

May 2010

# Maternity rights and benefits: women with 'no recourse to public funds'

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 or entry conditions. 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, EU and EEA nationals (including A8 and A2) and UK citizens and permanent residents.

## Immigration status

Women who have been allowed to enter the UK for a limited period may be subject to a condition, which will be stamped in their passport, that they do not have recourse to public funds. This may be because they have entered the UK as a fiancé, spouse or civil partner, or they are the spouse or partner of a person who has entered the UK on a work permit or student visa, or they have entered the UK on a work permit or student visa.

This information sheet is only for women with a current visa. Women whose visa has expired or who entered the country illegally are undocumented migrants. Women whose asylum claim and any subsequent appeal have been refused are 'refused' or 'failed' asylum seekers. We have a separate information sheet for [undocumented migrants](#) and another information sheet for [refused \(failed\) asylum seekers](#).

A woman with no recourse to public funds will be regarded as a 'person subject to immigration control'. A 'person subject to immigration control' is a person who is not an European Economic Area (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. Family members of EEA and Swiss nationals are not 'persons subject to immigration control', whatever their nationality.

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.

Public funds include (amongst others) Child Benefit, Child Tax Credit, Working Tax

Credit, Council Tax Benefit, Housing Benefit, Health in Pregnancy Grant, Income Support, Income-based Jobseekers Allowance and Social Fund payments including the Sure Start Maternity Grant. In addition, housing allocated by a local authority or provided under homelessness legislation counts as public funds. A claim for public funds could jeopardise a woman's leave to remain or lead to an application for indefinite leave to remain being refused.

## Employment rights

EEA nationals, spouses and civil partners of EEA nationals and spouses and partners of a person on a work permit or student visa are entitled to work in the UK. Women on a marriage visa or civil partner's visa are entitled to work but women on a fiance visa are not entitled to work until a marriage visa has been granted. Women who are employed will have the following rights during pregnancy and childbirth.

**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 by the Job Centre Plus to women who do not qualify for SMP.

**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.

Work-related benefits such as SMP, MA, SPP and Statutory Sick Pay are not affected by a person's immigration status and are not classed as public funds.

## Benefits and tax credits

A woman who has no recourse to public funds is **not** entitled to the benefits listed unless she:

(a) comes within one of the exceptions below – see 'Exceptions', or

(b) has a partner who is not a 'person subject to immigration control' – see 'Family members'.

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 29<sup>th</sup> week of pregnancy or within 3 months after the birth. 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. The SSMG is classed as public funds and is not available to a 'person subject to immigration control', subject to exceptions – see below.

**Child Benefit (CB)** can be claimed by a person responsible for a child, regardless of whether the child lives with that person. CB is classed as public funds and cannot be claimed by a 'person subject to immigration control', subject to exceptions – see below. The claimant must be present and resident and have the right to reside here. The child must also be present and resident here.

**Child Tax Credit (CTC)** can be claimed by families with children regardless of whether or not they are working. CTC is classed as public funds and cannot be claimed by a 'person subject to immigration control',

subject to exceptions – see below. The claimant must be present and ordinarily resident and have a right to reside here. Couples must claim CTC together.

**Health in Pregnancy Grant (HIPG)** can be claimed for babies due on or after 6<sup>th</sup> April 2009. This is a one-off payment of £190 which can be claimed after the 25<sup>th</sup> week of pregnancy. The HIPG is classed as public funds and cannot be claimed by a 'person subject to immigration control' (subject to exceptions – see footnote). The claimant must be present and ordinarily resident and have the right to reside here.

**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. HB and CTB are public funds and cannot be claimed by a 'person subject to immigration control', subject to exceptions – see below. The claimant must be habitually resident and have the right to reside here.

**Income Support** 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 29<sup>th</sup> week of pregnancy until 15 weeks after the birth. Income Support is classed as public funds and cannot be claimed by a 'person subject to immigration control', subject to exceptions – see below. Claimants must be habitually resident and have the right to reside.

**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. Income-based JSA is means-tested and classed as public funds and cannot be claimed by a 'person subject to immigration control', subject to exceptions – see below. Claimants must be habitually resident and have the right to reside to claim income-based JSA.

## Exceptions

A woman is not excluded from getting IS, income-based JSA, HB, CTB and social fund payments if she is an EEA or Swiss national or a family member of an EEA or Swiss national who is a worker or an asylum seeker with transitional protection – see the asylum seekers' information sheet.

A woman with limited leave who is subject to a public funds restriction is not excluded from claiming IS, income-based JSA, HB, CTB and social fund payments if her funds from abroad are temporarily disrupted and she is without money. She is also not excluded if she has indefinite leave and is subject to a formal undertaking by a sponsor that she will not have recourse to public funds if she has been in the UK for at least five years or her sponsor has died. In these circumstances, she can claim urgent cases payments of IS and income-based JSA which will be paid at a reduced rate.

A woman is not excluded from the HIPG if she is an EEA or Swiss national, a family member of an EEA or Swiss national, her stay in the UK is being sponsored or she (or a family member) comes from Algeria, Morocco, San Marino, Tunisia or Turkey and is working in the UK.

A woman is not excluded from getting Child Benefit if she is an EEA or Swiss national; or a family member of an EEA or Swiss national (regardless of her nationality or whether her partner is a worker); or she has indefinite leave and is subject of a formal undertaking; or she is 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'](#).

## Family members

Where a couple have different immigration status, a spouse or partner who is **not** subject to immigration control can claim Income Support and 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.

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 always seek advice before claiming benefits classed as public funds as it could jeopardise a partner's right to remain.

## Pilot scheme for women facing domestic violence

Women without recourse to public funds are excluded from applying for income support and housing benefit which would enable them to access a place in a refuge if they are fleeing domestic violence. The UK Border Agency is currently running a pilot scheme that enables some women with no recourse to public funds, and their dependants, to access a refuge and obtain support and subsistence. A woman can apply for help if she entered the UK as a spouse, civil partner, unmarried or same sex partner and has no recourse to public funds. The scheme provides up to 40 days accommodation in a refuge. Women should obtain legal advice to apply for indefinite leave to remain under the Domestic Violence Rule.

The pilot scheme is currently running until the end of August 2010. It is being run by

Eaves Housing Project. Women should contact a refuge, call the free National Domestic Violence Helpline on 0808 2000 247 or call the Sojourner Project Duty Worker at Eaves Housing Project on 0207 840 7147.

## Healthcare

Women with no recourse to public funds are entitled to free NHS care if they can show that they have a current visa or are otherwise here lawfully, and if they meet the residency requirements. They may be asked how long they have been living in the UK. If they have been resident for less than six months, they may need to show that they are 'settled' in the UK and intend to stay here for the time being. For more information, see [Entitlement to free NHS maternity care for women from abroad](#).

## Useful contacts

### Acas

[www.acas.org.uk](http://www.acas.org.uk)

Information on rights at work - 08457 474747

### UK Border Agency

[www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

Immigration enquiry bureau - 0870 606 7766

### Child Poverty Action Group

[www.cpag.org.uk](http://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](http://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](http://www.communitylegaladvice.org.uk)

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

Health in Pregnancy Grant Helpline

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

0845 366 7885.

### Working Families

[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

Advice on maternity rights and benefits.

Helpline 0800 013 0313.

*Maternity Action is unable to provide advice on individual cases.*

*This information sheet was produced in May 2010. It is important to get up-to-date advice.*

*Charity no. 1128776*

## **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: undocumented migrants

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

Maternity rights and benefits: indefinite leave, right of abode and British citizenship

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](http://www.maternityaction.org.uk)