



### EEA nationals and Right to Reside

#### What does it mean and what support is available for people in emergency situations in North East Scotland

##### What does Right to Reside mean?

European Economic Area nationals require a right to reside in order to legally remain<sup>1</sup> with in another EEA country. Right to reside means that you have permission or a right to live in the UK and can also claim benefits. It is also known as **legal residence**.

EEA nationals may lose their “right to reside” in the UK and therefore no longer qualify for most benefits or housing assistance. As a result these individuals would be classed as persons from abroad and as such have no recourse to certain public funds and services.

##### What counts as a Right to Reside?

There are a number of ways you can have a right to reside.

##### **Initial Right to Reside**

Every EEA national gets an initial right to reside of 3 months during which they are required to be self-sufficient. They are typically not entitled to benefits during this time, some exceptions do apply.

##### **Jobseeker**

If this is an individual’s only right to reside they can only hold this for a period of 3 months before being subject to the Genuine Prospect of Work Assessment. As a Jobseeker individuals are only able to apply for Jobseekers Allowance (IB) and this cannot be claimed until they have resided in the UK for at least a period of 3 months. If the individual’s status is only as a Jobseeker then they will be ineligible for Housing Benefit. It is important to note that DWP can include previous periods of job seeking accrued as far back as December 2013 in determining the 3 month entitlement.

##### **Worker**

This is an individual who is in ‘Genuine and Effective’ employment. This right to reside lasts as long as they remain in employment and satisfies the right to reside requirements for all means-tested benefits.

Workers who become involuntarily unemployed may retain their worker status for a period of 6 months so long as they immediately register as a jobseeker with DWP. This will allow them entitlement to Housing Benefit and most other means tested benefits.

When an individual becomes temporarily unable to work due to illness or accident they will also retain their worker status so long as they can provide medical evidence such as a fit note.

##### **Self-Employed**

Individuals who are self-employed should be registered with HMRC and must be able to provide evidence that they are genuinely self-employed. This right to reside lasts as long as the individual remains self-employed and satisfies the right to reside requirements for all means tested benefits. As with workers they can retain this status if they become temporarily unable to work because of an illness or accident.

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<sup>1</sup> In most cases having no right to reside will not lead to deportation of an EU national.

## **Self-Sufficient**

These are individuals who have sufficient resources for themselves and any family members so as not to become a burden on the state. They must have private comprehensive sickness insurance in the UK. They are ineligible for means tested benefits.

## **Students**

Students must be enrolled in a government accredited college or university and meet the same requirements stated for those who are self-sufficient. Students are generally ineligible for means-tested benefits but in certain exceptions may be able to claim so long as they do not become an unreasonable burden on the state.

## **Permanent Right to Reside**

This can be achieved if an individual resides continuously for a period of 5 years with any of the above rights to reside. You can move between categories but should not have gaps of more than 30 days where there is no right to reside. There are means by which this can be achieved earlier in certain special circumstances such as if retirement age is reached and a person has worked in the UK for the previous year, and resided in the UK continuously for more than three years.

## **Family Members of any of the above**

Individuals that are dependents of an EEA national with one of the above rights to reside have their own right to reside as a family member - "Family member" has a specific definition in this context. An individual is classed as a family member of an EEA national if:

- They are a spouse or civil partner
- Under 21 child/grandchild/great-grandchild or spouse/civil partner of her/him
- Child, grandchild, great-grandchild or her/his spouse/civil partner and are dependent on her/him
- Parent, grandparent or great-grandparent or her/his spouse/civil partner and are dependent on her/him

## **Derivative Rights to Reside<sup>2</sup>**

- Chen Carers

Third country nationals<sup>3</sup> who are primary carers for an EEA national child residing in the UK as a self-sufficient person. Chen carers have no recourse to public funds, only lawful residence with an entitlement to work

- Ibrahim/Teixeira Carers

Third country nationals who are primary carer of non EEA national child in education in UK. One parent must have been an EEA national 'worker' at some point whilst both parent and child were residing in the UK, further the child must be in education at the time of the benefit application. This right ceases when the child reaches 18 unless presence of the carer is required in order to pursue and complete education. Individuals will have a right of residence to work and claim means tested benefits.

This is only a guide and therefore it is recommended to seek specialist advice in complex cases.

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<sup>2</sup> Important to note that periods of derived residence do not count towards 5 years residency required to claim permanent residence.

<sup>3</sup> Third country nationals in EU law are 'any person who is not a citizen of the EU within the meaning of Article 17(1) of the Treaty'

## **Right to Reside and Benefit Eligibility**

A right to reside is required in order to be eligible for the following public funds:

- Child benefit;
- Child tax credit;
- Income-related employment and support allowance;
- Housing benefit;
- Income support;
- Income-based jobseeker's allowance;
- Pension credit;
- Severe disablement allowance;
- Social fund payments;
- Universal credit; (currently unavailable to EEA jobseekers and family members)
- Working tax credit;
- Housing and homelessness assistance (due to no means to cover rental costs)

The following non-means tested benefits do not require a right to reside but hold their own eligibility requirements

- Disability Living Allowance
- Personal Independence Payment
- Carer's Allowance
- Attendance Allowance

In order to claim an individual must:

- Be present in UK
- Satisfy past presence test (Must have been present in the UK for 104 in last 156 weeks)
- Be habitually resident in common travel area

## **EEA nationals with no Right to Reside accessing public funds**

It is always worth making an application for benefits even if it is unclear if an individual has a right to reside. Make sure to always review negative decisions and look to potential rights to reside that may not have been explored in the original application. In these instances seek specialist advice to assist with appealing such decisions.

## **What an EEA national without a Right to Reside may be entitled to**

As well as applying directly to a housing association and accessing health and education services, a person without a right to reside may also be eligible to:

- Social services care packages and support
- Scottish Welfare Fund Assistance
- Student grants and loans
- Legal aid
- Certain work-related benefits including:
  - Contribution based Jobseeker's Allowance
  - Contribution based Employment and Support Allowance
  - Retirement pension
  - Widow's benefit
  - Bereavement benefit,
  - Maternity allowance, Guardian's allowance, Statutory maternity pay

## **Right to Reside and Housing Assistance**

Those who have lost their right to reside will be classed as ineligible for Local Authority mainstream allocations and homelessness assistance. There is nothing to prevent those without the right to reside from making an application and housing advice should still be offered where discussion around the right to reside should take place. Registered Social Landlords (RSL) will accept applications from those without a right to reside however an RSL will discuss rent affordability with a new tenant and will discourage an individual from starting a tenancy that is likely to fail.

It is important to note that if an individual loses their right to reside after the homelessness assessment or whilst they are in Temporary Accommodation the statutory duty owed by the Local Authority should not be withdrawn on that basis alone and rather should be based on the person's circumstances at the time of making an application. Appropriate time and consideration should be given to allow a person to regain or derive an alternative right to reside. An offer of permanent accommodation is only likely to be made when an individual has means to cover the rental costs. In such instances seek specialist advice.

## **Other important exceptions**

### **Social Care**

Those who require support by virtue of their "age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them", may be entitled to support from the local authority.

### **Children**

Children of a person with no right to reside are covered by the Children (Scotland) Act 1995. Support provided under children's legislation can extend to support for the child's family.

## **What happens if an EEA national loses their right to reside?**

It is important to note that an individual can hold multiple rights to reside and to focus on the one that will give them the greatest entitlement. Individuals can move between rights to reside and if they lose one right they may automatically move to another.

An individual who has no current right to reside can regain one again by meeting one of the conditions described above e.g. gaining employment, beginning self-employment etc. It is therefore worthwhile advising individuals in this position to seek employability assistance and contacting an appropriate advice agency who could explore if their current right to reside classification is correct.

## **National Sources of Expert Help**

**CPAG** (Child Poverty Action Group) **01415520552** [advice@cpagscotland.org.uk](mailto:advice@cpagscotland.org.uk) they provide advice on benefits, tax credits and what people's rights are. Very good to help understand legislation. Only for advisors, not clients.

**Shelter** (ScotWras, advice for advisors) **03445151310** [scotwras@shelter.org.uk](mailto:scotwras@shelter.org.uk) if service user not present and advice is needed regarding housing and homelessness rights and legislation. Only for advisors, not clients.

**Shelter** (if **client present**) **08088004444** general housing and homeless advice and rights of tenants etc. can make referrals to local Shelter Office for case to be picked up and if legal assistance required.

**Aire Centre** (for advisers) **02078314276** [info@airecentre.org](mailto:info@airecentre.org) provides free specialist legal advice on EU law on the free movement of persons, including the residence rights of EU migrant citizens and their family members and their right to access benefits; EU asylum law; and the European Convention on Human Rights.

## Sources of advice and support in North East Scotland

**Aberdeen City Council Financial Inclusion Team** - Provide advice on what benefits you may be entitled to if you have 'no recourse to public funds'. Email [moneyadvice@aberdeencity.gov.uk](mailto:moneyadvice@aberdeencity.gov.uk) or call 01224 522709.

**Aberdeen City and Aberdeenshire Councils Housing Access Services** – Provide detailed advice and assistance to secure accommodation in the private sector, advice about legality of notices, tenants' rights, landlords' responsibilities and other issues relating to the private sector. If someone is looking for advice about their housing options click on the specific authority link. [www.aberdeencity.gov.uk/housingaccess](http://www.aberdeencity.gov.uk/housingaccess) or <http://www.aberdeenshire.gov.uk/housing/>

**Aberdeen Cyrenians- Advice Information & Support Drop In Service (AIS)**- The Drop In Service provides information, advice and support to those who are homeless or at risk of homelessness. The resettlement workers are experienced in dealing with a wide variety of issues that can impact on an individual accessing or sustaining permanent accommodation. Advice is offered in various different forms and can include: Advice on housing and homelessness issues, advice on benefits, advocacy and support, assessment for food parcels and clothing, assistance with formal appeals, support to access furniture, assessment to access our Street Alternative Service and referrals to other agencies. Tel. 01224 625732 Email: [info@aberdeen-cyrenians.org](mailto:info@aberdeen-cyrenians.org) Website: [www.aberdeen-cyrenians.com](http://www.aberdeen-cyrenians.com)

**Aberdeen Cyrenians- Domestic Abuse Support & Accommodation Project (DASAP)**- Provides support to women, men and families who are experiencing domestic abuse. The main aim of this project is to support people to gain safe accommodation including: support to remain safely in their own accommodation; support to identifying alternative accommodation; and access to temporary accommodation. Aberdeen Cyrenians' DASAP workers offer a 3-month package of emotional, practical and advocacy support. This service is provided in partnership with Aberdeen City Council who provide temporary accommodation to those fleeing domestic abuse. Tel. 01224 625732 Email: [info@aberdeen-cyrenians.org](mailto:info@aberdeen-cyrenians.org) Website: [www.aberdeen-cyrenians.com](http://www.aberdeen-cyrenians.com)

**Aberdeen Cyrenians- Street Alternatives** – This service allows rough sleepers, those who are NFA or have limited access to cooking facilities to have access to shelter, food, showers, laundry, clothing and toiletries, rough sleeping equipment as well as a safe place to have mail delivered. The service runs on a Tuesday and Thursday Evening (5.30pm-8pm) and on Saturday and Sunday lunchtime (12-2pm). Access to the service is assessed at our Advice and information Drop In Service. Tel.01224 625732 Email: [info@aberdeen-cyrenians.org](mailto:info@aberdeen-cyrenians.org) Website: [www.aberdeen-cyrenians.com](http://www.aberdeen-cyrenians.com)

**Aberdeen Cyrenians- Violence Against Women Project (VAW)**- Provides support to vulnerable women of all ages who have experienced or are currently experiencing violence and abuse. This abuse may be in the form of physical, emotional, financial, sexual abuse and/or sexual exploitation. Support includes: emotional, practical and advocacy support; assessment of needs; safety planning; crisis intervention; confidence building; and referral to other relevant services. Tel. 01224 625732 Email: [info@aberdeen-cyrenians.org](mailto:info@aberdeen-cyrenians.org) Website: [www.aberdeen-cyrenians.com](http://www.aberdeen-cyrenians.com)

**Bethany Christian Trust** - Provides advice and information on housing and other issues surrounding establishing and maintaining a tenancy. We can also offer practical and emotional support. For more information call 01224 647677 or 07443111401.

**Cash in Your Pocket** - Can provide access to help and advice with financial issues for everyone, including those with NRPF. Please phone 01224 686077 to discuss. Also the directories on our website may be able help – go to <http://website.directory.ciyp.azure.flexviews.com/> and browse.

**Citizen's Advice Bureau** - Advice, information, advocacy, negotiation & representation on all subjects - money advice, benefits, employment, housing, consumer, family etc. Specialist representation in court, employment & benefit appeal tribunals. Outreach in ARI. Open to everybody. 41 Union St, Aberdeen, Phone: 0844 848 9600. Offices also in Peterhead, Westhill, Stonehaven, Turriff.

**Ethnic Minorities Law Centre** – EMLC provide specialist legal advice and representation on all aspects of Immigration, Asylum, Employment, Criminal Injuries compensation, and Discrimination law. Thanks to funding from the Big Lottery we have expanded our services across Scotland and have a dedicated solicitor for the Aberdeen City and Shire areas. We also run an advice line on Monday – Friday from 9.30am – 10.30am. Office: 0141 204 2888

**Grampian Women's Aid** - Grampian Women's Aid is a small charity that provides support to women, children and young people who have experienced domestic abuse. The service covers both Aberdeen and Aberdeenshire and provides a range of confidential services, that includes information, practical and emotional support, temporary refuge accommodation, counselling and money advice. Tel: 01224 593381 [info@grampian-womens-aid.com](mailto:info@grampian-womens-aid.com) [www.grampian-womens-aid.com](http://www.grampian-womens-aid.com)

**GREC** – GREC offers a free and confidential casework service to individuals who have been discriminated against or victimised because of one of the protected characteristics as defined by the Equality Act 2010: Age; Disability; Gender Reassignment; Marriage and Civil Partnership; Pregnancy and Maternity; Race; Religion or Belief; Sex; Sexual Orientation. The service is open to those with No Recourse to Public Funds.

**Minority Ethnic Housing Project** – Provides housing advice and assistance with applying directly to housing associations and looking for private rented properties. Call 01224 423118 or 078010 78005

**Rape and Abuse Support** - RAS provides vital support and advocacy service to survivors of rape and sexual violence, regardless of when it happened. Office: 01224 590932 Helpline: 01224 591342 [info@rasane.org.uk](mailto:info@rasane.org.uk) [www.rasane.org.uk](http://www.rasane.org.uk)

**Shelter - Aberdeen Hub** – Housing Advisers providing advice and information on housing and homelessness local authority, housing association and private rented sector tenants. Assistance with homeless and eviction cases and access to Solicitor representation in court. Contact Shelter general advice line for appointment 0808 800 4444 or via the Aberdeen Project 01224 522851 [Aberdeenproject@shelter.org.uk](mailto:Aberdeenproject@shelter.org.uk)

**Shelter Advice + Worker** – providing advice and low level support on areas including housing, homelessness, employability, benefits, money and debt and social inclusion. Contact 0344 515 2299, 07775 411894 or via the helpline number above. [Adviceplusaberdeen@shelter.org.uk](mailto:Adviceplusaberdeen@shelter.org.uk)

### **Other sources of support:**

Link to [Free Food](#) and food banks available in Aberdeen City