

# LEGAL & POLICY BRIEFING

## Migrants' Entitlements to Welfare Benefits in Wales

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## Introduction

This briefing provides a general overview of migrants' entitlement to claim welfare benefits and some housing services in Wales, and which of these count as 'public funds'. A broad range of migrant groups are considered here, including mobile EU citizens, refugees and third country nationals. Eligibility processes for individual public funds are not considered here; rather we focus on the broad residence and/or immigration requirements that apply to migrants to be considered for welfare benefit entitlement.

'Public funds' is a term for a specific list of welfare benefits and some housing services in [Paragraph 6 of the Immigration Rules](#), because some migrants are given leave on condition that they can support themselves without "recourse to public funds" and so should not (and usually cannot) claim these benefits or services. Other benefits and services are not affected by this.

Welfare benefits are not a devolved area of law and policy, therefore most of the laws and policies in this briefing apply to the UK as a whole. However, housing is a devolved area in Wales and so this briefing covers migrants' access to these services under Welsh law. This is a highly complex area of practice, often requiring situations to be considered on a case-by-case basis. This briefing does not constitute legal advice and does not have statutory status.

## How this briefing is structured

This briefing begins by considering what counts as a public fund and which migrant groups (by immigration status) are excluded from accessing public funds and which groups are not excluded. The substantive part of this briefing addresses the entitlements of mobile EU citizens to claim welfare benefits. We close by considering the entitlements of migrants to housing services and by providing links to further resources.

## Welfare benefits – what counts as a 'public fund'?

Public funds are listed under Paragraph 6 of the Immigration Rules and include means-tested welfare benefits, housing services and welfare benefits for people with specific circumstances, such as having a disability or being a parent with dependent children. The list changes frequently and guidance on them can be accessed at the following link: [www.gov.uk/government/publications/public-funds--2](http://www.gov.uk/government/publications/public-funds--2). At the time of writing, the list of public funds is as follows:

- income-based jobseeker's allowance
- income-related employment and support allowance
- income support
- child tax credit
- universal credit
- working tax credit
- a social fund payment
- child benefit
- housing benefit
- council tax benefit
- council tax reduction
- domestic rate relief (Northern Ireland)
- state pension credit
- attendance allowance
- severe disablement allowance
- personal independence payment
- carer's allowance
- disability living allowance
- discretionary payments made from local welfare assistance schemes in England, Scotland and Northern Ireland but not those from the Welsh Discretionary Assistance Fund

- an allocation of local authority housing
- local authority homelessness assistance in England, Scotland and Northern Ireland but not in Wales.

Publicly funded services such as NHS treatment, education, legal aid and social services support do not count as 'public funds.' Similarly, welfare benefits that are based on National Insurance contributions do not count as 'public funds'; the list of these welfare benefits can be accessed at [www.gov.uk/government/publications/public-funds--2/public-funds](http://www.gov.uk/government/publications/public-funds--2/public-funds). They are:

- contribution-based jobseeker's allowance
- contribution-based employment and support allowance
- retirement pension
- widow's benefit and bereavement benefit
- guardian's allowance
- statutory maternity pay
- statutory sick pay

### **Migrant 'groups' and their eligibility for public funds**

The "no recourse to public funds" rule is an immigration rule, administered by the Home Office and setting the conditions under which people may or may not be granted leave to remain. Claiming something defined as 'public funds' when a person is subject to "no recourse to public funds (NRPF)" can result in a breach of their immigration conditions and may jeopardise their leave to remain, or could provide grounds for removal from the UK.

Individual benefits or services have their own eligibility rules which generally align with the immigration rules and also with [Section 115 Immigration and Asylum Act 1999](#), which states that certain groups of people that are 'subject to immigration control' (people who are neither British citizens or people with right of abode because of historic family links to the UK nor covered by EU law on rights to reside) cannot receive certain benefits. These include people who require leave to enter or remain in the UK but do not have it (e.g. visa overstayers, illegal entrants, refused asylum seekers); those who have leave to enter or remain in the UK on the condition of having NRPF (e.g. certain people on visas); or have leave to enter or remain in the United Kingdom given as a result of a written legally binding maintenance undertaking (these undertakings may be required if an adult dependant is brought to the UK and bar the person from access to most benefits and social housing for the first five years, unless all the people who have signed the undertaking are dead).

The entitlement of nationals of European Economic Area (EEA) countries<sup>1</sup> (henceforth referred to as 'mobile EU citizens') to welfare benefits is subject to separate regulations that are discussed in more detail in the latter part of this briefing (see section Mobile EU citizens: entitlements to claim welfare benefits).

A person's documentation (e.g. visa, Home Office letter) or their biometric residence permit may stipulate that they have no recourse to public funds (NRPF). If a person's documentation/biometric residence permit does not stipulate that they have no recourse to public funds, it is likely that the NRPF policy does not apply to them and that they are entitled to claim welfare benefits, subject to the individual eligibility criteria of each benefit.

### **Refugees and people with Indefinite Leave to Remain (ILR)**

Refugees, people with humanitarian protection, indefinite leave to remain (ILR) or those who have been resettled in the UK as part of a resettlement programme are generally entitled to claim welfare benefits unless their

1. The EEA comprises the 28 EU Member States (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK) and Iceland, Norway and Liechtenstein. Switzerland also benefits from an agreement that effectively gives it the same rights and obligations as an EEA state.

documentation stipulates that they have NRPF. They would still need to meet the individual eligibility criteria for that particular welfare benefit. Refugees and those with humanitarian protection do not have to pass the Habitual Residence Test (more information on this below), however those with ILR do.

### **People with Limited Leave to Remain (LLR)**

People with limited leave to remain (LLR) include those living in the UK on visas (such as work, visitor or student visas). These visas are generally issued on the condition of having no recourse to public funds (NRPF) and this is usually included in their documentation.

Since July 2012, people who apply to remain in the UK on private and family life grounds may be granted limited leave under specific immigration rules and this will normally be with NRPF. This leave is only granted to people who have lived a significant part of their lives in the UK, or who have no family links elsewhere, and have not committed criminal offences. The NRPF condition can be removed if the person can provide evidence on submitting the application (or by challenging the condition post-decision) that they are destitute or that there are particularly compelling reasons relating to the welfare of a child of a parent in receipt of a very low income. More info at: [www.childrenslegalcentre.com/userfiles/file/NRPF\\_30\\_07\\_13.pdf](http://www.childrenslegalcentre.com/userfiles/file/NRPF_30_07_13.pdf).

Sometimes, people are granted "discretionary leave" outside the immigration rules. This leave may or may not include a NRPF condition but it will be specified in the documentation. This type of leave was once more common for people who applied for asylum and were refused refugee status and humanitarian protection, but is now used for a small number of cases that simply do not fit into the immigration rules but whom it would not be possible or advisable to remove from the UK.

### **Asylum seekers and refused asylum seekers**

Asylum seekers and refused asylum seekers are excluded from welfare benefits and housing services by the individual eligibility conditions of these benefits and services. However, separate provisions are available under Sections 95 and 4 of the Immigration and Asylum Act 1999 to destitute asylum seekers and refused asylum seekers, respectively, provided by the Home Office. Both Sections 95 and 4 support include subsistence payments and accommodation across the UK provided by the Home Office via contractors. Section 95 is generally provided to those awaiting a decision on their asylum claim (including any appeals) and for families with dependent children born before they exhaust all appeal rights on their asylum claim but whose asylum case has been refused. Support under Section 95 for single adults ceases 28 days after their all-appeal rights exhausted (ARE) date, but this is currently not the case for families with dependent children under the age of 18.

[Section 4](#) is generally provided to refused asylum seekers who are destitute and meet certain conditions, including that they are taking all reasonable steps to leave the UK, however subsistence payments are at a lower rate and are provided on a prepaid card. Section 4 is most commonly provided to single adults and to refused asylum seeking families whose dependent children were born after their all appeal-rights exhausted (ARE) date. Information on the eligibility process for asylum support and the provision of services for asylum seekers and refused asylum seekers is available at: [www.gov.uk/asylum-support/overview](http://www.gov.uk/asylum-support/overview).

The Immigration Act 2016 repeals Section 4 Immigration and Asylum Act 1999, removes automatic support for families with dependent children after they have exhausted their appeal rights and sets up a new power to provide support to refused asylum seekers in exceptional circumstances (Section 95A Immigration and Asylum Act 1999 as amended). These were due to come into force in April 2017, with new regulations detailing:

- what exceptional circumstances would be considered in providing support under S95A
- the eligibility assessment process for support
- the role of local authority social services departments in providing support

These arrangements have been delayed and are now due to be implemented at some date after April 2017.

A joint response to the proposals in the Bill from the Local Government Association (LGA), Welsh Local Government Association (WLGA), the Convention of Scottish Local Authorities (COSLA), the Association of Directors of Children's Services (ADCS), and the No Recourse to Public Funds (NRPF) Network, which includes further information, is available at: [www.nrpfnetwork.org.uk/Documents/Reforming-asylum-support-consultation-response.pdf](http://www.nrpfnetwork.org.uk/Documents/Reforming-asylum-support-consultation-response.pdf).

### **Migrants with irregular status (including overstayers and illegal entrants)**

Migrants with irregular immigration status include those who require leave to enter or remain in the UK but do not have it, or those who are liable to deportation or removal, such as visa overstayers, although there is no single definition of 'irregular migration status.' Neither asylum support nor welfare benefits are available to migrants with irregular status, however safety net support from local authorities may be available to destitute irregular families with dependent children, adults with needs for care and support due to mental/physical health problems or care leavers (see section Statutory support available to people that are ineligible for public funds for more information). In rare circumstances, migrants with irregular status may be able to access accommodation and subsistence support under Section 4(1)(a) Immigration and Asylum Act 1999, however there are no published regulations stipulating eligibility, and it is granted rarely and generally only on appeal to the Asylum and Immigration Tribunal.

### **UK nationals returning from long periods abroad**

UK nationals are not subject to immigration control and do not have NRPF, however they must pass the Habitual Residence Test in order to be entitled to claim welfare benefits (more information on the Habitual Residence Test is provided below). This may affect UK nationals returning to the UK after living abroad.

### **Third country nationals from countries with bilateral social security arrangements with the UK**

Nationals of certain countries may be able to use social security contributions in their home countries to claim welfare benefits in the UK or claim welfare benefits from that country whilst living in the UK. Eligibility varies according to the country and the welfare benefit involved. Countries with bilateral social security arrangements with the UK (in addition to some EEA countries) are: Barbados, Bermuda, Canada, Isle of Man, Israel, Jamaica, Jersey and Guernsey (Channel Islands), Mauritius, New Zealand, Philippines, Republics of the former Yugoslavia, Turkey and the USA. Generally speaking, these cover basic state pension and some welfare benefits that are not 'public funds' as listed under Paragraph 6 of the Immigration Rules. The Habitual Residence Test applies to third country nationals applying for welfare benefits under a bilateral social security arrangement.

Nationals of countries that have ratified the [Council of Europe Social Charter \(CESC\)](#) or the [European Convention on Social and Medical Assistance \(ECSMA\)](#) are entitled to claim means tested benefits and Working Tax (including income-based JSA, Housing Benefit and Council Tax Reduction) if they are lawfully present in the UK and habitually resident. This means that citizens of Turkey and Macedonia can claim these benefits in the UK if they have leave and are habitually resident, even if their leave includes a NRPF condition, and this will not "count" as recourse to public funds.

Certain countries (Algeria, Morocco, San Marino, Tunisia and Turkey) have "association agreements" with the EU, which enable nationals of these countries to claim non-contributory benefits and tax credits if they are working lawfully in the UK. There are other association agreements (e.g. with Israel) which offer more limited access to some benefits to some nationals working lawfully in EEA countries including the UK. More detail on this is in the [CPAG Benefits for Migrants Handbook](#).

### **People fleeing domestic violence**

People in the UK on spouse visas are subject to immigration control and have NRPF. However, special arrangements are in place for those on spouse visas whose relationship permanently breaks down due to domestic violence and

want to settle in the UK. In such circumstances, applications to the Home Office can be made under the Domestic Violence Rule (DVR) for Indefinite Leave to Remain (ILR), and people intending to make this application can make a special, quick application for limited leave that will give them temporary access to welfare benefits, under a scheme called the Destitution Domestic Violence (DDV) Concession. Applicants must complete and return the [DDV Concession application form](#).

Other migrant groups fleeing domestic violence are not entitled to apply the DDV Concession. Alternative support may be available for asylum seekers fleeing domestic violence from the Home Office (under Section 95 Immigration and Asylum Act 1999), or from the DWP as mobile EU citizens or as family members of mobile EU citizens (see below section Mobile EU citizens: entitlement to claim welfare benefits), or from local authority social services departments if they have dependent children, are a care leaver, or have a mental or physical health problem and require care and support (see section below).

### **Statutory support available to people that are ineligible for public funds**

Children and young people under the age of 18 cannot claim welfare benefits in their own right (even Child Benefit can only be claimed by an adult aged 18 or over). However, unaccompanied children may be entitled to support, including accommodation and financial support from local authorities in under Part 6 of the Social Services and Well-being (Wales) Act 2014 from April 2016 (this replaced support previously available under the Children Act 1989). For more information on the rights and entitlements of unaccompanied asylum seeking children in Wales, please see [Safeguarding and Promoting the Welfare of Unaccompanied Asylum Seeking Children and Young People: All Wales Practice Guidance](#). Former looked after children between the ages of 18 and 21 (or up to 24 if in full-time education) may be entitled to support as care leavers from local authorities in Wales under the Social Services and Well-being (Wales) Act 2014 More information about the rights and entitlements of care leavers is available in another [Migration Services in Wales Briefing](#).

Families with dependent children who are ineligible for welfare benefits because they have NRPf or because they are mobile EU citizens that do not meet the eligibility criteria, may be entitled to support from local authorities in Wales under the Social Services and Well-being (Wales) Act 2014 from April 2016 if they are destitute. More information about the rights and entitlements of destitute families with children can be found in the Migration Services in Wales briefing Children and families: Destitution, safeguarding and services under the Children Act 1989 (up to April 2016) and under the Social Services and Well-being (Wales) Act 2014 (from April 2016): <http://welshrefugeecouncil.org.uk/migration-information/legal-briefings>.

There is a [web tool](#) to assess eligibility for support for migrant families with children available from the NRPf network.

Single adults (who do not have responsibility for dependent children) and have needs for care and support due to a physical or mental health problem may be entitled to accommodation and financial support under the National Assistance Act 1948 and under the Social Services and Well-being (Wales) Act 2014 from April 2016 (the NAA provisions are subject to immigration exclusions under Schedule 3 Nationality, Immigration and Asylum Act 2002) Single adults (who do not have responsibility for dependent children) and do not have needs for care and support and are ineligible for welfare benefits (and are not asylum seekers) have no entitlement to any statutory safety net, even if they become destitute. However, some support may be available to them from voluntary sector or faith-based organisations (for information about local projects, see: <http://naccomm.org.uk>). More information about the rights and entitlements of adults with needs for care and support and those with no entitlement to statutory safety net support is available in a [Migration Services in Wales Briefing](#).

## Transition to welfare benefits for newly granted refugees

People granted refugee status, Humanitarian Protection, Discretionary Leave to Remain (DLR), or Limited Leave to Remain (LLR) with recourse to public funds and those granted Indefinite Leave to Remain (ILR) will be entitled to work and claim welfare benefits immediately. A determination of asylum claim or Home Office letter will be issued as proof of the Home Office's decision, and this will usually be accompanied by a biometric residence permit confirming the person's entitlement to work and claim welfare benefits. Single adults receiving Home Office asylum accommodation and financial support under Section 95 Immigration and Asylum Act 1999 will cease to receive that support 28 days after receiving a positive decision. Problems in the transition period from receiving Home Office asylum support are well documented, mainly due to waiting times for official documents, and Homeless Link have provided a [useful document](#) for support agencies to prepare for the transition from Home Office to welfare benefit support from the DWP and housing-related support from the local authority. In Wales, local authorities have a duty under the Housing (Wales) Act 2014, to take all reasonable steps to prevent someone from becoming homeless if they are threatened with homelessness within 56 days. This may include the provision of advice, support and assistance.

Some people with new immigration status will need to apply for a National Insurance (NINO) number in order to be able to work or apply for welfare benefits. Applications for welfare benefits can be made at Jobcentre Plus and for housing services at the local authority (more on applying for housing services below). In Wales, refugees in the transition period can apply for financial assistance from the [Discretionary Assistance Fund](#). The Welsh Government's statutory guidance on the allocation of social housing and assessments of homelessness ([The Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness](#)) recommends that local authorities, in assessing applications from former asylum seekers, should give careful consideration to the possibility that they may be vulnerable due to their lack of knowledge of welfare systems and poor language skills.

The Habitual Residence Test (more below) does not apply to refugees (and those with DLR and humanitarian protection), who are applying for welfare benefits.

## Mobile EU citizens: eligibility for welfare benefits

The remainder of this briefing addresses the entitlements of mobile EU citizens to claim welfare benefits in the UK. The rights of mobile EU citizens to live and work in other Member States are enshrined in the EU Citizens Directive (2004/38/EC) and are incorporated into UK domestic law under the Immigration (European Economic Area) Regulations 2016 (which replaced the previous 2006 regulations and came into force on 1st February 2017)

Mobile EU citizens (and this includes citizens of the non EU EEA countries, Norway, Lichtenstein and Iceland, and Switzerland) have an initial right to reside in another Member State for up to three months without conditions attached to this status, under Regulation 13. In the UK, mobile EU citizens cannot claim welfare benefits if their right to reside is on the basis of the initial three months right to reside. After the three month period, mobile EU citizens must come under the category of a 'qualified person' under the terms of the Citizens Directive in order to continue having a right to reside and can only have a right to reside as:

1. a worker;
2. self-employed;
3. self-sufficient;
4. a student;
5. a jobseeker; or
6. a person with the permanent right to reside.



### Workers and self-employed people

Workers and self-employed mobile EU citizens and their family members<sup>2</sup> are entitled to claim welfare benefits (i.e. they must meet the eligibility requirements for the specific welfare benefit being applied for). Workers are defined as those who are engaged in activities that involve the provision of services under the direction of another person in exchange for remuneration. In order to be classified as a 'worker', the work undertaken must be 'genuine and effective' and not 'marginal or ancillary' (*Levin v Staatssecretaris van Justitie ECJ Case 53/81*). This means that the work cannot be irregular or with negligible remuneration, but it can be less than is necessary to be self-sufficient.

However, the UK government has imposed a minimum earnings threshold on those applying for Income-based Jobseekers Allowance, Housing Benefit, Child Benefit and Child Tax Credit: a two part test to assess whether their current or previous work was marginal or not. The threshold is set at earnings that average £155 per week or more over a three-month period (but is updated annually). If the EU citizen's earnings were or are at or above this level, they will automatically be considered to have 'worker' status. If their earnings are below this level, an assessment of their work activity is carried out. Consideration is given to whether their work was regular or intermittent, the period of their employment, whether their work was intended to be short-term or long-term at the outset, the number of hours they worked, and the level of their earnings. These factors will be considered by the DWP to determine whether their work activity is considered to be genuine and effective.

### Former workers and retention of worker status

Former workers who are temporarily unable to continue working due to illness or accident are able to retain their 'worker status', and therefore continue to be considered as qualified persons for the purpose of accessing welfare benefits. In such circumstances, they may be able to claim Employment and Support Allowance and other benefits while unable to work. Those who are involuntarily unemployed and who register as jobseekers can also retain their 'worker status' for six months. At the end of that time, those who have worked for less than 12 months lose their worker status and so cannot claim benefits until they start work again. Those who have worked for more than 12 months must show they have "genuine prospects of work" in order to continue receiving benefits. Mobile EU citizens who are on leave because of sickness or maternity remain workers. Those who leave work because of the demands of pregnancy retain worker status and continue to do so after the child is born, as long as they return to work within 'reasonable time' which is defined in relation to the UK rules on the duration of maternity leave (*Jessy Saint Prix v Department for Work and Pensions ECJ C-507/12*).

### Jobseekers

Mobile EU citizens may have a right to reside as a jobseeker and claim welfare benefits for a limited period of time. However, this is subject to strict eligibility tests and restrictions on the benefits.

Job seeking mobile EU citizens can only claim welfare benefits if they can demonstrate that they are 'habitually resident' in the UK (see Habitual Residence Test section below) and, like British citizens, can only claim income-based Jobseeker's Allowance Child Benefit and Child Tax Credit if they have been resident in the UK for three months. They must also meet the requirements of the welfare benefit being claimed. EEA jobseekers who meet the conditions to claim Income-based Jobseekers Allowance (e.g. being able to demonstrate that they are 'available and actively seeking work') can claim this benefit for up to 91 days. Beyond this time, mobile EU citizens with a right to reside as a jobseeker are required to undertake a Genuine Prospect of Work (GPOW) Test, which requires claimants to present 'compelling evidence' that they have a genuine prospect of securing work. This might include evidence of a job offer, evidence that the claimant is setting up a business or becoming self-employed or evidence of recently achieved qualifications that would likely lead to employment.

2. Family members of EEA workers and self-employed people are defined as children up to the age of 21, spouses, other dependant direct descendants and ascendants (children, grandchildren, parents, grandparents), and (if a residence permit is applied for) cohabittees and other relatives who need personal care. Family members may be citizens of non EU countries.

Since April 2014, mobile EU citizen jobseekers are not entitled to claim Housing Benefit. This also applies to workers who do not meet the minimum income threshold and are consequently classified as 'jobseekers.'

### **Habitual Residence Test (HRT)**

The Habitual Residence Test (HRT) applies to applications for means-tested welfare benefits and local authority housing services, and its conditions, principally that applicants are resident and settled in the UK, must be met in order to be entitled to apply for those benefits. It applies to all applicants for welfare benefits, including UK nationals, unless they fall into an exempt category. Those who fall into an exempt category include:

- mobile EU citizen workers or self-employed people (and their family members); mobile EU citizens that are permanent residents who have acquired permanent residence via economic activity;
- refugees;
- people granted Discretionary Leave to Remain or Humanitarian Protection
- people granted limited leave under the domestic violence policy (DDV)
- people deported or removed to the UK who are not subject to immigration control

Habitual residence under EU law refers to the place where a person's 'centre of interest' lies and a decision on habitual residence must be made on the facts of each individual applicant. For habitual residence purposes any residence in the Common Travel Area (CTA, which comprises the UK, the Channel Islands, The Isle of Man and the Republic of Ireland) is counted. There is no statutory definition of 'habitual residence.' The HRT involves questions that take into consideration a number of factors, including: a person's length and continuity of stay in the UK, their reason for moving to the UK, what they have done to establish themselves in the UK, reasons for any absences, their plans for the future and their employment prospects. Applicants' details are collated by relevant staff along with evidence of their identity, of their work history and of other factors relevant to the application a decision is then made on eligibility.

Habitual residence applies to the following benefits:

- Attendance Allowance\*
- Disability Living Allowance\*
- Personal Independence Payment\*
- Carer's Allowance\*
- income-based Jobseeker's Allowance
- income-related Employment and Support Allowance
- Income Support
- Pension Credit
- Universal Credit
- Housing Benefit
- Council Tax reduction

It also defines eligibility for housing allocation and homelessness services from local authorities.

\* It is a condition of entitlement for Attendance Allowance (AA), Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Carer's Allowance (CA) that the claimant be habitually resident in the UK. There is no right to reside element considered for these benefits. It is also a condition of entitlement to AA, DLA, PIP and CA that, in respect of any day of potential entitlement, the claimant must have been present in the UK for a specified period in the past. The requirement is that on the day the benefit is claimed, the claimant must have been present in the UK for a period of (or periods totalling) 104 weeks in the 156 weeks immediately preceding that day.

**Students and self-sufficient people**

Mobile EU citizens who are studying in the UK or who are self-sufficient (defined as a person who has a right to reside because they are not an "unreasonable burden" on the social assistance system of the UK) are qualified persons under the terms of the Citizens Directive and have a right to reside. Under EU law they must have comprehensive sickness insurance. Those deriving their right to reside as students or as self-sufficient people generally cannot apply for most welfare benefits, although they may be entitled to Child Benefit or Child Tax Credit, and to housing services in limited circumstances (more below).

**Mobile EU citizens and Universal Credit**

Universal Credit is a new welfare benefit currently being rolled out in stages across the UK and replaces six welfare benefits (Income-based JSA; Income-related Employment and Support Allowance; Housing Benefit; Child Tax Credit, Working Tax Credit and Income Support). It is for people who are unemployed, unwell or on low incomes and aims to simplify the welfare benefit system, including for those transitioning between unemployment and work.

Under the Universal Credit (EEA Jobseekers) Amendment Regulations 2015, mobile EU citizens whose right to reside is based on being a jobseeker will not be considered to be habitually resident for the purposes of claiming Universal Credit.

**Derived rights and family members of mobile EU citizens**

Family members with a direct ascending or descending relationship with a qualified person can derive their rights under the Citizens Directive (including to work and claim welfare benefits) from that person. This includes nationals of countries outside the EEA.

If a mobile EU citizen meets the conditions for claiming Child Benefit and Child Tax Credit, they can claim this for children living in other EEA countries, because the ordinary residence and presence requirements are not taken into account. For more information, see: <http://researchbriefings.files.parliament.uk/documents/SN06561/SN06561.pdf>.

If the child of an EU worker is in education, then they and their carers have a right to reside (with the same rights as an EU worker) until the child finishes their education. This applies whatever the nationality or circumstances of the carers and is found in detail in [Regulation 16](#).

Nationals of countries outside the EEA may derive an EU right of residence from a national of an EEA country (including a UK citizen) for whom they are a primary carer, under the 'Zambrano ruling' (*Ruiz Zambrano (European citizenship)* [2010] EUECJ C-34/09). The rights of carers for UK citizens are defined in regulation 16. In such circumstances, they will have a right to work, but not to claim welfare benefits.

**Permanent residents**

Mobile EU citizens acquire permanent residence after five years continuous lawful residence in another Member State and thereafter have the same rights in relation to welfare benefits as citizens of that Member State. Other groups that acquire permanent residence include people who become permanently incapacitated, people who stop working at retirement age and early retirees who have worked in the UK for 12 months. Permanent residents are exempt the Habitual Residence Test if they acquired their permanent residence through economic activity.

**EU accession states**

EU law allows Member States to implement transitional arrangements allowing the limitation of certain labour market and welfare rights of accession state nationals for a period of up to seven years. When ten countries joined the EU in 2004, the UK imposed a requirement to register once working on citizens of eight of those countries (A8 countries) and also barred them from access to some benefits for the first 12 months. These restrictions ended on 30th April 2011.

When Romania and Bulgaria joined the EU (A2 countries), similar restrictions on work and benefits were applied, which ended on 31st December 2013.

Transitional arrangements affecting access to labour markets and welfare state services for A8 and A2 nationals have now ended and their eligibility to work and to access welfare benefits is on the same footing as other mobile EU citizens.

Croatian nationals currently face [exclusions to the labour market](#), and they can only claim most welfare benefits once they have worked continuously for 12 months as an [authorised worker](#). These transitional arrangements will be in place up to at least end June 2018 and possibly until end June 2020.

### **Exporting benefits from home Member States**

Mobile EU citizens who receive a contributory unemployment benefit in the country where they last worked can have claim their benefit in the UK for three months after they arrive, and if the other country allows, for a further three months after that. The rules on exporting contributory benefits, which are outlined in EU Regulation 883/2004, also apply to other benefit types such as retirement pensions and invalidity benefits which can be imported to the UK on an indefinite basis from another Member State.

In cases where mobile EU citizens had worked in the UK for a time but not long enough to qualify for contribution-based Jobseeker's Allowance, social security contributions made in other Member States can, in some circumstances, be taken into consideration in the assessment of the UK benefit.

### **Housing services**

Housing services can be provided in the form of Housing Benefit, Homelessness Assistance and the allocation of social housing. Entitlement to claim these benefits are determined by local authority departments, rather than the job centre.

Housing Benefit helps towards rent payments for people on low incomes; homelessness assistance usually comprises the provision of emergency accommodation for those that are assessed by the local authority as being homeless; social housing may be allocated to those with longer-term housing needs either within council-provided or a nomination to housing association-provided accommodation.

In Wales, local authority powers for the allocation of social housing are given under Part 6 of the [Housing Act 1996](#), and in relation to homelessness assistance, under the [Housing \(Wales\) Act 2014](#). Regulations governing the eligibility under these statutes, which relate principally to migrants, are provided in the [Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) Regulations 2014](#). In accordance with Section 60 Housing (Wales) Act 2014, local authorities have a statutory duty to ensure there is a provision of information, advice and assistance in accessing help to anyone in its area, or with a local connection to its area, who present to them for assistance, including people who are ineligible for other housing assistance.<sup>3</sup>

Local authorities in Wales are required to have regard for the Welsh Government's statutory guidance on the allocation of social housing and assessments of homelessness: [The Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness](#).

Housing Benefit, and allocation of social housing are public funds as listed under Paragraph 6 of the Immigration Rules, but homelessness assistance in Wales is not.

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3. Chapter 9 of the Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness provides information on the provision of information, advice and assistance.

Those with recourse to public funds, including refugees, people granted DLR, Humanitarian Protection, ILR, LLR with recourse to public funds and mobile EU citizen workers/self-employed people (and their family members), including those with retained worker status and permanent residents, are entitled to claim Housing Benefit and will need to meet the specific eligibility requirements of this means-tested welfare benefit.

Since March 2014, the UK has removed the entitlement of mobile EU citizens with a right to reside on the basis of being a jobseeker to claim Housing Benefit. Workers who do not meet the minimum income threshold will be considered jobseekers and will also not be entitled to claim Housing Benefit.

People subject to immigration control who are eligible for homelessness services or an allocation of social housing are detailed in Regulation 3 of the Allocation of Housing and Homelessness (Eligibility) (Wales) Regulations 2014 and include people with refugee status or humanitarian protection, some people with leave to enter or remain that is not subject to the NRPF condition (those granted leave outside the immigration rules) and people with Indefinite Leave to Remain (ILR) that are habitually resident. Others, such as those with limited leave to remain with NRPF are ineligible.

Regulation 4 applies to UK citizens and those covered by EU rules. Those who are not habitually resident are ineligible, as are those whose right to reside is solely as a jobseeker, a "Zambrano carer" or for the first three months. EU workers, including those with retained worker status, self-employed people, Croatian authorised workers and those who acquired permanent residence through economic activity are eligible. EU students, self-sufficient people and others who have acquired the permanent right to reside are also eligible if they can pass the habitual residence test.

Those applying for social housing or homelessness services will be subject to the same processes as UK nationals. A homeless applicant will be offered emergency accommodation if there is reason to believe that they are

- Eligible
- Homeless
- In priority need (such as households with pregnant women, dependent children, a vulnerable person (on account of old age, physical or mental illness or disability, for example), or being a victim of domestic violence)
- Not intentionally homeless

Local authorities will also consider whether there is a "local connection" to the area, and if there is not may consider referring to another council.

For allocations of social housing local authorities may determine their own policies and priorities within the law, with some preference given to those who are in greater housing need because of overcrowding, homelessness or other factors.

## Further resources

### Key legislation

- [Immigration \(European Economic Area\) Regulations 2006](#)
- [Housing Act 1996](#)
- [Housing \(Wales\) Act 2014](#)
- [Allocation of Housing and Homelessness \(Eligibility\) \(Wales\) Regulations 2014](#)

### Statutory guidance

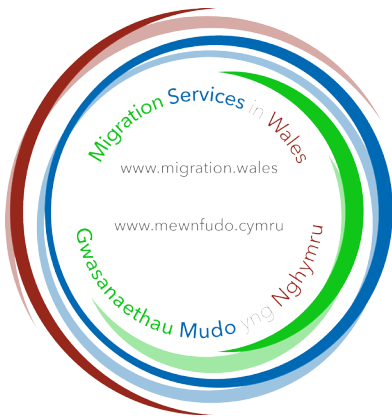
[The Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness](#)

### Useful websites and publications

- Housing Rights website – [www.housing-rights.info](http://www.housing-rights.info)
- Turn 2 us (for welfare benefit eligibility calculator) – <https://www.turn2us.org.uk>
- Child Poverty Action Group Welfare Benefits and Tax Credits Handbook – <http://www.cpag.org.uk/bookshop/wbtch>
- Homeless link – Welfare entitlements of EEA nationals: a brief introduction – <http://www.homeless.org.uk/sites/default/files/site-attachments/EEA%20Entitlements%20guidance%20June%202014%20FINAL.pdf>
- Citizens Advice Bureau – <https://www.citizensadvice.org.uk/benefits/coming-from-abroad-and-claiming-benefits-the-habitual-residence-test/>

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### Migration Services in Wales

Funded by Welsh Government, Migration Services in Wales is a project led by the Welsh Refugee Council in partnership with COMPAS that aims to increase understanding of migration policy and practice in Wales, and to support and facilitate the development of a 'strategic approach' to migration in Wales, one that will ensure relevant stakeholders are able to access detailed and up-to-date information.



### The Migration Observatory

Based at the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford, the Migration Observatory provides independent, authoritative, evidence-based analysis of data on migration and migrants in the UK, to inform media, public and policy debates, and to generate high quality research on international migration and public policy issues. The Observatory's analysis involves experts from a wide range of disciplines and departments at the University of Oxford.



### COMPAS

The Migration Observatory is based at the ESRC Centre on Migration, Policy and Society (COMPAS) at the University of Oxford. The mission of COMPAS is to conduct high quality research in order to develop theory and knowledge, inform policy-making and public debate, and engage users of research within the field of migration.

[www.compas.ox.ac.uk](http://www.compas.ox.ac.uk)



### Welsh Refugee Council

The Welsh Refugee Council has over 25 years' experience working with refugees and asylum seekers in Wales. It aims to ensure that Wales is a place of welcome through the delivery of specialist services in Cardiff, Wrexham, Newport and Swansea and by influencing policy and practice to improve the lives of migrants across Wales.

