

Access to Public Funds for non-EEA nationals

This document contains caseworker guidance regarding the parts of the Immigration Rules that relate to Public Funds. The content of this document is sourced directly from the [United Kingdom Border Agency](#) and is current as at the date of publishing on Visalogic's website on 15 October 2009.

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IMMIGRATION DIRECTORATE INSTRUCTIONS

CHAPTER 1 - GENERAL PROVISIONS

SECTION 7 – PUBLIC FUNDS

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1. Introduction

This chapter is designed to give caseworkers guidance on the parts of the Immigration Rules that relate to Public Funds. The chapter will fall into two parts – definition and consideration.

1.1. Definition

1.1.1. The definition section explains the legal background to public funds. It sets out which public services and benefits constitute public funds for the purposes of the Immigration Rules. It explains what limitations they have on Persons Subject to Immigration Control in claiming public funds and the exceptions to this.

1.2. Consideration

1.2.1. This section details how caseworkers should assess public funds when dealing with an application.

1.2.2. The section notifies caseworkers of the processes they are required to take with other government departments in order to establish whether a person should be treated as having had recourse to public funds and what actions caseworkers should take if this is confirmed.

2. DEFINITION

2.1. Legislative Background

2.1.1. It is important to note that not all public services and benefits are classed, for immigration purposes, as public funds. The main legislative provisions can be found in section 3(1)(c) of the Immigration Act 1971, sections 115, 118 and 119 of the Immigration and Asylum Act 1999, Section 42 of the Tax Credits Act 2002 and Paragraph 6 of the Immigration Rules. Section 3(1)(c)(ii) of the 1971 Act provides that if a person is given limited leave to enter or remain, it may be given subject to conditions. The conditions, such as a requirement for a person to maintain himself, and any dependants of his without recourse to public funds, are set out alongside the requirements for limited leave, in a particular category in the Immigration Rules. "Public funds" is defined in paragraph 6 of the Immigration Rules. The restrictions on access to public funds is achieved through a combination of a "no recourse to public funds" provision in the Immigration Rules and the definition of a person subject to immigration control in section 115 of the 1999 Act. Sections 115, 118 and 119 of the 1999 Act and section 42 of the Tax Credits Act 2002 deal with the benefits, tax credits, housing and homelessness assistance which persons subject to immigration control are not entitled to access.

2.2. What counts as a public fund?

The following benefits count as a "public fund".

- Attendance allowance
- Carers allowance
- Child Benefit
- Child tax credit
- Council tax benefit
- Disability living allowance
- Income Related Employment & Support Allowance - ESA (IR)
- Health in Pregnancy Grant
- Housing and homelessness assistance
- Housing benefit

- Income-based Jobseeker's Allowance
- Income support
- Severe Disablement Allowance
- Social fund payment
- State pension credit
- Working tax credit

There are some exceptions where the benefits listed above, are not treated as Public Funds. The exceptions are listed at Paragraph 3.2.

2.2.1. Attendance allowance

Attendance Allowance, sometimes referred to as AA, is a tax-free benefit for people aged 65 or over who need help with personal care because they are physically or mentally disabled.

2.2.2. Carer's Allowance (previously known as Invalid Care Allowance)

Carer's Allowance is a benefit to help people who look after someone who is disabled. A person does not have to be related to, or live with, the person that they care for.

2.2.3. Child Benefit

Child Benefit is a tax-free regular payment made to anyone bringing up a child or young person. It's paid for each child that qualifies and isn't affected by income or savings, so most people bringing up a child can get it.

2.2.4. Child Tax Credit

Child Tax Credit (CTC) is a means-tested allowance for parents and carers of children or young people who are still in full-time non advanced education or approved training. A claimant does not have to be the child's parent to be eligible but they must be the main person responsible for them. Child Tax Credit can be claimed jointly as a couple but will only be paid to one member of the couple.

2.2.5. Council Tax Benefit

A person needing financial help to pay their Council Tax bill, may be able to get Council Tax Benefit. A person may be able to get Second Adult Rebate if they share their home with another adult (not partner or civil partner) who is unable to pay towards the Council Tax.

2.2.6. Disability Living Allowance

Disability Living Allowance - sometimes referred to as DLA - is a tax-free benefit for children and adults who need help with personal care or have walking difficulties because they are physically or mentally disabled.

2.2.7. Employment and Support Allowance

From October 2008 Employment and Support Allowance (ESA) - income-related ESA (IR) and contribution-based ESA (C) replaced Income Support and Incapacity Benefit for new claims where these benefits have not been paid before (no longer awarded to new claims but it can still be paid where it was payable prior to April 2001).

Where the ESA is payable as result of paid contributions, ie. ESA (C), it is **not** to be classed as public funds.

Where the ESA is payable as an income related allowance i.e. ESA (IR), it **is** classed as public funds.

2.2.8. Health in Pregnancy Grant

Health in Pregnancy Grant (HPG) is being introduced to section 115 of the Immigration and Asylum Act 1999 under the Health and Social Care Act 2008 and will be payable with effect from April 2009.

2.2.9. Housing and Homelessness Assistance

This is not a benefit, but a range of services provided by local authorities (or on behalf of local authorities) for persons in need of social housing. This could be allocation of housing either by the local authority or by an independent housing association on behalf of a local authority, or housing assistance under homelessness legislation. There are certain circumstances where housing assistance should **never** be treated as public funds. These can be found in Paragraph 3.3.

2.2.10. Housing Benefit

This is paid to a person on low income who is in need of financial help to pay all or part of their rent.

2.2.11. Income-Based Jobseeker's Allowance

A person of working age but unemployed and actively seeking work, may be able to get Jobseeker's Allowance (JSA). A person may get **Income-Based** Jobseeker's Allowance if they have not paid enough National Insurance Contributions (or only paid contributions for self-employment) and are on a low income.

(Jobseeker's Allowance payable as a result of paid contributions ie. JSA (C) is **not** classed as public funds. See Paragraph 3 for more information.)

2.2.12. Income Support

A person who cannot be available for full-time work and does not have enough money to live on, may be able to get Income Support. No new awards of this benefit were made after 27 October 2008 when the Employment & Support Allowance was introduced. Income Support will be phased out by about 2011.

2.2.13. Severe Disablement Allowance

A person may have been able to claim Severe Disablement Allowance (SDA) if before April 2001 they were unable to work for at least 28 weeks in a row because of illness or disability. It is no longer possible to make a new claim to SDA, but if the person is already receiving the allowance, they will continue to receive it and it is classed as a public fund.

2.2.14. Social Fund Payment

The Social Fund consists of several benefits –

- A Community Care Grant is a non-repayable payment awarded for the purpose of meeting a need for community care.
- A Budgeting Loan is an interest-free loan intended to help spread the cost of certain one-off expenses over a longer period.

- A Crisis Loan may be available to anyone aged 16 or over, whether or not they get any benefit, who needs help to meet expenses in an emergency or because of a disaster.
- Sure Start Maternity Grants are to help pay for things for a new baby. A Sure Start Maternity Grant is a lump sum payment which does not have to be repaid.
- Funeral Payments are to help with the necessary costs of a funeral which the applicant or partner are responsible for arranging.
- Cold Weather Payments are made to some people getting Income Support or income-based Jobseeker's Allowance, and to all people getting Pension Credit to help towards extra heating costs when there is a spell of very cold weather in the area where they live.
- Winter Fuel Payments are made to people aged 60 or over to help towards their winter heating costs.

2.2.15. State Pension Credit

Persons aged 60 or over may be entitled to Pension Credit - extra money each week on top of state pension. It is made up of two elements - the 'Guarantee Credit' element and the 'Savings Credit' element (which may be payable from age 65).

2.2.16. Working Tax Credit

Working Tax Credit is a payment to top up the earnings of low paid working people (whether employed or self-employed). A person does not need to have children to qualify.

3. What does not count as a public fund?

These include contribution based benefits such as

Contribution based Jobseeker's Allowance
Guardian's allowance
Incapacity benefit
Contributory related Employment and Support Allowance - ESA(C)
Maternity Allowance
Retirement pension
Statutory Maternity Pay
Widow's benefit and bereavement benefit

3.1. Public Services

3.1.1. National Health Service (NHS)

3.1.1.1. The Department for Health has its own regulations regarding whether or not individuals who are not ordinarily resident in the United Kingdom can receive free NHS treatment. Treatment under the NHS (paid or unpaid) does not count as public funds for the purposes of the Immigration Rules.

3.1.1.2. Proposed treatment or evidence of treatment may, however, be a basis for refusal of leave to enter or remain on other grounds in the Immigration Rules. For example, a person may be applying for leave to enter/remain in a certain category under the rules when, in fact, they are primarily here to obtain NHS treatment.

3.1.1.3. Where a person was given leave to enter or remain to have **private medical treatment** but has had NHS treatment caseworkers should investigate whether the NHS treatment was the treatment they obtained leave to have privately. If so, this may be a breach of the conditions of their stay in the United Kingdom and refusal under the general grounds may apply.

3.1.2. Local Education Authority (LEA) schooling

3.1.2.1. All children of compulsory school age are required by law to have access to education. Access to compulsory school age education does not count as public funds for the purposes of the Immigration Rules.

3.1.2.2. Similar to NHS treatment above, however, where a person was granted leave to remain as a student to study at an independent fee paying school but they have been studying at an LEA funded state school, they may have breached the conditions of their stay in the United Kingdom and refusal under the general grounds may apply.

3.2. Exceptions where public funds can be claimed.

For the most part, people subject to immigration control are not eligible for the public funds listed in section 2.2.

There are, however some common exceptions to this general rule. These are listed below.

3.3. Housing and Homelessness Assistance

3.3.1. People who qualify to receive Housing and Homelessness Assistance includes:

- Certain asylum seekers who claimed asylum prior to 3 April 2000 (and whose claim has not been determined) are eligible for housing assistance under the homelessness legislation (but not an allocation of housing).
- Similarly, the following people subject to immigration control may be granted a non-secure tenancy or licence of housing accommodation by a local housing authority (applies to England only):
 - People attending a full time course at a specified education institution (where the accommodation is let to the institution for that purpose - and would otherwise be hard to let)
 - People owed a homelessness duty
 - People owed a duty under the National Assistance Act 1948
 - A child in need (or his or her parent/carer/guardian)
 - People who are already secure tenants of the housing authority.

Also applying to Scotland and N Ireland:

- People attending a designated full time course at an educational establishment (where the accommodation is not let as a secure tenancy and would otherwise be hard to let)

3.3.2. Types of Housing assistance that is **never** treated as public funds

3.3.2.1. **Housing being received by the spouse or partner of a person subject to immigration control.**

Where a British citizen or someone settled in the UK is receiving housing from the local authority, their partner's name may be included on the tenancy agreement, even if they are subject to immigration control. In such cases, the housing is being claimed by the individual eligible, rather than the person subject to immigration control.

3.3.2.2. **Housing provided independently by housing associations.**

Housing associations are separate bodies to housing authorities. They are independent, not-for-profit organisations that exist to provide low-cost housing.

Where a person subject to immigration control presents themselves to a housing association and enters into a contract with them, without any kind of referral from the Local Authority/Housing

Authority then this is **not** to be considered recourse to public funds.

Where the housing association provides accommodation following a referral by the Local Authority or Housing Authority then this **is** to be considered as recourse to public funds.

If it is not clear whether the housing is provided through an association or local authority, it will be necessary to contact the housing provider to establish on what basis the applicant qualified.

3.3.2.3. **Housing provided by key worker housing schemes.**

Key public sector workers, such as nurses teachers and police officers, may be able to get help to buy or rent a home in London and the South East of England under the Key Worker Housing Scheme Anyone who has their housing provided under this scheme, should **not** be considered as being in receipt of Public Funds for immigration purposes. Where it is not clear on what basis the applicant is entitled to receive the provided housing, it will be necessary to contact the housing provider to seek clarification.

3.3.2.4. **Housing paid for by employers.**

For example where an NHS Trust pays for housing for international nurses, this is not considered a public fund.

3.4. Exceptions as a result of nationality, nationality of partner or current situation

The following sub-paragraphs detail common exceptions that allow a person subject to immigration control eligibility to claim public funds.

3.4.1. Money Received by Partner

A person subject to immigration control is not to be regarded as having recourse to public funds if they are the partner of someone who is in receipt of public funds which they are entitled to. Child and Working Tax Credits are claimed jointly in the case of couples. If only one member of a couple is subject to immigration control then for tax credits purposes neither are treated as being subject to immigration control.

3.4.2. Exceptions as a result of living with a family member

A person subject to immigration control who is living with a family member who is a British Citizen or national of a country in the European Economic Area (EEA), for example a child or partner, is eligible for certain public funds if they have a right to reside in the UK. A list of EEA countries and the Public Funds which nationals of those countries are entitled to claim is given below;

3.4.2.1. EEA Countries

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

3.4.2.1.1. Public Funds they are entitled to claim

- Attendance Allowance
- Carer's Allowance
- Child Benefit
- Child Tax Credits
- Working Tax Credits
- Disability Living Allowance
- Contributory related Employment and Support Allowance - ESA (C)
- Severe Disablement Allowance
- Social Fund Payment

3.4.3. Exceptions as a result of agreements between United Kingdom / European Union and a person's home country

The United Kingdom, both as an individual state and as a member of the European Union (EU), has certain obligations under bi-lateral and multi-lateral international treaties which allow a person to claim certain funds despite being subject to immigration control.

The Council of Europe: European Convention on Social and Medical Assistance (ECSMA) and the European Social Charter of 1961(ESC).

The following is a list of countries which together with the UK have ratified either or both ECSMA, and the ESC.

- Turkey
- Croatia
- Former Yugoslav Republic of Macedonia

Nationals from these countries who are lawfully present in the UK are entitled to claim:

- Income Based Jobseeker's Allowance
- Income Support

- Income Related Employment and Support Allowance
- Social Fund payment
- Housing Benefit
- Council Tax Benefit.

Association Agreements

The following list of countries have an association agreement with the European Community (EC) that provides for equal treatment in the field of social security. These are agreements concluded under Article 310(a) of the Treaty of Amsterdam amending the Treaty on European Union, the treaties establishing the EC and certain relating acts.

- Turkey Morocco
- Algeria
- Tunisia
- San Marino

Nationals from these countries **who are lawfully working in the UK** are entitled to claim:

- Attendance Allowance
- Disability Living Allowance
- Carer's Allowance
- Child Tax Credit
- Child Benefit.

Reciprocal Social Security Agreements

The following is a list of countries which have reciprocal social security agreements with the United Kingdom.

- | | |
|-------------|---------------------|
| • Barbados | • New Zealand |
| • Bermuda | • The Philippines |
| • Canada | • USA + |
| • Israel | • FYR of Macedonia* |
| • Mauritius | |

Agreements with countries shown above, generally give a person access to contributory benefits which do not fall within the definition of public funds, for immigration purposes. However, exceptions to this principle are shown in Table 1 at the end of paragraph 3.4.5.

* The agreement with FYR of Macedonia also covers Bosnia-Herzegovina, Kosovo, Montenegro and Serbia

+ The agreement with the USA also covers American Samoa, Guam, the Northern Mariana, Puerto Rico and the US Virgin Islands.

3.4.4. Given leave subject to a maintenance undertaking

An individual who was given leave to enter or remain in the UK subject to an undertaking by a sponsor to be responsible for his or her maintenance and accommodation can be eligible for the following funds:

- Attendance allowance
- Carer's Allowance

- Child Benefit
- Disability living allowance
- Health in Pregnancy Grant
- Severe disablement allowance
- Contributory related Employment and Support Allowance - ESA (C)
- Social Fund Payment

An individual who has been resident for more than 5 years, starting from the date of entry or the date of the undertaking (whichever is the later) ; or an individual who has been resident for less than 5 years, but whose sponsor has died, is eligible for the following funds in addition to the list above:

- Child tax credit
- Council tax benefit
- Housing benefit
- Income-based Jobseeker's Allowance
- Income support
- Income related Employment and Support Allowance - ESA (IR)
- Social fund payment
- Working tax credit

A maintenance undertaking is a written undertaking given by a sponsor in relation to an applicant, in pursuance of the Immigration Rules, to be responsible for that person's maintenance and accommodation. Under the Social Security Administration Act 1992, an offence is committed where sponsors persistently refuse or neglect to maintain people whom they are liable to maintain, and as a result certain income related benefits are paid to or in respect of such people. Those benefits may also be recovered from the sponsor.

A person with ILR may have been given it subject to a maintenance undertaking so these provisions may apply even when a person has leave free of conditions.

3.4.5. Temporary loss of funds from abroad

An individual subject to the "no recourse to public funds" condition who is temporarily without funds, owing to disruption of funds from abroad, is temporarily eligible for the following:

- Child tax credits
- Council tax benefit
- Housing benefit
- Income-based Jobseeker's Allowance
- Income support
- Income related Employment and Support Allowance - ESA(IR)
- Social fund payment
- Working tax credit

Tax credits will only be awarded if there is a reasonable expectation that the supply of funds will be resumed. A person who falls under this category is entitled to claim tax credits for up to 42 days in aggregate within their period of leave granted.

Table 1 – Summary of exceptions as a result of agreements between United Kingdom / European Union and a person’s home country

	Algeria	Barbados	Canada	Croatia	Israel	FYR Macedonia	Mauritius	Morocco	New Zealand	San Marino	Tunisia	Turkey
Attendance Allowance	✓	X	X	X	X	X	X	✓	X	✓	✓	✓
Carer’s Allowance	✓	X	X	X	X	X	X	✓	X	✓	✓	✓
Child Benefit	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Child Tax Credit	✓	X	X	X	X	X	X	✓	X	✓	✓	✓
Council Tax Benefit	X	X	X	✓	X	✓	X	X	X	X	X	✓
Disability Living Allowance	✓	X	X	X	X	X	X	✓	X	✓	✓	✓
Housing Benefit	X	X	X	✓	X	✓	X	X	X	X	X	✓
Income-based Jobseekers Allowance	X	X	X	✓	X	✓	X	X	X	X	X	✓
Income Related Allowance (ESA (IR) –formerly Income Support.	X	X	X	✓	X	✓	X	X	X	X	X	✓
Social Fund Payment	X	X	X	✓	X	✓	X	X	X	X	X	✓
Working Tax Credit	X	X	X	✓	X	✓	X	X	X	X	X	✓

Key = ✓ - Entitled to claim, X - Not entitled to claim

4. CONSIDERATION

The following sections instruct caseworkers on how they should proceed with cases once it has been established, that a person subject to immigration control may be in receipt of benefits that constitute “public funds”.

Receipt of public funds may impact in two different ways: firstly, it may affect a person’s application to vary leave to remain in the United Kingdom; secondly, it may affect a person’s existing leave to remain in the United Kingdom.

5. Confirming a person has had recourse to a public fund

5.1. Where it is thought a person is in receipt of public funds, either from an application form or through other investigations, caseworkers should seek confirmation from the government department or local authority that administers the fund. The particular funds, and the department that issues them are listed below:

Issuing Authority	Public Fund
Her Majesty's Revenue and Customs (HMRC)	Child Benefit Child Tax Credit Working Tax Credit
	Health in Pregnancy Grant
Department of Work and Pensions (DWP)	Attendance Allowance
	Carer's Allowance
	Disability Living Allowance
	Employment and Support Allowance
	Income-based Jobseeker's Allowance
	Income support
	Severe Disablement Allowance
	Social fund payment State pension credit
Local Authorities	Council Tax Benefit
	Housing and Homelessness Assistance
	Housing Benefit

6. Checking with HMRC

6.1. On 31 January 2008 HM Revenue and Customs (HMRC) and the UK Border Agency published a Memorandum of Understanding (MOU) in light of the new UK Borders Act 2007 which came into force on that day.

6.2. The UK Borders Act includes two important provisions -

- legislation to enable the HMRC to share information with the Secretary of State for a number of specified purposes relating to the exercise of functions under the Immigration and Nationality Acts
- legislation to enable a criminal sanction for the unlawful disclosure of information obtained from the HMRC

6.3. Purposes for which information can be shared

- administering immigration control under the Immigration Acts (as defined in s.61(2) of the UK Borders Act);
- preventing, detecting, investigating or prosecuting offences under those Acts;
- determining whether to impose, or imposing, penalties or charges on carriers (under Part II of the Immigration & Asylum Act 1999);
- determining whether to impose, or imposing, penalties or charges on employers who employ illegal migrant workers (under section 15 Immigration, Asylum and Nationality Act 2006);
- providing facilities or for the provision of facilities for accommodation or providing support to families or asylum seekers and their dependants under section 4 and Part 6 of the Immigration and Asylum Act 1999;
- determining whether a person applying to be registered or naturalised as a British citizen or British subject is of "good character" (under the British Nationality Act 1981 or the Immigration, Asylum and Nationality Act 2006);
- determining whether to deprive a person of their British citizenship (section 40 of the British Nationality Act); or
- anything else in connection with the exercise of "immigration and nationality functions" (as defined in s.40(4) of the UK Borders Act).

6.4. UKBA will usually request information from HMRC in order to determine whether an applicant meets the Immigration Rules in light of the public funds they may or may not be claiming. These requests will be made under Section 40 of the UK Borders Act. Examples of typical UKBA requests are

- Is the subject in receipt of Working Tax Credits/Child Tax Credits due to HMRC error?
- This subject is in the UK on conditions which do not permit recourse to public funds, e.g. as a student, should they be in receipt of Working Tax Credits/Child Tax Credits/Child Benefit?
- This subject has provided P60s. Can you confirm if they are genuine?

6.5. If disclosure is in accordance with the provisions of the UK Borders Act 2007 DPA should be considered also. Disclosure of information to third parties (including the UK Border Agency) for the purpose of preventing or detecting crime, apprehending or prosecuting offenders or assessing or collecting any tax, duty or imposition of a similar nature will be exempt from the non-disclosure provisions of the DPA if their application prejudices those purposes. Section 29 (3) of the Data Protection Act 1998.

7. Checking with the DWP

7.1. Caseworkers should ask the DWP to verify whether the applicant is in receipt of a particular public fund and ask them on what basis they are entitled to it (whether they meet one of the exceptions).

7.2. Disclosure of information relies on permissive legislation and therefore it is essential that any officer requesting information fully explains the reason for the request. The DWP can provide information to UKBA for immigration purposes as listed in section 20 of the Immigration & Asylum Act 1999. DWP were added to section 20 of this Act under the Immigration (Supply of Information to the Secretary of State) Order 2008.

7.3. To be able to disclose the information UKBA request, the DWP must be satisfied that UKBA require the information for an immigration purpose and for the purpose of prevention or detection of crime or the apprehension or prosecution of offenders and that failure to provide the information would substantially prejudice the investigation. With that in mind, there are four key points that need to be addressed when making a referral to the DWP.

7.3.1. State Full Details of the Offence Being Investigated

- Do not be ambiguous or treat the Immigration offence lightly.
 - Unauthorised recourse to public funds, for example, will have an impact on a person's application to remain in the United Kingdom, this means the information is very important and that fact should be explained clearly to the DWP

e.g.

- I. *I am requesting information in conjunction with the subject's application for leave to remain in the United Kingdom and a suspected Immigration Offence*
- II. *I am investigating a suspect marriage*

7.3.2 State Clearly What Information Is Required

- Make sure the request is as specific as possible.
 - Be aware that different levels of detail may require a different DWP team to deal with it and tailor the request accordingly.
 - If details of dates and level of benefits paid are required, then this must be made clear in the request.
 - Similarly, state where this level of detail is not required
- Providing details of both current and previous addresses to the DWP will assist in DWP tracing the correct benefit customer and a quicker reply to the request.

e.g.

- I. *Has the subject claimed Income Support between 1 November 2005 and 1 November 2007?*
- II. *Please confirm whether the subject has claimed benefits whilst at this address, I do not require details of dates claimed.*
- III. *Subject has provided the following addresses in their application...*
- IV. *The foreign national partner has no National Insurance Number, can you please confirm if a clerical claim for benefit is held for this subject*

7.3.3 State How the Information Will Assist With Casework Action

Include a brief explanation as to how the requested information will assist UKBA work.

Do not be ambiguous or treat the request lightly as this will increase the likelihood that the DWP will not release the information.

Include a brief explanation as to how UKBA casework action would be affected if the request for information is refused.

e.g.

- I. *This information is required in order to determine whether UKBA are able to grant the subject settlement in the United Kingdom*
- II. *This information is required in order to determine whether the application is able to be refused leave to remain in the United Kingdom*
- III.

7.3.4 Show that all other appropriate lines of enquiry have been exhausted

- The DWP is not necessarily the first, or only, port of call.
- Are UKBA likely to be able to get the information from the applicant? If not, then show the DWP why this is the case.

e.g.

- I. *The subject has withheld information – the subject has stated he/she has no recourse to benefits but their bank statements appear to show receipt of Job Seekers Allowance*
- II. *The subject has not offered information as part of their application for leave to remain*
- III. *An allegation has been received regarding the subject.*

Show how failure to provide the information will prejudice the investigation.

- Include a brief sentence to explain how not receiving the information will hinder the case.

Please remember that each case has to be considered on its merits and whilst this approach will significantly improve our ability to exchange information, it may not guarantee success.

Language to Use / Phrases to Avoid

Any words or phrases which might suggest to the DWP that the request is only required to get background information on the applicant should be avoided.

Follow the example sentences and phrases above and do not use –

- “subject could be”, “subject is possibly”, “this is potentially”
- “subject may be”, “this is a routine check”,

Avoid jargon; staff at the DWP may not be aware of the different paragraphs of the Immigration Rules and the different Immigration Acts.

Use simple straightforward language which makes clear the importance of the information being sought.

7.4. Where a person is in receipt of a public fund and it is not because of an exception or an administrative error by the DWP, then they should be considered as having recourse to public funds.

8. Checking with Local Authorities

8.1. Caseworkers are able to search for which local authority an applicant falls under by following this [link](#)

8.2. Caseworkers should contact the Local Authority to verify whether the applicant is in receipt of any of the benefits they administer (Council Tax Benefit, Housing Benefit, Homelessness Assistance) or whether they are in the receipt of social housing (either administered by them or administered on their behalf by an independent housing association)

8.3. Caseworkers should investigate whether the applicant is in receipt of that particular public fund because of an exception or because of an administrative error.

8.4. Where a person is in receipt of a public fund and it is not because of an exception or an administrative error by the Local Authority, then they should be considered as having recourse to public funds.

9. Action when assessing an application for leave to remain in the United Kingdom where the applicant has had recourse to public funds

Where it is confirmed that a person has had recourse to public funds, that they are not covered by any of the exceptions listed in paragraph [3.2](#) and it was not because of an administrative error, caseworkers should consider three points -

9.1. Does this contravene the Immigration Rules of the category under which they are applying? (the substantive rules)

9.1.1. The vast majority of categories in the immigration rules require a person to be able to maintain and accommodate themselves without having recourse to public funds. Where an applicant is in receipt of public funds then a caseworker should consider whether they would be able to maintain and accommodate themselves if they had to stop claiming those funds immediately.

9.1.2. Where it is apparent that an applicant would not be able to maintain and accommodate themselves should they stop claiming public funds then refusal should be considered under the substantive rules.

9.1.3. However, it might be clear that a person is able to maintain and accommodate themselves – they might have enough money available to them from elsewhere. Where it is apparent that an applicant would be able to maintain and accommodate themselves if they stopped claiming public funds then they should not be refused on the grounds of maintenance and accommodation. (But, they should stop claiming public funds because they are not allowed to claim them)

9.2. Have they breached the conditions of their stay?

9.2.1. A person applying for variation of leave to remain in the United Kingdom will normally have conditions attached to their stay stating they should have no recourse to public funds. Caseworkers should check what is written on the Entry Clearance Certificate, Visa, UK Residence Permit or other Immigration document to clarify this.

9.2.2. Where an applicant's immigration conditions state they should not have recourse to public funds, but investigations reveal they have, caseworkers should consider refusal under Paragraph 322(3) of the Immigration Rules on the basis that they have breached the conditions of their stay, unless such recourse is allowable under an exception or has been made in error.

9.3. Have they declared they are in receipt of public funds on the application form?

9.3.1. All prescribed application forms include a section which asks the applicant to declare whether they are in receipt of public funds. Where an applicant has not declared they are in receipt of public funds but subsequent investigations reveal they are and this information has a negative impact on the outcome of their application, then caseworkers should consider refusal under Paragraph 322(1A) on the basis that they have not declared a material fact when making their application.

9.3.2. Where an applicant has not declared they are in receipt of public funds but they are claiming those funds legitimately as a result of an exception, Paragraph 322(1A) should not be used. See the Immigration Directorate Instructions, General Grounds for Refusal, [Chapter 9 Section 4](#), paragraph 4 for further information.

10. Action when assessing an application for leave to remain in the United Kingdom where the applicant's sponsor has recourse to public funds

10.1. As above, many categories of the Immigration Rules require a person to be able to maintain and accommodate themselves without recourse to public funds. Paragraph 6A of the Immigration Rules gives guidance where an applicant is not claiming public funds themselves, but their sponsor is reliant on public funds.

10.2. An applicant should not necessarily be refused leave to enter or remain where their sponsor is reliant on public funds.

In accordance with Paragraph 6B of the Immigration Rules, where the grant of leave to enter or remain means that the amount of funds claimed by the sponsor will increase, the applicant should be refused **unless** the increased public funds are funds which the sponsor and dependant are jointly entitled to. For example, WTC or CTC under Tax Credits Regulations. Where the increased funds are received under the Tax Credits Regulations then the dependants are not to be regarded as having recourse to public funds.

e.g.

(a) British Citizen is claiming Income-Based Jobseeker's Allowance (JSA (IB))

The foreign national applies for further leave to remain in the United Kingdom as their spouse.

The amount of JSA (IB) the British Citizen receives would increase as a result of being part of a couple

Application falls for refusal on the basis that the applicant would not be able to be maintained and accommodated without recourse to public funds. Reference should be made to paragraph 6A of the Immigration Rules.

(b) British citizen is claiming Working Tax Credits (WTC).

Sponsor has sufficient funds to satisfy the Maintenance & Accommodation requirements for Entry Clearance (6A of the Immigration Rules).

Foreign national wife and children join sponsor in the UK.

After arrival the family is entitled to claim increased public funds. (Sponsor and wife are jointly entitled to claim WTC and CTC under Tax Credits Regulations.)

Dependants are not regarded as having recourse to public funds.

10.3. Caseworkers will be required to check whether the applicant has indicated on the application form that their sponsor is claiming public funds. Checks should then be made with the relevant issuing authority to confirm whether the amount of funds the sponsor would receive would increase as a result of the applicant joining them.

10.4. A person subject to immigration control is not regarded as having recourse to public funds if they are the partner of a person who is in receipt of assistance from any of the public funds to which their partner is entitled. For example, Child and Working Tax Credits are normally claimed jointly in the case of couples. If only one member of a couple is subject to immigration control, for example, if one partner is a British Citizen or has settled status in the United Kingdom, then for tax credits purposes neither are treated as being subject to immigration control. In those circumstances, Child and Working Tax credits would not normally be treated as recourse of public funds. If in doubt check with a Senior Caseworker.

11. Action when assessing a person's existing leave to remain

11.1. Where it is confirmed that a person who has existing leave to remain in the United Kingdom has had recourse to public funds then caseworkers should check whether the applicant has breached the conditions of their stay. The existing conditions of their leave to remain will be available in their passport or other immigration status document, if this is not available then caseworkers should check CID or CRS.

11.2. If a person is found to have breached the conditions of their leave to remain then consideration should be given to curtailing their leave under Paragraph 323 with reference to Paragraph 322(3) of the Immigration Rules.