

**Housing and social
work services**



**A guide to rights and
entitlements to services
and benefits for
refugees, asylum
seekers and migrant
workers**

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1. Introduction

This guidance has been produced to provide information to frontline staff who may have to respond to queries from non UK nationals seeking advice about access to public services or benefits.

Rights and entitlements to services and benefits will frequently differ according to a person's migration status. For example, asylum seekers have a different level of rights and benefits compared to a refugee, which again may differ from those of a migrant worker.

The following sections in this guide provides some basic information on the status of different types of migrants, a quick reference to rights to accessing services and more detailed information on each area where advice may be sought.

2. Definitions and status

Although there is a significantly wide range of migrants come to the UK, for the purpose of this guidance we are highlighting four groupings that are most likely to seek advice from our services. These are refugees, asylum seekers, migrant workers and other nationals.

An **asylum seeker** is an individual who once on the territory of the UK has claimed asylum for protection under the 1951 Convention Relating to the Status of Refugees and is waiting for their claim to be decided by the home office. Once they have made a claim, asylum seekers who entered the country after 1999 come under the auspices of the National Asylum Support Service (NASS) and are dispersed across the country to local authorities who have a contract with NASS to provide basic supports until the person's application for asylum is dealt with.

Refugees are people whose application for asylum has been accepted and are allowed to remain in the UK. There are slightly different categories of this: full refugee status, having discretionary leave to remain, or having humanitarian protection. They will all have rights to housing, work and many of the other rights of full citizens. A proportion of refugees will come through international programmes such as the UN Gateway programme which has brought a number of Congolese refugees to North Lanarkshire. These refugees were granted refugee status before their arrival in the UK.

Since 2004 and the accession of ten Eastern European nations to the European Union, there has been a significant movement of **migrant workers** to the UK. Nationals from two of the accession countries – Malta and Cyprus – were given the right to work in the UK equivalent to existing EU member states. Nationals from the other eight countries (referred to as the 'Accession 8' or 'A8') who wish to work in the UK for longer than one month are required to register with the Workers Registration Scheme but are able to enter the UK freely. Unlike asylum seekers and migrants from outwith the EU, these (A8) Eastern European migrant workers are subject to only limited restrictions in terms of their ability to enter the country and take up work. Further to this, Bulgaria and Romania joined the EU on 1st January 2007. Bulgarian

and Romanian nationals will often be referred to using the term 'A2 nationals'. From that date the UK labour market will open gradually. In October 2006, the home office announced that access to the labour market for these two states would be restricted so that, in general, **only highly skilled workers or people who are already working legally in the UK on 31 December 2006 will be able to work freely in the UK.**

Checking the status of an individual is an important first step in being able to advise them appropriately. It is important to be aware of the status of any presenting person and to be aware of distinctions between for example someone who is seeking asylum and someone whose application for asylum has been approved and they have been granted leave to remain (as a refugee, or having discretionary leave to remain or having humanitarian protection). The legal status between those seeking asylum and those granted leave to remain and the type of support that can be provided are very different. The status of asylum seekers and the levels of support that can be offered to them are determined by when application is made for asylum and if or when it is granted. Refugee status, discretionary leave and humanitarian protection are all granted for limited periods (for example, three or five years). As long as someone applies to extend their leave before it expires, their leave will continue until such time as a decision is made by the home office. Appendix B gives some key questions to ask and documentation that should help ascertain a person's status.

3. Quick guide to entitlements and rights to accessing services

	Refugee	Asylum Seeker*	EU Migrant Worker & family	Other nationals (with no recourse to public funds)
Housing	Yes	Yes but only through NASS programme.	Yes if they are working.	Not in their own right. Only if the householder is eligible.
Health	Yes	Yes	Yes	Yes but may be charged.
Employment	Yes	No	Yes	Dependent on terms of visa.
Benefits	Yes	No An allowance is paid through NASS.	Yes mainly in-work and housing benefits but some time and work restrictions apply for A8 and A2 nationals.	No however if partner is British can access child tax credits etc.
Education	Yes	Yes - primary and secondary but not further or higher education unless self financing.	Yes - primary and secondary but not further or higher education unless self financing.	Yes - primary and secondary but not further or higher education unless self financing.
Social work and support services	Yes	Yes	Yes	Only under community care legislation or the protection of children. The council would have to meet the cost.

Legal Services - Legal Aid Legal Advice	Yes Yes	Yes Yes	Yes Yes	Yes Yes **
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* **Failed asylum seekers have no right to services or benefits pending return to their country of origin. The exception would be provision for the protection of children.**

** **Legal advice can be provided by the Ethnic Minorities Law Centre accessed directly or through CAB's.**

4. Housing

Refugees have the same housing rights as UK Nationals as in the right to housing and homelessness services and housing related benefits.

Asylum seekers are only provided with housing where there is a contract with NASS, such as exists in Glasgow. However, unaccompanied Asylum Seeking Children are not dispersed through a NASS contract but are "looked after and accommodated" by the local authority in whose area they have claimed asylum.

Migrant workers have access to housing and homelessness services. The rule of thumb being that if they are working and paying taxes then they have access to services.

Other nationals do not have access to public housing in their own right but can reside if their partner is British or meets one of the other criteria such as being a qualifying EEC citizen or has had an asylum application approved with leave to remain.

5. Employment

Refugees have the same employment rights as UK nationals as in the right to work and receipt of in-work benefits.

Asylum seekers are generally not allowed to work or take vocational training while waiting for a decision about their application. They can ask for permission but this is seldom given. If they have waited for their initial decision from the home office for more than 12 months, they have the right to work. However, they can take unpaid or voluntary work. A few asylum seekers may still have permission to work if this was granted before concessions were removed.

There are different rules affecting **migrant workers** from the EU depending when their country joined. For countries who joined the EU prior to 2004, their nationals have the same rights to and within employment as UK nationals. For those nationals from the new EU 8 Accession states, the rules are slightly different with fewer rights and entitlements for their first 12 months working and residing in the UK. Information on the Workers Registration Scheme and obtaining a National Insurance Number is contained in Appendix D.

The situation for other nationals depends entirely on the conditions of their visas. The majority of visa holders will have the right to work. If employment is not allowed this will be made clear on the visa. If there is no mention of employment on the visa this means the person will have the right to work. Those on student visas have the right to work up to 20 hours per week during term time and full time during holidays.

6. Benefits

The issues for **asylum seekers and refugees** are relatively straightforward. Refugees have access to the full range of benefits as UK nationals. Asylum seekers who entered the UK prior to 1999 have access to a limited range of benefits. As applications for asylum are processed, the numbers of pre-1999 asylum seekers accessing benefits will gradually reduce and disappear. Those who came after 1999 only receive a financial allowance from NASS aimed at preventing destitution.

The issues for **migrant workers** are more complex as they have limited entitlement to benefits during their first year of employment in the UK. A8 workers who are registered under the Home Office Worker Registration Scheme have a right to reside and are entitled to child benefit and in-work benefits such as housing benefit and council tax benefit. If they are in part-time work, working 15 hours or less a week, they can also qualify for income-based jobseeker's allowance. If they lose their job, they lose their worker status, but will be able to remain in the UK to look for work. However, they will not have access to the benefit system.

Although migrant workers have entitlement to housing benefit, there appears to be no recorded instances of A8 migrant workers claiming it. This may be a result of a lack of detailed monitoring by councils but it is more likely to reflect the fact that migrant workers are generally all employed full-time and would not be eligible on the grounds of their income.

Only highly skilled migrants from Bulgaria and Romania (A2 nationals) will be able to claim income based jobseeker's allowance and, if in receipt of that benefit, housing benefit (HB) and council tax benefit (CTB) while they look for work, as they are treated as full EEA nationals. A2 Highly skilled migrant work seekers will have a right to reside but will need to show that they are habitually resident. They are unlikely to be entitled to income support or state pension credit because, since 30 April 2006, a claimant with an EEA work-seeking right to reside alone will not satisfy the right to reside aspect of the habitual residence test for those benefits.

After 12 months of uninterrupted registered work, A8 and A2 migrant workers can have access to the full range of benefits.

Other nationals can only access certain benefits as a couple if their spouse is eligible either as a British citizen, qualifying EEC citizen or refugee.

7. Education

Refugees have the same entitlement and access to educational provision as UK nationals.

Asylum seeker children up to the age of 16 have the same right to school and pre-school education as UK nationals including free school meals. Adult asylum seekers have full access to further and higher education as long as they meet entry requirements and can pay course fees. They are not eligible for local authority grants or loans and are charged overseas students fees.

Migrant workers' children up to the age of 16 have the same right to school and pre-school education as UK nationals including free school meals.

Other nationals have free access to primary and secondary education for their children. They have full access to further and higher education as long as they meet entry requirements and can pay course fees. They are not eligible for local authority grants or loans and are charged overseas students fees.

8. Social work and support services

Refugees have the same entitlement and access to social work services as UK nationals.

Since 2000, **asylum seekers** and their families have special support arrangements provided through the creation of the National Asylum Support Service (NASS) which contracts with individual councils to provide a basic package of support including a financial allowance and accommodation. North Lanarkshire Council does not have a contract with NASS.

The exceptions to this rule are **unaccompanied asylum seeking children** who remain the responsibility of the local authority and cannot be dispersed. Authorities will be reimbursed up to a certain limit and until the child reaches 18 and in some cases longer. Also, asylum seekers with special needs are entitled to a needs assessment by the local authority and might be entitled to community care support, for which the local authority is responsible.

Migrant workers have access to social work services. Again, the rule of thumb being if they are working and paying taxes they have access to services.

Other nationals who arrive in the UK with the understanding that they have "no recourse to public funds" could still approach the council for assistance. Support from local authorities under welfare provisions does not constitute public funds, but local authorities will not be reimbursed for any expenditure incurred.

9. Health services

Refugees have the same entitlement and access to health services as UK nationals.

Asylum seekers can access primary healthcare for free including all NHS accident and emergency, maternity and in-patient as well as out-patient services. Asylum seekers do not have to show official documentation when registering with a GP. NASS are able to help with some costs such as prescriptions, dental treatment, and sight tests and can cover travel costs to and from the hospital. **Failed asylum seekers** awaiting return to their country of origin could be asked to meet health costs of any treatments.

Migrant workers and their families have the same right to health services as UK nationals.

Other nationals may be charged for using health services.

10. Legal advice

Refugees have the same entitlement and access to legal advice and legal aid as UK nationals.

Asylum seekers have the same entitlement and access to legal advice and legal aid as UK nationals. They can get advice and assistance before the initial decision from the home office and during any appeal process.

The council, along with South Lanarkshire Council and NHS Lanarkshire, have commissioned the Ethnic Minority Law Centre to provide what is referred to as complainant services. The centre provides legal services exclusively to black and ethnic minority communities. They offer specialist knowledge and experience in specific areas of the law, particularly discrimination and immigration.

Other nationals have access to legal services.

11. The legal position when interviewing or offering advice

New migrants may have difficulty dealing with public bodies because of fears that information they provide may not be treated in confidence. Local authorities are effectively a part of government. Staff should ensure that they can provide clear information about confidentiality policies and the limits of them. This should include a statement that:

- Advice services are offered in confidence and clear information will be provided about whether any applications for housing or other help will be notified to the home office.
- Advice services can be offered to people who do not give their name or address, but this may limit the advice available.
- The authority does not routinely share information with the home office, but may contact them or respond to requests in certain situations:
 - If the home office contact the local authority with a written request for information about a specific person whom they suspect of committing an immigration offence, the local authority has to provide the home office with the information they may have about where that person is or was living.
 - The local authority (as with all citizens and residents) has a general duty to assist the police in any criminal enquires.
 - If an application for local authority housing or homelessness services is made, the local authority has to establish whether the applicant is eligible and may contact the home office for information about this. Contact will not be made with the home office before the applicant is informed, and will not be made if the applicant withdraws their application at this stage.
 - If an applicant is placed in accommodation under a contract with NASS (the National Asylum Support Service), then the home office will be informed of this.
 - If an application for accommodation or support is made to housing and social work services by someone who is an asylum seeker whose application has been rejected, or is someone who has entered the country illegally or has overstayed the period in which they were

granted permission to be here, then, if housing and social work services know this, they must inform the home office.

- If the applicant does not have proof of their eligibility for accommodation, and asks the authority to contact the home office, then it will do so.

12. Further sources of help and advice

Should you require further information or advice the following appendices may assist:

- A. Internal and external sources of information and advice
- B. How to ascertain a persons status
- C. List of EU Accession states
- D. Workers Registration Scheme and getting a national insurance number

Appendix A

Sources of information and advice

Internal contacts:

Housing and social work services:

Willie Ross (Senior Supporting People Officer) Tel. 01698 346851

Kevin McGown, Planning Section, Social Work Tel. 01698 332157

Legal Services: Aileen Howson, Chief Solicitor Tel. 01698 302526

(Can only provide advice to the council and not third parties)

External sources:

Scottish Refugee Council

5 Cadogan Square

(170 Blythswood Court)

Glasgow

G2 7PH

Tel: 0141 248 9799, Fax: 0141 243 2499

E.mail www.scottishrefugeecouncil.org.uk

Border & Immigration Agency

Festival Court 1

200 Brand Street

Glasgow

G51 1DH

Tel for appointment: 0870 606 7766, Asylum Support: 0845 602 1739

Border & Immigration Agency

Lunar House

40 Wellesley Road

Croydon

CR9 2BY

Tel: 0870 606 7766

Work Permits Enquiries

Dealt with at Sheffield

Tel: 0114 259 4074

Immigration Advisory Service

115 Bath Street

Glasgow

G2 2SZ

Tel: 0141 248 2956, Fax: 0141 221 5388

Email glasgow@iasuk.org

Ethnic Minorities Law Centre

41 St Vincent Place

2nd Floor

Glasgow

G1 2ER

Tel: 0141 204 2888, Fax: 0141 204 2006

Email admin@emlc.org.uk

Appendix B

Questionnaire to assess eligibility for support (designed by the immigration and nationality directorate)

The purpose of this questionnaire is to provide you with a series of questions that enable you to establish if an applicant is ineligible for support or assistance under the terms of Schedule 3 of the Nationality, Immigration and Asylum Bill.

However, they will also assist with identifying the status of different migrants.

Section A:

- A1 What is your name?

- A2 Do you use, or are you known by any other names?

- A3 What is your date of birth?

- A4 Why are you seeking social care support?

- A5 Where do you live?
(Check this is a permanent address. If not ask for one)

- A6 Where were you born?

- A7 What is your nationality?

Inform the applicant:

Prior to any services being provided, I will need to see proof of ordinary residence and nationality. This means I will need to see your full current passport or birth certificate or original home office letter confirming your immigration status and some other positive proof of identity such as a credit card, building society book or other official document.

At this stage:

If the applicant is an EEA national, you can discontinue questioning and refer to your departmental guidance on eligibility. Otherwise, continue to ask all questions in sections B, C and D.

Section B: Identifying those with refugee status in other EEA states

- B1** Have you ever applied for asylum or refugee status in another country?
- B2** If so, where?
- B3** What was the outcome of that application?
- B4** Do you have a wife/husband/partner and if so have they ever applied for asylum or refugee status in another country?
- B5** Where was that application made and what was the outcome?

Section C: Identifying current and failed asylum seekers

- C1 Have you ever applied for asylum in the UK?
- C2 What was the outcome of that application – or is it still pending?
- C3 Do you have a wife, husband or other partner?
- C4 Have they ever applied for asylum in the UK?
- C5 What was the outcome of that application – or is it still pending?

Refugee status, discretionary leave and humanitarian protection are all granted for limited periods (e.g. 3 or 5 years). As long as someone applies to extend their leave before it expires, their leave will continue until such time as a decision is made by the home office. For example, Ms X held discretionary leave, which expired in August 2005. She applied for Indefinite Leave to Remain in July 2005 (before her leave expired). The home office made a decision in July 2007 and granted her ILR. For the period August 2005 - July 2007 Ms X continued to hold Discretionary Leave. Even though clients may present with documents showing their leave expired some time ago it is important to check if they have any outstanding applications with the home office and therefore continue to hold valid leave.

Section D: Identifying those unlawfully present in the UK

- D1 When did you enter the UK?
- D2 How did you enter the UK?
- D3 What is your current immigration status in the UK?
- D4 When does/did your permission to stay expire?

D5 Have you submitted an application to the Home Office to remain in the UK?

Interpreting responses

If a person has a refugee status in another EEA state, or they are a dependant of a person with refugee status in another EEA state, they are ineligible for support or assistance.

If a person has an asylum claim outstanding in the UK, they are ineligible for support. If their claim has failed or they are a dependant of a person whose claim has failed, and they are refusing to leave the UK, they are ineligible for support. If the applicant, or their partner, has an asylum application refused you should refer to the home office to establish if they can leave, and if so, if they are refusing to leave.

Persons here unlawfully are ineligible for support or assistance. If they have entered the UK lawfully, they will have a passport or national identity card. You must ask to see this before granting support. If they have lost it, you must ask the applicant to produce official confirmation from the police and the relevant embassy or high commission.

Reporting to the home office

You are obliged to report to the Home Office Immigration and Nationality Directorate the details of any person whom you reasonably suspect to be:

- a failed asylum seeker refusing to leave the UK; and/or
- unlawfully present in the UK.

Appendix C

European Economic Area (EEA) and accession states

The EEA is comprised of all European Union (EU) states plus Norway, Lichtenstein and Iceland. EU nationals are citizens of Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom.

From 1 June 2002, Swiss nationals have the same rights as EEA nationals in the UK.

The eight states which joined the EU on 1 May 2004, (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) are referred to as the A8 countries.

Nationals from Cyprus and Malta also acceded on the 1 May 2004 but are treated differently from nationals from other accession countries.

The accession treaty allows member states to restrict the right of accession country nationals (except those from Cyprus or Malta) to freedom of movement as workers for a transitional period of up to seven years.

Since 1 January 2007, nationals of Romania and Bulgaria (the A2 countries) also possess some EEA rights. In October 2006, the home office announced that access to the labour market for these two states would be restricted so that, in general, **only highly skilled workers or people who are already working legally in the UK on 31 December 2006 will be able to work freely in the UK.**

Appendix D

The Worker Registration Scheme (information for applications)

After you have started working, in order to ensure you get all your rights, you will have to register with the Worker Registration Scheme.

You can do this by filling in form WRS which you can get from the Workers Registration Team at the home office. You can download this from the home office website:

www.workingintheuk.gov.uk/workingintheuk/en/documents/allforms.html

You should apply as soon as you start work and definitely within one month of starting work.

If you change jobs within the first 12 months, you will have to fill in another WRS form, but you will not have to pay another fee. Once you have been working legally in the UK for 12 months you won't need to be on the WRS anymore. You then can apply for a registration certificate, which gives you that same rights and benefits as British workers.

If you are from Bulgaria and Romania the home office in October 2006 announced that access to the labour market for these two states would be restricted so that, in general, **only highly skilled workers or people who are already working legally in the UK on 31st December 2006 will be able to work freely in the UK.**

The Home Office regulations made on the 13th December 2006 include details of a new work permit scheme which will limit the number of A2 nationals allowed to work in the UK. This scheme will be known as the **Workers Authorisation Scheme (WAS)**

Accession Work Cards

Workers not exempt from the requirement to seek permission to work will need to hold an **Accession Work Card** or a **Seasonal Agricultural Workers Scheme (SAWS)** work card in order to be legally employed in the UK. An accession work card will be in respect of a specific job with a specific employer, provided the relevant qualifying criteria are met.

National Insurance Numbers

For A8 Nationals to get a NI Number you have to contact your local Jobcentre Plus and you will be asked to attend an interview and to take documents with you to prove your identity. The following documents will help you:

- Passport
- National Identity Card
- Birth Certificate
- Medical Card
- Payslips
- A letter for your employer
- Contract of employment
- Details of any employment agencies you are registered with
- Invoices or other official letters