



Ending of transitional restrictions for Bulgarian and Romanian workers

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Romania and Bulgaria (the 'A2' states) joined the EU on 1 January 2007. The accession treaties allowed other Member States to apply transitional restrictions on Bulgarian and Romanian workers' free movement rights for up to seven years after accession, in order to guard against disruption of their labour markets. Transitional restrictions cannot be applied against other categories of A2 national exercising free movement rights (such as 'self-sufficient' or 'self-employed' persons). All Member States must lift restrictions on Bulgarian and Romanian workers by the end of 2013.

The UK has applied restrictions for the full seven year period. Bulgarians' and Romanians' opportunities to come to work in the UK have been limited to two schemes for highly skilled and skilled workers, and two quota-based schemes for low-skilled work in the agricultural and food processing sectors. With limited exceptions, Bulgarian and Romanian nationals have been required to obtain a 'worker authorisation document' before beginning employment in the UK. Non-compliant A2 workers (and their employers) have been liable to fines and prosecution.

When the transitional restrictions are lifted, Bulgarian and Romanian workers will no longer be subject to worker authorisation, and will be able to come to work (or look for work) in the UK on the same basis as other EU nationals.

There are no official forecasts of migration to the UK by nationals of Bulgaria and Romania after 2013. A report produced by the National Institute of Economic and Social Research for the Foreign and Commonwealth Office concluded that it is not possible to produce such a forecast because of a lack of accurate data on migration.

The Government anticipates that it is more likely that A2 migrants will choose to move to Germany, Spain or Italy than come to the UK. Nevertheless, it has acknowledged concerns about potential negative impacts of a significant increase in immigration from the A2 states. It is taking a range of measures in order to address perceived 'pull factors' for migration to the UK, such as new restrictions on migrants' access to welfare benefits. In late November, an article written for the *Financial Times* by the Prime Minister proposed a further set of measures, including broader changes to the fundamental principle of free movement of persons.

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1 In brief: EU ‘free movement’ law

EU citizenship grants the right of free movement within the EU.¹ EU nationals do not require an entry clearance (visa) to enter the UK, and no time limit may be placed on their stay. An EU citizen who produces a valid passport or national identity card must be admitted to the UK unless exclusion is justified on the grounds of public policy, public security or public health.

Although all EU nationals can exercise [free movement](#) rights, only certain categories of person will have, under European law, certain guaranteed rights attached to their residence in the host country. This is what is meant by EU nationals having a “right to reside”. European Directive [2004/38/EC](#) “*on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*” sets out who has a right to reside when moving within the EU, and the circumstances in which Member States can restrict those rights. This Directive is often referred to as the ‘Free Movement of Persons’, ‘Citizens’ or ‘Rights of Residence’ Directive.

EU directives specify certain end results that must be achieved in every Member State. Member States must adapt their laws to meet those goals, but are free to decide how to do so. Directive 2004/38/EC was transposed into UK legislation by the *Immigration (European Economic Area) Regulations 2006* (‘the 2006 Regulations’).²

Put briefly, an EU national has an initial right to reside in another Member State for up to three months, regardless of the purpose of the visit, as long as they do not become an

¹ [Treaty on the Functioning of the European Union](#). Swiss and European Economic Area (EEA) nationals (Iceland, Liechtenstein and Norway) enjoy similar rights due to agreements with the EU.

² SI 2006/1003 (as amended)

“unreasonable burden” on the social assistance system of the Member State. People who have a right to reside solely on the basis of the three-month right of residence will not satisfy the UK’s benefits eligibility requirements.

Those wishing to stay for longer than three months must fit into one of the following categories in order to have a right to reside in the host Member State:

- a worker³
- a self-employed person
- a job-seeker (a person who is seeking employment and has a genuine chance of being employed)
- a self-sufficient person (a person who has sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State, and has comprehensive sickness insurance cover)
- a student (a person who is enrolled on a course of study at a private or public establishment, has comprehensive sickness insurance cover and assures the relevant national authority that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State)
- a family member accompanying or joining an EU national who satisfies one of the above criteria.⁴

EU nationals and their family members continue to have a right of residence whilst they meet the conditions specified in the Free Movement Directive, and can apply for residence documentation as proof of their right to reside. A “right of permanent residence” is acquired after five continuous years’ residence in the host Member State.⁵ Member States may investigate in specific cases where there is a reasonable doubt as to whether an EU national or his/her family members satisfies the conditions for having a right to reside, but cannot carry out such checks systematically.

Some determinations made by the Court of Justice of the EU have extended the circumstances in which a person may be able to claim a right to reside under European law.⁶ The UK Border Agency website provides [a brief summary](#). The UK Government’s position is that rights of residence acquired on the basis of such judgements do not have to be recognised as equal to those which stem directly from the Free Movement Directive, and consequently, do not confer the same rights on holders. It has therefore amended the 2006 Regulations to create a new category of “derivative right of residence” in order to accommodate these cases.⁷ Under the amended 2006 Regulations, persons with a

³ In certain circumstances, a person who is no longer working can retain “worker” or “self-employed” status - for example, if temporarily unable to work due to illness or accident, or due to involuntary unemployment: [Directive 2004/38/EC](#), Article 7(3)

⁴ A more limited range of relatives are eligible for a right of residence as the family member of a “student” than for the other categories: [Directive 2004/38/EC](#), Article 2(2), Article 7(4)

⁵ Or sooner in certain specified circumstances - for example, a worker who reaches retirement age or becomes permanently incapacitated: [Directive 2004/38/EC](#), Article 17

⁶ See, for example, [Chen \(C-200/02\)](#), [Ibrahim \(C-310/08\)](#), [Teixeira \(C-480/08\)](#)

⁷ [SI 2006/1003](#) as amended by [SI 2012/1547](#) and [SI 2012/2560](#)

derivative right of residence do not have the same entitlements as those with a right to reside in terms of eligibility for permanent residence or sponsoring family members to come to the UK.⁸ Nor do they have access many types of welfare benefits.⁹

2 Transitional restrictions for Bulgaria and Romania

Romania and Bulgaria (the 'A2' states) joined the EU on 1 January 2007. From that date, Bulgarian and Romanian nationals have been able to exercise their free movement rights to travel to other Member States.

However, the terms of their accession treaty permitted existing Member States to impose [transitional restrictions](#) on the free movement rights of Bulgarian and Romanian 'workers' for up to seven years following accession, in order to guard against disruption of their labour markets.¹⁰ Transitional restrictions cannot be applied against other categories of A2 national (such as 'self-sufficient' or 'self-employed' persons).

The transitional restrictions were split into three phases:

- For the first two years after accession (1 January 2007 - 31 December 2008) Bulgarian and Romanian workers' access to labour markets in other Member States depended on those states' national laws and policies.¹¹
- Member States could continue to apply their national restrictions for a further three years (1 January 2009 - 31 December 2011) if they notified the European Commission of their intention to do so.
- Member States could apply the restrictions for a further two years (1 January 2012 - 31 December 2013) if they experienced or anticipated "serious disturbances" in their labour markets, and notified the European Commission.

Member States could lift their transitional restrictions at any stage during the seven year period, or choose not to apply any restrictions.

Under a 'safeguard' clause in the accession treaty, a Member State could re-introduce restrictions previously lifted during the seven year transitional period in the event of a serious disturbance in the labour market. Spain invoked the safeguard clause on 28 July 2011 in order to reintroduce restrictions on Romanian workers' access to its labour market (which it had lifted in 2009).¹² However, the accession treaty does not include emergency provisions which would allow transitional restrictions to continue for longer than seven years. Therefore, all Member States must end their transitional restrictions on A2 workers by the end of 2013.

⁸ UKBA *update*, '[Changes to the Immigration \(European Economic Area\) Regulations 2006](#)', 13 July 2012

⁹ *The Social Security (Habitual Residence) (Amendment) Regulations 2012*, SI 2012/2587

¹⁰ Discussed further in Library standard note [SN 4171 In brief: Restrictions under the EU Accession Treaty for Romanian and Bulgarian workers](#) (October 2006)

¹¹ The 'standstill clause' in the accession treaty provides that Bulgarian and Romanians' access to Member States' labour markets cannot be any more restrictive than was the case when the accession treaty was signed (25 April 2005).

¹² See European Commission *press releases*, "[The Commission accepts that Spain can temporarily restrict the free movement of Romanian workers](#)", 11 August 2011; "[Commission authorises Spain to extend existing temporary restrictions on Romanian workers](#)", 21 December 2012

2.1 What restrictions has the UK applied?

The Labour government chose to apply transitional restrictions on Bulgarian and Romanian workers when they joined the EU in 2007. The current government decided to keep these in place for the full seven year transition period. The decisions to maintain the restrictions have been taken in line with advice from the Government's Migration Advisory Committee.¹³

Put briefly, Bulgarian and Romanian nationals' [opportunities to come to the UK as workers](#) have been restricted as follows:

- Highly skilled migrants have had unrestricted access to the labour market if they qualify under the [Highly Skilled Migrant Programme](#) scheme, which was in place at the time of accession.
- Skilled workers have been able to come to the UK if they are filling a vacancy which could not be filled by a resident worker, and qualify for a [work permit](#) under the arrangements which were in place prior to the points-based system for immigration.
- Low-skilled workers have been limited to two quota-based schemes - the Seasonal Agricultural Workers Scheme ([SAWS](#)) and the Sector Based Scheme ([SBS](#), which covers food processing jobs). These schemes have only been open to Bulgarian and Romanian workers, and are due to close when transitional restrictions are lifted at the end of December 2013.
- Bulgarian and Romanian students have been allowed to work for 20 hours per week during term-time and full-time during holidays.

With limited exceptions, Bulgarian and Romanian nationals wishing to work in the UK have been required to obtain a 'worker authorisation document' before commencing employment.¹⁴ To have a right to reside as a worker, a Bulgarian or Romanian national who is subject to worker authorisation must have a worker authorisation document and be working in accordance with the work authorisation scheme.¹⁵ Persons found working illegally have been liable for an on the spot fine of £1000, or prosecution and a £5000 fine and/or 3 months imprisonment. Persons who employ an illegally working Bulgarian or Romanian national have faced prosecution and a £5000 fine.

Under the transitional restrictions, A2 nationals have not been allowed to retain worker or job-seeker status unless they have completed 12 months' authorised employment. After working legally in the UK without interruption for 12 months, they become exempt from worker authorisation and have the same rights and entitlements as other EU nationals.

A few categories of A2 workers have been exempt from the worker authorisation requirement (for example, family members of other EEA nationals).

2.2 What have other EU Member States done?

Some Member States chose not to apply any restrictions when Bulgaria and Romania joined the EU on 1 January 2007; others chose to apply restrictions but have since lifted them; and

¹³ MAC, '[The Labour market impact of relaxing restrictions on employment in the UK of nationals of Bulgarian and Romanian EU states](#)', December 2008; '[Review of the transitional restrictions on access of Bulgarian and Romanian nationals to the UK labour market](#)', November 2011

¹⁴ *The Accession (Immigration and Worker Authorisation) Regulations 2006*, [SI 2006/3317](#) (as amended)

¹⁵ *European Casework Instructions*, [Chapter 7 'Accession State Nationals'](#), Section 2 (accessed on 8 April 2013) discusses the requirements in greater detail.

other Member States have chosen to apply transitional restrictions for the full seven years (although in some cases they have partially relaxed them).

A [summary table](#) prepared by the European Commission lists each Member States' use of transitional restrictions for Bulgarian and Romanian workers (as at 30 July 2012).¹⁶ Belgium, Germany, Spain, France, Luxembourg, Malta, the Netherlands and Austria are listed as continuing to apply transitional restrictions. Recent comments by the Minister for Immigration indicate that these states are continuing to apply their restrictions until the end of 2013.¹⁷

3 Bulgarian and Romanian immigration to date

There are two principal sources of data that provide estimates of migration to the UK by nationals of Bulgaria and Romania: estimates of long-term international migration flows and population estimates showing population growth by nationality. The two sources differ in how much migration they suggest there has been by A2 nationals since the accession of Bulgaria and Romania to the EU in 2007. While estimates of migration flows suggest net migration of A2 nationals to the UK has averaged less than 10,000 a year since 2007, population data suggests that the population of these nationals has grown by around 25,000 a year.

Estimates of long-term international migration (LTIM) are based primarily on the International Passenger Survey (IPS), which is a survey of passengers travelling through UK ports. The IPS approaches around 800,000 people each year, of which around 5,000 meet the definition of a long-term international migrant; that is someone who changes their country of usual residence for a period of at least a year. The IPS sample is not large enough to accurately estimate the number of migrants that are nationals of just the A2 countries. However, it does allow for annual estimates of immigration, emigration and net migration by nationals of Bulgaria, Romania, Cyprus and Malta combined. These are set out in Table 1 below.

Table 1: Migration by nationals of the A2, Cyprus & Malta, 2004-2012

	Immigration <i>000s</i>	Emigration <i>000s</i>	Net migration <i>000s</i>
2004	0	1	0
2005	3	1	2
2006	4	0	3
2007	6	3	4
2008	19	11	6
2009	17	4	13
2010	14	4	10
2011	14	6	8
2012	13	5	9
Total 2007-12	83	33	50
Annual average 2007-12	14	6	8

Source: ONS, [Migration Statistics Quarterly Report August 2013](#)

¹⁶ European Commission, Employment, Social Affairs & Inclusion/'[Enlargement - transitional provisions](#)' "Summary table of Member States policies" (undated; accessed on 8 April 2013)

¹⁷ [PBC Deb 19 November 2013 c385](#)

Table 1 suggests that between 2007 and 2012 total long-term immigration to the UK by nationals of Bulgaria, Romania, Cyprus and Malta was around 83,000, while total net inward migration by nationals of these countries was around 50,000, equal to around 8,000 a year on average.

The estimates of long-term international migration are the figures the Government uses to measure progress against its target of reducing net migration from “the hundreds of thousands to the tens of thousands”, so Table 1 gives some indication of the contribution of A2 migration to the overall level of migration that the Government is seeking to meet.¹⁸

However, data from population surveys suggest that these estimates of migration do not capture the full extent of population change that is due to migration from Bulgaria and Romania. Table 2 shows Labour Force Survey estimates of the number of Bulgarian and Romanian nationals living in the UK at the time of accession and in the most recent comparable quarter, which is Q1 2013. It also shows the estimated home population of each A2 country at the start of 2013.

Table 2: Estimated number of A2 nationals living in the UK, Q1 2007 & Q1 2013

	Nationals resident in UK		Change over period		Population
	Q1 2007	Q1 2013	Total	Annual average	2013
Bulgaria	15,000	55,000	+40,000	+7,000	7,285,000
Romania	14,000	122,000	+108,000	+18,000	20,057,000
Total A2	29,000	177,000	+148,000	+25,000	27,342,000

Notes: 1. Data is not seasonally adjusted so comparisons are made between the same quarters in each year.
Sources: ONS Labour Force Survey, Eurostat

Between the accession of Bulgaria and Romania in Q1 2007 and Q1 2013, the population of A2 nationals living in the UK increased by around 148,000, which is around 25,000 a year on average. This increase has taken place while transitional restrictions are in place.

The difference between the levels of migration suggested by the two sources of data is perhaps due to differences in what each source of data measures. The estimates of long-term international migration measure migration by people entering and leaving the UK for periods of at least a year, so these estimates do not capture “seasonal” migration for shorter periods of time. Estimates of the population of A2 nationals also include children who have been born to A2 migrants since they moved to the UK.¹⁹ However, there is evidence to suggest that estimates of migration flows between 2001 and 2011 may have underestimated the full extent of international migration.²⁰

¹⁸ [HC Deb 23 Nov 2010 c169](#), ‘Controlling Migration’

¹⁹ Children of foreign nationals born in the UK are not automatically British citizens.

²⁰ ONS, [“Explaining the Difference between the 2011 Census Estimates and the Rolled-Forward Population Estimates”](#), 16 July 2012.

4 Forecasts of future immigration from Bulgaria and Romania

4.1 Official forecasts

There are no official forecasts of the number of Bulgarian and Romanian nationals that will migrate to the UK after transitional controls are lifted at the end of 2013. However, the immigration Minister Mark Harper has said that he does not expect migration from Romania and Bulgaria to be on the same scale as migration from Eastern Europe following the accession of other Eastern European countries in May 2004.²¹

On 29 January 2013, Parliamentary Under-Secretary of State at the Home Office, Lord Taylor of Holbeach, made the following statement in the House of Lords:

The Home Office regularly monitors and analyses overall migration data to help inform policy decisions. However, we have not prepared forecasts of likely inflows from Romania and Bulgaria once restrictions are lifted. Such forecasts are unlikely to be reliable because they are dependent on too many variable factors.

In November 2011 when considering the impacts of ending transitional controls on Romanians and Bulgarians, the independent Migration Advisory Committee concluded that it would not be sensible, or helpful to policymakers, for us to attempt to put a precise range around this likely impact.

So rather than produce speculative projections we are focusing on our work to cut out the abuse of free movement and address the pull factors that drive EU migrants to Britain.²²

The Foreign and Commonwealth Office commissioned the National Institute of Economic and Social Research (NIESR) to produce research on the potential impacts of future migration from Bulgaria and Romania. The commissioned report was published on 4 April 2013.²³ It considered factors that may affect the scale of migration from Bulgaria and Romania and the potential impact of A2 migration on services within the UK, but it did not produce a forecast of future migration flows from the A2 on the grounds that “it is not possible to predict the scale of future migration from Bulgaria and Romania to the UK numerically”.²⁴ The report cited a lack of accurate data on migration and the unreliable nature of surveys of migration intention as reasons why it is not possible to produce such a forecast.²⁵

4.2 Migration Watch forecast

The only UK organisation that has published a forecast of future migration from Bulgaria and Romania is the think tank Migration Watch.

Migration Watch produced three separate estimates of future migration from the A2, using different methods. On the basis of these estimates, and considering qualitative factors likely to affect migration, they produced a range of possible outcomes with a central estimate of net migration by A2 nationals of 50,000 a year in the five years after 2013:

²¹ The Guardian, ‘UK won’t see mass Romanian and Bulgarian immigration, minister says’, 21 Nov 2013

²² HL Deb 29 Jan 2013 cWA315-6

²³ NIESR for FCO, “Potential impacts on the UK of future migration from Bulgaria and Romania”, 4 April 2013

²⁴ *ibid*, page iv

²⁵ The authors of the report also published a separate article explaining their reasons for not forecasting future migration from the A2 on the blog of NIESR’s director, Jonathan Portes. See “When it comes to migration, there are no winners in the numbers game”, Not the Treasury view, 4 April 2013

Our view is that [nationals of Bulgaria and Romania] are likely to add between 30,000 and 70,000 to our population in each of the next five years of which about half will appear in the immigration statistics. So our central estimate is 50,000 a year or 250,000 in five years. However, that number could be considerably higher if there were to be a movement of Roma to the UK or if some of the nearly one million Romanians in both Spain and Italy should transfer to Britain.²⁶

Note that the above forecast relates to migration as measured by change in the population of A2 nationals (as in Table 2 above). Migration Watch expects that around half of this migration would appear in estimates of long-term international migration flows.

It is worth considering each of the three quantitative methods Migration Watch used to arrive at this forecast. For its first method, Migration Watch estimated annual average growth in the number of A8 nationals living in the UK since 2004 (around 100,000 a year) and then scaled that down to represent A2 migration based on the relative size of the home populations of A8 and A2 countries.²⁷ This led to estimated annual average net migration of around 40,000 A2 nationals in each year after 2013. In other words, Migration Watch is arguing that if the 73 million people that live in the A8 have generated average net migration to the UK of around 100,000 a year since 2004, then the 29 million people living in the A2 will generate average net migration of around 40,000 a year in the years after 2013.

A limitation of this approach is that, because the majority of A8 migrants to the UK are Polish nationals, the overall rate of migration from A8 countries is strongly influenced by the rate of migration from Poland. Considering the rate of migration (measured in this way) from each individual A8 country shows considerable variation between countries. Table 3 below shows the average annual change in the population of A8 and A2 nationals living in the UK in the period between each country's accession and the equivalent quarter in 2012, measured as a percentage of the home population of each country in 2012.

The population of A8 nationals living in the UK grew by around 123,000 a year between Q2 2004 and Q2 2012. This is equal to around 0.17% of the population of A8 countries in 2012. Growth in the number of Polish nationals living in the UK over the same period was around 82,000 a year, equivalent to around 0.21% of the population of Poland in 2012.

Growth in the number of Lithuanian and Latvian nationals in the UK has been much greater as a proportion of their home populations than it has been for the A8 as a whole, while growth in the number of Hungarian and Czech nationals has been much smaller as a percentage of their home populations than for the A8 overall. The number of Estonian and Slovenian nationals living in the UK has not changed to any measurable extent since accession.

Future growth in the number of Bulgarian and Romanian nationals living in the UK could conceivably follow the pattern established by any of the individual A8 countries, or a different pattern entirely.

²⁶ Migration Watch, "[Immigration from Romania and Bulgaria](#)", accessed 10 April 2013.

²⁷ A8: the central and eastern European states that joined the EU in 2004.

Table 3: Average annual change in the number of A8 & A2 nationals living in the UK as a percentage of their home populations, accession to 2012

	Annual average change in UK stocks since accession	Population in 2012	Annual average change as a % of home population
A8 countries	+123,000	72,818,000	0.17%
Poland	+82,000	38,538,000	0.21%
Lithuania	+14,000	3,004,000	0.47%
Latvia	+10,000	2,045,000	0.48%
Slovakia	+8,000	5,404,000	0.15%
Hungary	+5,000	9,932,000	0.05%
Czech Republic	+3,000	10,505,000	0.03%
Estonia	-	1,334,000	-
Slovenia	-	2,055,000	-
A2 countries	+25,000	27,423,000	0.09%
Bulgaria	+8,000	7,327,000	0.11%
Romania	+17,000	20,096,000	0.08%

Notes: 1. Change in the number of A8 nationals is measured between Q2 2004 and Q2 2012.

2. Change in the number of A2 nationals is measured between Q1 2007 and Q1 2012.

3. Change in the population of Estonian and Slovenian nationals since 2004 is too small to estimate.

4. Data is not seasonally adjusted so comparisons are made between the same quarters in each year.

Sources: ONS Labour Force Survey, Eurostat

The second and third methods used by Migration Watch to estimate future migration by Bulgarian and Romanian nationals are similar, in that they each take a different approach to estimating net migration of A2 nationals in the years *before* 2013 and then assume that net migration on each measure will double or treble in the years *after* 2013, when transitional controls expire. Migration Watch present no specific evidence for the expectation that net migration of Bulgarian and Romanian nationals will double or treble after 2013, beyond the broad assumption that immigration of A2 nationals will increase.

Considering the overall estimate produced by Migration Watch, that the population of A2 nationals living in the UK will increase by between 30,000 and 70,000 in each of the next five years with a central estimate of 50,000, the lower bound is consistent with the observed pattern of migration by A2 nationals in recent years, but the upper bound and central estimate are less certain.

4.3 Analysis by the Oxford Migration Observatory

In February 2013, the Oxford Migration Observatory published a briefing on future migration from the A2.²⁸ It argued that “there is, at present, no sound method for working out how many Romanians and Bulgarians will come” and described unofficial forecasts as “no more than informed guesses”.

The briefing sets out some of the factors that may affect future levels of migration from the A2 to the UK, grouping them into those that imply low levels of migration and those that imply high levels of migration.

²⁸ Migration Observatory *briefing*, “Romania and Bulgaria: The accession guessing game”, 8 February 2013

Factors suggesting low levels of migration include: that there has already been migration to the UK by A2 nationals under transitional controls, that the UK has not so far been a destination of choice for A2 nationals within the EU, and that all remaining transitional controls will expire in all EU countries at the same time.

Factors suggesting high levels of migration are high unemployment rates and youth unemployment rates in those EU countries that have so far been the preferred destinations for A2 nationals within the EU, which are Italy and Spain.

5 Controversy surrounding the ending of transitional restrictions

5.1 Calls on the Government to take action before 2014

The ending of transitional restrictions on Bulgarian and Romanian workers has been a high-profile issue throughout 2013. After the transitional restrictions end on 31 December 2013, Bulgarian and Romanian workers will no longer be subject to worker authorisation, and will be able to come to work (or look for work) in the UK on the same basis as other EU nationals.

The Government has recognised that the accession treaty does not give scope to extend restrictions for longer than seven years.²⁹ Nevertheless, concerns about a significant increase in Bulgarian and Romanian immigration and the impact this may have led to calls for further restrictions, which have been supported by some politicians and commentators.

An [e-petition on the HM Government website](#) calling on the Government to retain the transitional restrictions for a further five years attracted over 150,000 signatures before it closed in November 2013. The petition articulated several of the concerns commonly raised in discussions about the desirability of ending the restrictions:

In 2014 EU restrictions are set to be removed, allowing nationals of Bulgaria and Romania 'free movement' to the UK. The move is similar to the one that granted access to around 600,000 Polish immigrants to enter Britain over recent years.

(...)

Once the restrictions are lifted all new comers will be entitled to claim benefits, housing, child, job seekers etc. There is currently an estimated 1.5 million people seeking work within the two countries

The impact will also put pressure on housing, infrastructure, schools, and health care. All at a time the government are cutting pensions, jobs, public services and the armed forces.³⁰

More recently, Nigel Mills tabled a new clause during Public Bill Committee stage of the *Immigration Bill*, which proposed extending the transitional restrictions until the end of 2018. Mr Mills acknowledged that there were constraints on the UK's scope to do so, but did not consider that these would be insurmountable:

That brings us to the question whether we can extend them. Clearly, we have signed treaties that say we cannot, but we are a sovereign Parliament and we could, presumably, decide we no longer accepted the conditions in them, because things

²⁹ [HL Deb 2 July 2012 cWA120](#)

³⁰ HM Government e-petition, "[Stop mass immigration from Bulgarian and Romanians in 2014, when EU restrictions on immigration are relaxed](#)" (accessed on 8 April 2013)

have changed so dramatically that we should exercise our sovereign right to renege on parts of them and impose restrictions regardless.

I am not sure it would be wise of me to try to persuade a Committee of fewer than two dozen MPs that it is time for us to start renegeing on our treaty obligations. I suspect we would find ourselves in various courts relatively quickly, and we might well be found to be in breach of our treaty obligations. However, I have some sympathy for the approach the French told me about when I asked them, on something completely different, how they seemed to be able to take a more relaxed view of EU rules than us. The answer was, "We prefer the approach of apologise later, rather than seek permission now."³¹

The Minister for Immigration, Mark Harper, identified the legal obstacles:

(...) there is no possibility under the treaties to extend those controls any further. The only way of doing so would be to negotiate a change to those treaties. Given that this would require the unanimous agreement of all member states, including Bulgaria and Romania, the Government's judgment—which I think is the right one—is that there is no prospect of achieving it. That is why the transitional restrictions come to an end at the end of this year.³²

The proposed new clause was withdrawn.³³

In a February 2013 briefing, Migration Watch concluded that there are "very strong financial incentives" for Bulgarians and Romanians to move to the UK, due in part to differences in living standards and wages between those countries and the UK.³⁴ It acknowledged that the Government has very little scope within European law to restrict immigration from Bulgaria and Romania, and contended that the only option to guard against a significant increase in A2 immigration is to ensure that the UK's welfare benefits system does not act as a further 'pull factor'.³⁵ Migration Watch has highlighted various ways in which it considers that the UK's benefits system is more generous than arrangements in many other EU states.³⁶

Comparing access to benefits for EU migrants across EU Member States is far from straightforward. EU law requires that, where a person moves from one Member State to another and has a right of residence in the host Member State, they should not be discriminated against as regards access to benefits simply on the basis of their nationality. However, the provisions in EU law do not harmonise the rules governing entitlement to each type of benefit across the Member States, or require that all Member States provide benefits to people covering different situations/contingencies. So, for example, one Member State might provide generous in-work benefits for low income families, while (at the other extreme) another might provide no in-work support at all. Similarly, one Member State might make entitlement to unemployment benefits conditional on the person having worked for a period in that country, while another might attach no such condition for access to its unemployment benefit. In the UK, access to most benefits for EU migrants is dependent on the person satisfying the 'right to reside' requirement.

³¹ [PBC Deb 19 November 2013 c399](#)

³² [PBC Deb 19 November 2013 c401](#)

³³ [PBC Deb 19 November 2013 c402](#)

³⁴ Migration Watch, '[Briefing 4.20 Incentives for Romanian and Bulgarian migration to the UK](#)', 12 February 2013

³⁵ Andrew Green, The Spectator Coffee House Blog, '[Reducing the 'pull factor' for Bulgarian and Romanian migrants](#)', 7 February 2013

³⁶ Migration Watch, '[Briefing 4.16 Comparison of UK Benefits with those of the EU 14](#)' and '[Briefing 4.18 UK Child Benefits and non-resident EU children](#)', February 2013

On the other hand, some stakeholders have argued in favour of lifting the transitional restrictions before 2014, on the grounds that they have made Bulgarian and Romanian workers vulnerable to abuse and exploitation and failed to prevent the undercutting of resident workers' wages. UCATT, a construction workers' trade union, has highlighted the prevalence of accession state workers in the construction industry being falsely treated as self-employed.³⁷ Such workers are not affected by the transitional restrictions, but cannot benefit from employment protections or minimum wage legislation. In a January 2013 comment piece in *The Guardian*, UCATT's General Secretary argued in favour of extending full employment protections to A2 nationals, and contended that this would not necessarily result in a significant change to migration levels from the A2 countries, since "the unavoidable fact is that many workers are already here working in some capacity or other."³⁸

Romanian community representatives in the UK made similar points in evidence to the Migration Advisory Committee in 2011:

1.25 When we met with representatives of the Romanian communities in the UK it was argued that removing the labour market restrictions on A2 nationals would help to protect those A2 migrants already resident here because this would offer them alternatives to self-employment. It was said that this would also benefit the UK economy, by increasing tax receipts from employers, and the existing UK labour force, by denying UK employers the option of hiring A2 nationals at a lower cost. The Romanian Embassy in the UK also argued that removing labour market restrictions would not increase the number of Romanian nationals seeking employment in the UK, but was important because it would protect Romanian nationals currently resident in the UK.³⁹

Employers in the agricultural sector have warned that without a suitable replacement immigration category, the ending of the transitional restrictions on A2 workers (and the related closure of the SAWS and SBS schemes) will exacerbate their difficulties in finding suitable seasonal workers, since A2 workers will have a wider choice of employment options.⁴⁰ A report published by the Migration Advisory Committee in May 2013 considered the likely impact of the ending of transitional restrictions and the closure of the SAWS and SBS schemes.⁴¹ It concluded that the supply of A2 seasonal workers is unlikely to dry-up immediately, but that there might be a lack of seasonal migrant labour in the medium to long-term, which could have negative consequences for the sector.

5.2 The Government's response

In spite of the absence of official estimates of future immigration flows, various Ministers raised concerns in early 2013 that large-scale immigration from the A2 states would pose significant problems for the UK.⁴²

The Minister for Immigration's more recent assessment (in November 2013) is that Germany, Spain and Italy are likely to be more attractive destinations for A2 migrants than the UK.⁴³

³⁷ UCATT, *The Evasion Economy False self-employment in the UK construction industry*, 2010

³⁸ "Regulate the gangmasters exploiting Bulgarian and Romanian workers", *The Guardian* [online], 21 January 2013

³⁹ MAC, *Review of the transitional restrictions on access of Bulgarian and Romanian nationals to the UK labour market*, November 2011

⁴⁰ "Extra 20,000 foreign workers could head to the UK", *The Telegraph* [online], 26 December 2012

⁴¹ MAC, *Migrant Seasonal Workers*, 14 May 2013

⁴² BBC News [online], "Eric Pickles: New EU 'influx' may add to housing problems", 13 January 2013; "Iain Duncan Smith admits 'crisis' over immigrants claiming benefits", *The Telegraph* [online], 5 March 2013

⁴³ *The Guardian*, 'UK won't see mass Romanian and Bulgarian immigration, minister says', 21 November 2013

Nevertheless, the Government has been keen to emphasise over the past few months that it has been considering a range of measures to introduce in response to concerns about future A2 migration.

Addressing the ‘pull factors’ for coming to the UK

The Government established an Inter-Ministerial Group on Migrants’ Access to Benefits and Public Services “to consider whether existing rules preventing illegal non-EEA migrant access to benefits, employment and public services could be administered more effectively, and determine whether existing rules on both EEA and non-EEA migrant access are overgenerous and should be tightened.”⁴⁴

The Prime Minister indicated some of the things being considered in a speech on immigration in March 2013.⁴⁵ In particular, he highlighted plans to strengthen the ‘Habitual Residence’ Test, which determines which migrants can access benefits, and to create a statutory presumption that an EEA national cannot retain a worker or job-seeker status (and continue to claim benefits) for longer than six months, unless they can demonstrate that they have been actively seeking work during that period and have a genuine chance of finding work. He also said that the Government intended to get “much better at proper reciprocal charging” for NHS treatment, and introduce new statutory housing allocation guidance to give local residents priority in the social housing system and require that migrants live in the UK for at least two years and “make a contribution” before they can qualify for social housing.

The Minister for Immigration gave an update on these (and other plans) during debates in the *Immigration Bill’s* Public Bill Committee in November 2013.⁴⁶ In particular, he noted that the new approach to assessing whether job-seekers have a ‘genuine prospect’ of finding work after six months would come into force for new claims from January 2014, and that the Department of Health would be publishing proposals to strengthen the NHS’ ability to reclaim the costs of treating EU nationals “in the not-too-distant future.” He also referred to work undertaken by the Home Office and partner agencies to remove rough sleeping EU nationals, and highlighted that the Migration Advisory Committee has been commissioned to review migrant employment in low-skilled work, including the use of EU migrant labour and its economic and social impact on resident workers.⁴⁷ It has also recently been reported that the Government is also considering whether there is scope to increase the length of time EU migrants must spend in the UK before becoming eligible for various welfare benefits.⁴⁸ Various Library standard notes discuss EU migrants’ entitlements to welfare benefits and public services:

- [EEA nationals: the ‘right to reside’ requirement for benefits](#)
- [The Habitual Residence Test](#)
- [Child Benefit and Child Tax Credit for children resident in other EEA countries](#)
- [EU migrants: entitlement to housing assistance \(England\)](#)
- [NHS Charges for Overseas Visitors](#)

⁴⁴ [HC Deb 7 March 2013 cc1173-4W](#)

⁴⁵ Number 10, [David Cameron’s immigration speech](#), 25 March 2013

⁴⁶ PBC Deb 19 November 2013 c385-6

⁴⁷ See MAC, [Call for Evidence: Review of migrant employment in low-skilled work](#), September 2013

⁴⁸ [The Telegraph](#), “Cabinet split over forcing EU migrants to wait longer for unemployment benefit”, 24 November 2013

Charging for documents confirming rights to reside under EU law

The Free Movement Directive allows Member States to require EU nationals to register with the relevant authorities for periods of residence longer than three months and obtain a 'registration certificate'. The UK does not require EU nationals to do this, although they can apply to UK Visas and Immigration for a registration certificate if they wish (and there are practical advantages to doing so, such as in order to have evidence of their status and entitlements).⁴⁹ Some Member States do require EU nationals to register with the national authorities, and there have been calls for the UK to adopt a similar approach.⁵⁰ Introducing a requirement to register would not directly prevent EU nationals from being able to come to the UK. However, arguably it could assist the UK to monitor numbers of EU nationals exercising their Treaty rights in the UK and those who cannot demonstrate that they have a right to reside.

The Free Movement Directive also states that registration documents must be issued "free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents."⁵¹ The UK introduced a charge of £55 for processing applications for documents confirming rights of residence under EU law on 1 July 2013 - previously no fee was charged.⁵² The fee was set at this level following advice from the European Commission, and consideration of the cost of similar documents issued to British nationals (including passports, driver's licences and nationality status letters) and the estimated unit cost of processing these applications (£82).⁵³

Seeking support for changes to European law

The Government has been seeking opportunities to raise its broader concerns about courts' interpretations of EU free movement law, EU rules on access to benefits, and individual abuses of the existing provisions with other Member States and the European Commission.⁵⁴ The European Commission is due to issue a final report on free movement rights in December.

In May 2013 the Government issued a Call for Evidence to inform its review of EU free movement law, which the Home Office and Department for Work and Pensions are undertaking as part of the Government's [Balance of Competences review](#). The report about free movement law is also expected to be published before the end of the year.⁵⁵

Yvette Cooper, the Shadow Home Secretary, has indicated that the Labour Party is also in favour of longer-term changes to EU laws, arguing that "the framework that surrounds that right to work [anywhere in Europe] was drawn up for a smaller, more homogenous Europe and is now out of date."⁵⁶

⁴⁹ For details of supporting documents required, see UKBA website, '[How to apply for residence documents as a European citizen](#)', *Guide EEA* (May 2011) and *EEA application checklist* (undated); accessed on 24 January 2013) and UKBA, *Modernised Guidance*, '[European Economic Area \(EEA\) and Swiss nationals: Free movement rights](#)', 28 August 2012

⁵⁰ [HC Deb 7 February 2013 cc395-6W](#)

⁵¹ [Directive 2004/38/EC](#), Article 25

⁵² *The Immigration and Nationality (Cost Recovery Fees) Regulations 2013*, [SI 2013/617](#)

⁵³ Explanatory Memorandum to [SI 2013/617](#)

⁵⁴ See, for example, [HC Deb 29 November 2012 c 25WS](#); [HC Deb 5 March 2013 cc824-5](#); [HC Deb 15 October 2013 c52-3WS](#) and [letter from Theresa May and her German, Austrian and Dutch counterparts to the Irish Presidency](#), 24 April 2013.

⁵⁵ Gov.uk, [Review of the Balance of Competences](#) (accessed on 20 November 2013)

⁵⁶ Labour.org.uk, '[Speech by Yvette Copper, Shadow Home Secretary, to the IPPR](#)', 7 March 2013

6 STOP PRESS: Further proposals made by the Prime Minister, 26 November

On 26 November the *Financial Times* published an article written by the Prime Minister, in which he identified a further set of measures which the Government intends to take in respect of EU immigration.⁵⁷ Details of how (or when) the measures proposed in the article will be implemented are not yet known.

The Prime Minister's article said that the Government will take action so that:

- no EU migrant will be entitled to out-of-work benefits for the first three months in the UK;
- no newly arrived EU jobseekers will be able to claim Housing Benefit;
- from January 2014, no EU migrant will be able to claim Jobseeker's Allowance for more than six months unless they can prove that they have a genuine prospect of employment;
- a new minimum earnings threshold will be introduced before benefits such as Income Support can be claimed;
- migrants who are begging or sleeping rough will be removed from the UK, and barred from re-entering for 12 months, unless they can prove they have a "proper reason" to be in the UK, such as a job; and
- the maximum penalty for employing people below the minimum wage will be raised to £20,000 per employee.

The Prime Minister's article stated that all of the proposals are "what we can legally do within the limits of the treaties Labour signed up to." The Government has noted that other Member States are also taking action, and in particular the Netherlands already impose a three-month residence requirement before access to benefits such as job-seekers' allowance.

The European Commissioner for Employment, László Andor, has reportedly said that the Commission will wait for the UK to publish detailed proposals before assessing whether they are compatible with EU law.⁵⁸

The Prime Minister's article also suggested some broader changes to EU free movement of persons provisions, namely:

- returning "the concept of free movement to a more sensible basis" - making it a "qualified right";
- addressing arrangements which enable child benefit payments to be "exported"; and
- putting in place "new arrangements that will slow full access to each other's labour markets until we can be sure it will not cause vast migrations."

Changing the existing provisions would require significant Treaty changes and the unanimous support of all Member States. The European Commissioner for Justice, Viviane

⁵⁷ *Financial Times*, 'Free movement within Europe needs to be less free', 26 November 2013

⁵⁸ Euractiv.com, '[Cameron isolated on push for free movement restrictions](#)', 28 November 2013

Reding, was quoted reiterating the importance of the principle of free movement in response to the Prime Minister's proposals:

The EU's Justice Commissioner Viviane Reding later told journalists that free movement of people is "a fundamental pillar of the free market", along with freedom of movement of goods, services and capital, which the UK has championed.

"You sign up to all four [freedoms] or to none," Reding said, adding that "freedom of movement is non-negotiable as long as you are a member of the EU and the Single Market".⁵⁹

There has been mixed speculation about the likely extent of support from other Member States for the UK Government's position. The Government has referred to a "growing coalition of support for change" amongst Member States.⁶⁰ The French and German governments have recently raised concerns about abuse of EU rules about employment and access to benefits respectively. UK Government sources are reportedly taking these as an indication that there is growing support for the Prime Minister's arguments.⁶¹

On the other hand, European Commission sources are reportedly more sceptical of whether there is consensus amongst Member States:

Insiders at the EU Commission said that interior ministers meeting in Brussels next week (5 December) will not form a united front with David Cameron against free movement of workers as they are too divided on the issue.

(...)

"These countries all have different issues. In Germany, the fear is of a marked rise in the numbers of Roma who might migrate to the large German cities next year, the Dutch are concerned about illegal employment contracts being handed to migrants which do not honour EU rules, and the UK has this problem with so-called "benefits tourism" which is wholly unsubstantiated," said an EU source familiar with the issue.⁶²

⁵⁹ Euractiv.com, '[Brussels hits back at UK's 'nasty' proposal against free movement](#)', 28 November 2013

⁶⁰ HC Deb 27 November 2013 c268

⁶¹ FT.com, 'Cameron heads east to seek backing for migration stance', 27 November 2013; 'Germany and France join UK in migrant benefits debate'; 28 November 2013

⁶² Euractiv.com, '[Cameron isolated on push for free movement restrictions](#)', 28 November 2013