

# 1. Introduction to immigration control



## What does “subject to immigration control” mean?

The *Immigration Act 1971* splits people in the UK into two groups:

- those with a right of abode
- those with no right of abode – therefore “subject to immigration control”.

Having right of abode means you are allowed to live, work, and access public services in the UK without any immigration restrictions. This means:

- you do not need a visa to come to the UK
- there’s no limit on the length of time you can spend in the country.

British citizens have an automatic right of abode. There are also a small minority of Commonwealth citizens who may also have a right of abode – you can find out more about this on the UK Government’s website [here](#).

Everybody who has **no right of abode** in the UK is “**subject to immigration control**”. This means that:

- you need permission from the Home Office to be present in the UK – this is usually known as “leave to enter” or “leave to remain”
- if you do not have permission to be in the UK or you breach the conditions of your permission then you are not in the UK legally

Even if you have ‘indefinite leave to remain’ (also known as ‘settled status’), this does not give you a right of abode and is not a permanent status. The status can lapse where the holder has stayed outside the UK for a continuous period of more than two years.

People who are “subject to immigration control” and who do not have indefinite leave to remain / settled status are normally prohibited from accessing particular public funds, unless case-by-case exemptions are made. These public funds are specified in legislation, under section 115 of the *Immigration and Asylum Act 1999*. Some people subject to immigration control also face restrictions which limit their access to work, social housing, renting accommodation, health care, and opening bank accounts.

## What is the difference between ‘subject to immigration control’ and ‘no recourse to public funds’ (NRPF)?

The term “subject to immigration control” is often used interchangeably with “NRPF”. In other words, NRPF is often used as a shorthand to encompass *all* individuals

whose immigration status prohibits them from accessing a range of benefits (public funds).

However, in legal terms, having 'no recourse to public funds' (NRPF) is not an immigration *status* but rather a *condition* that can be imposed by the Home Office on individuals as part of their leave (permission) to enter or remain in the UK.

People with a NRPF condition on their visa are "subject to immigration control", but there are also other immigration statuses which are subject to immigration control.

Distinguishing whether someone has access to public funds and what their current immigration status is is important when supporting survivors because the type of statutory support they are entitled to differs according to their type of leave and the conditions put on their leave.

In this resource, the phrase "subject to immigration control" is used to encompass all migrants whose entitlement to public funds is restricted by their immigration status. This includes, for example: those on visas subject to a NRPF condition; asylum seekers; appeal rights exhausted asylum seekers; EU nationals with pre-settled status; and those who have no current permission to be in the UK.

The term NRPF is used specifically to refer to migrants granted permission to enter / remain in the UK subject to a NRPF condition.

You might also want to take a look at the Right to Remain Toolkit. It provides a step-by-step guide to the UK asylum and immigration system and is free to use. It is for people who want to learn more about the legal process, or a particular part of the legal process. You might find it useful to read yourself, or to share with service users. You can find it here: <https://righttoremain.org.uk/>

## Who is subject to immigration control?

“A person subject to immigration control” is defined by section 115 of the [Immigration and Asylum Act 1999](#) and means: a person who is not a national of an European Economic Area (EEA) State\*\* and who:

- requires leave to enter or remain in the UK but does not have it; e.g.
  - someone who has overstayed a visa and has not applied for an extension;
  - someone who entered illegally and has not submitted an asylum claim;
- has leave to enter or remain in the UK subject to a condition of NRPF; e.g.
  - Family / private life / UK ancestry visa
  - Work / student / visitor visa
- has leave to enter or remain in the UK given as a result of a ‘maintenance undertaking’ – i.e. where a family member or friend undertakes to provide the individual with somewhere to live and financial support during their stay; or
- has leave to enter or remain in the United Kingdom only as a result of appealing an immigration decision or asylum claim.

**\*\*However, all EEA nationals who entered the UK after 31 December 2020 are subject to the same immigration rules as non-EEA migrants.**

**After 30 June 2021, any EEA national who entered the UK on or before 31 December 2020 but who has not applied or been granted status under the EU Settlement Scheme (EUSS) will be considered as being here without permission.**

Although EEA nationals who obtain **settled status** under the EUSS will be eligible to access public services and funds (e.g. mainstream welfare benefits and social housing), EEA nationals granted **pre-settled status** under the EUSS may be subject to restrictions on the benefits they can access – see [NRPF Network](#). The slide below, provided by NRPF Network during training delivered on 09.02.2021, provides an useful summary of the current rights of EEA nationals to benefits/housing based on their different statuses.

## When will an EEA national qualify for benefits?

- **Settled status** = eligible for benefits/ housing
- **Pre-settled status** = must be exercising a qualifying right to reside, i.e. economically active (although recent court judgment may enable person to rely on pre-settled status to qualify)
- **Entitled to apply under EUSS but not applied/ granted status yet** = must have a right to reside (any) on 31 December 2020 and be exercising a qualifying right to reside at time of benefit application
- **Leave to enter as visitor/ student/ worker** = subject to the NRPF condition and ineligible for benefits

### Useful resources on the EU Settlement Scheme and the rights of EEA nationals:

- Appendix 1: Newfields Law: presentation slides on the EU Settlement Scheme
- The [NRPF Network](#)
- The [EU Citizens' Immigration Advice Service](#)  
Provides free advice and support to EU citizens and their family members living in Wales who wish to apply to remain in the country in accordance with the EU Settlement Scheme.

## Which public funds are people subject to immigration control excluded from receiving?

**Section 115** of the *Immigration and Asylum Act 1999* excludes people who are “subject to immigration control” from receiving a range of benefits. However, the Act is specific and targeted in respect of the public funds which they are excluded from receiving. There are other public funds and services which are not "public funds" for the purpose of immigration.

## Update June 2022: Free School Meals in Wales

In March 2022, the Welsh Government and Plaid Cymru signed a co-operation agreement which included a commitment to provide universal free school meals for all primary school pupils by 2024.

In June 2022, the Welsh Government confirmed that children in Reception class will begin to receive universal primary free school meals from as early as September 2022: [Universal Free School Meals Roll-out to Commence in September \(gov.wales\)](#). The Welsh Government has been clear that ‘universal’ includes **all** children in primary school – including those from families with NRPF / insecure immigration status.

## Update April 2022: Free School Meals in England

In April 2022, the Department for Education (DfE) permanently extended access to Free School Meals (FSM) to children from families with No Recourse to Public Funds (subject to income thresholds). Schools will also be able to receive appropriate funding, e.g. Pupil Premium, for these pupils claiming Free School Meals. The extension started from the start of Easter Term 2022 (19th April 2022), but The Children’s Society reports in June 2022 that many newly-eligible families are unaware or have been unable to access this entitlement. The UK Government Guidance can be accessed here: [Providing free school meals to families with no recourse to public funds \(NRPF\) - GOV.UK \(www.gov.uk\)](#).

Remember, this applies to schools in ENGLAND only – the Welsh Government are pursuing their own Free School Meals plan in collaboration with Plaid Cymru: see here: [Pledge to plate: Making sure every primary school pupil gets a Free School Meal - Bevan Foundation](#)

Public funds that individuals subject to immigration control are prohibited from accessing	Examples of public funds which individuals subject to immigration control are not excluded from receiving
<p>Universal Credit;</p> <p>Income-based jobseeker's allowance;</p> <p>State pension credit;</p> <p>Income-related allowance;</p> <p>Employment and support allowance;</p> <p>Personal independence payment;</p> <p>Attendance allowance;</p> <p>Severe disablement allowance;</p> <p>Carer's allowance;</p> <p>Disability living allowance;</p> <p>A social fund payment;</p> <p>Health in pregnancy grant;</p> <p>Child benefit;</p> <p>Housing under Part VI or VII of the Housing Act 1996 and under Part II of the Housing Act 1985 (in England) and Housing under Part II of the Housing (Wales) Act 2015 (in Wales).</p>	<p>Contribution based Jobseeker's Allowance;</p> <p>Guardian's allowance;</p> <p>Incapacity benefit;</p> <p>Contribution-based Employment and Support Allowance;</p> <p>Maternity allowance;</p> <p>Retirement pension;</p> <p>Statutory maternity pay;</p> <p>Statutory sickness pay;</p> <p>Government funded childcare for 3-4 year olds (subject to other criteria – see Welsh Government's <a href="#">Childcare Offer: Guidance for Local Authorities</a>)</p> <p>Widow's benefit and bereavement benefit;</p> <p>NHS care (this is subject to its own, separate, restrictions – see <a href="#">Access to Healthcare for Migrants in Wales</a>. Note that EEA citizens who have not applied for / been granted status under the EUSS by 30th June 2021 will be subject to the same rules as other migrants);</p> <p>State-funded schooling;</p> <p>Local authority care and support under the Care Act 2014 (in England) or the Social Services and Well-being (Wales) Act 2014 (in Wales). There are some exemptions to this – see "Social Services Support".</p>