

Citizens Advice Camden, GOSH Information Sheet 8: People from Abroad

020 7829 8896

Take home message

- *Rules affecting foreign nationals are extremely complex*
- *A wrong claim could result in a family losing their benefits and being detained and deported*
- *People from abroad should be referred to us, where specialist help is available*

People from outside the European Economic Area (EEA) and Switzerland

- People from outside the EEA and Switzerland may have a ‘no recourse to public funds’ (NRPF) restriction on their visas, which means they cannot get benefits or housing. These individuals may also be referred to as being ‘subject to immigration control’. If they claim benefits, they may end up being detained and deported.

People from within the EEA or Switzerland: the ‘right to reside’

- People from within the EEA or Switzerland (see Appendix for definition and list of countries) do not have NRPF restrictions. They have a directly effective right to move and reside freely anywhere in the EEA. They may, however, still have difficulty accessing benefits and social housing.
- Some classes of European migrants cannot get benefits at all whereas others can only get some. This will depend on the nature of their ‘right to reside’ (RTR). A person’s RTR is determined by a complex set of rules and there are many different categories. It is possible to have more than one RTR at a time. Classic examples of RTRs include people who are working or self-employed, or who retain such status.
- To be counted as a worker or self-employed, the work must be ‘genuine and effective’. The government has uses a Minimum Earnings Threshold to determine this. **However, there has been no change in EU law so people failing this test should be referred to us.**
- To get most benefits and housing assistance, a person also needs to be habitually resident in the UK. This means that the UK is the person’s settled home - which is a relatively easy test to meet. For most benefits, the habitual residence test includes the RTR test. The argument in most EEA and Swiss cases is therefore whether the claimant has a RTR.

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- Note that the term ‘right to reside’ can confuse many people. Technically, an EEA or Swiss national without a RTR can be removed from the UK but this is rare. The RTR test in benefits and housing law is more of a gatekeeping mechanisms to deny access to foreign nationals without the ‘right kind’ of RTR.

EEA and Swiss jobseekers

- Some EEA and Swiss nationals will only have a RTR as a workseeker. They will only have a RTR on this basis, and only be able to claim Jobseekers Allowance (JSA), for a maximum of 91 days before being subjected to the very strict Genuine Prospect of Work (GPoW) test.
- EEA and Swiss nationals whose only RTR is as a workseeker cannot get Housing Benefit (HB). It used to be the case that they could, but this changed in April 2014. Transitional provisions were put in place so that anyone getting both JSA and HB before April 2014 will continue getting them until there is a break in either claim.
- There is anecdotal evidence that decision makers are not applying the rules properly and people are being wrongly classified as workseekers even though they actually have another RTR. **Anyone classified as a jobseeker and caught by these rules should be referred to us to check.**

The permanent right to reside

- Some EEA and Swiss nationals will have a permanent right to reside. You usually get this after at least five years’ lawful residence in the UK. You can also get it in a shorter time in certain circumstances. People with a permanent right to reside are to be treated in almost exactly the same way as British nationals.
- ‘Lawful residence’ is defined as residence in accordance with specific provisions of EU law. Therefore, not all EEA and Swiss nationals will have a permanent right to reside, even if they have been in the UK legally for five years or more.

Past presence rules

- Many benefits have a rule that you cannot get them until you have been in the UK for a certain period of time. For example, for Child Benefit and JSA, you have to have been in the UK for three months.
- This can be much longer. For disability benefits (including Disability Living Allowance [DLA] and Carer's Allowance [CA] - see Sheet 1), you have to have been in the UK for at least two years out of the preceding three.
- These rules apply to everybody, including British nationals who have been living abroad and return to the UK.

EU law and past presence rules

- EEA nationals (including British nationals) who have been living in another EEA state or Switzerland can rely on the EU Social Security Co-ordination Regulations to satisfy the past presence requirements in some cases.
- These rules say that you can count periods spent living in other EEA states or Switzerland as though you were living in the UK.
- **The government disputes how these rules apply to the disadvantage of families with disabled children. Recently arrived migrants who may be eligible for disability and carer's benefits should be referred to us as soon as possible.**

Family members

- Many of the rights described above also extend to the family members of EEA and Swiss nationals. 'Family member' is specifically defined in European law and includes both EEA and non-EEA nationals.
- Carers can also derive a RTR from their EEA/Swiss national (including British) child, even if the carer is from outside the EEA or Switzerland. Benefits may severely restricted in these cases.
- British nationals will not be able to bring to the UK their relatives from outside the EEA or Switzerland unless they can show some link to EU law or satisfy the tough UK Immigration Act requirements.

Disclaimer

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We have endeavoured to ensure the information in these sheets is correct at the time of print. Social security law, however, is a rapidly developing area of law and the information in these sheets may soon be out of date. No liability is accepted for their use by any party.

Any queries regarding these sheets should be directed to us on 020 7829 8896.

Appendix - the European Economic Area (EEA) and Switzerland

- The 28 member states of the EU are:

Austria	Belgium
Bulgaria	Croatia (transitional provisions currently in place)
Cyprus	Czech Republic
Denmark	Estonia
Finland	France
Germany	Greece
Hungary	Ireland
Italy	Latvia
Lithuania	Luxembourg
Malta	Netherlands
Poland	Portugal
Romania	Slovakia
Slovenia	Spain
Sweden	UK

- An international agreement called the EEA Agreement extends most of the Internal Market (including free movement and social security co-ordination provisions) to three European Free Trade Association (EFTA) states: Iceland, Liechtenstein and Norway.
- An agreement also exists between the EU and the fourth EFTA state, Switzerland, which extends parts of the Internal Market to that country.
- UK immigration and social security law does not draw any distinctions between the EU member states, the three EEA-EFTA states or Switzerland.
- For more detail on the rights conferred by the EEA and Swiss frameworks, see Jay M. Homogeneity, the free movement of people and integration without membership: *Mission Impossible? Croatian Yearbook of European Law and Policy* 2012; 8: 77-115.

www.cyelp.com/index.php/cyelp/article/view/152/