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People from abroad: what benefits can they claim?

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UK Border

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Summary

The rules on eligibility for benefits for people coming to the UK from abroad are one of the most complex areas of welfare rights law. Whether or not a person can claim benefits and, if so, which benefits, may depend on a number of factors. These include nationality, immigration status (and any conditions attached to it), the circumstances under which the person arrived in the UK, whether they are deemed "habitually resident", whether they are in work or looking for work, and whether they arrived alone or with other family members. Many other factors may be relevant.

This note gives a broad overview of the rules on access to benefits and tax credits for people coming to the UK from abroad. It describes the situation for three groups:

- Asylum seekers
- Nationals from countries which are not part of the European Economic Area (EEA)
- EEA nationals

It is not intended to be a definitive statement on who can claim what, but rather to indicate in broad terms the factors which can determine what people in each of the three categories may be able to claim.

Links are included to further Library briefings which give more detailed information, and to other resources. This is however a very complex area of the law. It is important that individuals who are uncertain about what they are entitled to seek specialist advice before making a claim for any benefit or tax credit. For some people, a claim for benefits may mean that they are in breach of immigration conditions and could result in their removal, a refusal of further leave and/or prosecution.

1. Introduction

To understand the rules on access to benefits and tax credits for people coming to the UK from abroad, it is helpful to split the migrant population into three broad groups:

- People seeking asylum
- Nationals of non-EEA countries
- Nationals of European Economic Area (EEA) countries

2. Asylum seekers

Asylum seekers – ie persons waiting for a decision on an asylum application – are not entitled to mainstream non-contributory social security benefits including income-based Jobseeker’s Allowance, Income Support and Housing Benefit. Instead, they may be eligible for [accommodation and/or financial support \(“asylum support”\) from the Home Office](#).

Cash support for asylum seekers is less generous than social security benefits. The support available to asylum seekers in the UK is outlined in a separate Library briefing, [Asylum: Financial support for asylum seekers](#).¹

Refugees – ie asylum seekers whose application for asylum has been successful – are able to claim social security benefits and tax credits on the same basis as UK nationals.

Members may be contacted by constituents complaining that “illegal immigrants/refugees” in Britain receive significantly more financial assistance from the Government than UK pensioners, citing an email. The Library has produced a briefing, [Viral emails protesting about financial assistance for “illegal immigrants/refugees living in Britain”](#), which looks at the origins of this email, examines the claims it makes, and gives information on actual entitlements for immigrants and pensioners in the United Kingdom.²

¹ CBP 01909

² SN 05621

3. Non-EEA nationals

The European Economic Area (EEA) comprises the EU Member states plus Iceland, Liechtenstein and Norway. For EEA and Swiss nationals, the rules governing entitlement to benefits differ from those for nationals of other countries (see section 4 below).

For non-Swiss nationals and nationals of countries not part of the EEA (both groups are hereafter referred to as “non-EEA nationals”), immigration status is the key factor determining what they can claim.

Non-EEA nationals with **indefinite leave to remain** (often called “settled status”) have no time limit on their right to stay in the UK, and no conditions may be attached to their leave. They can therefore access social security benefits and tax credits on the same basis as UK nationals (unless their right to remain was awarded as a result of a formal undertaking by another person to maintain and accommodate them).

Most people admitted to the UK from outside the EEA will however have **limited leave to remain** and will be subject to the condition that they have “**no recourse to public funds**” during their stay in the UK. A person with limited leave to remain who has recourse to public funds in breach of their leave conditions can find themselves liable to removal, refusal of further leave and/or prosecution.

“Public funds” covers a wide range of benefits including:³

- income-based Jobseeker’s Allowance
- Income Support
- Income-related Employment and Support Allowance
- Child Tax Credit
- Working Tax Credit
- Universal Credit
- Social Fund payments
- Child Benefit
- Housing Benefit
- Council Tax reduction
- Domestic rate relief (Northern Ireland)
- Pension Credit
- Attendance Allowance
- Personal Independence Payment
- Carer’s Allowance
- Disability Living Allowance
- an allocation of local authority housing
- local authority homelessness assistance

More detailed information on public funds can be found in the [Modernised guidance for how UK Visas and Immigration decides what public funds foreign nationals can claim](#).

Separately, [section 115 of the Immigration and Asylum Act 1999](#) provides that a “**Person Subject to Immigration Control**” (PSIC) is

³ UK Visas and Immigration, [Guidance: Public funds](#), 17 February 2014

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not entitled to most social security benefits and tax credits, except in certain limited circumstances.

Box 1: Person Subject to Immigration Control (PSIC)

A person who is not an EEA national and who:

- requires leave to enter or remain in the UK but does not have it; or
- has leave to enter or remain subject to the condition that they do not have recourse to public funds; or
- has leave to enter or remain as a result of an undertaking by another person to maintain them during their stay; or
- has leave to enter or remain only because they are appealing a decision refusing an application to vary their leave

The benefits a PSIC is prevented from claiming include:

- Attendance Allowance
- Carer's Allowance
- Child Benefit
- Child Tax Credit
- Disability Living Allowance
- income-related ESA
- Housing Benefit
- income-based JSA
- Income Support
- Pension Credit
- Personal Independence Payment
- Social Fund payments
- Universal Credit
- Working Tax Credit

Until recently, immigration status did not affect eligibility for those benefits which depend on National Insurance contributions, such as contribution-based Jobseeker's Allowance (JSA) and contributory Employment and Support Allowance (ESA). Other work-related benefits including Statutory Maternity Pay, Statutory Adoption Pay, Statutory Paternity Pay, Statutory Sick Pay and Industrial Injuries benefits were also payable regardless of immigration status. However, as a result of measures in the *Welfare Reform Act 2012* eligibility for these benefits is restricted to those who are entitled to work in the UK.

There are some **limited exceptions** to the above rules. For example, sponsored immigrants may be able to claim means-tested benefits if they have been resident for at least five years (or before then, if their sponsor has died). People with limited leave to remain may also be able to claim means-tested benefits (but not Universal Credit) on a time-limited basis, if their funds from abroad have been temporarily disrupted.

For couples with mixed immigration status (ie where one partner is a "Person Subject to Immigration Control" but the other is not) the rules

are complicated, but there are special provisions which allow mixed-immigration status couples to claim tax credits on the same basis as couples where neither partner is a PSIC (and without it breaching any “public funds” restriction). The rules vary from benefit to benefit however, and couples should seek specialist advice before making a claim.

In addition, the UK also has a number of [reciprocal social security agreements](#) with non-EEA countries which may help individuals gain entitlement to certain UK benefits where they would not otherwise have been able to. However, the scope of the reciprocal agreements varies widely, in terms of who is covered, the benefits in question and the provisions which apply.

Further information on the rules for non-EEA nationals can be found at the [Citizens Advice](#) website. The organisation [Turn2Us](#) also has information on migrants’ entitlement to benefits on its website.

3.1 Habitual residence

Even if a non-EEA national is not prevented from claiming benefits because of their immigration status, they may still be prevented from claiming certain benefits within a certain period of arrival in the Common Travel Area (the UK, Ireland, Channel Islands and the Isle of Man) if they are deemed not to be **“habitually resident.”**

The Habitual Residence Test is applied to people (unless they in an exempt category) who have recently arrived in the country and who make a claim for certain benefits, or seek housing assistance from a local authority. It applies to returning UK nationals as well as to those coming to the UK for the first time. The benefits covered by the Habitual Residence Test are:

- 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

There is no statutory definition of “habitual residence” but factors which may be taken into account by DWP or a local authority when considering whether a person is habitually resident include how long they have been in the country, the person’s reasons for coming here and their future intentions, what the person has done to establish themselves since arriving, their employment prospects, and where their “centre of interest” lies. Library briefing SN00416, [The Habitual Residence Test](#), gives further background.

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Since December 2013, a more “robust” process has been used to determine whether claimants are habitually resident, involving more rigorous questioning of individuals. In addition, from 1 January 2014 in order to be treated as habitually resident for income-based JSA purposes, a person must have been living in the Common Travel Area (the UK, Channel Islands, Isle of Man or the Republic of Ireland) for three months. This affects returning UK nationals as well as those coming to the UK for the first time.⁴

3.2 Alternative sources of help

Where a person is unable to claim benefits or tax credits because of their immigration status, alternative sources of help may be available. The [No Recourse to Public Funds Network \(NRPF\)](#) – a network of local authorities and partner organisations focusing on the statutory duties to migrants with care needs who have no recourse to public funds – has produced [practice guidance](#) which gives an indication of the alternative sources of support which may be available. It is however aimed at local authority staff involved in assessing and supporting people who have no recourse to public funds, rather than individuals themselves. The NRPF website also emphasises that the guidance does not constitute legal advice and is not a substitute for consulting a lawyer about an individual case.

⁴ For further information see Library briefing CBP 06889, [Measures to limit migrants' access to benefits](#)

4. EEA nationals

People coming to the United Kingdom from EEA countries⁵ do not have unrestricted access to UK social security benefits and tax credits. In May 2004, the legislation governing entitlement to certain benefits and housing assistance was amended so that a person cannot be “habitually resident” unless they have the “**right to reside**” in the Common Travel Area (the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland).

The “right to reside” test applies to claims for a range of benefits including:

- Income Support
- income-based JSA)
- income-related ESA
- Pension Credit
- Housing Benefit
- Council Tax reduction
- Child Benefit
- Child Tax Credit
- Universal Credit
- housing assistance from local authorities

Broadly speaking, a person who moves from one EEA country to another has a right to reside in that country if they are economically active, or are able to support themselves. This applies to people from the “old” EU countries as well as those from the newer accession states.

On 30 April 2006, the *Rights of Residence Directive 2004/38/EC* came into force, giving everyone, including economically inactive people, a right to reside for the first three months; but the UK Government amended the rules on access to benefits to ensure that people who had a right to reside solely on the basis of the new three-month right of residence would not be able to claim benefits for that reason.⁶

Article 7 of the Directive sets out who has “the right of residence” after the initial three month period. This includes:

- **workers** or **self-employed persons** in the host member state, and their families, and
- **students** attending institutions in the host member state and their families, provided they can support themselves

A “worker” has the right of residence – and with it access to benefits and tax credits – for as long as they are in “genuine and effective work”.⁷ A worker can however retain worker status when they stop working in certain circumstances, e.g. if they are temporarily unable to

⁵ Switzerland is not a member of the EEA but as a result of an agreement that came into force on 1 June 2002, Swiss nationals enjoy broadly the same rights as EEA nationals with regard to freedom of movement

⁶ The *Social Security (Persons from Abroad) Amendment Regulations 2006 SI 2006/1026*

⁷ CH/3314/2005, CIS/3315/2005 paras 21-30; Case C-357/89 *Raulin* (1992) ECR 1027

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work because of illness, or have been made unemployed and are looking for work.

EEA nationals may also have a right to reside as a **jobseeker**, if they can show that they are looking for work and have a “genuine chance of being engaged”, and are **habitually resident**.

All other groups only have the right of residence if 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 during their period of residence and have comprehensive sickness insurance cover in the host Member State⁸

An economically inactive “**self-sufficient person**” may however be able to access means-tested benefits with being considered an “unreasonable burden” on the UK’s social assistance system, in certain circumstances.⁹

A person may also have a right to reside based on another person’s right to reside. This is known as a “**derivative right to reside**.” For example, a person who formerly a “worker” may have a right to reside as a **primary carer of a child in education**.¹⁰

EEA nationals who have “resided legally” in the UK for a continuous period of five years (or less in certain circumstances) acquire a **permanent right of residence** and have access to benefits and tax credits on the same terms as UK nationals.¹¹

Further information can be found in Library briefing SN05972, [EEA nationals: the ‘right to reside’ requirement for benefits](#).

The European Commission has begun infringement proceedings against the United Kingdom on the grounds that the right to reside requirement discriminates against non-UK EEA nationals, contrary to EU law. On 30 May 2013 the Commission confirmed that it would refer the UK to the Court of Justice.¹² The Government has pledged to fight this action.¹³ The Commission has also begun separate infringement proceedings against the UK in relation to the right to reside test for Child Benefit and Child Tax Credit.¹⁴

⁸ Article 7(1)(b) *Rights of Residence Directive* 2004/38/EC

⁹ See Martin Williams, “[Right to reside: Breytastic!](#)”, *Welfare Rights Bulletin*, October 2013, pp7-9

¹⁰ See CPAG Scotland factsheet, [Right to reside – parent or carer of child in education](#)

¹¹ See the AIRE Centre factsheet, [Permanent Residence for EEA Nationals and their family members in the UK](#), April 2013

¹² European Commission press release, [Social security benefits: Commission refers UK to Court for incorrect application of EU social security safeguards](#), 30 May 2013

¹³ DWP press release, [The European Commission’s announcement on access to benefits](#), 30 May 2013

¹⁴ InfoCuria - Case-law of the Court of Justice, [Action brought on 27 June 2014 – European Commission v United Kingdom of Great Britain and Northern Ireland \(Case C-308/14\)](#)

4.1 Additional restrictions for nationals of certain countries

For people coming to the UK from one of the countries which joined the EU in 2004, until 20 April 2011 there were further conditions that had to be satisfied. To have a right of residence, most workers from **A8 countries**¹⁵ had to be in work and registered under the then UK Border Agency's Worker Registration Scheme (WRS). They had the right of residence – and with it access to in-work benefits – for as long as they were in registered employment. Once an A8 national had legally worked in the UK without interruption for a period of 12 months they did not have to register with the WRS and had the same rights and access to means-tested benefits and tax credits as other EEA nationals. A8 nationals who had not previously worked in the UK could not claim benefits as a "jobseeker", and could only claim out-of-work benefits if they had been in work and registered under the WRS for 12 months.

The Worker Registration Scheme was established under provisions in the Accession Treaty allowing the existing Member States to apply national measures regulating access to their labour markets for nationals of A8 countries for up to seven years. The period expired on 30 April 2011, and from that date A8 nationals have been subject to the same rules as other EEA nationals (apart from **A2 nationals** - Romanians and Bulgarians).

Until 31 December 2013, Romanian and Bulgarian nationals were subject to transitional restrictions which limited their access to the UK labour market and benefits. Briefly, this meant that:

- A2 nationals could not come to the UK and claim benefits without having worked here first, ie they could not have a right to reside as a "jobseeker"
- A2 nationals had to obtain a "worker authorisation document" before starting work as an employee in the UK
- Those who had obtained worker authorisation had a "right to reside" as a worker, and could claim in-work benefits (eg tax credits, Housing Benefit) when working
- If they stopped working before they had completed 12 months' uninterrupted work, they could not claim out-of-work benefits
- Once they had completed 12 months' work, they were able to claim out of work benefits in the same way as other EEA nationals

Self-employed A2 nationals were not subject to worker authorisation and had a right to reside as a self-employed person for as long as they remained in work. However, they could not claim out of work benefits if they subsequently stopped working.

The transitional restrictions on A2 nationals were lifted from the end of December 2013, and A2 nationals will now be treated in the same way as all other EEA nationals (**except Croatian nationals**, who continue to

¹⁵ The 'A8' comprises the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia

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be subject to rules similar to those which previously applied to A2 nationals¹⁶).

Further information can be found in Library briefing SN06606, [Ending of transitional restrictions for Bulgarian and Romanian workers](#).

The ending of the transitional restrictions led to fears of an influx of migrants from A2 countries in order to take advantage of the UK social security system. Concern focused on the prospect of large numbers of A2 nationals arriving in the UK and claiming out-of-work benefits on arrival, without first having worked here. However, to have a right to reside as a “jobseeker” – ie without first having worked in the UK – an EEA national must be habitually resident in the Common Travel Area (see section 3.1 above and Library briefing SN00416, [The Habitual Residence Test](#)).

4.2 Child Benefit and Child Tax Credit for children in other EEA countries

One of the most controversial aspects of EU law in the area of social security is the provision under which a migrant may claim “family benefits” from the state in which they reside in respect of dependent children resident in another Member State. The provisions are in EC Regulation 883/2004 on the co-ordination of social security systems for people moving between Member States, but they have a much longer pedigree. The rules apply to all EEA countries, not just the United Kingdom.

The key provision in EC Regulation 883/2004 is Article 67:

Members of the family residing in another Member State

A person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. However, a pensioner shall be entitled to family benefits in accordance with the legislation of the Member State competent for his/her pension.

This means that, if an EEA migrant in the United Kingdom is covered by the UK social security system, they can claim Child Benefit and Child Tax Credit for their dependent children even if they are not resident in the UK. The person making a claim must meet all the usual conditions for entitlement to these benefits, but the ordinary residence and presence requirements for the child or children do not apply and they can claim benefit for them on the same basis as if they were living in the UK.

Where family benefits are already being paid, “overlapping benefits” provisions apply to ensure that the family is not paid twice (the total amount they receive will not exceed the amount payable by the state with the higher entitlement).

¹⁶ Croatia joined the European Union on 1 July 2013 and similar transitional restrictions to those imposed on people from the A2 countries were applied to Croatian nationals. For further information see Henri Krishna, [“The accession of Croatia”](#), *Welfare Rights Bulletin* 235, August 2013

Further information can be found in Library briefing SN06561, [Child Benefit and Child Tax Credit for children resident in other EEA countries](#).

4.3 New measures to limit access to benefits

In an article in the *Financial Times* on 27 November 2013, the Prime Minister noted that on 1 January 2014 the people of Romania and Bulgaria would have the same right to work in the UK as other EU citizens, and said that he shared the concerns of those who were “deeply concerned about the impact that could have on our country.”¹⁷ He announced a series of measures to further limit access to benefits for EEA nationals. These include:

- From 1 January 2014, for the purposes of claiming income-based Jobseeker’s Allowance, no-one can be considered “habitually resident” unless they have been living in the Common Travel Area (the UK, Republic of Ireland, Channel Islands or the Isle of Man) for three months.¹⁸ This applies to returning UK nationals as well as to people coming to the UK for the first time.
- From 1 January 2014, EEA jobseekers or former workers would have to show that they had a “genuine prospect of finding work” to continue to get JSA after six months (and if applicable, Housing Benefit, Child Benefit and Child Tax Credit).¹⁹ From 10 November, for those with a right to reside as a jobseeker the test will be applied after three months on JSA.
- From 1 April 2014, EEA nationals whose only right to reside is as a “jobseeker” have no longer be able to access Housing Benefit (although existing HB claimants at the point of change can continue to receive it). EEA “workers” or “self-employed persons” who retain their worker status on stopping work – eg due to incapacity – are not affected.²⁰
- From 1 March 2014, a new minimum earnings thresholds to help determine whether an EEA national is or was in “genuine and effective work,” and so has a right to reside as a “worker” or “self-employed person.” The earnings threshold is the point at which employees start to pay Class 1 National Insurance contributions (for 2014-15, this will be £153 a week).²¹ Those earnings less than the threshold “will be assessed against a broader range of criteria to decide whether they should still be considered as a worker, or self-employed.”²²

The Government argued that the package of measures was “necessary to protect the UK's benefit system and to discourage people, who have no established connection or who have broken their connection with

¹⁷ David Cameron, “Free movement within Europe needs to be less free”, *Financial Times*, 27 November 2013

¹⁸ [Jobseeker’s Allowance \(Habitual Residence\) Amendment Regulations 2013](#); SI 2013/3196

¹⁹ [The Immigration \(European Economic Area\) \(Amendment\) \(No. 2\) Regulations 2013](#); SI 2013/3032

²⁰ [The Housing Benefit \(Habitual Residence\) Amendment Regulations 2014](#); SI 2014/539

²¹ Further guidance can be found in DWP Memo DMG 1/14, [JSA\(IB\) – Right to Reside – Establishing whether an EEA national is/was a “worker” or a “self-employed” person](#)

²² DWP, [Minimum earnings threshold for EEA migrants introduced](#), 21 February 2014

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the UK, from migrating here without a firm offer of employment or imminent prospect of work.”²³ The overall package of measures announced up to Budget 2014 was expected to yield savings of £60 million in 2014-15 and £80 million in 2015-16, rising to £125 million a year in 2018-19.²⁴

Further changes were announced in April 2014 including:²⁵

- From 1 July 2014, new jobseekers arriving in the UK would need to have lived here for three months in order to claim Child Benefit and Child Tax Credit.²⁶

On 9 March 2015 regulations were laid before Parliament preventing EEA jobseekers from accessing Universal Credit.²⁷ The regulations provide that an EEA national whose only right to reside is as an EEA jobseeker, or a family member of such a person, cannot satisfy the Habitual Residence Test and will not be entitled to Universal Credit. The regulations came into force on 10 June 2015.²⁸

Further information on the changes outlined above is given in Library briefing 06689, [Measures to limit migrants' access to benefits](#).²⁹

In his keynote speech on immigration on 28 November 2014, the Prime Minister set out plans to secure agreement on changes to European law on free movement of persons to allow the UK to, among other things, deny EEA migrants in-work benefits for four years, and to prevent Child Benefit and Child Tax Credit being paid for children living in other EEA countries.³⁰ The speech followed announcements by Labour and by the Liberal Democrats of measures they would seek to introduce to further limit migrants' access to benefits.³¹

The scope for further limiting access to UK benefits for EEA nationals is examined in the Library Second Reading blog of 2 December 2014, [EU migrants and benefits: frequently \(and some less frequently\) asked questions](#). See also the Commons Library briefing paper [Further proposals to restrict migrants' access to benefits](#).

²³ DWP, [The removal of Housing Benefit from EEA jobseekers Impact Assessment](#), 27 February 2014, p1

²⁴ [Budget 2014: policy costings](#), p50

²⁵ HM Treasury, [Further curbs to migrant access to benefits announced](#), 8 April 2014

²⁶ [Child Benefit \(General\) and the Tax Credits \(Residence\) \(Amendment\) Regulations 2014](#); SI 2014/1511

²⁷ [Universal Credit \(EEA Jobseekers\) Amendment Regulations 2015; SI 2015/546](#)

²⁸ See DWP ADM memo 14/15: [Universal Credit, EEA Jobseekers](#), April 2015

²⁹ See also the section of the “[Right to reside](#)” at the Child Poverty Action Group’s website for further information and commentary, in particular Henri Krishna, “[Residence rights and wrongs](#),” *Welfare Rights Bulletin* 242, October 2014

³⁰ “[David Cameron's EU speech: full text](#),” BBC News, 28 November 2014

³¹ See Library briefing 07174, [Further proposals to restrict migrants' access to benefits](#)

5. Further information

5.1 Library briefings

SN01909, [Asylum: Financial support for asylum seekers](#).

SN05621, [Viral emails protesting about financial assistance for "illegal immigrants/refugees living in Britain"](#)

SN05972, [EEA nationals: the 'right to reside' requirement for benefits](#)

SN06561, [Child Benefit and Child Tax Credit for children resident in other EEA countries](#).

SN00416, [The Habitual Residence Test](#)

SN06606, [Ending of transitional restrictions for Bulgarian and Romanian workers](#).

SN06689, [Measures to limit migrants' access to benefits](#)

SN05433, [Entitlement to social housing: persons from abroad \(non-EEA\)](#)

SN04737, [EU migrants: entitlement to housing assistance \(England\)](#)

5.2 Other resources

The Child Poverty Action Group's [Welfare benefits and tax credits handbook](#) contains chapters on immigration status affects benefit entitlement, and on the rules for EEA nationals. CPAG has also produced a more detailed [Benefits for migrants handbook](#). The most recent (sixth) edition was published in September 2014 covers the law as it applied on 1 June 2014.

Further information on the rules for EEA and non-EEA nationals can be found at the [Citizens Advice website](#). The organisation [Turn2Us](#) also has information on migrants' entitlement to benefits on its website.

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