



**The Rights and Entitlements of
Migrants in Northern Ireland:
A brief overview**

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A wide range of migrants enter the UK every year. Their rights and entitlements are determined by a number of factors, mainly nationality and immigration status.

This document breaks down migrants by category, according to whether they are a European national, a third country national, an asylum seeker or a refugee, and outlines their access to employment, the welfare and benefits system, healthcare and political participation. It is designed to be a quick guide, and is not an exhaustive list of exemptions and special cases. For more detailed information please refer to the links at the end of the document.

GLOSSARY

Asylum seeker Someone who has lodged an application for protection on the basis of the Refugee Convention or Article 3 of the ECHR.

Failed asylum seeker Someone who has claimed asylum, but received a negative decision from the Home Office and has exhausted all appeal rights. They are not illegal immigrants, but have no entitlements and are likely to be removed from the country at some point in the future

Habitual Residence Test Used to determine the eligibility of EEA nationals who apply for benefits. The test also applies to UK nationals who are returning to the UK after a significant period abroad. There is not a standard definition of the habitual residence test. It is usually based on the length, continuity and nature of residence, reasons for coming to the UK and future intentions for remaining in the UK. For jobseeker's allowance claims, a claimant cannot be considered habitually resident during their first three months' residence in the common travel area, and so is thereby disqualified.

Public Funds Benefits listed in the Immigration Rules which may not be claimed by a third country nationals holding a residence permit which includes the condition '**no recourse to public funds**'. Public funds include a range of benefits that are given to people on a low income, as well as housing support. These are:

income-based jobseeker's allowance;	income support;
child tax credit;	universal credit;
working tax credit;	a social fund payment;
child benefit;	housing benefit;
council tax benefit;	council tax reduction;
domestic rate relief;	state pension credit;
attendance allowance;	severe disablement allowance;
personal independence payment;	carer's allowance;
disability living allowance;	an allocation of local authority housing;
local authority homelessness assistance	

Ordinarily resident Used to determine entitlement to NHS care. It has not been defined in any Act of Parliament but is broadly decided on whether an individual is living in the UK on a lawful and properly settled basis. It does not include a minimum time period for residence. The Immigration Act 2014 redefines the 'ordinarily resident' test to exclude all migrants who do not have indefinite leave to remain in the UK. Indefinite leave to remain can only be applied for after a minimum of 5 years residence in the UK.

Refugee Someone whose application for asylum has been accepted by the government. They have been recognised as needing protection under the 1951 Refugee Convention

Shortage Occupation List A list of occupations compiled by the government in which the UK is experiencing a shortage and where it is considered that this shortage can best be filled via immigration from outside the European Economic Area.

Third-country national A national of a country outside the European Economic Area

Right to access employment

The right to work in the UK for migrants varies according to nationality and immigration status. The following table is a brief guide to employment rights for migrants according to category. More information on these entitlements and conditions for exception can be found in the links at the end of the document.

EEA and Swiss Nationals	Entitled to full working rights equivalent to that of a UK Citizen
Croatian Nationals	Transitional restrictions have been imposed on Croatian nationals for a period which can be up to 7 years from the date of EEA accession (1 st July 2013). A Worker Authorisation Scheme is in place and in most cases prospective workers need to have a job offer from an employer with a Home Office license to employ foreign workers. This then entitles the worker to apply for a Worker Authorisation Certificate.
Third-Country Nationals	<p>Must be sponsored by an employer which has a license to employ foreign workers. Sponsor employers must be able to demonstrate that the intended job cannot be filled by a UK resident and prospective workers must meet criteria outlined in the points based system before allocation of a temporary work visa.</p> <p>For third country nationals who are full time students studying at a UK higher education institution, course related work placements, part-time work during term time and full-time work during vacations are permitted.</p>
Refugees	Entitled to full working rights equivalent to that of UK Citizen.
Asylum Seekers	Not entitled to work in the first 12 months. If waiting longer than 12 months for a decision on their asylum application, they can apply for permission to look for work. Jobs found through this route must be among those included on the Shortage Occupation List. They are not entitled to establish themselves as self-employed. Failed asylum seekers have no entitlement to work in the UK.

Social Security Entitlements

Entitlements to social security benefits and tax credits are usually based on the outcome of the habitual residence test. The table below outlines the general case regarding entitlements for each category of migrant. More information on these entitlements and conditions for exception can be found in the links at the end of the document.

EEA and Swiss Nationals	Must pass the Habitual Residence Test to access benefits and tax credits. For JSA claims a claimant is not considered habitually resident during the first three months of residence in the common travel area. EEA and Swiss national jobseekers must also be able to show that they have a 'genuine prospect of finding work' to continue to get JSA after six months.
Croatian Nationals	Must pass the Habitual Residence Test and be working in authorised employment/be self-employed/self-sufficient/a student to access in-work benefits and tax credits. After 12 months of uninterrupted authorised employment, rights to benefits are the same as other EEA nationals.
Third-Country Nationals	<p>Most third-country nationals have limited leave to remain in the UK and are subject to the condition that they have no recourse to public funds. They are therefore not eligible to receive most social security benefits and tax credits.</p> <p>After 5 years they may be considered eligible for certain social security benefits subject to habitual residence test.</p> <p>There are special provisions for couples with mixed immigration status (i.e. where one partner is subject to immigration control but the other is not)</p>

Refugees	Full access to welfare entitlements subject to the same tests as UK nationals.
Asylum Seekers	<p>Not entitled to any non-contributory benefits.</p> <p>If deemed in sufficient need, fully-furnished housing and amenities will be provided by the Home Office, along with weekly cash support based on level of need (ie: age, dependents, etc). Rates for cash support are currently £36.62 for a single person aged 18 or over, £43.94 for a lone parent.</p> <p>If a failed asylum seeker can prove that they are destitute and they also meet eligibility requirements they will be given accommodation and £35.39 on a payment card for food, clothing and toiletries.</p>

Entitlements to NHS Healthcare

The following hospital treatment is free of charge for anyone who needs it:

- Treatment as an outpatient in a hospital’s accident and emergency department.
- Compulsory psychiatric treatment
- Treatment for certain communicable diseases e.g. TB, measles, SARS (in Northern Ireland testing for the HIV virus and related counselling are both free of charge, but any necessary subsequent treatment and medicines may have to be paid for)
- Family planning services

Entitlement to additional care under the NHS for migrants is largely determined by whether or not the individual can be considered as ‘ordinarily resident’ in the UK. Free NHS care is also available to nationals of countries outside of the EEA which have signed a health care agreement with the UK. Entitlement in this case is dependent on the terms of each particular agreement.

The table below outlines the general case regarding entitlements for each category of migrant. More information on these entitlements and conditions for exception can be found in the links at the end of the document.

EEA and Swiss Nationals	Full access to free health care equivalent to UK nationals if ordinarily resident in the UK. If visiting the UK, free healthcare is provided on presentation of a European Health Insurance Card (EHIC).
Croatian Nationals	Full access to free health care equivalent to UK nationals if ordinarily resident in the UK. If visiting the UK, free healthcare is provided on presentation of a European Health Insurance Card (EHIC).

Third-Country Nationals	<p>Full access to free healthcare equivalent to UK nationals if ordinarily resident in the UK. The Immigration Act 2014 has changed the definition of 'ordinarily resident' to preclude those who do not have indefinite leave to remain.</p> <p>Students whose course of study in the UK is for six months or more qualify for NHS treatment on the same bases as anyone who is ordinarily resident.</p> <p>A health surcharge (expected to be £200 per person for each year of stay, and £150 for students) will be levied on those with limited leave to remain on issue of visa from 2015 (expected implementation from April 2015).</p>
Refugees	<p>Full access to free health care equivalent to UK nationals if ordinarily resident in the UK.</p>
Asylum Seekers	<p>Full access to free health care equivalent to UK nationals if ordinarily resident in the UK.</p>

Housing Rights

Migrants who meet all legal requirements and are not subject to immigration control are eligible for social housing wait lists and housing benefit. All applicants for social housing complete the same application form with points allocated according to need.

More information on these entitlements and conditions for exception can be found in the links at the end of the document

EEA and Swiss Nationals	Must pass the Habitual Residence Test to access housing benefit. Anyone in receipt of JSA must have a further claim to right of residence other than as a jobseeker in order to be eligible for housing benefit. Applicants for social housing must qualify in line with NIHE housing allocation scheme.
Croatian Nationals	Must pass the Habitual Residence Test and be working in authorised employment to access housing benefit. Applicants for social housing must qualify for eligibility in line with NIHE housing allocation criteria.
Third-Country Nationals	Access to housing benefit and social housing only possible if legally resident for more than 5 years. In this instance eligibility for housing benefit will be subject to Habitual Residence Test and social housing applicants must meet NIHE housing allocation criteria.
Refugees	Full access to housing benefit and social housing equivalent to UK national
Asylum Seekers	No access to housing benefit or social housing. If deemed in sufficient need, housing is granted for the duration of their application period, the costs of which are covered by the Home Office. Failed asylum seekers have no entitlement to housing benefit or social housing. If a failed asylum seeker can prove that they are destitute and they also meet eligibility requirements they will be provided accommodation by the Home Office.

Political Participation

The following table outlines the voting rights and rights to stand in elections. All political participation is based on the individual being ordinarily resident in the UK.

EEA and Swiss Nationals	<p>Can vote in European, Northern Ireland Assembly and local council elections but are not able to vote in UK Parliamentary general elections (with the exception of citizens of the Republic of Ireland).</p> <p>Can stand as candidates in European, Assembly and local government elections.</p>
Croatian Nationals	<p>Can vote in European, Northern Ireland Assembly and local council elections but are not able to vote in UK Parliamentary general elections.</p> <p>Can stand as candidates in European, Assembly and local government elections.</p>
Third-Country Nationals	<p>Commonwealth citizens resident in the UK with leave to enter or remain, can vote in all local, assembly and general elections. Other third country nationals are unable to vote in any election without UK/RoI citizenship.</p> <p>Only qualifying commonwealth citizens or other third country nationals with British or Irish citizenship can hold political office (in European, Assembly, local government or general elections)</p>

<p>Refugees</p>	<p>Commonwealth citizens resident in the UK with leave to enter or remain, can vote in all local, regional and general elections. Other third country nationals are unable to vote in any election without UK/RoI citizenship.</p> <p>Only qualifying commonwealth citizens or other third country nationals with British or Irish citizenship can hold political office (in European, Assembly, local government or general elections)</p>
<p>Asylum Seekers</p>	<p>Commonwealth citizens resident in the UK with leave to enter or remain, can vote in all local, regional and general elections. Other third country nationals are unable to vote in any election without UK/RoI citizenship.</p> <p>Only qualifying commonwealth citizens or other third country nationals with British or Irish citizenship can hold political office (in European, Assembly, local government or general elections)</p>

Useful links

Right to access employment

Citizens Advice Bureau: www.adviceguide.org.uk/e_migrant_workers.pdf

Gov.UK: www.gov.uk/browse/visas-immigration/work-visas

Social Security Entitlements

House of Commons Library: www.parliament.uk/business/publications/research/briefing-papers/SN06847/people-from-abroad-what-benefits-can-they-claim

Home Office, Public funds guidance:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/284160/Public_funds_v12_0_EXT.pdf

Law Centre: www.lawcentreni.org/Publications/Policy-Briefings/Refugee-issues-MLA-info-sheet.pdf

Entitlements to NHS Healthcare

Citizens Advice Bureau:

www.adviceguide.org.uk/england/healthcare_e/healthcare_help_with_health_costs_e/nhs_charges_for_people_from_abroad.htm

UK Council for International Student Affairs: www.ukcisa.org.uk/International-Students/Study-work--more/Health-and-healthcare/National-Health-Service-NHS-who-is-entitled/

Housing Rights

NIHE: www.nihe.gov.uk/housing_myths_and_migrants.pdf

House of Commons Library: www.parliament.uk/business/publications/research/briefing-papers/SN04737/eu-migrants-eligibility-to-apply-for-social-housing-england

Political Participation

NI Direct: www.nidirect.gov.uk/registering-to-vote

Electoral Commission: www.electoralcommission.org.uk/i-am-a/voter/registering-to-vote-and-the-electoral-register

General

Law Centre: Migrants and benefits:

www.lawcentreni.org/Publications/Migrant%20Workers/Migrants-and-Benefits-2014.pdf

Gov.UK: Habitual residence and right to reside:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/324553/dmgch0703.pdf

House of Commons Library: Rights of Croatian nationals in UK: www.parliament.uk/briefing-papers/SN06686/croatian-nationals-rights-to-live-and-work-in-the-uk-after-joining-the-eu

Gov.UK: Asylum support: www.gov.uk/asylum-support/what-youll-get