

# ‘No recourse to public funds’, ‘person subject to immigration control’ and benefit entitlement



**October 2023**

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*Child Poverty Action Group works on behalf of the one in four children in Scotland growing up in poverty. It doesn't have to be like this. We use our understanding of what causes poverty and the impact it has on children's lives to campaign for policies that will prevent and solve poverty – for good.*

*We provide training, advice and information to make sure hard-up families get the financial support they need.*

## **Introduction**

Advising people who come to the UK from abroad can be difficult, especially as getting it wrong can have serious consequences. This factsheet aims to give basic information if you are advising people who may have ‘no recourse to public funds’ or who are a ‘person subject to immigration control’. These terms are often misunderstood and have very specific meanings when it comes to benefit entitlement.

This factsheet explains the basics of what those terms mean for benefit entitlement and the main groups of people they cover. CPAG in Scotland produces other factsheets specifically on [Benefits for New Refugees](#) (including those granted humanitarian protection or ‘leave outside the rules’), [Benefits for Resettled Afghans](#), [Benefits for Resettled Ukrainians](#) and [Rights to Benefits and Tax Credits for European Nationals](#). CPAG also produces the [Benefits for Migrants Handbook](#) that contains much greater detail on the rights of all these groups. Note that CPAG does not have expertise on or provide advice about immigration matters, only about how someone’s immigration status affects their benefit entitlement. See the end of this factsheet for where you can get advice about immigration issues.

## **Overview**

Most, but not all, benefits have residence and presence rules that you must satisfy to be entitled. Depending on which country you come from and your immigration status in the UK, these rules may stop you from getting the benefit entirely or for a certain period of time. The rules vary considerably between different benefits and there are no general rules about how long you must have been in the country before you can be entitled to benefits. If you are a British national, these rules can also stop you from getting some benefits until you have been back in the country for some time.

In addition to the specific residence and presence rules for individual benefits, you can be excluded from getting most benefits if you have ‘no recourse to public funds’ (NRPF) as a condition of your

leave to remain in the UK granted by the Home Office. *A NRPF condition only applies if your current leave to remain says it does, eg on your biometric residence permit or other Home Office documents. NRPF does not apply as a general rule to everyone who comes to the UK from abroad, however, even if you are not subject to a current NRPF condition, other rules about immigration status that treat you as a 'person subject to immigration control' (PSIC) may still prevent you claiming most of the same benefits. Note that all those with NRPF are PSICs, but not all PSICs have NRPF.*

## **No recourse to public funds (NRPF)**

### **Who has 'NRPF'?**

Having NRPF is a specific condition of being granted some types of leave to remain by the Home Office under UK immigration law. If you have come to the UK from abroad and have been granted leave to remain in the UK which is subject to a NRPF condition, the documents issued to you by the Home Office will say you have NRPF, eg on your biometric residence permit. If your Home Office documents don't say you have NRPF, or you should but don't currently have leave to remain in the UK (eg you entered the UK without first getting leave to enter or remain, or you had leave to remain but it expired before making a further application), then you are not subject to a NRPF condition. If in doubt about whether a NRPF condition applies to your current leave to remain, seek specialist immigration advice.

Examples of non-British nationals coming to the UK whose leave to remain is likely to have NRPF condition (eg it says so on their Home Office documents) include:

- Workers;
- Students;
- Family members of British nationals;
- EU nationals who were not in the UK before 1 January 2021 and are not joining family members who were.

Examples of non-British nationals in the UK who won't usually have NRPF include;

- EU nationals and their family members granted status under the EU Settlement Scheme;
- Refugees, and their family members granted leave under 'family reunion' rules;
- Those granted humanitarian protection;
- Those granted leave under the Destitute Domestic Violence Concession;
- Those granted indefinite leave to remain;
- Afghans or Ukrainians admitted to the UK under the applicable resettlement schemes;
- Asylum seekers;
- Commonwealth citizen in the UK before 1 January 1973 (the 'Windrush Generation');
- Irish nationals (Irish nationals do not need leave to enter or remain in the UK).

Note that just because you don't have NRPF doesn't mean you have access to any or all benefits, as you may still be excluded due to other rules. For example, while asylum seekers are not usually subject to a NRPF condition they are still excluded from most benefits under the 'person subject to immigration control' rules (see below).

If your current leave to remain was granted on the condition that you have NRPF, breaking that condition can have serious consequences both for your current stay in the UK and when making

future applications for further leave to remain in the UK. A NRPF condition is broken if either you claim public funds *or someone else gets more of them due to your presence (including for a child who has NRPF)*. If you are subject to a NRPF condition, it is therefore very important to get advice before making or being included in a claim for any benefit defined as a public fund.

There are some exceptions that may allow you in certain circumstances to claim some benefits that count as public funds, even if you have NRPF. However, the rules are complex so get advice first to check if any exception applies to you.

### **Which benefits are public funds?**

Not all benefits are public funds. It is only those specifically listed in the UK government's Immigration Rules that are defined as public funds. Therefore, if the benefit isn't listed in the Immigration Rules, having a NRPF condition as part of your leave to remain does not stop you claiming it, although other rules may still prevent you being entitled. The list of public funds sometimes changes and has most recently been updated to include a number of devolved Scottish benefits.

The definition of public funds at present includes the following current benefits:

- universal credit;
- pension credit;
- housing benefit;
- child benefit;
- council tax reduction;
- tax credits;
- income support;
- income-based jobseeker's allowance (JSA);
- income-related employment and support allowance (ESA);
- personal independence payment;
- attendance allowance;
- disability living allowance.
- carer's allowance;
- Scottish welfare fund (and discretionary local assistance schemes in England but not those in Wales);
- social fund payments;
- child disability payment;
- adult disability payment;
- carer's allowance supplement;
- Scottish child payment;
- job start payment;
- child winter heating payment;
- winter heating payment;
- funeral support payment;

While other benefits are not listed as public funds, if you need to get one of the above to 'passport' you to that benefit then you are also effectively excluded from that benefit too.

Benefits that are *not public funds* include:

- contributory ESA;
- contributions-based JSA;
- maternity allowance;
- bereavement benefits;
- statutory payments including statutory sick pay and maternity pay;
- industrial injuries benefits;
- best start foods (BSF) and best start grants (BSG) (note: in some circumstances you do not need to receive a 'passporting' benefit to be entitled to BSF or BSG).

So even if you do have NRPF, you can still claim the benefits listed immediately above provided you meet all the other qualifying conditions for them. So, for example, if you're working in the UK but have NRPF and have to take sick leave, you should be entitled to statutory sick pay for the first 28 weeks and then, if you have paid sufficient national insurance contributions, contributory ESA.

Note that as well as the benefits listed above as public funds, some other services count as public funds, such as some housing or homelessness services.

### **What if your leave to remain has expired?**

If the leave to remain you had in the UK has expired and *you did not make a new application for leave to remain before it expired*, then you don't currently have NRPF even if your expired leave to remain said you did. However, as you no longer have leave to remain in the UK, you are likely to be a 'person subject to immigration control' and so excluded from most of the same benefits for that reason instead (see below). You should get urgent immigration advice if you don't currently have leave to remain and if you do attempt to make any benefit claims it is likely to bring you to the attention of the Home Office.

If the leave to remain you had in the UK has expired, *it included a NRPF condition and you made a new application to the Home Office for leave to remain before it expired*, then your previous leave to remain continues to apply until the new application is decided. That means you continue to be subject to a NRPF condition.

If the leave to remain you had in the UK has expired, *it did not include a NRPF condition and you made a new application to the Home Office for leave to remain before it expired*, then your previous leave to remain continues to apply until the new application is decided. That means you are still not subject to NRPF.

## **Person subject to immigration control (PSIC)**

### **Who is a 'PSIC'?**

For the purposes of claiming benefits, you are *not* a PSIC just because you are a non-British national in the UK. PSIC has a specific meaning in the law and only includes some people who have come to the UK from abroad.

The law says you are a PSIC if you fall into any of the following groups:

- You require leave to remain in the UK but don't have it;
- You have leave to remain subject to a NRPF condition;
- You have leave to remain as a result of a 'maintenance undertaking' (this is sometimes referred to as having a 'sponsor' but that can lead to confusion, eg in refugee 'family reunion' cases the family members are not subject to a maintenance undertaking even though the refugee is often referred to as their 'sponsor');
- You previously had leave to remain, you applied for further or varied leave, but it was refused, and you are now appealing that decision.

Therefore, people *who are PSICs* include:

- Anyone who had leave to remain in the UK, but it has expired and no new application for leave to remain was made before it did;
- Anyone whose current leave to remain says they have NRPF, such as most of those initially granted leave as workers or students;
- Asylum seekers whose applications have not yet been decided or have been refused and who have no other form of leave in the UK;
- Family members of someone in the UK who have been granted leave because that person has said they will maintain them;

- Someone who had leave to remain, applied for further leave before it expired, that new application was refused, and they are now appealing that decision.

People *who are not PSICs* include:

- Those with leave ('pre-settled' or 'settled') under the EU Settlement Scheme (EUSS) or with a pending EUSS application with the Home Office;
- Refugees, and their family members granted leave under 'family reunion' rules;
- Those granted humanitarian protection;
- Those granted leave under the Destitute Domestic Violence Concession;
- Those granted indefinite leave to remain;
- Afghans or Ukrainians admitted to the UK under the applicable resettlement schemes;
- Commonwealth citizen in the UK before 1 January 1973 (the 'Windrush Generation');
- Irish nationals (Irish nationals do not need leave to enter or remain in the UK).

**All those who have current leave to remain with a NRPF condition are PSICs but not all PSICs have NRPF.**

Note that before 1 January 2021 you could not be a PSIC if you were a European Economic Area (EEA) national. From that date EEA nationals are no longer automatically not PSICs, but you will still not be a PSIC if you have leave under the EUSS (ie 'settled' or pre-settled' status) or if you are otherwise in a 'protected group' who can still use EEA residence rights – see CPAG in Scotland's [Rights to benefits and tax credits for European nationals](#) factsheet.

### **What being a PSIC means for benefit entitlement**

If you are a PSIC, usually you cannot claim certain benefits including:

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| • universal credit;                         | • income-related employment and support allowance (ESA); |
| • pension credit;                           | • personal independence payment;                         |
| • housing benefit;                          | • attendance allowance;                                  |
| • child benefit;                            | • disability living allowance;                           |
| • council tax reduction;                    | • adult disability payment;                              |
| • tax credits;                              | • child disability payment;                              |
| • income support;                           | • carer's allowance;                                     |
| • income-based jobseeker's allowance (JSA); | • funeral support payment;                               |
|   | • social fund payments.                                  |

Being a PSIC does not exclude you from other benefits (see for example those listed as not public funds above), but if entitlement to it depends on 'passporting' from one of the above then you may be effectively excluded. This list above is mainly the same as those listed as 'public funds' but does not include Scottish welfare fund (SWF) and several other Scottish benefits. But if you are a PSIC because you have NRPF, then you are also excluded from claiming all the other benefits listed as public funds. Note that while asylum seekers are PSICs but do not usually have NRPF, and so are not excluded from getting grants from the SWF by the law, Scottish Government official guidance says they are excluded.

There are exceptions that allow PSICs to still be entitled to the benefits listed above in some circumstances. However, the rules are complex so get advice to see if any exception applies to you.

## More information, resources and advice

CPAG in Scotland does not provide information or advice about immigration matters. To get specialist immigration advice you can search for a registered adviser in your area on the [Office of the Immigration Services Commissioner](#)'s website. Solicitors and law centres may also provide immigration advice and you can search the [Law Society of Scotland](#) and [Scottish Legal Aid Board](#) directories for specialists in your area. Some other agencies may also be permitted to provide immigration advice and you can search [Advice Local](#) to find those in your area that do.

Independent benefits advice is available from agencies such as a local Citizen Advice Bureau or law centre. Housing association tenants often have access to their own support staff and specialist welfare rights officers who can help. You can also search the [Advice Local](#) website for other agencies who can offer advice in your area.

If you are an adviser and need help with any benefits issues affecting those you support, you can contact CPAG in Scotland. **Scottish based advisers** can call 0141 552 0552 Monday to Thursday 10am to 4pm and Fridays 10am to 12 midday, or email [advice@cpagscotland.org.uk](mailto:advice@cpagscotland.org.uk). **If your questions are about your own benefit entitlement, we cannot help you but see above for the other agencies who may be able to.**

CPAG publishes the following resources that may be useful when advising people from abroad:

- [Benefits for New Refugees factsheet](#) (including those granted humanitarian protection or 'leave outside the rules')
- [Benefits for Resettled Afghans factsheet](#)
- [Benefits for Resettled Ukrainians factsheet](#)
- [The Rights to Benefits and Tax Credits for European Nationals factsheet](#)
- [Benefits for Migrants Handbook](#)

Also see the AskCPAG [Benefits for Migrants](#) topic page from more resources.

Warning! The information in this factsheet is correct at the date produced and is intended for those living in Scotland. However, benefit law changes often and so will need updating after some time.

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