

May 2011

Maternity rights and benefits: EU, EEA and Swiss nationals (including A8 and A2)

This is one of a series of information sheets which provide a guide to maternity rights and benefits for pregnant women and new mothers according to their immigration status. This information sheet covers:

- Employment-related maternity rights
- Benefits and tax credits
- Healthcare

Other information sheets cover rights and benefits for asylum seekers, refused (failed) asylum seekers, refugees, undocumented migrants, women with no recourse to public funds, trafficked women and UK citizens and permanent residents.

Immigration status

Nationals of the European Economic Area (EEA) or Switzerland and their family members (regardless of their nationality) are free to enter and live in the United Kingdom. Countries in the EEA are: Austria, Belgium, Bulgaria, Cyprus (Southern), Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Spain and Sweden.

EEA nationals and Swiss nationals are not considered to be 'persons subject to immigration control'.

Employment rights

Nationals of EEA states and Switzerland have the right to work in the UK, however, specific rules apply to nationals of the A8 and A2 states that recently joined the EEA.

The A8 states are: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. Up until 30th April 2011, nationals of the A8 states must register under the Workers Registration Scheme for authorisation to work if they are working in the UK for more than one month. Once they have been working in the UK for 12 months without a break they will no longer need to register and can obtain a residence permit which gives them the right to work and claim benefits. From 30th April 2011, A8 nationals can apply for work and benefits in the same way as other EU nationals. See our [information sheets for Polish workers](#).

The A2 states are: Bulgaria and Romania. Nationals of the A2 states must apply to the UK Border Agency for permission to work. Once they have been working in the UK for 12 months without a break they will also have the right to work and claim benefits.

Under EU social security co-ordination rules a person can take periods of work and contributions paid in other EEA states into account when applying for benefits in another EEA state. This applies to Maternity Allowance and contribution-related Employment and Support Allowance, see below.

Pregnant employees have the right to paid time off for antenatal care, protection from health and safety risks and the right not to be treated unfairly because of pregnancy or childbirth. Employees have the right to 52 weeks maternity leave from day one of their employment.

Statutory Maternity Pay (SMP) is paid by the employer for 39 weeks to women who meet the qualifying conditions.

Maternity Allowance (MA) is paid for 39 weeks by the Job Centre Plus to women who do not qualify for SMP.

Employment and Support Allowance (ESA) is paid at the time of the birth by the JobCentre Plus to women who do not qualify for Maternity Allowance, who have worked and paid some National Insurance contributions in the past two to three years but not recently.

Casual or agency workers have the right to health and safety protection and the right not to be treated unfairly because of pregnancy or childbirth. They will also have the right to SMP or MA if they meet the qualifying conditions.

Fathers or partners (including same sex couples) who work are entitled to two weeks paternity leave and may qualify for two weeks' Statutory Paternity Pay (SPP) or income support. Fathers or partners may also be able to take additional paternity leave if the mother returns to work early.

Public funds

Work-related benefits such as SMP, MA, SPP, contribution-related ESA and Statutory

Sick Pay are not affected by a person's immigration status and are **not** classed as public funds. See below for more information on which benefits are classed as public funds.

Going abroad

Once a woman has qualified for SMP, she can still receive it if she goes abroad either temporarily or permanently, providing she does not work for a new employer. A woman can also continue to receive Maternity Allowance and contribution-related ESA if she goes to another EU country, either temporarily or permanently, but she should check the position with the JobCentre Plus first.

Benefits

EEA nationals are eligible to apply for all benefits open to UK citizens however they must meet the residence conditions attached to some benefits.

During the first three months of residence in the UK, all EEA nationals have the right to reside and can claim child benefit and child tax credit regardless of whether or not they are working. They are not eligible for other benefits unless they are working.

After the initial three months, EEA nationals have the right to reside in the UK only if they are working, studying or a family member of someone with a right to reside. A woman who has stopped work temporarily because of pregnancy or childbirth should still be able to claim that she is a worker. If there is a dispute, she should seek legal advice.

Co-ordination of EU social security rules

EEA nationals can rely on periods of work and social security contributions paid in an EEA country to qualify for certain contributory benefits, for example, contribution-based JSA. This includes A8 and A2 nationals even if they paid contributions prior to those countries joining

the EEA. Some of the new co-ordination rules do not apply to nationals of Iceland, Leichtenstein, Norway and Switzerland.

The Sure Start Maternity Grant (SSMG) is a one off payment of £500 to buy things for a new baby. It **MUST** be claimed from the 29th week of pregnancy or within 3 months after the birth. From April 2011, the SSMG can only be claimed for the first baby. It can be claimed by a pregnant woman or her partner providing they are getting a qualifying benefit such as income support, income-based jobseekers allowance or child tax credit of at least the family element. It can also be claimed by a family member if they are receiving a qualifying benefit in respect of the mother, for example, if the mother is under 16, or under 19 and in education.

Child Benefit (CB) can be claimed by a person responsible for a child, regardless of whether the child lives with that person. The claimant must be present and ordinarily resident and have the right to reside here. Family members of EEA and Swiss nationals can claim CB, regardless of their nationality and whether or not their partner is a worker. The child must also be present and ordinarily resident here (but see below).

Child Tax Credit (CTC) can be claimed by families with children regardless of whether or not they are working. The claimant must be present and ordinarily resident and have a right to reside here. Couples must claim CTC together. EEA nationals may also qualify for Working Tax Credit if they are on a low income.

It may be possible to receive CB and CTC for children who are living in an EEA member state, including A8 and A2 states, for example, where the child is temporarily absent or is in education in an EEA state, including A8 and A2 states; or the child is living in an EEA state while the claimant is working in the UK and no child benefit is paid in that EEA state; or the child is born outside the UK during a period in which the mother could be treated as present in the UK.

Housing Benefit and Council Tax Benefit (HB/CTB) are paid to people on a low

income, regardless of whether or not they are working, who need help paying rent and/or council tax. The claimant must be habitually resident in the UK and have the right to reside here.

Income Support (IS) is paid to people on a low income who are not in full-time work. It may be claimed by single parents, a parent or partner on unpaid parental or paternity leave and a woman who is incapable of work because of pregnancy from the 29th week of pregnancy until 15 weeks after the birth. Claimants must be habitually resident in the UK and have the right to reside here.

Jobseekers Allowance (JSA) is paid to people who are unemployed or employed for less than 16 hours a week and looking for full-time work. Contribution-based JSA is paid to those who have paid sufficient NI contributions. Claimants must be habitually resident in the UK and have the right to reside to claim income-based JSA. JSA can be claimed jointly by a couple. If one of the couple is subject to immigration control a claim can still be made but will be paid at the single rate not the couple rate. EEA nationals (apart from A2 nationals and A8 nationals before 30th April 2011) looking for work have the right to reside. A2 nationals who become unemployed before completing 12 months continuous employment lose the right to reside and the right to claim benefits as a worker.

Family members who are not EEA nationals

Family members of an EEA national are generally not classed as 'persons subject to immigration control' and are not excluded from claiming any benefits. This applies whatever the nationality of the family member and rights should continue if a couple separate or divorce.

In some cases, a family member may be a 'person subject to immigration control', for example, a visitor or asylum seeker who recently married an EEA national. A 'person subject to immigration control' is a person who is not an EEA national or who requires

leave to enter or remain, or has leave to enter or remain with a public funds restriction or is subject to a formal undertaking or is appealing an immigration decision. A 'person subject to immigration control', is not entitled to Income Support, JSA, HB, CTB, Child Benefit or social fund payments unless they qualify under one of the exceptions - see footnote.

Where a couple have different immigration status, a spouse or partner who is **not** subject to immigration control, such as an EEA national, can claim Income Support and Jobseekers Allowance (JSA) for themselves, Child Benefit (regardless of the child's immigration status) and tax credits. JSA can be claimed jointly by a couple. If one of the couple is subject to immigration control a claim can still be made but will be paid at the single rate not the couple rate.

Child Tax Credits (CTC) can be claimed by families with children regardless of whether or not they are working. The claimant must be present and ordinarily resident and have a right to reside here. Where a spouse or partner is entitled to claim CTC the claim is made as a couple and treated as if the couple are not subject to immigration control. The claimant can also claim for any children, regardless of their immigration status.

Claimants should take care when claiming benefits classed as 'public funds' as some family members may be prohibited from claiming public funds and a claim would jeopardise any application for leave to remain. Benefits considered to be public funds include, amongst others, Child Benefit, CTC, Working Tax Credit, CTB, HB, Income Support, income-based JSA, income-related ESA, and Social Fund payments including the SSMG.

Couples with different immigration status will both need an NI number in order to claim benefits. It is not necessary to have the right to reside in the UK to obtain an NI but a person who does not have the right to reside will be excluded from qualifying for most benefits. See the information sheet on undocumented migrants for more on obtaining an NI number.

Healthcare

All EEA and Swiss nationals who are 'insured' are entitled to maternity care free of charge so long as they have not come to the UK specifically in order to obtain maternity care. Maternity care consists of antenatal, birth and postnatal care until 15 weeks after the birth of the child. An EU-EEA or Swiss national can demonstrate that they are 'insured' by producing a European Health Insurance Card (EHIC). Alternatively, they can show a passport or identity card which provides that they are insured in their home country/country of residence.

All EEA and Swiss nationals who are 'ordinarily resident' in the UK are entitled to free NHS care. EEA and Swiss nationals who have not lived in the UK for six months may be asked to demonstrate that they are 'settled' in the UK. For more information, see [Entitlement to free NHS maternity care for women from abroad](#).

Useful contacts

Maternity Action

www.maternityaction.org.uk

Advice on maternity benefits and rights at work for UK citizens and women from abroad – 0845 600 8533

Acas

www.acas.org.uk

Information on rights at work - 08457 474747

UK Border Agency

www.ukba.homeoffice.gov.uk

Immigration enquiry bureau - 0870 606 7766
Asylum support customer contact centre - 0845 602 1739

Child Poverty Action Group

www.cpag.org.uk

Advice on benefits and tax credits.
For advisors only - 020 7833 4627, any weekday from 2-4pm.

Citizen's Advice Bureau

www.adviceguide.org.uk

General help and advice. You can find your nearest CAB in the phone book.

Community Legal Advice

www.communitylegaladvice.org.uk

Legal advice and access to a legal adviser in your area 0845 345 4345.

Working Families

www.workingfamilies.org.uk

Advice on rights at work
Helpline 0800 013 0313.

This information sheet was produced in May 2011. It is important to get up-to-date advice.

Footnote

A person is not excluded from getting IS, income-based JSA, HB, CTB and social fund payments if they are an EEA or Swiss national; a family member of an EEA or Swiss national who is a worker; a refugee; or they have indefinite leave and are the subject of a formal undertaking that was given five or more years ago and they have been in the UK for at least five years; or they are the subject of a formal undertaking given with the past five years but the person who

gave the undertaking has died; or they have limited leave and are subject to a public funds restriction and their funds from abroad are temporarily disrupted; or they are an asylum seeker who has transitional protection.

A person is not excluded from getting Child Benefit if they are an EEA or Swiss national; a family member of an EEA or Swiss national (regardless of their nationality and whether their partner is a worker); a refugee; or they have indefinite leave and are the subject of a formal undertaking; or they are an asylum seeker or person with limited leave who has transitional protection.

Nationals from countries with social security agreements with the UK or EU are also not excluded from claiming some of these benefits – for a full list of countries see the UK Border Agency leaflet ‘No recourse to public funds’.

More Maternity Action information sheets

[Maternity rights and benefits: asylum seekers](#)

[Maternity rights and benefits: refused \(failed\) asylum seekers](#)

[Maternity rights and benefits: refugees](#)

[Maternity rights and benefits: no recourse to public funds](#)

[Maternity rights and benefits: undocumented migrants](#)

[Maternity rights and benefits: indefinite leave, right of abode and British citizenship](#)

[Maternity rights and benefits: trafficked women](#)

[Maternity rights and benefits: which information sheet to use](#)

[Pregnancy and maternity rights for Polish workers \(English language\)](#)

[Pregnancy and maternity rights for Polish workers \(Polish language\)](#)

[Rights at work for fathers and partners- Polish workers \(English language\)](#)

[Rights at work for fathers and partners – Polish workers \(Polish language\)](#)

[Entitlement to free NHS maternity care for women from abroad](#)

[Your rights at work](#) – a series of information sheets about your rights in the workplace

Available at www.maternityaction.org.uk