



Migrant rights and entitlements

Introduction to Migration

Guidance booklet #4



Migration Yorkshire
supporting local migration services



Integration up North
Training and Development in the North of England



Co-funded by the
European Union's
European Integration Fund

Who is this guidance for?

Migrant rights and entitlements is part of the *Introduction to Migration* series from the Integration up North project. The series provides a basic guide to migration for people working in public sector organisations: local authorities (including health services), police, fire and rescue services, probation services, Jobcentre Plus, Trades Unions and others. It should also be useful for those working in the voluntary and community sector.

The guidance aims to improve the knowledge and understanding of migration among service providers, so that they can shape their service to support the integration of new arrivals to the benefit of both the newly-arrived migrants and the wider local community. Throughout the guidance there are examples from practice across the northern region, and experiences of new arrivals in these areas. While the focus is migration to the north of England, it should be useable in other areas of England.

This is intended to be an easy-to-use reference document. It does not provide legal advice or a detailed guide to immigration law and policy. In such a fast-changing context, information can quickly become out of date. All information should be checked with an expert or the Home Office if in doubt. We have highlighted other sources of information and guidance where it exists, for further reading and future reference.

About the contributors

Migrant rights and entitlements was written by Pip Tyler and the Appendix Reference tables on migrant entitlements were compiled by Sue Lukes.

The *Introduction to Migration* series was edited by Pip Tyler, with most Integration up North (IUN) case studies written by Nahida Khan. The project and guidance documents would not have been possible without contributions and advice from our migrant volunteers, migration champions in our partner organisations, and our training delegates who commented on the materials.

This publication has been produced with the financial support of the European Union's European Fund for the Integration of Third Country Nationals. The contents of this publication are the sole responsibility of Migration Yorkshire and can in no way be taken to reflect the views of the European Commission.

This document should be cited in the following way:
Integration up North (2015) *Migrant rights and entitlements*. Introduction to Migration series, Guidance booklet #4. Migration Yorkshire: Leeds.

The *Introduction to Migration* series is FREE and available online at www.migrationyorkshire.org.uk/integrationupnorth

Migrant rights and entitlements was last updated in June 2015.

Contents

| | |
|--|---------|
| Introduction: why <i>Migrant rights and entitlements</i> ? | page 5 |
| Overview of rights and entitlements | page 6 |
| Permission to work | page 8 |
| Permission to bring family to the UK | page 9 |
| Access to benefits and services | page 11 |
| • EEA nationals | page 12 |
| • Third country nationals | page 13 |
| • Three worked examples | page 17 |
| Sources of information and support | page 18 |
| Summary of key messages | page 20 |
| Appendix: Reference tables on migrant entitlements | page 21 |
| 4.1 EEA migrants | page 22 |
| 4.2 Third country nationals | page 25 |
| 4.3 Asylum seekers and refugees | page 30 |
| 4.4 Glossary and acronyms | page 36 |

List of figures

| | | |
|------|--|---------|
| i | <i>The impact of poor advice - Rukhsana's story</i> | page 11 |
| ii | <i>The Habitual Residence Test</i> | page 11 |
| iii | <i>Public Funds</i> | page 14 |
| iv | <i>Access to education for third country nationals</i> | page 16 |
| v | <i>Worked example: Serhiy from the Ukraine</i> | page 17 |
| vi | <i>Worked example: Bridget from Switzerland</i> | page 17 |
| vii | <i>Worked example: Daniele from Italy</i> | page 17 |
| viii | <i>Sources of advice for migrants</i> | page 18 |
| ix | <i>Sources of guidance for advisers</i> | page 19 |

Introduction: why *Migrant rights and entitlements*?

Key message 1: There is no simple, blanket rule about migrant rights and entitlements. Migrants have different rights to work, to family reunion, and access to benefits and services according to their individual circumstances, including immigration status, nationality, purpose and length of stay in the UK.

There are many rules about the rights and entitlements of different migrant groups. This can lead to some confusion about this issue, for migrants, people trying to help them, and among the general public. Consequently, myths about migrant benefits can arise and cause resentment among the local community.

The purpose of this booklet is to set out as clearly as possible the general rules on migrant rights and entitlements in England (there are some different rules for migrants in devolved nations). The information here is presented in two ways:

- The main text in this booklet provides a narrative overview of migrant rights to work in the UK, rights to bring family to join them and rights to claim benefits. It gives definitions, key messages, case study examples and signposts to further resources.
- The Appendix provides tables (as shown in the picture below) where you can cross reference more detailed information on different types of entitlements (work, family, benefits, services etc.) with different migrant groups (several different types within each of these categories: EEA nationals; third country nationals; and asylum seekers and refugees). Since the table is complex, it has been designed to be viewed on A3 sized paper.

Migrant rights and entitlements, Guidance booklet #4

Appendix: Reference table on migrant entitlements

- 4.1 EEA nationals p22
- 4.2 Third country nationals p25
- 4.3 Asylum seekers and refugees p30
- 4.4 Glossary and acronyms p36

4.2 Third country nationals*

Appendix: Reference table on migrant entitlements (last updated April 2015)

| | Visitors | Students | Workers | Family members | Indefinite leave to remain (ILR) / settled people | Undocumented migrants | |
|--|--|--|--|--|---|--|---|
| In what situation can they come and stay in the UK? | Visitors, students, workers and family members from third countries are generally granted 'limited leave to remain' or temporary permission to stay in the UK initially. Their visa usually shows the length of time admitted. These columns cover people with the limited leave. (The table reserves 'indefinite leave to remain' (ILR) for entitlements as set out in the following rights). | Most visitors need a visa or entry clearance, and have to show they can accommodate and support themselves to get it. Visas are also issued for those coming to the UK for private medical treatment, to study on short courses, for some specific business visits and as entertainers not undertaking said work. | Students have to provide evidence that they have the resources to accommodate and support themselves and any dependants when applying for a visa or entry clearance to come to the UK to study. They must be sponsored by the college or university. | Certain skilled workers can be recruited to jobs in 'shortage occupations' if an employer has been unable to recruit from within the UK or EEA. Employers sponsor the workers and must report relevant changes of circumstance to the Home Office. Temporary workers may get entry clearance to come on youth mobility schemes, government exchange programmes and engagements to cover sporting, religious, charity and creative workers. EXCEPTIONS: there are special rules for Commonwealth citizens who serve in the UK armed forces (not covered here). EXCEPTIONS: there are rules for investors, entrepreneurs and some people of 'exceptional talent' who can apply for visas to live in the UK (not covered here). | Spouses, wives, cohabitees and civil partners of British citizens and settled people can apply for entry clearance to come to live in the UK, along with their children. Employers sponsor the workers and must report relevant changes of circumstance to the Home Office. Temporary workers may get entry clearance to come on youth mobility schemes, government exchange programmes and engagements to cover sporting, religious, charity and creative workers. EXCEPTIONS: there are special rules for Commonwealth citizens who serve in the UK armed forces (not covered here). EXCEPTIONS: there are rules for investors, entrepreneurs and some people of 'exceptional talent' who can apply for visas to live in the UK (not covered here). | Settled people have 'indefinite leave to remain' (ILR) or permanent permission to be in the UK. Skilled workers could apply for ILR after 5 years' work in 2012. The rules changed to only those earning £35k+ p.a. or with certain types of job or high levels of qualification etc. Family members who applied to come before 9th June 2012 can apply for ILR after 2 years' leave. Family members who applied after 9th June 2012 can apply for ILR after 5 years. Refugees and those with humanitarian protection or discretionary leave can also apply for ILR, usually after 5 years (but with exceptions). Adult dependent family members whose family member has signed an agreement to accommodate and support them get ILR on arrival. Most non citizens, those over retirement age, top or too disabled have to pass a test of their knowledge of English and life in Britain to get ILR. Most applications for ILR involve a fee (e.g. £1300 for a single person) but it may be waived for refugees, victims of domestic violence who are destitute and some others. | Most people become undocumented by 'overstaying' after their leave has expired or they have been refused leave. A small number enter illegally. |
| What happens next? | Visitor visas are usually for 6 months maximum and holders are then expected to return home. | Students are expected to attend the course and pass any relevant exams. At the end of the course, the student and dependants are expected to leave the UK. Those who have completed a PhD successfully may apply for a 12 month visa to look for work or set up a business. Students who have completed their degree within the UK and find a employer who | Some skilled workers can apply for ILR after working for 3 years. If they are in a shortage occupation, or earning over £25k a year or working on jobs for which a PhD is a qualification, others are expected to return home. | Family members may apply before the end of the 2 years' period of limited leave, or apply for limited leave with no other conditions, for 3 months. | People with ILR have no further conditions attached to their stay. ILR is lost if the person leaves the UK for 1 year or unless member of family members get apply for ILR. If the family member is subject to domestic violence during the period of limited leave, they can apply for limited leave with no other conditions, for 3 months. | Some undocumented migrants can regularise their stay, for example through: <ul style="list-style-type: none"> • Long stay (20 years from July 2012, 14 years before, but not if there are previous convictions) • Human rights considerations (especially an asylum claim) • An asylum application or receiving an asylum claim • European rules (e.g. on marriage to an EEA national or | |

Third country national - anyone from a country outside the European Economic Area (EEA). (Note that this table 4.2 exclude asylum seekers and refugees, who are covered in table 4.3.)

Since there will always be exceptions to these rules, this guidance should not be used in application to individual cases; good quality, accredited advice is the best option.

Overview of rights and entitlements

Key message 2: Migrants are less likely to be receiving out-of-work benefits than non-migrants. New EEA arrivals looking for work cannot claim benefits. Third country migrants (non-EEA migrants) are usually only allowed to enter the UK if they do not draw on public funds but can support themselves.

There is no evidence of ‘benefit tourism’ in the UK. Different statistics measure slightly different things and use different definitions of migrant (such as non-UK nationals or non-UK born) but the key message is that migrants are less likely to be receiving out-of-work benefits¹ than non-migrants.

- 16% of the working age population in the UK are people who were born outside of the UK so you might expect a similar proportion of benefit claimants to be migrants. In fact just 8% of working age benefit claimants are non-UK nationals.²
- 15% of working age UK nationals are claiming working-age benefits compared with 7% of working age migrants (non-UK nationals).³

Key points to understand are:

- Only after securing work and proving their intention to settle (through the ‘Habitual Residence Test’ – see *Figure ii*) can EEA migrants access mainstream welfare benefits. New arrivals looking for work cannot claim benefits.
- Migrants from outside the EEA (third country nationals) are usually only allowed to enter the UK if they do not draw on public funds but can support themselves.
- Vulnerable migrants may be supported by the local authority depending on their situation, for example if they are children or have fled domestic violence.

Rights and entitlements vary according to migrants’ reasons for coming to the UK and their immigration status. They fall into three different areas: whether work is permitted or restricted; if they can bring family over to join them; if they have ‘recourse to public funds’ and if so, what access they have to benefits, housing, health, education, and social care.

Access within each area depends on several factors:

- Law and policy – this includes any restrictions set by the Home Office as outlined on their passport, visa or biometric residence card, the specific policies for each area and whether the individual is from the EEA or a third country.
- Individual circumstances e.g. whether they have children in the UK, how long they have been here, their purpose in the UK, whether they have contributed taxes.

¹ Such as jobseeker’s allowance, or carer/incapacity related benefits.

² Migration Observatory (2015) *Election 2015 Briefing – Migration and Welfare Benefits*
www.migrationobservatory.ox.ac.uk/briefings/election-2015-briefing-migration-and-welfare-benefits

³ This is an estimate of people currently claiming benefit who were non-UK nationals when they registered for a national insurance number. Over half of these are estimated to have gained British citizenship since then and so are arguably no longer migrants. DWP (2014) *NINo allocations to adult overseas nationals entering the UK – registrations to June 2014*. p7
www.gov.uk/government/statistics/national-insurance-number-allocations-to-adult-overseas-nationals-entering-the-uk-to-june-2014

Key message 3: Third country nationals usually have more restrictions on their rights and entitlements than migrants from the EEA.

An important distinction in this area is whether a migrant is:

- *An EEA national* – this group is generally the least restricted because of the EU agreement on free movement for EEA citizens.
- *From an EU accession state* - migrants from new EU countries are usually subject to transitory controls (for up to seven years) affecting rights to work and claim benefits in the UK. Transitory controls on 'A8' and 'A2' nationals have been lifted so now they have the same rights as all other EEA nationals. Transitory controls currently apply to Croatia, and are likely to apply to new member states in future.
- *A third country national* - this group is generally more restricted. Policy tends to focus on restricting entry and rights and maximising utility to the UK (in particular the economy and business sector) but changes to reflect government thinking.

Key message 4: All migrants can access emergency services such as police, the fire and rescue service and emergency health care. Migrants may be unaware of this.

All migrants can access emergency services such as police, the fire and rescue service and emergency health care. No person should be denied access to these fundamental services. Migrants may be unaware of this.

Key message 5: Rights to non-emergency services vary according to rules relating to each particular service area.

The core areas of rights and entitlements relating to work, family reunion and access to benefits and non-emergency services are summarised in the remainder of this guidance.

Permission to work

Any restrictions on employment are determined by the Home Office when a migrant arrives in the UK, and are usually shown in the migrant passport, visa or Biometric Residence Card.

Key message 6: All EEA nationals have permission to work in the UK. EEA nationals subject to transitional controls are usually restricted in the type of work they can do in the UK.

All EEA nationals have permission to work in the UK. They can seek work at the Jobcentre Plus. All EEA nationals (including those subject to transitional controls) can set up their own business or be self-employed.

EEA nationals subject to transitional controls - currently only Croatians - are usually restricted in the type of work they can do in the UK as outlined by the authorisation system, such as particular types of skilled work. Exemptions may apply, such as for those who have worked with authorisation for over 12 months.

Key message 7: Third country nationals with 'indefinite leave to remain' (ILR) can work without restrictions. Work restrictions exist for some third country nationals with 'limited leave to remain.'

The situation is more complex for third country nationals. Those with 'indefinite leave to remain' (ILR or permanent permission to be in the UK)⁴ can work without restrictions as there are no conditions attached to their stay.

Third country nationals with 'limited leave to remain' (time-limited temporary permission) may have work restrictions, but visitors and asylum seekers are not permitted to work.

- *Workers* can work with an employer registered with the Home Office. Work can be in a 'shortage occupation' or where a vacancy has not been filled by a UK or EEA worker. If they already work for an overseas company they may be transferred to a UK branch (an intra-company transfer). Different arrangements exist for temporary workers, sportspersons, ministers of religion etc. These rules are part of the Points Based System.
- *Students'* work restrictions vary. Those on courses of six months or more may be permitted to work part-time (10-20 hours depending on the course) in term time and full-time in the vacations. Dependants of students on some courses can work.
- *Family members* usually have permission to work without restrictions (although this may depend on who they are a family member of).
- *Asylum seekers* are not usually permitted to work. If they have been waiting 12 months for a decision on their claim they can apply to work in a shortage occupation. Asylum seekers who were already working legally in the UK when they made their claim may be permitted to continue to work. Refused asylum seekers are not permitted to work.
- *Refugees* can work without restrictions.
- *Undocumented migrants* do not have any form of permission to be in the UK, and therefore are not permitted to work.

⁴ Third country nationals can receive different types of permission to stay in the UK, known as 'leave to remain'. For more details, see: Integration up North (2015) *Understanding immigration status*, guidance booklet #3. www.migrationyorkshire.org.uk/introductiontomigration-iun

Permission to bring family to the UK

EEA nationals

Key message 8: EEA nationals in the UK can bring family members to join them if they are also EEA citizens. If the family member is a third country national, they must apply for a residence permit.

EEA nationals in the UK can bring any family member to join them if they are also an EEA citizen, since they both have the same freedom of movement across the EEA. However if their family member is a third country national, they must apply for a residence permit. The child of a worker in the UK has the right to enter (and complete a course of education in the UK) and this right extends to cover any parents with care of the child.

Third country nationals with ILR

Key message 9: Third country nationals with ILR can apply to bring family members to join them in the UK but must meet certain criteria including a minimum income threshold.

Third country nationals with indefinite leave to remain (ILR) can apply to bring family members to join them in the UK. Applications have to demonstrate that they meet a minimum income threshold (currently £18 600 plus more per dependent children: £3800 for the first child and £2400 for each additional child). The minimum income threshold policy was introduced in 2012 and has been challenged in the courts, but remains in force at the time of writing.⁵

Family members are given limited leave to remain for 30 months (before July 2012 this was for two years then they could apply for ILR) which they can renew for a further 30 months before they can apply for ILR.

Key message 10: Refugees can apply to bring family members to live with them in the UK.

Refugees can apply to bring family members to live with them in the UK, if they formed the family before becoming a refugee. This holds whether the refugee has indefinite or limited leave to remain in the UK; unlike other migrants in these categories, refugees do not have to fulfil additional criteria. A separated child with refugee status cannot bring family to the UK except in exceptional circumstances.

The Red Cross operates a tracing and message service for refugees trying to contact family members with whom they have lost contact.⁶

⁵ For a more detailed explanation, see House of Commons Library (2015) *The financial (minimum income) requirement for partner visas*. Briefing Paper Number 06724, 12 June 2015

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06724>

⁶ *International Family Tracing* www.redcross.org.uk/What-we-do/Finding-missing-family/International-tracing-and-message-services

Third country nationals with limited or no leave

Key message 11: Third country workers and students with limited leave to remain can apply to bring family over in certain circumstances. Asylum seekers cannot bring family over until their asylum claim is processed and they are granted permission to stay.

Third country nationals with limited leave to remain can apply to bring family over in certain circumstances:

- Students can bring family members if they are on a government-sponsored course for at least six months or a postgraduate course for at least 12 months, and if they can demonstrate income or savings to support them.
- Skilled workers can bring family members as long as they have the funds to support them. Some temporary workers can bring dependants: rules on this are complex.
- Asylum seekers cannot bring family over until their asylum claim is processed and they are granted permission to stay.

Undocumented migrants do not have permission to be in the UK and therefore cannot bring family to the UK.

Access to benefits and services

Eligibility rules for non-emergency services all vary for different migrant groups. They are too complex to summarise comprehensively in this introduction; only the more usual circumstances are described here. This is an extremely complex and changing area of law and policy which make any written account likely to be out of date as soon as it is published.

These descriptions are not designed for use when advising clients. *Figure i* describes the impact of well-meaning but ill-informed advice given to one third country national.

Figure i: The impact of poor advice - Rukhsana's story

Rukhsana came from Pakistan to live with her husband in Yorkshire in 2008. The marriage broke down and Rukhsana was living in a women's refuge having experienced domestic violence. She had no understanding of her entitlements as a single mother from abroad. *'That time was very difficult for me. I had no money, no clothes, no pushchair, nothing.'*

Rukhsana feels she could have benefited from better quality advice when she arrived in the refuge. *'The support workers in the refuge are bi-lingual which has been fantastic. However they should leave advice such as benefits to those who are most up to date with the information. I did try to explain things to my support worker that I am sure I should tell them [the benefits agency] that I have left home and that I'm not sure what he [her husband] has been claiming, but she insisted that they would automatically know and that I don't need to tell them anything.'*

Rukhsana found she could not receive tax credits because her husband was claiming them on her behalf – something she was unaware of. She explained to the benefits agency that her husband used to deal with everything and she did not have access to any money. She told them she would sign where he would ask her and she never questioned anything. She didn't have a bank account in her own name. The consequences were significant as Rukhsana explains: *'It turned out that they said I was committing fraud as I did not inform them that he [her husband] was already claiming on my behalf. As a result I am in debt of around £1000.'*

Source: Integration up North (IUN) volunteer project

Access to non-emergency services and benefits often depends on whether an individual has a (permanent) right to reside and/or they pass the 'Habitual Residence Test' (HRT) which is described in *Figure ii*.

Figure ii: The Habitual Residence Test

The Habitual Residence Test (HRT) can be applied to anyone who applies for services or benefits (UK nationals and migrants alike, although not asylum seekers and refugees) to ensure they are usually living in the place where they are requesting support. Guidelines recommend that the test is only used for people who arrived during the past two years.

It is generally used to determine eligibility for benefits and for housing and homelessness services.

There is no minimum amount of time that proves someone is habitually resident. The most important factors in determining habitual residence are the length, continuity and general nature of actual residence.

The Housing Rights Information website⁷ has detailed advice on this complex topic.

⁷ What is the habitual residence test? Housing Rights Information www.housing-rights.info/habitual-residence-test.php

EEA nationals: benefits

Key message 12: EEA nationals who have been in the UK for five years are usually entitled to all benefits and access all services. EEA nationals who have been in the UK for less than five years have different access to benefits, and housing and homelessness services and may be subject to the 'Habitual Residence Test'.

Under EU rules, EEA nationals have the 'right to reside' in the UK for three months. After this they must be economically active, self-sufficient, a student or a family member of an EEA national (who is economically active, self-sufficient or a student). EEA nationals with only the right to reside have different access to benefits:

- Workers/self-employed people (including accession nationals subject to transitional controls) can claim all relevant benefits. They do not have to pass the HRT.
- A workseeker's situation is complex. They can get income-based job seekers allowance (IBJSA) if they are habitually resident but cannot become habitually resident until they have been in the UK for three months. EEA workseekers claiming IBJSA cannot claim housing benefit. They cannot claim Child Benefit or Child Tax Credit for three months, and from 10 June 2015 cannot claim Universal Credit.
- A student can claim means tested and other benefits but will not be able to do so if s/he loses his/her right to reside as a student (i.e. if they do not remain on their course). Access to benefits is limited and subject to a test of habitual residence.
- 'Self-sufficient' EEA nationals who do not work or study must be able to meet their own needs without becoming 'an unreasonable burden' on social assistance (means tested benefits). A self-sufficient person can claim benefits once habitually resident, but may be refused (although this interpretation of EU law may be challengeable).

People who have had a European right to reside for five years then get the permanent right to reside. They are then are entitled to all benefits and usually do not have to pass the HRT.

EEA nationals: other services

All EEA nationals can access all relevant social services.

All EEA nationals pay 'home' fees as students in higher education but access to student support (student grants and loans) depends on whether they have resided in the UK for three years for another purpose. All EEA nationals are eligible for Skills Funding Agency (SFA)-funded further education courses including English for Speakers of Other Languages (ESOL). All EEA children have the right to attend school.

All EEA nationals are eligible for health services: primary care (GP, NHS dental and optical care, community based nursing), secondary care (hospital based treatments) and free prescriptions. Some EEA nationals (including students and self-sufficient individuals) may need health insurance in order to maintain their right to reside in the UK.

Housing rights differ according to migrant category:

- EEA nationals with the permanent right to reside are eligible for council housing and homelessness assistance, although they may have to pass the HRT.

- Workers/self-employed people are eligible for housing and homelessness assistance. They must pass the minimum earnings test (if their earnings are below a specified threshold, currently £155 per week, they face a test of whether their employment is marginal or self-employment is effective. If so they will be reclassified as workseekers, expected to sign on and can only get workseeker benefits).
- A student can apply for housing and homelessness assistance if habitually resident.
- A self-sufficient person can apply for council housing and get homelessness assistance if habitually resident.
- A workseeker does not have the right to reside for purposes of housing and homelessness services. A workseeker can rent privately, take up a hostel place, or apply directly to a housing association.

Of course, being able to apply for a benefit such as social housing does not guarantee that an individual will be allocated a property. Waiting lists for housing are ordered by priority.⁸

In future, EEA nationals may need to prove they are exempt from new immigration checks by landlords under the provisions of the Immigration Act 2014. They are currently only taking place in pilot areas in the West Midlands but may be rolled out across the UK.

Third country nationals: benefits

Key message 13: Third country nationals with ILR and those with refugee status or humanitarian protection are usually entitled to all benefits and services. Third country nationals with limited leave usually must be able to accommodate and support themselves without recourse to public funds and there are some restrictions on access to services. There are some exceptions for families, children and asylum seekers.

Third country nationals with ILR can usually claim benefits.

Third country nationals with limited leave usually must be able to accommodate and support themselves without recourse to public funds (except for those with refugee status or humanitarian protection) – see *Figure iii* for an explanation of public funds.

- Visitors, students, workers, family members and dependants must accommodate and support themselves without recourse to public funds. They cannot claim means tested benefits or tax credits (minor exceptions must still pass the HRT). They can claim contributions-based benefits if they are entitled. Parents given a right to reside to enable a British child to stay in the UK are not eligible for benefits (since 2012).
- Those with leave under the domestic violence rule can claim means tested benefits.
- Asylum seekers are not eligible for mainstream benefits. Asylum seekers who are destitute are supported through the Home Office asylum system.
- Refugees and those granted humanitarian protection (HP) or discretionary leave (DL) are eligible for all benefits and do not have to pass the HRT. Resettled refugees receive reception and resettlement services in the relevant local authority areas during their first year in the UK.
- Undocumented migrants do not have access to public funds or benefits.

⁸ Access to housing is complex and covered in a separate booklet: Integration up North (2015) *Migration and housing*, guidance booklet #7 www.migrationyorkshire.org.uk/introductiontomigration-iun

Figure iii: Public Funds

Public funds currently include: housing, attendance allowance, severe disablement allowance, carer's allowance and disability living allowance, income support, council tax benefit, housing benefit, a social fund payment, child benefit, income based jobseeker's allowance, income related allowance, state pension credit, child tax credit, working tax credit, Universal Credit, Personal Independence Payment, and council tax reduction (although Immigration Rules can change).

Any other benefit not listed in the Immigration Rules does not class as public funds (e.g. the benefits linked to national insurance contributions like the state pension, contributions-based element of jobseeker's allowance, contributions-based element of the employment and support allowance, and incapacity benefit), nor do using parts of the welfare state such as the NHS or schools.

Source: Home Office (2015)⁹

Third country nationals: housing

People with ILR can apply for council housing and get homelessness assistance.

People with limited leave to remain:

- Visitors, students and workers cannot go on to council waiting lists and are not eligible for homelessness services.
- Families are more complex and there are number of specific rules and exceptions (including homeless applications by families where one partner is on limited leave, families of UK/EEA citizens, people with leave granted under the domestic violence rule, parents with a right to reside solely because their child is British, and elderly dependant family members whose relative/s have signed an agreement or undertaking to accommodate and support them).
- Asylum seekers are not eligible for council housing or homelessness services. The asylum support system offers accommodation to asylum seekers and eligible refused asylum seekers on a no choice basis, provided by a Home Office contractor. Social services normally accommodate and support separated children but they may be eligible for local authority housing if they have DL, HP or refugee status.
- Refugees are eligible for council housing and homelessness services and do not have to pass the HRT. Those who received asylum support accommodation will have a 'local connection' (for homelessness purposes) to the last area in which they were housed as an asylum seeker.

Undocumented migrants have no access to council housing or homelessness services. Some undocumented migrants may be able to access some services for rough sleepers: there are no legal restrictions on this.

Under the Immigration Act 2014, in the pilot areas in the West Midlands since December 2014 landlords have to check the immigration status of new tenants, with some exceptions such as some student accommodation. This may be rolled out over the rest of the UK. Landlords will not be allowed to rent to people who have no current leave.

⁹ Home Office (2015) *Immigration Rules: introduction*. See paragraph 6, 'Public funds' pp4-5, accessed 07.07.15 www.gov.uk/government/publications/immigration-rules-introduction

Third country nationals: social services

People with ILR can get social services provision for adults and children.

Third country nationals with limited leave to remain:

- Visitors, students and workers are generally not able to get social services provision for adults (except where this would cause a breach of human rights and for aftercare services for those detained for treatment under the Mental Health Act).
- Family members of UK citizens or people with ILR can get social services provision for adults and get social services support and accommodation under S17 of the Children Act 1989. Support and accommodation to families under S17 of the Children Act 1989 is generally not available to visitors, students, workers or undocumented migrants (except where this could cause a breach of human rights). A homeless child in need must be accommodated. However, immigration status is not to be considered when a child is in need of protection.
- The situation is complex for asylum seekers. As a general rule, asylum seekers get accommodation and support through the asylum process but separated children are supported and accommodated by children's services. Refused asylum seeking families with children may be able to get accommodation and support via S17 Children Act 1989 if it is necessary to avoid a breach of human rights. Adult asylum seekers in need of 'care and attention' (because of age, disability, illness or other reason) can apply to social services for accommodation and support to help them access this care and attention *instead* of asylum support. Asylum status is not to be considered when a child is in need of protection.
- Refugees, those with HP and those with DL are entitled to all relevant social services.
- Undocumented migrants generally cannot get social services provision for adults (except where this would cause a breach of human rights and for aftercare services for those detained for treatment under the Mental Health Act). An undocumented migrant applying for leave on human rights grounds should be accommodated and supported by social services while the application is being considered.

Third country nationals: health

People with ILR, refugees, those with HP and DL, asylum seekers and separated children and victims of trafficking are entitled to primary care (GP, NHS dental and optical care, community based nursing) and secondary care (hospital based treatments).

The Immigration Health Surcharge applies to most other third country nationals applying for limited leave after 6 April 2015. It must be paid before applicants submit their visa application. The annual fee is currently £200, but reduced to £150 for students and their dependants. The charge is calculated based on the length of leave people receive, so the cost may be more than £200 up front if you get more than a year's leave.

Exempt groups from this new levy include visitors, skilled workers, trafficking and domestic violence victims, and nationals from Australia or New Zealand. Being exempt does not necessarily lead to free NHS care: for example, visitors and short term students will be charged 150% of the cost of their treatment, so should consider getting medical insurance before they arrive.

Visitors, refused asylum seekers and undocumented migrants are more restricted to health care except for emergency services, certain transmissible diseases and immediately necessary treatment. GPs can use their discretion to register them. Treatment can be charged for (although refused asylum seekers on Section 4 support are entitled to free hospital treatment) and non-necessary treatment can be refused if the patient does not pay.

Third country nationals: education

Parents and the local education authority must ensure children resident in their area attend school. This applies to all migrant groups except when a child is on a brief visit.

Rules on access to education beyond school provision for third country nationals relates mainly to:

- paying student fees for Higher Education ('home' or 'overseas' fees) and accessing student support e.g. student grants and student loans.
- accessing English language support – standard English for Speakers of Other Languages (ESOL) courses are funded through the Skills Funding Agency (SFA).

The general rules are summarised in *Figure iv* below.

| Figure iv: Access to education for third country nationals | | |
|---|--|--|
| | Student fees and student support | ESOL access to SFA funded courses |
| Indefinite leave | <ul style="list-style-type: none"> • Third country nationals with ILR • Refugees • Those with HP <p>pay <i>home</i> student fees and are entitled to student support once ordinarily resident for 3 years. Refugees and those with HP don't have to be resident for 3 years.</p> | <ul style="list-style-type: none"> • Third country nationals with ILR • Refugees • Those with HP or DL <p>are eligible for SFA funded courses.</p> |
| Limited leave | <ul style="list-style-type: none"> • Those with DL • Visitors • Students • Workers • Family members <p>pay <i>overseas</i> student fees for higher education and are <i>not</i> entitled to student support.</p> <p>However, an exception is children of asylum seekers and separated children qualify for <i>home</i> student fees and tuition fees support.</p> | <ul style="list-style-type: none"> • Asylum seekers • Refused asylum seekers • Undocumented migrants <p>Workers and their dependants are eligible when they have been in the UK 3 years.</p> <ul style="list-style-type: none"> • Visitors • Students and their dependants • Undocumented migrants <p>are <i>not</i> eligible for SFA-funded courses.</p> <p>Workers and their dependants are eligible when they have been in the UK 3 years.</p> <ul style="list-style-type: none"> • Asylum seekers waiting longer than 6 months for their claim to be resolved • 16-18 year old asylum seekers and • 16-18 year old migrant children in care <p>can access SFA funded courses.</p> <p>Refused asylum seekers can only start a new SFA funded course if they are receiving 'Section 4' support.</p> |

Three worked examples

The following fictitious examples put some of these rules into a real life scenario. Use the *Reference table* (Appendix) to work out what entitlements the individuals may have.

Figure v: Worked example - Serhiy from the Ukraine

Serhiy is from the Ukraine and is the partner of Paul, a UK national. He met Paul when on holiday in Spain. Serhiy has been living in the UK with Paul for over two years now, and wants to give up his low paid job but doesn't know if he can afford this as Paul cannot support him on his own.

What are his options?

If Serhiy has leave as Paul's partner, then it will be for 2 or 5 years and include the condition that he can accommodate and support himself without recourse to public funds. If he does leave his job that may cause problems if he and Paul cannot get other income.

If Serhiy applied to stay as Paul's partner before July 2012 then he can get indefinite leave to remain (assuming he can pass the English and citizenship test) after 2 years. If he applied after July 2012, he will have to wait for 5 years to settle. In practice, until he gets settled status a lot of routes out of low paid work are going to be difficult: he cannot get means tested benefits, will be treated as an overseas student for fees purposes, and cannot get funding for local college courses. If he does lose his job he may be able to get contributions based benefits, but if he leaves voluntarily this may cause problems and he should check the benefits position with a welfare rights adviser.

Figure vi: Worked example - Bridget from Switzerland

Bridget is from Switzerland where she has recently got divorced. She wants to come over and live in England to be near her grandchildren, who live in your area and are of Colombian nationality.

What is she entitled to?

As a Swiss national Bridget has freedom of movement in the EU. She can come and visit or to stay. If she wants to stay she will need to work out whether she will do this as a self-sufficient person (if she has her own income or savings), as a workseeker, a worker or a self-employed person or as a student. She can come and live in the UK if she wishes.

If she is likely to need benefits to support herself, she will probably need to become economically active to qualify. She may also be able to claim Swiss benefits in the UK and should check that in Switzerland.

Figure vii: Worked example - Daniele from Italy

Daniele came over here to study 5 years ago from Italy and having qualified, he found work in a local business. Unfortunately this recently went bust and Daniele is without work. He has been trying to find jobs for 5 months, but things are looking a bit desperate. In addition, his partner Annie is from Senegal and she also came over on a student visa which has now expired. Annie is pregnant.

What help can they get from public services?

Daniele has the permanent right to reside and can apply for unemployment benefits and all public services.

Annie can apply for a family permit as the dependent of an EU citizen with the permanent right to reside and as such she also has access to all services.

Sources of information and support

Key message 14: Destitute migrants with no recourse to public funds may request support from their local authority; the NRPF Network gives guidance and support on handling these cases.

In practice many local authorities are faced with individuals who are destitute but have 'no recourse to public funds' (NRPF). This term refers to a person who is subject to immigration control and has no entitlement to benefits, public housing or asylum support (*Figure iii* gave a definition of public funds). This may include for example, migrant families with children, or looked-after children who arrived as unaccompanied migrants and are turning 18.

This is a complex area, and causes confusion as each local authority deals with these cases differently, cases can be complex and the legislation and developing case law is complex.

The No Recourse to Public Funds (NRPF) Network is a national network of local authorities coordinated by Islington Borough Council. The network provides practical guidance for assessing people with NRPF, runs training and regional associations for local practice sharing; there are networks in the North West and in Yorkshire and Humber. The network also engages with government regarding costs incurred in supporting people with NRPF.

Sources of advice for migrants and those advising them are outlined in *Figures vii and ix*.

Figure viii: Sources of advice for migrants

In addition to the Housing Rights website, UKCISA and Home Office above, advisers may find it helpful to signpost clients to the following sites:

- **Citizens Advice Bureau** www.citizensadvice.org.uk/law-and-rights/immigration Good, clear information, regularly updated and with clear links to follow for more information.
- **Find an immigration adviser** www.gov.uk/find-an-immigration-adviser is a government site providing information on how to find regulated immigration advisers in local areas.
- **MyUKinfo** <http://myUKinfo.com> Focus particularly on European workers with good range of subjects

Figure ix: Sources of guidance for advisers

The following sites offer guidance to those advising migrants:

- **AdviserNet by Citizens Advice** www.citizensadvice.org.uk/index/professionals/adviser_resources/advisernet.htm
Regularly updated comprehensive and detailed advice service for advisers, with good coverage of all migrant groups and issues. Available on subscription from Citizens Advice.
- **Child Poverty Action Group (CPAG)** www.cpag.org.uk/welfare-rights
Specialists in welfare rights and training, including specific training on welfare benefits for migrants. Their *Welfare Benefits and Tax Credits Handbook* has a section on 'Immigration and residence rules for benefits and tax credits'
- **Cumbria Advice Network (CAN)** www.cumbriaadvicenetwork.org.uk. CAN offers training to advisers across the county. The site lists network members who can provide immigration advice. *Figure vii: Sources of guidance for advisers (continued)*
- **Department for Work and Pensions (DWP)** www.gov.uk/government/collections/decision-makers-guide-staff-guide provides specialist resources for advisers such as the Decision-Makers Guide and a range of leaflets and references on most benefits, but not structured towards migration issues per se.
- **Homeless Link** www.homeless.org.uk/our-work/resources has a variety of housing and homelessness information based largely on work done with Eastern Europeans, including a section on supporting people with NRPF, an 'Assessment & Reconnection toolkit' and information on trafficking and forced labour.
- **Housing Rights website by CIH** www.housing-rights.info Focuses on migrants' rights to access local authority and housing association housing and housing benefits. Detailed information for individuals and advisers and good links for very specialist concerns. Regularly updated.
- **No Recourse to Public Funds (NRPF) Network** www.nrpfnetwork.org.uk A network of local authorities focusing on statutory duties to migrants who have no recourse to public funds. The website provides practice guidance for local authorities. It also offers more content to its members and training for a fee.
- **Praxis Manual for Professionals working with Undocumented Migrants** www.praxis.org.uk/manual-for-undocumented-migrants-page-27.html Web publication on subscription only for people advising undocumented migrants. Includes chapters on immigration status, routes into and out of irregularity, services, options etc.
- **UK Council for International Student Affairs** www.ukcisa.org.uk/ Website provides 'Study in the UK: A Practical Guide' with various sections on immigration for international students. Most student advisers are members of UKCISA and can access their advice service as part of their subscription.
- **UK Visas and Immigration** (part of the Home Office) www.gov.uk/government/organisations/uk-visas-and-immigration This is the official government website on immigration, up to date on policy and legislation, with resources on particular types of migrants and issues.



Migrant rights and entitlements

Summary of key messages

Overview

1. There is no simple, blanket rule about migrant rights and entitlements. Migrants have different rights to work, family reunion, and access to benefits and services according to their individual circumstances including immigration status, nationality, purpose and length of stay in the UK.
2. Migrants are less likely to be receiving out-of-work benefits than non-migrants. New EEA arrivals looking for work cannot claim benefits. Third country migrants (non-EEA migrants) are usually only allowed to enter the UK if they do not draw on public funds but can support themselves.
3. Third country nationals usually have more restrictions on their rights and entitlements than migrants from the EEA.
4. All migrants can access emergency services such as police, the fire and rescue service and emergency health care. Migrants may be unaware of this.
5. Rights to non-emergency services vary according to rules relating to each particular service area.

Work

6. All EEA nationals have permission to work in the UK. EEA nationals subject to transitional controls are usually restricted in the type of work they can do in the UK.
7. Third country nationals with 'indefinite leave to remain' (ILR) can work without restrictions. Work restrictions exist for some third country nationals with 'limited leave to remain.'

Family

8. EEA nationals in the UK can bring family members to join them if they are also EEA citizens. If the family member is a third country national, they must apply for a residence permit.
9. Third country nationals with ILR can apply to bring family members to join them in the UK but must meet certain criteria including a minimum income threshold.
10. Refugees can apply to bring family members to live with them in the UK.
11. Third country workers and students with limited leave to remain can apply to bring family over in certain circumstances. Asylum seekers cannot bring family over until their asylum claim is processed and they are granted permission to stay.

Benefits and services

12. EEA nationals who have been in the UK for five years are usually entitled to all benefits and access all services. EEA nationals who have been in the UK for less than five years have different access to benefits, and housing and homelessness services and may be subject to the 'Habitual Residence Test.'
13. Third country nationals with ILR and those with refugee status or humanitarian protection are usually entitled to all benefits and services. Third country nationals with limited leave usually must be able to accommodate and support themselves without recourse to public funds and there are some restrictions on access to services. There are some exceptions for families, children and asylum seekers.
14. Destitute migrants with no recourse to public funds may request support from their local authority; the NRP Network gives guidance and support on handling these cases.