



Welfare Rights Conference 2025

Migrants' rights now

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Overview: benefit rules and immigration law

- Immigration law prevents some groups of migrants claiming specific benefits depending on their immigration status
- It does not prevent entitlement to all benefits
- Some migrant groups have no restrictions on claiming benefits
- However, each benefit has its own rules, which may include its own residence and presence rules
- These residence and presence rules can prevent entitlement even if the immigration law does not

Overview: EEA vs non-EEA nationals

- EEA nationals and family members:
 - If eligible for EU Settlement scheme (EUSS), can be granted 'leave to remain' (LTR) either for limited period (pre-settled – 'PSS') or indefinitely (settled)
 - If not eligible for EUSS, granted LTR in same way as non-EEA nationals
- Leave under EUSS not subject to 'no recourse to public funds' (NRPF) condition, and not 'person subject to immigration control' (PSIC)
- Conditions of LTR granted outside EUSS vary depending on exact route and circumstances – so may be NRPF condition and/or PSIC

Types of non-EUSS immigration status (1)



- Refugee/humanitarian/discretionary leave:
 - Usually granted following asylum application
- Time limited 'leave to remain' (LTR):
 - Usually initially granted to workers, students, visitors, family members, ...
 - Normally subject to a **NRPF** condition
- Indefinite LTR:
 - Usually granted once have been in the UK with another LTR for a specified period of time

Types of non-EUSS immigration status (2)

- Asylum seekers:
 - Don't usually have LTR but granted 'immigration bail' pending outcome of asylum application or appeal against refusal
- Other statuses:
 - Migrant victims of domestic abuse concession leave (MVDAC)
 - Refugee 'family reunion' leave
 - Resettlement schemes, ie Afghan and Ukrainian
 - LTR due to 'maintenance undertaking' (sometimes called 'sponsorship') – this is different to refugee family reunion leave

Waiting on an immigration application

- If your LTR is time limited, you need to apply for further LTR before it runs out*
- If you don't, you have to leave the UK when it does, or you become an overstayer (ie someone with no current LTR)
- But if you did apply before your LTR ran out, your previous LTR is extended until a decision is made on the new application

* Pre-settled status is normally extended automatically by Home Office



Proof of your immigration status



- Via Home Office's UKVI website – 'eVisa'
- Letters or emails from Home Office
- Old biometric residence permit (BRP)
- Passport/ID card

Non-EUSS status: exclusion from benefits

- You are normally excluded from getting most, but not necessarily all, benefits if you are someone whose immigration status means you:
 - have NRPF
 - are a PSIC

Note – ‘NRPF’ is often used to refer to anyone who is excluded from benefits, either due to a current NRPF condition as part of their LTR or otherwise being a PSIC, plus sometimes others who for other reasons fail a benefit's residence or presence rules. Strictly speaking this is not correct.

No recourse to public funds (NRPF)

- You only have NRPF if your current LTR says so
- It is a breach of your NRPF condition if you receive 'public funds' or someone else does for you
- Many, but not all, benefits (see next slide) are listed as public funds
- If you breach a NRPF condition it may affect your current LTR and any future applications for LTR
- Get urgent specialist immigration advice if you may have breached a NRPF condition or need it lifted



LAW



Benefits that are 'public funds'

- Benefit only a 'public fund' if listed as such in the Home Office's Immigration Rules
- This currently includes the following benefits:
 - Universal credit (UC)
 - Pension credit (PC)
 - Housing benefit (HB)
 - Child benefit
 - Council tax reduction (CTR)
 - Adult/child/pension age disability payment
 - Scottish adult DLA
 - Carer support payment
 - Carer allowance supplement
 - Scottish child payment
 - Scottish welfare fund
 - Job start payment
 - Winter heating payments
 - Funeral support payment

Benefits that are not public funds



- 'New style' JSA and ESA
- Statutory payments, eg statutory sick pay, statutory maternity pay, etc..
- Best start grants and best start foods
- Maternity allowance
- Bereavement benefits
- Industrial injuries benefits
- Council tax status discounts

Who is a 'person subject to immigration control' (PSIC)?

- The law (s115(9) Immigration & Asylum Act 1999) says you are a PSIC if:
 - Your current LTR is on the condition that you have NRPF; *or*
 - You have no current LTR but require it (includes asylum seekers); *or*
 - You have LTR due to a 'maintenance undertaking'; *or*
 - You are appealing a refusal to extend or vary your immigration status

How being a PSIC affects benefits

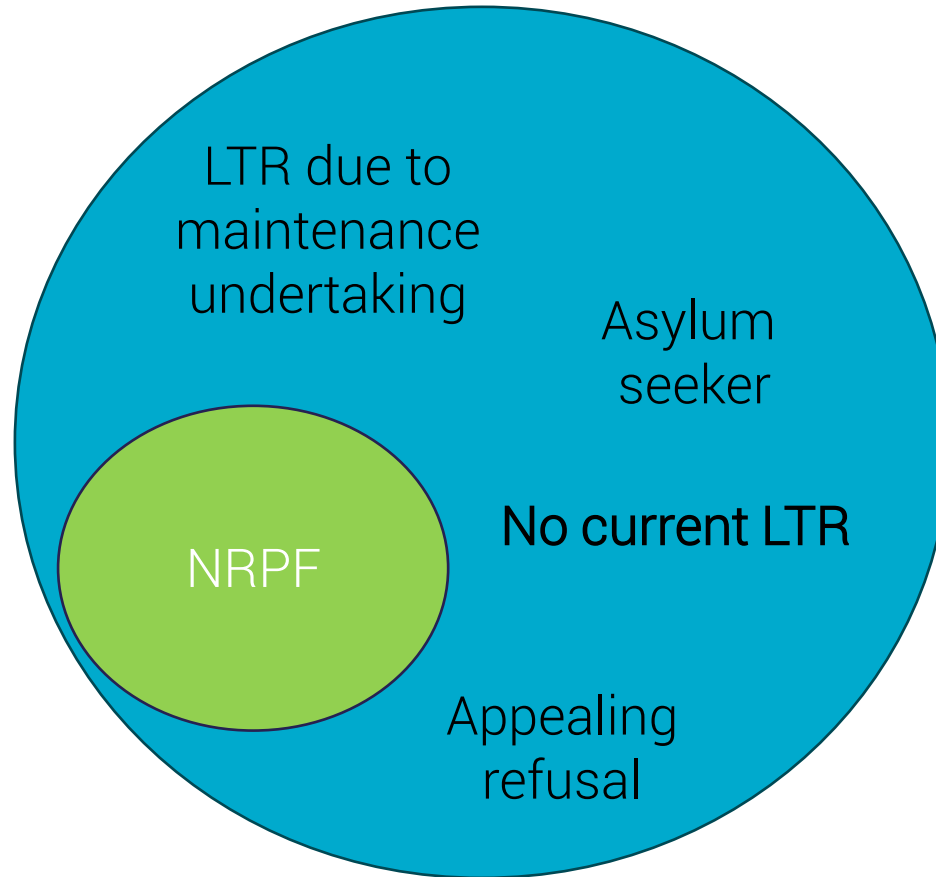
- Immigration law says that if you are a PSIC, you cannot receive certain benefits
- But if you are a PSIC and not subject to a NRPF condition, you or someone else getting these benefits for you should not affect your immigration status
- However, if you are a PSIC and benefits are paid for you, it is likely to bring you to the attention of the Home Office, eg if an overstayer and included in your partner's claim



Benefits PSICs are excluded from

- The same as those listed as 'public funds' except:
 - Winter heating payments*
 - Scottish child payment
 - Scottish welfare fund
 - Job start payment
 - Carer's allowance supplement (CA supplement)
- Note that exclusion of PSICs from Scottish benefits is found in the individual benefit regulations, not s115 Immigration & Asylum Act 1999

Who is a PSIC?



Public funds summary

The diagram consists of a large vertical rectangle divided into two horizontal sections. The top section is blue and contains a list of public funds. The bottom section is orange and contains a list of payments that are specifically excluded from public funds. Two purple arrows point from text boxes on the right towards their respective sections: one points to the blue section and the other points to the orange section.

- Winter heating payments
- Scottish child payment
- Scottish Welfare Fund
- Job start payment
- CA supplement

All of these are public funds

- CTR
- Child benefit
- HB
- UC
- PC
- Carer support payment
- Disability benefits
- Funeral support payment

PSIC are specifically excluded from these public funds



‘Mixed status’ households

- Exclusion/entitlement depends on claimant's immigration status
- For couples, in some cases, may need to work out which one might be entitled, and they can make the claim
- But if you can claim a benefit and it is paid, or includes extra amounts, for someone with NRPF, that may breach that condition, for example:
 - If you claim UC, PC or child benefit for a child who has NRPF
 - If you claim HB or CTR and your partner has NRPF
- If claiming child disability payment, child is the claimant, so it is their immigration status that matters

UC and mixed status households

- For UC, if a couple living together, both are usually claimants
- But if one excluded due to immigration status:
 - A joint claim is treated as a single claim
 - Award paid as if entitled partner is a single person
 - Excluded partner's income and capital is still taken into account
 - Excluded partner does not have a claimant commitment, but their presence may affect entitled partner's claimant commitment
- No option to not get paid child element for NRPF child

Status under EUSS – overview

- Those with PSS under EUSS do not have NRPF and are not PSICs, so no blanket exclusions from any benefits
- However, those with PSS can still be excluded from some benefits due to the benefit having:
 - a habitual residence requirement
 - the need for a qualifying right to reside (RTR)
 - a 'past presence test' (PPT)
 - a 'passporting' requirement
- Some benefits have no residence requirements but may need employment history or NI contributions

Benefits with habitual residence and RTR requirements

- Means-tested benefits:
 - Universal credit (reg 9 UC Regs 2013)
 - Pension credit (reg 2 PC Regs 2002)
 - Housing benefit (reg 10 HB/HB(SPC) Regs 2006)
 - Council tax reduction (reg 16 CTR/CTR(SPC) Regs 2021/12)
- Child benefit (CB - only RTR requirement)
- Any RTR in the common travel area (UK for CB) meets the requirement, unless specifically excluded
- Some types of RTR exempt claimant from the rest of habitual residence test (HRT)

Excluded rights to reside

- For those benefits requiring a RTR, the following exclude you if it is the only one you have:
 - PSS (not CTR(SPC))
 - Holder of EUSS family/travel permit (not CTR(SPC))
 - 'Zambrano' carer (not CTR(SPC))
 - EEA jobseeker (rather than retained worker status while involuntarily unemployed) and their family members (not CB or CTR(SPC))
 - EEA national with initial 3-month RTR and their family members (not CB)

Those with PSS

- If have PSS, in 'protected' group who can still have 'free movement' RTR under old EEA Regs
- Also protected if have pending EUSS application
- So can have EEA type qualifying RTR, including:
 - Worker/self-employed
 - Retained worker/self-employed
 - Permanent RTR
 - Self-sufficient/student
 - Family member of any of above
 - Primary carer of child in education of EEA worker/self-employed



PSS but no other qualifying RTR

- *SSWP v AT* [2023] EWCA Civ 1307
- EU nationals and family members covered by WA '19 still protected by EU Charter of Fundamental Rights
- Includes protection from 'risk of living in undignified conditions' – if refusing UC puts at such risk then reg 9 UC Regs (the HRT) must not be applied
- High bar:
 - If could alleviate risk by getting job, then not covered
 - If guaranteed that other support immediate available, not covered
- DWP guidance – ADM Memo 06/24 (updated)

Recent changes to legislation/policy

- Those with decision recognising refugee status after 7 April '25 can no longer get extra CB backdating
- Withdrawal of asylum support when recognised as refugee extended to 56 days (temporarily?)
- More Scottish benefits added to public funds list
- Best Start foods ex-gratia entitlement extended to parents of non-British children
- Automatic extension of PSS when due to expire, and 'automated' grants of settled status starting
- If couple getting legacy benefits migrate to UC and only entitled as single person, no transitional protection

Managed migration to UC

- While migration not in itself a change in immigration status, UC can carry out new HRT
- May (wrongly) fail even though nothing has changed
- Previous legacy benefit HRT decision is not binding (but may be good evidence?)
- Challenge any such UC decision immediately – if previously successfully challenged legacy benefit HRT decision, provide that as evidence

Gatekeeping

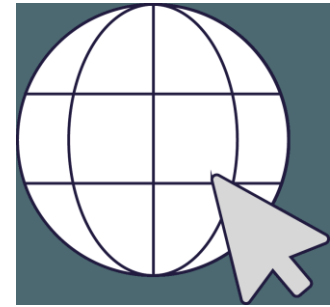
- No requirement to have eVisa, national insurance number (NI no.), specific ID, have settled status, etc., before can make a claim
- If no NI no. yet, NI no. application should be made with claim, but payment may be delayed until NI no. allocated
- If prevented from making claim:
 - keep notes of what happened
 - try alternative way of claiming
 - complain if lose out
 - send JR pre-action letter if necessary

Self-sufficiency



- RTR as self-sufficient EEA national not excluded for means-tested benefits or child benefit
- But must not be 'unreasonable burden' on 'social assistance system'
- Recent CPAG test cases:
 - *SSWP v Versnick and anor* [2024] EWCA Civ 1454
 - *SSWP v VB and AD* [2024] UKUT 212 (AAC)
- Resources relied on can include partners income and other benefits that received
- Duration of any 'social assistance' that will be received relevant - including when will qualify for settled status

Resources, information and advice



- CPAG - [Advising migrant group service](#)
 - [Benefits for migrants topic page](#)
- CIH - [Housing Rights website](#)
- IAA - [Registered immigration adviser finder](#)
- Law centres - [Scottish Refugee & Migrant Centre](#)
- Maternity Action - [Women from abroad, financial support and housing](#)
- LITRG - [International matters](#)
- Scottish Refugee Council - [New Scots Connect Map](#)

Help for advisers in Scotland



Advice by telephone:
0141 552 0552

Monday to Thursday, 10am - 4pm,
Friday 10am - 12 noon

Advice by email:
advice@cpagscotland.org.uk

Free, independent, expert, up-to-date advice and information to frontline advisers and support staff on all aspects of the benefits and tax credits system.

More resources for advisers can be found at **cpag.org.uk/welfare-rights**

2025/26 Courses

Now available to book

- Online courses until March 2026
- Experienced tutors
- Small training groups

cpag.org.uk/scotland/training



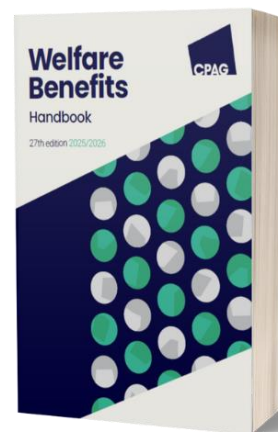
New Welfare Benefits Handbook

The structure of this edition reflects that, in 2025/26, income support, income-based jobseeker's allowance and tax credits are due to be fully replaced by universal credit. It covers transitional protection for people who get less money on universal credit and the special rules for pensioners who were getting tax credits.

Written by a team of over 20 experts, our flagship handbook is an essential guide to navigating the social security system. It equips you with the knowledge to maximise your clients' income, conduct thorough benefits checks, assist with claims, and confidently handle challenges when things go wrong.

We've also produced a wall chart (available in A2 and A4) which give quick and handy access to the benefit rates for 2025/26.

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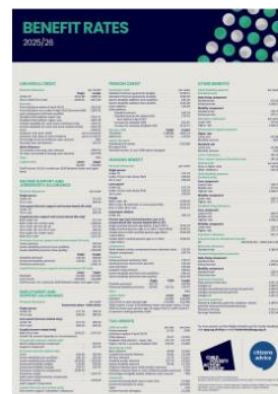
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