

[Benefits and tax credits for European students]

Benefits and tax credits for European students is one of a series of Child Poverty Action Group in Scotland leaflets giving guidance to advisers who are working with people who are studying or thinking about doing a course of education. Child Poverty Action Group promotes action for the prevention and relief of poverty among children and families with children.

Benefits and tax credits for European students

Nationals from other European countries who are in Scotland have to satisfy certain tests to be eligible for social security benefits and tax credits. These rules also apply to any European nationals on a course of education, as well as the normal restrictions on students claiming benefits.

Full-time students are normally expected to rely on student funding, and can only claim benefits in particular circumstances, for example, if they are a parent, a disabled student, or a young person on a further education course who is living away from their parents because they are estranged from them or because of other difficult circumstances. As well as fitting into one of these categories, students from Europe have other tests to satisfy in order to be eligible for benefit.

A European national may be eligible for some help from the student funding bodies. Seek advice from SAAS (Student Awards Agency for Scotland) or the Scottish Funding Council (see *Further advice and information*), or your college or university.

This leaflet outlines the main restrictions and potential eligibility for benefits/tax credits for students from a member state of the European Economic Area (EEA). It is **not a full and complete guide**, and anyone from abroad should **always seek further advice** from your local citizens advice bureau or other advice agency when considering making a claim for benefit.

EEA students (and Swiss nationals)

This leaflet applies to you if you are a European national. By this we mean a national of a member state of the EEA (except the UK), or a Swiss national.

Member states of the EEA

EU states plus Iceland, Liechtenstein, and Norway.

European Union (EU)

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

Switzerland

Although Switzerland is not a member of the EEA, for benefit purposes Swiss nationals generally have the same entitlements as EEA nationals.

Accession states

There are currently some variations to the rules for the following groups:

- A8 nationals: nationals from the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia (note that the variations to the rules for A8 nationals are likely to end in May 2011)
- A2 nationals: nationals from Bulgaria and Romania

Benefits for European nationals

There are a number of conditions that a European national has to meet in order to be eligible for benefits. Most benefits require you to be present in the UK, and living here for the time being. Some also require you to have a 'right to reside', and it is this test which is most problematic for European nationals.

Benefits requiring a right to reside

Benefits in this category are income support, income-based jobseeker's allowance (JSA), income-related employment and support allowance (ESA), pension credit, housing benefit, council tax benefit, child benefit and child tax credit. To get a social fund maternity grant, you need to first get a qualifying benefit, which requires a right to reside.

If you do not have a right to reside then you are not eligible for these benefits. You may have a right to reside if you are:

- a worker;
- self-employed;
- a jobseeker;
- a student;
- a family member of someone in one of these groups or
- a parent with a child/ren in education

Each of these terms has a precise definition, which you will have to check carefully to see if it applies to you (see below).

Remember: even if you have a right to reside you still also have to be in one of the groups of students who can claim benefit (see CPAG's leaflet *Benefits and tax credits for students*).

Workers

You must be an employee. Part-time and temporary work can count but the work must be 'genuine and effective'. There is no set minimum of hours. If you are on maternity leave, you are still a worker. You may also continue to count as a worker for some time after you have stopped work, for example, if you are temporarily ill, or have lost your job but are claiming JSA. You still count as a worker if you stop work and go on to do vocational training, which must be related to that work unless you were made involuntarily unemployed.

Self-employed

You can count as self-employed whilst you are setting up your business (eg whilst you are advertising your services but have not yet generated any income). To confirm that you are self-employed you should register as self-employed with HM Revenue and Customs. You can be working either part time or full time.

Jobseekers

You are a jobseeker if you are in the UK to seek employment, and can provide evidence that you are seeking employment and have a genuine chance of being engaged. You must show that you are seeking work by claiming JSA. To get JSA you will also have to be able to show that you are habitually resident here, ie that you have taken up residence and lived here for a period.

Example

Dominique is French, and is a lone parent with a three-year-old child. She is studying part time at college. She cannot claim income support as she is not a worker, nor does she fit into any of the other groups that have a right to reside'. She should claim income-based JSA as a jobseeker, and this will passport her to full housing benefit and council tax benefit, and also mean she has a right to reside for child benefit and child tax credit.

Students

You must have sufficient resources to support yourself so as not to become a burden on the social assistance system, and you must have adequate sickness insurance. A claim for a means-tested benefit that requires you to have a right to reside is likely to fail as making a claim demonstrates that you do not have sufficient resources. It may be possible to have a right to reside for child benefit and child tax credit, but seek advice before you claim. Former workers on vocational training may still count as workers and have a right to reside (see 'Workers' section).

Family members

You may have a right to reside if you are a family member of a European national who themselves has a right to reside. Family member includes a spouse, civil partner, child under age 21 or older if they are dependent on you, and your parents if they are dependent on you. This is more limited if you/your family member's right to reside is only as a student - seek advice. In some cases having another relative or an unmarried partner who has the right to reside can give you a right to reside, but seek advice about the extra conditions to satisfy.

Example

Carmen and her husband Jose and two children are from Spain. Carmen is studying full time on a two-year course. Jose has his own business as a plumber. He has a right to reside as a self-employed person, and she has a right to reside as a family member of a self-employed person. They are eligible for child tax credit (and working tax credit) and child benefit. They are also eligible for housing benefit and council tax benefit, although Jose will have to claim this as his wife is excluded from claiming this because she is a full-time student.

Parent with child/ren in education

A child of an EU worker and their main carer have a right to reside. The child has to have lived with the parent who is an EU worker, and be in the UK education system. The main carer does not need to have ever worked in the UK, and does not need to be living with the parent who is/was a worker.

Example

Brigita has been in the UK for 2 years with her partner, and he has been in full-time work throughout this period. Their 5 year old son is at school, and Brigita is studying on an FE course. She separates from her partner. She has a right to reside as the main carer of a child in education who previously lived with an EU national parent who was a worker. She can claim income support and housing benefit, as well as child benefit and child tax credit.

A8 and A2 nationals

If you are in self-employment or you are a student, the rules are the same as for other European nationals. For other categories the rules are different, as outlined below.

Worker - you have a right to reside if you are a worker, as long as your work is registered (A8 nationals) or you are in approved work (A2 nationals). This requirement is only for the first 12 months of continuous registered/authorised employment. After that you have the same rights as other EEA nationals.

Jobseeker - until you have had 12 months of continuous employment in registered or approved work you cannot claim JSA.

Family member - unless you are self-employed, your family members cannot claim JSA until you have had 12 months of continuous employment in registered or approved work.

Example

Sasha is Polish and has recently separated from her unmarried partner. She has two pre-school children. She has been in the UK for three years and has not worked. She is on a full-time one-year further education course. She does not have a right to reside and cannot claim benefits. If she had been married to her partner, assuming he was a worker, she would have had a right to reside as his family member, even though they were separated.

When might these rules not apply?

- If you have a right of permanent residence. This may apply if you have resided in the UK in accordance with European directives for over five years, for example as a worker, and in some other limited circumstances.
- Some people who were here before 30 April 2004 and entitled to benefit continuously since then have transitional protection and do not have to meet these rules.

Other benefits

Some benefits do not require you to have a right to reside, but they have other conditions that must be met.

Non-contributory non-means-tested benefits

These include disability living allowance, attendance allowance, carer's allowance and employment and support allowance (ESA) in youth. As well as meeting the usual entitlement conditions for these benefits, you must also be in the UK, living here and have been here for at least 26 weeks out of the previous 52 weeks. Note that full-time students cannot usually claim carer's allowance; full-time students under 19 cannot usually claim ESA in youth.

Example

Dmitri is from Latvia and has mental health problems. He has been in the UK for a year, and has not worked during that time. He has started a full-time course at college, aged 19. He can claim disability living allowance and ESA in youth, if he meets the other conditions of entitlement, because he has been here for at least 26 weeks in the previous 52 weeks. A claim for housing benefit or income-related ESA is likely to be refused as he may be seen as being a 'burden on the social assistance system' (see Students above).

Contributory benefits

Contributory ESA and contribution-based JSA require you to have paid enough national insurance contributions in recent tax years. If you have worked in the UK and previously worked in another EEA country, you may be able to have contributions paid in that country taken into account.

Work-related benefits and working tax credit

This includes maternity allowance, statutory maternity pay, statutory adoption pay and statutory sick pay. These require you to have worked for a period, with earnings above a certain threshold. European national students can claim these benefits if they satisfy the qualifying conditions.

If you are working enough hours, and your income is low enough, you can claim working tax credit as long as you are in the UK and living here for the time being, and meet the other qualifying conditions.

Example

Eloise is French and in her second year of a degree course. She works 15 hours a week. Towards the end of her pregnancy, she can claim statutory maternity pay from her employer. When the baby is born, if she is still in employment, she can claim child tax credit and child benefit. This is because she has a right to reside as a worker. She may also be able to claim a social fund maternity grant, as well as housing benefit if she has rent to pay.

Further information and advice

UKCISA (UK Council for International Student Affairs)

UKCISA provides advice and information to international students studying in the UK and to staff who work with them. Go to <http://www.ukcisa.org.uk/> for more information and to download guidance notes.

Student Awards Agency for Scotland (SAAS)

For information on funding in higher education, go to www.saas.gov.uk. You can also telephone 0845 111 1711 or e-mail saas.geu@scotland.gsi.gov.uk

Scottish Funding Council

For more information on student support for further education courses at college, please contact your local college. You can also contact the Scottish Funding Council on 0131 313 6500 or e-mail info@sfc.ac.uk

Child Poverty Action Group in Scotland

0141 552 0552 advice line for advisers on benefits and tax credits

Monday, Tuesday, Wednesday and Thursday 10 am to 12 pm

This advice line is only for advisers. For help with your own benefits seek help from college/university student welfare services, or your local CAB.

E-mail: advice@cpagscotland.org.uk

e-mail advice for advisers on benefits and tax credit

Web:

for more information about

- CPAG in Scotland's Benefits for Students Project and more leaflets go to www.cpag.org.uk/scotland/studentbenefitsproject
- CPAG's *Benefits for Students in Scotland Handbook* go to <http://scottishhandbooks.cpag.org.uk>
- CPAG's *Welfare Benefits and Tax Credits Handbook*, go to www.cpag.org.uk

**CHILD
POVERTY
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GROUP**
in SCOTLAND

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