

---

## Immigration status and rights and entitlements

---

A person's immigration status in the UK relates directly to what services they can or can't access. If an FNP is being released into the community either because no immigration action is being taken or on immigration bail pending possible immigration action it is important to know what their status will be on release in order to establish what services they can access.

These notes will not enable you to advise anyone about their application to enter or stay in the UK. They are designed entirely in order to enable you to advise about entitlement to housing, benefits etc.

Often, a person who has previously had a particular immigration status which gave them the right to be in the UK will have that status withdrawn by Home Office Immigration Enforcement (HOIE) once a decision of intention to deport has been made. Therefore, they would be treated as having no current permission to stay in the UK, putting them in the same position as a person who is undocumented.

In order to assist with resettlement of FNPs within the community and to clarify the rights and entitlements of those on immigration bail, below are outlined the different kinds of status a person may have and what that means in practical terms if the person is in the community.

### **“subject to immigration control”**

The definition provided in immigration law (\*Asylum and Immigration Act 1996, Section 13(2)) is that anyone who needs permission to enter or to remain in the UK is subject to immigration control. “whether or not such leave has been given”. This covers anyone who is not a UK national, or a national of a country within the European Economic Area (EEA). People from EEA countries have “freedom of movement”: they can enter the UK simply because of their nationality, unless they are barred by the UK government because they pose a risk to national security, public order or public health.

But for housing and benefits law purposes, being “not subject to immigration control” is more restrictive. The Court of Appeal in April 2006 (LB Barnet -v- Abdi [2006] EWCA Civ 383) decided that an EEA national who does not have the right to reside

in the UK is someone who requires leave to enter or remain in the UK and is therefore a person who is subject to immigration control. This has the effect of excluding people from benefits, housing waiting lists and homelessness assistance if they do not fit the rules that give the right to reside to EEA nationals because they have worked, been self employed, studied or lived in the UK as self sufficient. The complex rules on this are explained later.

A different definition of this term is used only in part VI of the Immigration and Asylum Act 1999 (the part dealing with benefits, housing and support). S115(9) defines a “person subject to immigration control” for the purposes of that part of the Act as a person who:

- Requires leave but does not have it
- Has leave subject to a condition that s/he does not have recourse to public funds
- Has leave granted subject to a maintenance undertaking
- Has leave granted only in order to enable him/her to appeal against an immigration decision.

This is the definition used in some benefits regulations.

For further information on the rights and entitlements pertaining to particular immigration statuses please refer to the Library & Resources section, ‘Release into the UK’.

## **Resettlement outside of England & Wales on licence**

It should be noted that it is possible for an FNO to resettle outside of England & Wales while on licence if they wish to do so and in some cases, if an FNO has no recourse to public funds and no support within the UK, it may be sensible for them to do so. The requirements for enabling this are contained in PI 02-2013.