



# Government policy on “British Jobs for British Workers”

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Section Business & Transport Section

“British jobs for British workers” refers to a set of policies announced by the Prime Minister Gordon Brown, first on 5 June 2007 at the GMB trade union congress in Brighton, and then in September 2007 at the 2007 Trades Union Congress. They have been criticised by politicians as being contrary to anti-discrimination law. The Government is reported to have said that the precise nature of the policies has been misunderstood.

Unofficial industrial action in January 2009 saw the convergence of these issues with a host of other complex issues relating to the *Posting of Workers Directive* and ECJ case law on both the Directive and trade unions’ ability to organise industrial action in cases of transnational subcontracting.

The following standard note covers these issues in detail:

[SNB/BT/301 \*Posted Workers\*, 2 February 2009](#)

There have been parallel developments in relation to labour migration from outside the EU and the points-based system for immigration to the United Kingdom. The following standard note contains further information on this issue:

[SN/HA/3953 \*IMMIGRATION: Points-Based Immigration and the Restaurant Trade\*](#)

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# 1 Government Policy

When the Prime Minister addressed the Trades Union Congress on 10 September 2007, further to announcements made earlier in June, he promised to find an extra 500,000 “British jobs for British workers”. This statement outlined a commitment to training unemployed workers for jobs currently being filled by workers from other countries:

Now today I want to show you how we can respond to globalisation by creating more jobs for British men and women and young people throughout our economy. After I took over this job a few months ago I asked for a study to be done on where the jobs are going to come from in future years. I found that while in the next decade we will need less unskilled jobs, we will need 5 million more skilled jobs.

I want us to be ready and prepared for what is the biggest economic transformation in employment our country will have seen for a 100 years.

Even now today there are greater opportunities. In addition to 29 million jobs in our economy, which is already the highest level of employment in our history, there are even today two-thirds of a million vacancies waiting to be filled, 654,000 in all.

Because the vacancies go right across the board in manufacturing, finance, hospitality, healthcare, because the vacancies exist in every region and nation of the country, and because they range across all our skills, our task in the coming months and years is to rapidly match workers needing jobs to the jobs that need workers.

One of the benefits of globalisation is, of course, the benefits we receive in many industries from the skills of workers from around the world, but it is absolutely essential also that British workers receive all the support, the training, and the skills, so that they can share in the benefits of globalisation too.

(...)

We are now ready to take the next big step forward as a country. There are jobs available today for in total 30 million men and women for the first time in our history. If we make the right decisions, we can advance even further and faster to full employment than ever before, with a British job on offer for every British worker.

Today I am proposing, and I have written to Brendan, the General Secretary, about this, that we work together to fast-track British workers into jobs we know exist and we work together to implement radically five practical changes that between them will yield half a million jobs.<sup>1</sup>

At the Labour Party Conference in 2007 this was repeated in the following terms:

As we set out on the next stage of our journey this is our vision: Britain leading the global economy - by our skills and creativity, by our enterprise and flexibility, by our investment in transport and infrastructure - a world leader in science; a world leader in financial and business services; a world leader in energy and the environment from nuclear to renewables; a world leader in the creative industries; and yes - modern manufacturing too - drawing on the talents of all to create British jobs for British workers.<sup>2</sup>

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<sup>1</sup> [TUC, Speech by the Prime Minister Gordon Brown to TUC Congress, 10 September 2007](#)

<sup>2</sup> [Gordon Brown's Labour conference speech](#), 24 September 2007

These statements have been elaborated in various press reports which included statements from government sources. They also refer to the scheme announced by the Home Secretary that will require migrant workers from outside the European Union to pass English language tests before being allowed to work in the UK. This will extend the language requirements currently imposed on highly-skilled migrants from outside the EU to cover skilled migrants, and possibly low-skilled workers.

There are also plans to expand an "Employment Partnership" scheme linking major employers with local Jobcentre Plus offices. The Government intends to form more of these partnerships with all the major industries to help British workers access available jobs. These will involve the retail, hotels, hospitality and security sectors, as well as the Olympic Delivery Authority. An article in Personnel Today provided further details:<sup>3</sup>

A Downing Street spokesman said: "The prime minister believes that, with jobs today available for more than 30 million people in the country, we can - if we make the right decisions - advance closer to full employment than ever before in our history, so that there is a British job for every British worker.

"That is why he has been working with [work and pensions secretary] Peter Hain and [chancellor] Alistair Darling to bring forward a package of measures to fast-track British workers into the vacancies available in the economy."

Also included in the measures are plans to fast-track lone parents back into work, and offer young people who left school this summer a guarantee of a place on a pre-apprenticeship course or in college by the end of September.

The spokesman added: "In total, the government believes that if we are able to implement all of these measures, an extra 500,000 British jobs could be created for British workers."

An article in the Guardian also gave specific information:

Ministers are planning three measures to encourage employers to offer jobs to these three groups: a £400 training allowance to train up new recruits from this fast-track programme; extending the guarantee of lone parents' benefits from the current first 15 days of work up to the first six weeks; and offering those finding work a back-to-work credit of £40 a week, rising to £60 a week in London.<sup>4</sup>

Local Employment Partnerships were introduced in Budget 2007.<sup>5</sup> An example of one such agreement with Asda, B & Q, Marks & Spencer, Sainsbury's and Tesco Express sets out the following measures intended to help long term benefit claimants back into the labour market:

- Offering 2-4 week Work Trials to a given number (determined by the employer) of local benefit claimants;
- Offering a target number of places for New Deal participants wishing to participate in the Subsidized Employment option, or wishing to take up work experience or work placement;
- Working with Jobcentre Plus and the Learning and Skills Council on the design of pre-employment training to ensure that it is relevant to employers' needs, and agree,

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<sup>3</sup> [Gordon Brown to reveal plans at TUC Congress to create 500,000 new jobs for British workers, \*Personnel Today\*, 10 September 2007](#)

<sup>4</sup> ["Brown plans new migrant controls to get unskilled Britons back to work", \*The Guardian\*, 10 September 2007](#)

<sup>5</sup> [Budget 2007, Press Notice PN1, 21 March 2007](#)

when hiring, to guarantee interviews or jobs to local benefit claimants who complete this training;

- Encourage their employees to volunteer to provide one-to-one mentoring for long-term benefit claimants to help prepare them for work;
- Review their application processes to ensure that local benefit claimants are not inadvertently excluded by, for example, requirements for qualifications, or overly complicated procedures.<sup>6</sup>

## 2 Criticisms

Since June there have been a number of criticisms of “British jobs for British workers” in the press and Parliament. The main arguments may be summarised as follows:

- Employment discrimination based on nationality is covered by European law and the *Race Relations Act 1976*
- Some employers may interpret the phrase “British jobs for British workers” as general government encouragement for discriminatory employment policies designed to privilege British job seekers over other people entitled to seek work in this country
- The phrase echoes the general employment policies of the British National Party and the National Front and may unintentionally benefit those parties

In the Debate on the Address on 6 November 2007, the Leader of the Opposition, The Rt Hon David Cameron MP criticised the Government’s policy and referred to further statements by the Secretary of State for Work and Pensions, The Rt Hon Peter Hain MP:

If we want just one example of the absolute bankruptcy of this Government, let us take the slogan that the Prime Minister wheels out every week: British jobs for British workers. Yes, if only he could see how embarrassed his Labour MPs are, how they shudder when he utters those words. I have done a bit of work on this little slogan of the Prime Minister’s. The Secretary of State for Work and Pensions told us that there should be no doubt. It is, he said,

“explicitly a British jobs for British people campaign”.

We asked the House of Commons Library, and it said:

“There is apparently nothing in the detail of the proposals to suggest that foreign nationals will be excluded from any of the initiatives if they happen to live in the area where the locally based schemes operate.”

So there we have it: the reality is that the Prime Minister has no intention of providing British jobs for British workers, because he knows that it would be illegal under EU law. His proposals will not help British people working in Britain any more than they will help Italian people working in Britain or Polish people working in Britain. That is the truth about British jobs for British workers. I did a bit more research to find out where he got his slogans from: he borrowed one off the National Front; he borrowed another off the British National party. Where was his moral compass when he was doing that?<sup>7</sup>

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<sup>6</sup> [Jobcentre Plus, Local Employment Partnership with Asda, B & Q, Marks & Spencer, Sainsbury’s and Tesco express](#), pdf document

<sup>7</sup> [HC Deb 6 November 2007 c22](#)

Keith Vaz MP also raised concerns in an adjournment debate on labour migration from the EU accession states, Bulgaria and Romania:

There has also been talk recently of the importance of British jobs for British people. I worry about that statement. It lacks credible arguments, and some have suggested that it appears to amount to little more than employment apartheid. It assumes that foreign workers are somehow stealing jobs from United Kingdom workers, an idea for which there is absolutely no evidence. It also raises the question: how do we ensure that jobs are going to British people and what do we classify as British? If someone has another citizenship but they have indefinite leave to remain in the UK, they have a right to work.

Hopes are falsely raised whenever “British jobs” are mentioned. Every position that is filled will require justification and an account kept of how many British jobs there are. The fact is that, in this country, over the past century, we have entered into many agreements with European and Commonwealth countries, which means that we are obligated under treaties, rightly, to give jobs to people who are not British, based on merit.

I am still shocked at the way in which we reversed our position on the highly skilled migrant workers programme. There are Indian and other citizens who came to this country to work hard and to help our economy, and they have been treated very badly.

[...]

I believe that another reason why the Government have decided to do that [retain restriction] is the general fear about the number of people who came in under the A8 and A2 accession rules, which, of course, is the subject of this debate. It is shocking that, in this day and age, it is acceptable in some quarters to criticise someone on the basis of the country they came from. Any talk of British work for British people will serve only to worsen the situation.

There is also, in dealing with the issue of the Romanians' and Bulgarians' restrictions, the issue of the number of British citizens who are working abroad. In 2006 EUROSTAT estimated that around 800,000 British citizens were working in the EU, outside the UK, some in Romania and Bulgaria. That is only 300,000 people fewer than the 1.1 million foreign workers in the UK and that figure does not include British workers based further afield, figures on which are not available. That serves to demonstrate not only that Britain benefits from migrants working in the UK, but that British people benefit from the agreements that allow that to happen, as it means that there is free movement of labour. The EU and the free movement of labour within it enriches our country and our citizens. It is something that we can be proud of and celebrate.<sup>8</sup>

## 1.1 European Law

The proposals on “British jobs for British workers” appear to specifically involve:

- Work Trials
- Work experience
- Vocational training
- Mentoring schemes

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<sup>8</sup> [HC Deb 6 November 2007 c124](#)

- Lone parents' benefits
- Back to work benefits

The question is to what extent these arrangements represent a specific benefit to British nationals as opposed to people from other countries?

The principle of free movement and non-discrimination on the grounds of nationality is set out in Article 39 of the consolidated version of the *EC Treaty*.<sup>9</sup> These rights are directly effective by individuals against Member States. There are various EC regulations and directives in force under this treaty provision. In particular, Directive 2004/38 contains provisions on access to employment and equal treatment.<sup>10</sup> Article 24 of the Directive sets out the principle of equal treatment:

### **Equal treatment**

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.

Vocational training, tax and “social advantages” are also covered by the principle of equal treatment. The fact that the principle of equal treatment is “subject to such specific provisions as are expressly provided for in the Treaty and secondary law” would allow derogations on the grounds of public policy, public security, public health, and employment in the public service.<sup>11</sup> Both direct and indirect discrimination against migrant workers from the EU is prohibited. So are measures that “substantially impede market access”. Direct discrimination would, for example, be the limitation of provision of private security to private security firms employing only domestic nationals.<sup>12</sup>

Indirect discrimination focuses on the effect of a measure and whether it would have a greater impact or impose a greater burden on nationals of other Member States. Such measures may be apparently neutral in terms of nationality. They would be unlawful unless objectively justified. Taking the example of the Local Employment Partnerships, claims of indirect discrimination could arise if the effect of these was to encourage employers to employ less migrant workers and more people on benefits, who by virtue of the rules on benefit entitlement (see below) might be more likely to be British than in the wider labour market. This would very much depend on the facts of a given case, also taking into account

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<sup>9</sup> [EC Treaty \(consolidated version\) 2002](#)

<sup>10</sup> [Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#)

<sup>11</sup> Barnard, Catherine, *EC Employment Law* (3<sup>rd</sup> Ed.) Oxford University Press, 2006, p187

<sup>12</sup> As was found by the ECJ in Case C-283/99 *Commission v Italy* [2001] ECR I-4363

permitted derogations and whether the specific provisions were objectively justified. Helping long-term benefit claimants back into employment might be asserted as such a justification.

The measures proposed by the government will potentially benefit more British nationals than foreign EU nationals simply by virtue of the fact that there are more British people in the UK. This would not of itself be discrimination. But there is nothing in the detail of the proposals to suggest that foreign nationals will be specifically excluded from any of the initiatives if they happen to live in the area where the locally based schemes operate or number among the target group of national schemes or benefits. If there were such specific provisions excluding people on grounds of nationality they would probably be caught by anti-discrimination law.

### 3 Race Equality Duty

An article in Personnel Today on 11 June 2007 reported on some of the responses to the Prime Minister's announcement to the GMB congress on 5 June:

Confusion and anger surround prime minister designate Gordon Brown's much publicised promise to create hundreds of thousands of jobs for British people.

Employers groups have admitted they do not know how the jobs will be allocated, and the Commission for Racial Equality (CRE) has received complaints that the proposals are racist.

Brown boasted to delegates at the GMB union's annual congress in Brighton last week that he had secured deals with retailers and Olympic bosses.

"I want to ensure that the jobs available in Britain are available for British workers who are looking for jobs," he said.

The British Retail Consortium said Brown was referring to Local Employment Partnerships, where long-term unemployed people were given help applying for jobs. However, migrant workers can also secure jobs through this scheme.

The Olympic Delivery Authority pointed to its Boost scheme, which allows residents in the five host London boroughs for the Games to receive support to apply for job vacancies. But there is nothing to ensure British passport holders secure jobs via this route.

Civil rights group Liberty & Law has written to the CRE, asking for an investigation into the policy to ensure it was not designed to give British jobseekers privileges over others entitled to work in the UK.<sup>13</sup>

The complaints made in June to the CRE<sup>14</sup>, referred to in the above article, were based on the provisions of the *Race Relations Act 1976* (as amended).<sup>15</sup> It is unlawful for a person to discriminate on racial grounds against another person in employment or the provisions of goods and services. The law defines racial grounds as including race, colour, nationality or ethnic or national origins.

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<sup>13</sup> Personnel Today, [Gordon Brown's pledge to create hundreds of thousands of 'jobs for Brits' causes concern](#), 11 June 2007

<sup>14</sup> The Commission for Racial Equality (CRE) closed in October 2007 and was replaced by a new unified commission covering all the equality strands: The Equality and Human Rights Commission.

<sup>15</sup> [Liberty & Law, 7 June 2007](#)

There are a set of duties on various public authorities to promote race equality referred to as the “race equality duty”. This includes the general statutory duty under section 71(1) of the *Race Relations Act 1976*, as amended by the *Race Relations (Amendment) Act 2000* and the various specific duties (including the employment duty) that were introduced by way of statutory instruments. The general statutory duty is as follows:

**71 Specified authorities: general statutory duty**

(1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need—

(a) to eliminate unlawful racial discrimination; and

(b) to promote equality of opportunity and good relations between persons of different racial groups.

(2) The Secretary of State may by order impose, on such persons falling within Schedule 1A as he considers appropriate, such duties as he considers appropriate for the purpose of ensuring the better performance by those persons of their duties under subsection (1).

(3) An order under subsection (2)—

(a) may be made in relation to a particular person falling within Schedule 1A, any description of persons falling within that Schedule or every person falling within that Schedule;

(b) may make different provision for different purposes.

(4) Before making an order under subsection (2), the Secretary of State shall consult the Commission.

(5) The Secretary of State may by order amend Schedule 1A; but no such order may extend the application of this section unless the Secretary of State considers that the extension relates to a person who exercises functions of a public nature.

(6) An order under subsection (2) or (5) may contain such incidental, supplementary or consequential provision as the Secretary of State considers appropriate (including provision amending or repealing provision made by or under this Act or any other enactment).

(7) This section is subject to section 71A and 71B and is without prejudice to the obligation of any person to comply with any other provision of this Act.

**71A General statutory duty: special cases**

(1) In relation to the carrying out of immigration and nationality functions (within the meaning of section 19D(1)), section 71(1)(b) has effect with the omission of the words “equality of opportunity and”.

(2) Where an entry in Schedule 1A is limited to a person in a particular capacity, section 71(1) does not apply to that person in any other capacity.

(3) Where an entry in Schedule 1A is limited to particular functions of a person, section 71(1) does not apply to that person in relation to any other functions.

The general duty applies to bodies and other persons listed in Schedule 1A of the *Race Relations (Amendment) Act 2000*. Paragraph 1 of Schedule 1A provides that Ministers of the Crown and government departments are subject to the general statutory duty:

(1) A Minister of the Crown or government department.

(2) Sub-paragraph (1) does not include the Security Service, the Intelligence Service or the Government Communications Headquarters.

The Equality and Human Rights Commission explain the enforcement of the race equality duty as follows:

The race equality duty is a statutory duty and therefore failure to comply can result in legal enforcement action.

#### **Complying with the general duty**

If a public authority does not meet the general duty, its actions (or failure to act) can be challenged in a High Court (or Court of Session in Scotland) for judicial review. A claim for judicial review can be made by one or more people with an interest in the matter, or the Commission. The Commission can also use its powers of formal investigation to enforce the general duty. If the Commission has sufficient information and belief that unlawful discrimination is taking place, it can mount a formal investigation into the relevant actions of a named body. At the end of the formal investigation process, a finding of discrimination can be made and the Commission can serve a non-discrimination notice on the named body.

#### **Complying with the specific duties**

If a public authority does not meet any of its specific duties it could face enforcement action by the Commission under section 71D of the amended Race Relations Act.<sup>16</sup>

## **4 Trade Union Policy**

Broadly, trade unions appear to welcome migrant workers. The TUC website has a dedicated section on migration.<sup>17</sup> It has also produced a leaflet for people coming to work in the UK giving information about their legal rights to work.<sup>18</sup> On 10 September the TUC issued a press notice to accompany its *2007 Equality Audit*, which it states “highlighted a major recruitment drive for migrant workers across the trade union movement, reflecting unions’ rapid response to the changing make-up of the labour market.”<sup>19</sup>

At the Trades Union Congress (TUC) Black Worker’s Conference 2007 a motion, by the union Community, was carried unanimously to encourage migrant workers to join UK unions. This motion was seconded by ASLEF, they said:

Chair, Conference, ASLEF fully supports Community in their intent to win the right to work for asylum seekers and economic migrants in the UK. Not only does this make sound economic sense, but it removes the burden of supporting migrants from UK tax payers and allows people to live in dignity and to use their inherent skills and abilities.

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<sup>16</sup> Equality and Human Rights Commission, [Race equality duty: Compliance and enforcement](#)

<sup>17</sup> TUC website: [section on migration](#)

<sup>18</sup> TUC website: [leaflet on employment rights](#)

<sup>19</sup> TUC [Equality Audit 2007](#), and TUC, [Unions embark on major recruitment drive for migrant workers](#), 10 September 2007

The UK can, and does, not only benefit economically, but culturally and socially from the experiences that foreign workers bring with them. Unorganised labour, whether in the UK or abroad is a threat to the terms and conditions of UK workers, as these workers tend to earn lower wages and have fewer and poorer terms and conditions at work.<sup>20</sup>

[...]

Unions need to prioritise the recruitment of migrant workers and to target resources to encourage them to join their appropriate unions. Resources need to be produced in a variety of languages and the TUC should be producing generic recruitment packs in at least Swahili, Arabic, Somalian, Russian, Polish and Romanian. There should also be appropriate information on the TUC website.

A TUC report, *the economics of migration: managing the impacts*, of June 2007, considered the relationship between immigration and the work of the trade unions:<sup>21</sup>

It seems clear that immigration does not threaten the jobs of British-born workers overall, but there can be transitional problems, and the most disadvantaged workers may be the most likely to be disadvantaged in this process. We also know from anecdotal accounts that in certain, specific sectors migration may be causing job losses. For example, there is growing evidence that this may be happening in the construction sector although we know of no survey work which has been conducted to verify this.

This suggests three policy responses for unions. Firstly, unions should press for effective enforcement of current minimum employment standards, and make sure that migrant workers actually benefit from their rights to the minimum wage, sick pay, paid holidays and social security contributions. Secondly, unions should make an extra effort to organise migrant workers, extending union rates and conditions of employment to a vulnerable group of workers and thus ensuring that native workers are not undercut. Thirdly, British society generally gains from migrants' impact on output and their net fiscal contribution; it is only fair that the bulk of any gains should be used to enhance social security and services for those workers who may lose out, especially through extra rights to training and higher social benefit rates. The Treasury has recognised the case for "appropriate social protection instruments" to "prevent the most severe effects" of "short-term adjustment costs". Unfortunately the Treasury confines its discussion of the social purpose of social protection to the prevention of absolute destitution – this is not a fair bargain, and the trade union movement will insist that an open economy can only be operated fairly if the gains are applied to enhancing the social wage.<sup>22</sup>

A Learning and Skills Council Report from January 2007 states that "it is generally accepted within evidence-informed debate that migrant labour does not generally disadvantage existing workers by displacing them or depressing wages".<sup>23</sup> The House of Lords Economic Affairs Committee is currently conducting an inquiry into the economic impact of immigration in the UK.<sup>24</sup> The Committee received written and oral evidence to the inquiry.<sup>25</sup> This has

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<sup>20</sup> Patmore, P. BEMCC National Secretary, [Report Of The TUC Black Worker's Conference 2007](#), 18 May 2007

<sup>21</sup> TUC, [The economics of migration: managing the impacts](#), June 2007

<sup>22</sup> TUC, [The economics of migration: managing the impacts](#), June 2007, p5

<sup>23</sup> Learning and Skills Council, [Migrant Workers and the Labour Market: Review of LSC research on labour market participation, skills and skills provision for migrant workers](#), January 2007

<sup>24</sup> [House of Lords Economic Affairs Committee](#)

<sup>25</sup> House of Lords Economic Affairs Committee, [The Economic Impact of Immigration, Written Evidence](#) and uncorrected oral evidence taken on [9 October 2007](#); [16 October 2007](#); and [23 October 2007](#)

included a joint submission from the Home Office, Department for Work and Pensions and the Treasury.<sup>26</sup>

## 5 Social security benefits and tax credits<sup>27</sup>

The rules governing social security benefits and tax credits for people coming to the United Kingdom from the European Economic Area are complex. The basic position is that there is no *general* entitlement to social security benefits for people coming to the UK from other countries in the European Economic Area. The provisions in EU law to coordinate social security rules for people moving from one Member State to another exist primarily to facilitate the free movement of labour within the European Economic Area (EEA).<sup>28</sup> As such, they apply mainly to economically active people and their families. Economically inactive people, such as non-working lone parents, may face restrictions on their entitlement to benefit in the host country.

In order to claim the principal means-tested benefits such as Income Support, a person who has recently arrived in the UK must satisfy the 'Habitual Residence Test', or be treated as habitually resident. Since 1 May 2004 people have had to satisfy an additional test – the 'right to reside' test – in order to be considered habitually resident.

The term 'right to reside' in this context is perhaps a little confusing. Having a 'right to reside' does not simply mean that the person can live in a particular country. Not all European Economic Area (EEA) nationals will have the 'right to reside' even though they can all exercise free movement rights whatever their personal circumstances. This is because not all migrants can move from one EEA country to another and engage in certain activities, such as claiming benefits. In other words, only certain categories of person moving within the EEA will have, under EU law, certain guaranteed rights attached to their residence in the host country. This is what is meant by EEA nationals having a 'right to reside'. It is perhaps more helpful to think of 'rights of residence', and indeed the new EU Directive which sets out who has a right to reside when moving within the EEA is known as the *Rights of Residence Directive*.<sup>29</sup>

Broadly speaking, a person who moves from one EEA country to another has a right to reside if they are working, or are able to support themselves. This applies to people from the 'old' EU countries as well as those from the new 'accession countries'.

On 30 April 2006, the new *Rights of Residence Directive* 2004/38/EC came into force, giving everyone, including economically inactive people, a right to reside for the first three months; but the UK Government amended the rules on access to benefits to ensure that people who have a right to reside solely on the basis of the new three-month right of residence will not satisfy the requirements.<sup>30</sup>

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<sup>26</sup> Home Office, DWP, HM Treasury, [The Economic and Fiscal Impact of Immigration: A Cross-Departmental Submission to the House of Lords Select Committee on Economic Affairs](#), October 2007, Cm 7237

<sup>27</sup> This section was provided by Steven Kennedy, Social Policy Section

<sup>28</sup> The EEA comprises the EU Member States plus Iceland, Liechtenstein and Norway. Switzerland is not a member of the EEA but as a result of an agreement with the EU that came into force on 1 June 2002, Swiss nationals enjoy broadly the same rights as EEA nationals with regard to freedom of movement.

<sup>29</sup> 2004/38/EC

<sup>30</sup> The *Social Security (Persons from Abroad) Amendment Regulations 2006* SI 2006/1026

## 6 Unofficial industrial action in January/February 2009

In late January/ early February 2009 strikes were staged by contract workers at around a dozen oil refineries, gas terminals and power stations in the UK. The strikes were reportedly triggered by the award of a contract by Total to IREM, an Italian engineering company, which is claimed will use its own workforce from Portugal and Italy.<sup>31</sup> The strikes have raised issues again associated with Gordon Brown's Trades Union Congress pledge on 10 September 2007, to find an extra 500,000 "British jobs for British workers".<sup>32</sup>

The *Financial Times* highlighted the use of British Jobs for British workers placards at the strikes:

The placards wielded by some of the striking workers demanding "British jobs for British workers" demonstrated how this pledge – uttered by Gordon Brown in 2007 – has returned to haunt the prime minister.

David Cameron, the Tory leader, said the "British jobs" rhetoric risked fuelling xenophobia, as well as contradicting the anti-protectionism argument Mr Brown was advancing in Davos on Friday.

"The prime minister should never have used that slogan," he said.

Business expressed concern that the natural political reaction of appearing to sympathise with the strikers' fears of job losses could spill over into protectionist rhetoric.

Martin Broughton, president of the CBI employers' body and chairman of British Airways, said the conflict between the pressure to protect domestic workers and the international logic for backing free trade was "one of the dilemmas that any politician has to face".<sup>33</sup>

The slogan has also been used at sites where jobs for British workers has not been an issue:

Workers at Sellafield echoed the common refrain of safeguarding "British jobs for British workers". Though this is not an issue at Sellafield, union shop stewards said foreign companies elsewhere were undercutting and refusing to hire locals.

"If it happened there [Lindsey] it can happen anywhere," said Willy Doggert, an official with the GMB union, who is stripping asbestos at the site. "We want a level playing field."<sup>34</sup>

Another FT article explains that the dispute and the use of the British jobs for British workers slogan has been politically difficult for the Prime Minister:

The dispute is politically fraught for the government, highlighting both fears about rising unemployment and the legal difficulties of trying to abide by Gordon Brown's 2007 pledge to create British jobs for British workers. Mr McFadden yesterday rejected suggestions this commitment was inconsistent with Mr Brown's anti-protectionist stance.

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<sup>31</sup> "ACAS called in as wildcat strikes spread" *Financial Times*, 30 January 2009

<sup>32</sup> [TUC, Speech by the Prime Minister Gordon Brown to TUC Congress, 10 September 2007](#)

<sup>33</sup> "Protectionist pressures begin to grow" *Financial Times*, 31 January 2009

<sup>34</sup> "Wildcat strikes spread to UK nuclear site" *Financial Times*, 2 February 2009

"I don't think Gordon Brown has ever said he is in favour of trade barriers or in favour of a situation where UK companies could not operate in Europe and European companies could not operate here," he said.<sup>35</sup>

In a BBC interview, the Prime Minister explained further what he meant when he talked about British jobs for British workers:

In his interview, to be broadcast today, the Prime Minister was asked what his message would be to those thinking of staging sympathy strikes on Monday.

"That that's not the right thing to do and it's not defensible," he replied. "What we've set up as a process to deal with the questions that people have been asking about what has happened in this particular instance."

He went on: "When I talked about British jobs, I was talking about giving people in Britain the skills, so that they have the ability to get jobs which were at present going to people from abroad and actually encouraging people to take up the courses and the education and learning that is necessary for British workers to be far more skilled for the future."<sup>36</sup>

The British National Party has announced its "sympathy" with what it calls a grass-roots "British Jobs for British Workers" sympathy strike campaign."<sup>37</sup>

The *Financial Times* commented that the Prime Minister's use of the slogan could have "adverse" impacts:

Rarely can a soundbite have bitten back so ferociously. At the time, the promise was denounced by political opponents as "dog-whistle" politics, heard only by the constituency to which it appeals. But let's face it, it was more like a full-throated yell to the UK's xenophobes. As the recession deepens, you can expect this ill-judged promise to be invoked increasingly frequently, alongside injunctions to consumers to "Buy British" and banks to "Lend British".

Mr Brown's 2007 comment cannot be unsaid, so the question now is whether its adverse impact can be blunted. Both employers and unions have a role to play. The former need to ensure that they are above reproach. The fact that the dispute has been allowed to escalate is already evidence that the companies involved have mishandled the situation. The unions are careful to condemn the wildcat racism of some British workers. But they simultaneously warn companies against breaking European law by refusing to hire UK staff. Total and its Italian contractor, Irem, which is employing Italian and Portuguese workers at its Lindsey refinery, claim to have behaved fairly.

There are a few heartening signs. Even on the construction workers' website [bearfacts.co.uk](http://bearfacts.co.uk) – where protesters can download placards with the "British jobs" pledge – some workers are remonstrating with intemperate comrades for fomenting nationalist fury. Job insecurity may cause these localised demonstrations to peter out. But Italian news agencies reported on Friday that the regional president of Sicily – where Irem is based – was threatening to retaliate by calling off talks about a local regasification joint venture with Royal Dutch Shell. This dog may already be off the leash.<sup>38</sup>

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<sup>35</sup> "ACAS called in as wildcat strikes spread" *Financial Times*, 30 January 2009

<sup>36</sup> "Brown condemns British workers striking for jobs" *The Herald*, 2 February 2009

<sup>37</sup> British National Party website, [Solidarity with the construction lads](http://Solidarity with the construction lads), 30 January 2009

<sup>38</sup> "Lombard Live: Brown's jobs dilemma" [FT.com](http://FT.com), 30 January 2009

The trade unions Unite and GMB are expected to back the creation of an independent panel to investigate complaints of British workers being excluded from jobs:

Acas, the conciliation service, will meet unions, workers and employers today to find a way to halt the strikes and protests, which spread to more than a dozen locations last week. The unions Unite and the GMB are expected to back the creation of an independent panel to investigate individual complaints by British workers of being excluded from jobs. Unions said that they had warned the Government weeks ago that British workers were being prevented from applying for construction jobs because foreign workers were coming in on less money.<sup>39</sup>

In the Lindsey refinery disputes it was acknowledged that the terms and conditions set down in the National Agreement for the Engineering Construction Industry (NAECI) including pay were not covered by the Directive. The Acas report into the dispute describes the agreement:

This agreement, commonly known in the industry as the NAECI 'blue book', determines the pay and conditions for workers at all major engineering construction sites in the UK and requires that all member firms of the Engineering Construction Industry Association (and of other signatories to the agreement) abide by the terms of the agreement where projects are put within its scope.<sup>40</sup>

The Report's conclusions were as follows:

The Acas inquiry found no evidence that Total, Jacobs Engineering or IREM have broken the law with regard to the use of posted workers or entered into unlawful recruitment practices.

There is tension around the application of the Posted Workers Directive in the UK, and its relationship with the UK's industrial relations system. These issues have been highlighted by the recession.

The complexity produced by the interrelation of EU law, national agreements and supplementary local collective agreements is a potential source of confusion and dispute. A review by the relevant parties of the interrelationship between national and local collective agreements would aid transparency and reduce the potential for misunderstandings and conflict.

An enhanced role for the NAECI independent auditor in both the tendering and project monitoring processes, if this could be agreed, would, we believe, play an important part in helping to overcome some of the difficulties that this dispute has raised.<sup>41</sup>

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<sup>39</sup> More strikes loom in row over hiring foreign workers at low wages, [The Times](#), 2 February 2009

<sup>40</sup> Acas, [Report of an Inquiry into the circumstances surrounding the Lindsey oil refinery dispute](#), 16 February 2009

<sup>41</sup> Acas news, [Acas publishes report findings from the Lindsey oil refinery investigation](#), 16 February 2009