

OPENING DOORS

training modules



training module 3: the legalities

What this module includes:

- the legal context and how it affects your work
- rights to housing benefit and council tax benefit
- rights to homelessness assistance in England
- rights to the allocation of local authority accommodation in England
- differences between allocation of HA and LA accommodation.

[Refer to chapter 4 CIH/JRF guide. This module updates Appendix 3 of the guide]

The need for caution in giving advice

The rules regarding eligibility for welfare benefits, assistance under homelessness provisions and the allocation of local authority accommodation are complex and what follows is only a summary.

A key message is to be cautious in giving advice or making judgments about eligibility. Never make assumptions about the law as these may reflect value judgements as to what is 'fair' and will often be the wrong answer. Here are some examples of beliefs that are fairly commonly held but which **are false**:

“Housing associations are not allowed to allocate property which has been built with public subsidy to new migrants”.

“Housing associations cannot legally give a tenancy to an asylum seeker”.

“A8 nationals are only entitled to housing assistance after they have been working for one year”.

Differences in the law between local authorities and housing associations

Local authorities are part of government and subject to complex rules governing their ability to help migrants, depending on their immigration status. The rules which this module describes are those that apply in England as at 1 April 2007.

Housing associations, including those created from stock transfer, are independent from government and are not governed by the same rules. In fact they have a duty to treat all applicants equally and not discriminate against anyone because of their immigration status. To do so would open them to challenge under race relations legislation.

In practice, though, there is an overlap with the restrictions governing local authorities, in four ways:

<i>nomination agreements</i>	The ability of housing associations to consider all applicants depends on whether they have lettings which are not subject to nomination agreements (see the note to Table A). Some HAs may not have such lettings.
<i>common housing registers or lettings agreements</i>	These should not inadvertently constrain associations in the scheme to the same rules that apply to any local authority partners. Some applicants may be eligible for housing by an association who would not be eligible for council housing.
<i>housing benefit</i>	Some new migrants are not allowed to receive housing benefit, at least initially. An applicant that fulfils the letting criteria and who is able to pay the rent (for example, from wages) should be considered in the same way as any other.
<i>stock transfers</i>	Particular issues arise, especially with whole stock transfers. Associations should consider carefully how their lettings policies relate to immigration law and not simply follow the previous local authority practice.
Eligibility for assistance	<p>The tables explain eligibility in detail. Below are some introductory notes on each category of person dealt with in the tables.</p> <p>Definitions of the EEA (European Economic Area) and countries within it, including the (A8 and A2) accession states, were given in module 2.</p>
<i>British nationals, Irish Citizens, and others with a right of abode</i>	<p>British citizens have the right of abode (table B) in the UK, the Republic of Ireland, the Isle of Man and the Channel Islands (collectively known as the common travel area). British citizens are eligible for assistance if they are habitually resident in the common travel area.</p> <p>A British citizen cannot be treated as an EEA worker and so be exempt from the habitual residence test until they have worked in another EEA state.</p> <p>Certain categories of British nationality, other than British citizenship, do not give the right of abode in the UK (although almost all now do). A British or Commonwealth national who is not a British citizen but who has the right of abode will have this fact stated in their passport.</p>
<i>asylum seekers and refugees</i>	<p>Applicants seeking asylum are not entitled to assistance while their asylum claim is processed, except for that provided through the Home Office Border and Immigration Agency (BIA) – previously provided by the agency NASS (see module 2).</p> <p>Those who have received a positive decision on their claim or who have been granted permission to stay for humanitarian reasons or with discretionary leave are entitled to benefits and housing assistance.</p> <p>For those who have been refused asylum see module 6.</p>

asylum seekers, refugees and the local connection rule

In addition to the rules restricting eligibility, where a refugee applies for homelessness assistance, any period in accommodation provided by BIA counts towards establishing a local connection. A refugee may also be able to establish a local connection for other reasons (employment, for example, or having stayed with relatives).

non EEA nationals including sponsored immigrants

Most nationals from countries not in the EEA are subject to immigration control and require 'leave' to enter the UK (table B). Most applicants who are granted limited leave (ie for a fixed period) will be subject to a no 'recourse to public funds' condition (a fact that will show in their passport) and not be entitled to assistance.

Some migrants, known as sponsored immigrants (table B), are granted leave on the understanding that they will be maintained and accommodated by their sponsor (e.g. family member) for a period (usually two years) after which they get indefinite leave to remain (which is also called settled status). Where their sponsor has signed a written agreement to support them (an **undertaking**) they will not normally be entitled to assistance for a period even if they have indefinite leave to remain. The fact that they are subject to an undertaking is recorded on their passports (see table A).

Other non-EEA nationals who have a right of abode or who have settled status (table B) are entitled to assistance, subject to being habitually resident.

EEA nationals

EU citizens have rights to live and work in Britain. The European Economic Area (EEA) extends these rights to citizens of certain non-EU countries.

Restrictions on the right to live and work apply to citizens of the EU accession states (see below). All restrictions which apply to nationals of these states will be lifted after their countries have been members of the EU for five years.

In general, other EEA nationals are free to come to Britain to work without any restrictions. They can also come to Britain to live for up to three months for any reason but this right does not entitle them to claim assistance.

In certain circumstances EEA nationals who start work in the UK but whose employment is temporarily disrupted (eg unemployment or sickness) are treated as still in work and so entitled to assistance (table C).

Certain others who have worked and lived in Britain for a minimum qualifying period (which varies according to the circumstances) can acquire a right of permanent residence. EEA nationals who have lawfully resided in the UK for five years also acquire the right of permanent residence (no period of work is required). See table C.

EEA nationals who enter the UK seeking work can claim income-based jobseeker's allowance, which means they can also claim housing benefit (but are not entitled to local authority housing until after they start work).

All other economically-inactive EEA nationals (such as students) are entitled to claim assistance provided they have comprehensive medical insurance and have sufficient resources to maintain themselves and their family.

In exercising any of these rights there is also a right to bring immediate family members, including those who are not EEA citizens. EEA nationals have these rights automatically and may not have any documentation to show that they have the right to reside, permanently or otherwise. Non-EEA nationals who are family members have to apply for a residence permit within three months of arrival.

accession states

Special rules apply though to **accession states** – certain countries which joined the EU recently (but not Malta or Cyprus, which are treated the same as the rest of the EEA). As pointed out in module 2, there are two special groups of accession states. Note, however the restrictions about these groups do **not apply to the self-employed, students or people who are self-sufficient.**

A8 national workers

After completing 12 months employment in registered work, A8 nationals are entitled to assistance under the same terms as other EEA nationals whether in or out of work. Those who are not in work who would otherwise be required to register (ie those who are not exempt from registration and who have not completed their 12 month qualifying period) are not entitled to assistance.

A2 national workers

A2 nationals have more limited rights to take up paid employment. Most can only take up employment in work which is 'authorised' (see table D for exceptions). Authorised work is limited to certain occupations, and the applicant must meet certain other requirements. Applicants in authorised work or who are working but who are exempt from worker authorisation (table D) are eligible for assistance.

After completing 12 months employment in authorised work A2 nationals are entitled to assistance under the same terms as other EEA nationals, whether in or out of work. Those who are not in work who would otherwise be required to seek worker authorisation (ie those who are not exempt from worker authorisation and who have not completed their 12 month qualifying period) are not entitled to assistance.

The significance of habitual residence

Strictly speaking all applicants for assistance, including British citizens, need to prove they are habitually resident in the common travel area. The test is intended to exclude non-UK residents who may have a right to reside in the UK from being eligible for assistance immediately on their arrival in the UK – an example might be a person who has British Citizenship but who has never lived in the UK. Some people are exempt from this test including:

- EEA nationals with 'worker' status
- refugees or people granted humanitarian protection
- people granted exceptional leave

These are identified in table A where they arise.

There is no set period over which a person who has lived in the UK will acquire habitual residence although most people who have lived in the UK for at least two years will normally be assumed to have passed the test.

For guidance on how to apply this test for benefit purposes, see the *Housing Benefit Guidance Manual*, chapter C4. For homelessness and housing allocation purposes, see *Homelessness Code of Guidance*, annex 10.

Table A: Entitlement to homelessness assistance, allocation of local authority accommodation and housing benefit/council tax benefit

Status	Conditions of Eligibility
British or Irish citizen	Eligible if they are habitually resident in the common travel area.
Other British nationals	Eligible if: <ul style="list-style-type: none"> • they have leave to enter the UK and left the territory of Montserrat after 01/11/1995 due to the volcanic eruption; or • they have leave to enter the UK which is not subject to a public funds restriction and they are habitually resident in the common travel area; or • they are in the UK as a result of their deportation, expulsion or other removal from another country.
Asylum seeker	Not eligible.
Refugee	Eligible (together with their dependents) without further conditions.
Humanitarian protection, discretionary or exceptional leave	Eligible without further conditions but only if their leave is granted without the condition that there is no recourse to public funds.
Non EEA nationals (who are not in any of the classes above or below)	Eligible only if: <ul style="list-style-type: none"> • they have been granted indefinite leave and they are habitually resident in the common travel area and are not the subject of sponsorship agreement to maintain them; or • they are a sponsored immigrant subject to an undertaking and at least five years have passed since they entered the UK or the agreement was made (whichever is the later); or • they are habitually resident in the common travel area and they are subject to an undertaking but all those who signed it have since died; or • (in respect of housing benefit and council tax benefit only) they have limited leave but their funds from abroad are temporarily disrupted and there is a reasonable expectation they will resume within three months. They are entitled to HB/CTB for up to 42 days in any one period of leave.

<p>EEA nationals* (who are not in any of the classes above or below)</p>	<p>Eligible if:</p> <ul style="list-style-type: none"> • they are self-employed in the UK (including a person who is temporarily unable to work due to sickness or injury); • they are currently in paid work in the UK; • they were previously working in the UK but have retained their worker status whilst temporarily out of work (table C); • they are a retired worker who has acquired a right of permanent residence (table C); • (in respect of housing assistance and allocation only) they have lawfully resided in the UK for a continuous period of five years and are habitually resident in the common travel area; • (in respect of housing benefit and council tax benefit only) they have lawfully resided in the UK for a period of five years; • they are economically inactive (including students) and do not fall into any of the categories above but are self-sufficient and habitually resident in the common travel area.
<p>A8 nationals</p>	<p>Eligible if:</p> <ul style="list-style-type: none"> • they are self-employed in the UK (including a person who is temporarily unable to engage in their business due to sickness or injury); or • they are currently working and have previously worked in the UK for an uninterrupted period of at least 12 months whilst on the worker registration scheme; or • they are currently working whilst on the worker registration scheme or have applied to go on to it within the first 30 days of starting their job; or • they have completed an uninterrupted 12 month period of work in the UK whilst on the worker registration scheme; and <ul style="list-style-type: none"> ○ although not now working have acquired some other right to reside (eg as a worker); and ○ are habitually resident in the common travel area; • they have indefinite leave to remain in the UK which was granted before 01/05/04, and they are habitually resident in the common travel area.
<p>A2 nationals</p>	<p>Eligible if:</p> <ul style="list-style-type: none"> • they are a person who is currently self-employed in the UK; • they are a person who is working, is subject to worker authorisation, has a worker authorisation document and who is fulfilling the conditions set out in that document; • they are a person who is working who is exempt from worker authorisation (including a person who has completed 12 months authorised work); • they are a person who is exempt from worker authorisation (including a person who has completed 12 months authorised work); and <ul style="list-style-type: none"> ○ are habitually resident in the common travel area and have the right to reside in the UK; and ○ now has some right to reside in the UK (eg as a worker or former worker).

Nationals of Turkey, Croatia or Macedonia	Eligible (in respect of housing benefit or council tax benefit only) if they have been granted leave or temporary admission by the immigration authorities, which has not expired; and they are habitually resident in the common travel area.
<p>Notes on table A:</p> <p>1 Table A does not include persons who may have other transitional or preserved rights to housing or benefits arising from legislation which was in force before 1 January 2007.</p> <p>2 A person will be considered to be allocated local authority housing if they:</p> <ul style="list-style-type: none"> • are selected to be a local authority introductory or secure tenant, or • transfer from an existing secure or introductory tenancy granted before these rules were in force (this does not apply to mutual exchanges), or • are nominated by the local authority to be an assured or assured shorthold tenant of a registered social landlord (whether under a voluntary arrangement or otherwise). <p>3 Other persons entitled to housing benefit and/or council tax benefit In addition to the rules for eligibility in table A above a person will be entitled to housing benefit and/or council tax benefit (but not housing assistance or local authority allocation) regardless of their immigration status if they are in receipt of either:</p> <ul style="list-style-type: none"> • income-based jobseeker's allowance; • income support; or • state pension credit. <p>A claimant is also still entitled if they were entitled to anyone of those benefits or housing benefit or council tax benefit on the 30/04/05 and have remained entitled to at least one of those benefits since.</p>	

Table B: Glossary of selected immigration terminology

Illegal entrant	A person who enters the UK without leave and who has not been granted temporary admission.
Leave	Legal permission to be in the UK granted by the immigration authorities within the immigration rules (or in exceptional circumstances outside the immigration rules at the discretion of the Home Secretary). Leave can be for a fixed period (limited leave eg a visa) or open-ended (indefinite leave). Temporary admission is not a form of leave.
Overstayer	A person whose leave has expired and has not been renewed and for whom no appeal is pending.
Public funds	A claim for any of the following benefits or assistance: <ul style="list-style-type: none"> ○ income support; income-based jobseeker's allowance; state pension credit; housing benefit or council tax benefit (and most other non-contributory state benefits) or; ○ housing assistance provided under the homeless persons legislation.

Right of abode	A person with a right of abode is entirely free from UK immigration control. It applies to all British citizens but not necessarily other forms of British nationality. Certain citizens of Commonwealth countries also have the right of abode and can apply for a certificate to prove this (a sticker in their passport.)
Settled status	Describes when a person subject to immigration control has been granted indefinite leave to remain (ILR) in the UK by the immigration authorities. Their passport may be endorsed as such and accompanied by an authenticating stamp issued by the Home Office Immigration and Nationality Directorate, or they may have a letter confirming that indefinite leave to remain has been granted.
Sponsored immigrant	A person who has been granted leave to remain in the UK to join a family member (referred to as a 'sponsor') on the understanding that their sponsor will provide their maintenance and accommodation. This arrangement may be acknowledged by a written agreement ('undertaking') in certain circumstances.
Temporary admission	The period of grace allowed a person who has entered the UK while their application for leave or for asylum is determined. Temporary admission is not a form of leave but a person who has been granted it is 'lawfully present'.

Table C: Economically inactive EEA nationals who have the right to reside in the UK following a period of work and /or residence

Category	Conditions of eligibility
Workers temporarily unemployed or unable to work due to sickness	<p>An EEA national (including an A8 or A2 who has completed their one year qualifying period in legitimate work), who was previously working in the UK but who is temporarily out of work, will retain their worker status (and so be entitled to assistance) if they are a person who:</p> <ul style="list-style-type: none"> • is temporarily unable to work as a result of illness or accident; • is currently registered as a jobseeker; and who <ul style="list-style-type: none"> ○ was employed for one year or more before becoming unemployed; or ○ has been unemployed no more than six months; or ○ can provide evidence that they are seeking employment and have a genuine chance of being engaged; • is involuntarily unemployed and has started vocational training; • has voluntarily stopped working and has started vocational training related to their previous employment. <p>Note: in the cases above reference to voluntary or involuntary employment is determined by reference to whether the person is still genuinely in the labour market and not to the circumstances in which in which they ceased to be employed.</p>

<p>Retired workers (incapacity or old age)</p>	<p>A EEA national (including an A8 or A2 who has completed their one year qualifying period in legal work) will acquire a right of permanent residence if they are a person who:</p> <ul style="list-style-type: none"> • has retired after working (including self employment) in the UK for at least 12 months prior to reaching age 65 (60 for a woman) and they have continuously resided in the UK for more than three years; • has taken early retirement as an employee after working in the UK for at least 12 months and they have continuously resided in the UK for more than three years; • has retired from work (including self employment) after reaching age 65 (60 for a woman) and their spouse or civil partner is a UK national; • has taken early retirement as an employee and their spouse or civil partner is a UK national; • ceases working (including self-employment) as a result of permanent incapacity; and who <ul style="list-style-type: none"> ○ is entitled to UK incapacity benefit or industrial injuries benefit, or ○ has continuously resided in the UK for more than two years; or ○ has a spouse or a civil partner who is a UK national; or ○ is incapacitated as a result of a work-related injury or illness.
<p>Note 1: Where one of the conditions above requires a minimum period of work: then any period of inactivity which is due to sickness or injury; any period of unemployment during which they are registered as a jobseeker; or any other period of inactivity for 'reasons not of their making'; will be deemed to be a period of work.</p> <p>Note 2: Once acquired this right of residence is only lost after absence from the UK for a period exceeding two years.</p>	
<p>Others with a permanent right of residence</p>	<p>An EEA National (including an A8 or A2 who has completed their one year qualifying period in legal work) who has lawfully resided in the UK for a continuous period of five years. Some absences are allowed during this period.</p> <p>Note: Once acquired this right of residence is only lost after absence from the UK for a period exceeding two years.</p>

Table D: Accession state nationals who are allowed to work without restrictions

<p>A8 Nationals who are not subject to worker registration</p> <p>(a) a person who had leave to enter the UK on the 30/04/04 which was not subject to any condition restricting their employment;</p> <p>(b) a person who has legally worked in the UK for an uninterrupted period* of 12 months (whether that period started on, before or after 1 May 2004);</p> <p>(c) a person who is also a national of the UK or another EEA state, other than an A8 or A2 state (i.e. has dual nationality);</p> <p>(d) a person who is a family member** of an EEA national who has a right to reside in the UK other than an accession national who is subject to worker registration or worker authorisation who has not yet completed their one year qualifying period of work;</p> <p>(e) a person who has been posted to work in the UK by an organisation that is based in another EEA member state.</p>
<p>A2 Nationals who are not subject to worker authorisation</p> <p>(a) a person who has leave to enter the UK who is not subject to any condition restricting their employment;</p> <p>(b) a person who has legally worked in the UK for an uninterrupted period* of 12 months (whether that period started on, before or after 1 January 2007);</p> <p>(c) a person who is also a national of the UK or another EEA state, other than Bulgaria or Romania (i.e. has dual nationality);</p> <p>(d) a person whose spouse or civil partner is either a UK national or a person with settled status;</p> <p>(e) a person who is a family member** of an EEA national who has a right to reside in the UK other than an EEA national who is subject to worker authorisation;</p> <p>(f) a person who meets the Home Office criteria to enter the UK under the highly-skilled migrant programme and who holds a blue registration certificate that includes a statement that they have unrestricted access to the UK labour market;</p> <p>(g) a person who has been posted to work in the UK by an organisation that is based in another EEA member state.</p>
<p>Notes:</p> <p>* any intervening periods within the 12 months in which that person was not in work are ignored provided they do not together exceed 30 days.</p> <p>** family member includes spouse, civil partner and any direct descendents up the age of 21 and certain other relatives.</p>

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