

## Working, volunteering and NI numbers

This fact sheet provides information on working, volunteering and NI numbers for migrant and refugee young people in the UK.

### Those with the right to work

The right to work is linked to an individual's immigration status. Checking that someone has a right to work is important, especially given that illegally working in the UK was made a criminal offence in 2016 (see below).

Those with the right to work in the UK include individuals with the following types of status:

- British citizens
- Refugee status (and their dependants)
- Humanitarian Protection (and their dependants)
- Indefinite leave to remain (and their dependants)
- Limited leave on the basis of private or family life
- Discretionary leave
- UASC leave

Those with specific visas, such as work visas or student visas, may have some restrictions on the type and amount of work they can do. These restrictions will usually be printed on a person's biometric residence permit (BRP) or in-passport visa sticker.

EEA nationals and their family members have the right to work through their EEA rights – although this may change after the UK exits the EU. The current EEA rights still apply at time of writing. Please see our EU fact sheets for further information, available here: [www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

### Those with no leave to remain

Those with no leave to remain, including those who are appeal rights exhausted, do not have the right to work. For example, if someone is an overstayer without permission to be in the UK they are not allowed to work.

Anyone who works while not having the right or permission to do so will be committing an

immigration offence: namely that they have failed to follow a condition or restriction of their leave. Under the Immigration Act 2016, 'illegal working' is now also a criminal offence for the individual – this came into force on 12<sup>th</sup> July 2016. The criminal offence of 'illegal working' gives the Home Office the ability to seize wages as the proceeds of crime. [1]

### Asylum seekers

Asylum seekers do not have permission to work in the UK, but if someone seeking asylum has been waiting for an initial decision on their claim for longer than 12 months then they can apply for permission to work. [2] A Supreme Court judgment in 2010 found that the concession also applies to individuals who have made a fresh claim for asylum. [3]

The following criteria must apply in order for an asylum seeker to be considered for permission to work:

- the applicant must have waited more than 12 months for an initial decision by the Home Office on the asylum claim or fresh claim for asylum;
- the delay in the Home Office's decision must not have been the fault of the applicant; and
- the claim for asylum or fresh claim must be ongoing, even if it is at the appeal stage. [4]

The Home Office normally has a target of six months to determine a child's asylum claim. However, in practice the Home Office can take a long time to make decisions on applications and therefore this may affect a number of children seeking asylum, as well as young people awaiting a decision or making a fresh claim.

It is important to note that, even where an applicant is granted permission to work, asylum seekers' employment options are restricted to the jobs identified on the UK's official shortage occupation list. This list is updated relatively regularly and is available on the government website: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-k-shortage>

[occupation-list](#). Most of the occupations on the list require qualifications and high salary rates. It is therefore unlikely that many young people will be able to work even if they are given permission to work.

## **Demonstrating eligibility to work**

All children and young people granted refugee status, humanitarian protection, discretionary leave, limited leave, UASC leave or indefinite leave to remain will be given a 'Biometric Residence Permit' (BRP), which will show what status they have. A letter from the Home Office granting status could also be used to demonstrate eligibility to work if the BRP has been lost and a replacement is being sought, although the Home Office states that this does not constitute proof of status. [5]

As part of the process of applying for further leave to remain, the applicant must submit their original status document. This means they will not be immediately able to show their right to work to a current or future employer, and proving their eligibility to work can often be problematic. If a solicitor or immigration adviser has assisted the young person to make a further leave to remain application or an application to vary their leave, the young person can request that they provide a headed letter confirming that an in-time, valid application has been made and this could be used as further evidence of eligibility to work. Additional evidence could take the form of a certified copy of the BRP (a copy of the BRP signed, usually by the solicitor or immigration adviser, to say it is a true copy).

If a person needs to explain that they have a continuing right to work but is not able to get one of the alternate forms of proof above (or if this proof is not accepted), they may find our template letter for explaining section 3C leave helpful. This is available at:  
<https://www.childrenslegalcentre.com/resources/3c-leave-template-letter/>.

If an employer is looking to recruit an individual who has made an application for further leave to remain, they can contact the employer checking service (ECS) to confirm their continuing entitlement to work at <https://www.gov.uk/employee-immigration-employment-status>. The ECS will clarify that the employee or potential employee has the right to work at the point of recruitment and that this entitlement can continue until a conclusive decision has been made. The Home Office will send the employer a 'positive verification notice' to confirm that the

applicant has the right to work. The employer must keep this document. Depending on the type of leave or when the leave expires, further checks will normally be required.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638349/Employer\\_s\\_guide\\_to\\_right\\_to\\_work\\_checks\\_-August\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/638349/Employer_s_guide_to_right_to_work_checks_-August_2017.pdf)

However, sometimes delays in applying for further leave to remain and being registered on the Home Office's database do occur. Practice shows that employers have been misinformed or have received the wrong information about a person's right to work. If the Home Office cannot confirm that a young person has made an application for further leave, evidence from a legal representative may need to be sought.

## **Voluntary work & volunteering**

The Home Office distinguishes between voluntary work and volunteering. Volunteers are not workers for the purposes of the national minimum wage. Voluntary workers are still defined as workers, but they are exempt from being paid the national minimum wage, so they can give their time for free to charitable or public-sector organisations.

Those with valid leave in the UK can undertake voluntary work, but voluntary work cannot be undertaken by asylum seekers or failed asylum seekers awaiting the outcome of an application for asylum or further submissions, unless they have been granted permission to work.

Asylum seekers and individuals who are appeal rights exhausted, or have no valid leave, are allowed to volunteer without obtaining permission to work, as long as the activity is 'genuinely voluntary' (i.e. the activity is not replacing a paid worker). The unpaid work must therefore be carried out 'on behalf of a charity, voluntary organisation or body that raises funds for either'. The Home Office guidance notes that:

- there should be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance at a set rate);
- there should be no contractual obligations on the volunteer;
- the volunteer is helping a registered voluntary or charitable organisation (or organisation that

raises funds for either);

- the volunteering is for a public sector organisation; and
- the volunteering is not a substitute for employment (i.e. fulfilling a role that a salaried worker would normally fulfil).

While one part of the Home Office guidance states that 'volunteering should not undermine the effective removal of those who do not need protection' there is no legal power to stop failed asylum seekers from volunteering. [6]

## Vocational training

Refugees, those with humanitarian protection and young people with limited leave to remain or indefinite leave to remain are entitled to apply for vocational training because they have the right to work in the UK. Asylum seekers and those whose asylum claims have been refused, unless they have permission to work, are restricted to vocational training that does not involve employment (whether paid or unpaid).

The Home Office has stated that asylum seekers can do vocational training where it is part of a college course. It cannot be work-based, where the training is part of a job. Any work placement that is part of a college course must be unpaid.

## National Insurance Numbers

Every person over the age of 16 who wishes to work or claim benefits, and has the immigration status that allows them to do so, must obtain a National Insurance number (NINO). This includes separated or unaccompanied young people who have been granted refugee status, humanitarian protection, limited leave, discretionary leave, UASC leave or indefinite leave to remain. In addition, asylum seekers who receive permission to work because they have been waiting for an initial decision on their asylum claim for over 12 months will need to be issued with a NINO.

When a child seeks asylum in the UK, the Home Office will normally fill out an application for a NINO at the substantive interview if the child is 16 or over. This is submitted in the event of a child being granted a form of status that confers a right to work.

For looked after children, whether seeking asylum or not, an application for a NINO can be made through their social worker on their behalf. This includes young people in or leaving care up to the age of 20. [7]

## NOTES

- [1] Home Office, Illegal working factsheet, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/537205/Immigration Act - Part 1 - Illegal Working.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537205/Immigration_Act_-_Part_1_-_Illegal_Working.pdf)
- [2] Council Directive 2003/9/EC, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:En:PDF>
- [3] *R (on the application of ZO (Somalia) and others) (Respondents) v Secretary of State for the Home Department* [2010] UKSC 36
- [4] Home Office, Permission to work and volunteering for asylum seekers, January 2017, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583192/Permission-to-work-v7.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583192/Permission-to-work-v7.pdf)
- [5] Home Office, An employer's guide to acceptable right to work documents, May 2015, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf)
- [6] Home Office, Permission to work and volunteering for asylum seekers, January 2017, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/583192/Permission-to-work-v7.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583192/Permission-to-work-v7.pdf)
- [7] HM Revenues & Customs, Apply for a National Insurance number for a looked after child, August 2014 <https://www.gov.uk/guidance/national-insurance-number-applying-for-a-number-for-a-looked-after-child>

**This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.**

**For further assistance contact our advice line by emailing [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk).**