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

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 EU and EEA nationals (including A8 and A2).



The Grayston Centre
28 Charles Square, London N1 6HT
T: +44 (0)20 7324 4740
E: info@maternityaction.org.uk
W: www.maternityaction.org.uk
Company Reg. No. 6478568



The Grayston Centre
28 Charles Square, London N1 6HT
E: access@medact.org
W: www.medact.org
Registered Charity 1081097 Company Reg. No. 2267125

Immigration status

British citizens hold UK passports. Those with the right of abode have an unconditional right to live in the UK. All British Citizens and some Commonwealth citizens have the right of abode. Non-British citizens with the right of abode have a stamp in their passport confirming their status. Individuals, such as spouses or partners, who have been living in the UK legally for a certain period of time, usually between two and four years, can apply for permanent residency. If they qualify, they will be granted indefinite leave to remain which gives them the right to stay in the UK permanently but does not give them the right of abode.

Employment rights

British citizens, individuals with indefinite leave to remain or the right of abode have the right to work in the UK.

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

British citizens and those with the right of abode have the same rights to claim benefits and tax credits.

A person with indefinite leave to remain who is subject to a formal undertaking by a sponsor that they will not have recourse to public funds is excluded from claiming means-tested benefits for the first five years unless their sponsor dies.

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. The SSMG is classed as public funds and is not available to a 'person subject to immigration control' (subject to exceptions – see footnote).

Child Benefit (CB) can be claimed by a person responsible for a child, regardless of whether the child lives with that person. The claimant cannot be a 'person subject to immigration control' (subject to exceptions – see footnote) and must be present and

resident and have the right to reside here. The child must also be present and resident here. CB is classed as public funds.

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 footnote). 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 6th April 2009. This is a one-off payment of £190 which can be claimed after the 25th 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 cannot be claimed by a 'person subject to immigration control' (subject to exceptions – see footnote) and 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 29th 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 footnote). 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 footnote). Claimants must be habitually resident 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.

Family members who are not British citizens or permanent residents

Where a family member is considered to be a 'person subject to immigration control', they are 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. 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.

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.

However, claimants should take care when claiming benefits classed as public funds as it could jeopardise a partner's application for leave to remain. 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.

A spouse or partner admitted with limited leave, on condition that they do not have recourse to public funds, can claim urgent cases payments of IS and income-based JSA if they are temporarily without money.

Healthcare

British citizens and permanent residents are entitled to free NHS care if they meet the residency requirement. 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.

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

Immigration 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 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; 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'.