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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, and UK citizens and permanent residents.



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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. Nationals of the A8 states are required to register under the Workers Registration Scheme for authorisation to work if they are working in the UK for more than one month. There are a few exceptions to this (see UK Border Agency website for more information). 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.

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.

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. Some women may be able to take periods of employment in other EEA countries, including A8 and A2 countries, into account when calculating the number of weeks in which they have been employed for Maternity Allowance purposes.

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

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.

EEA nationals can rely on 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.

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. 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.

Health in Pregnancy Grant (HIPG) can be claimed for babies due on or after 6th April 2009. This is a one-off payment of £190 which can be claimed after the 25th week of pregnancy. 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. 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 A8 and A2 nationals) looking for work have the right to reside. Currently, A8 and 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, HIPG, 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, HIPG, Income Support, Income-based JSA 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.

Useful contacts

Acas

www.acas.org.uk

Information on rights at work - 08457 474747

UK Border Agency

www.bia.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.

Health in Pregnancy Grant Helpline

www.hmrc.gov.uk

0845 366 7885.

Working Families

www.workingfamilies.org.uk

Advice on maternity rights and benefits.

Helpline 0800 013 0313.

Maternity Action and Medact are unable to provide advice on individual cases.

This information sheet was produced in April 2009. It is important to get up-to-date advice.

For email updates on this information sheet, send a message to maternityrights-subscribe@yahoogroups.com

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; 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 within 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 claiming the HIPG if they are an EEA or Swiss national, a family member of an EEA or Swiss national, their stay in the UK is being sponsored or they, or a family member, come from Algeria, Morocco, San Marino, Tunisia or Turkey and are working in the UK.

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); 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'.