

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

Zoe Harper, ILPA Legal Officer zoe.harper@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

18 April 2017

BREXIT

2. EEA and Swiss nationals and their family members

This information sheet explains who may benefit from rights of residence under European Union (EU) law and who may qualify for a right of residence as their family member.

Who may benefit from a right of residence under EU law?

People who may have rights of residence under EU law include:

- **Nationals of countries in the EU:**
Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden (for British citizens see below);
- **Nationals of other countries in the European Economic Area (EEA):**
Iceland, Liechtenstein and Norway;
- **Nationals of Switzerland**, who are treated like EU citizens for the purposes of free movement; and
- **British Citizens** who may benefit from rights of residence in other EU countries. They cannot normally rely on their EU citizenship rights whilst in the UK but they may do so if they return to the UK after exercising EU law rights in another EU country and wish to be joined in the UK by the family members they lived within the EU. This is known as the 'Surinder Singh route' after the name of the legal case that confirmed this right.

Croatia was the latest country to join the EU in 2013. There are currently special restrictions, permitted by EU law on the work Croatian nationals can do in the UK under these provisions and different forms for applying for relevant residence documents.

What is the EU?

The EU is a political and economic union of 28 member States aimed at promoting economic cooperation, human rights and equality through its collectively agreed laws, democratic institutions and internal (single) market.

What is the EEA?

The EEA brings together EU member states and three other countries under an agreement enabling the three states to participate in the internal (single) market if they comply with relevant EU legislation, including on the free movement of goods, services, capital and people.

What about Switzerland?

Switzerland is not in the EU or the EEA but is part of the single market and follows its rules and other EU legislation under separate agreements.

What residence rights do EEA and Swiss nationals have in the UK?

EEA and Swiss nationals have an initial right of residence in the UK for a period of three months without restrictions. They may then gain a right of residence in the UK if they undertake activity as a worker, self-employed person, student or self-sufficient person. These activities are known as 'exercising Treaty rights' as they are rights of free movement protected under the EU treaties. Other rights associated with the right to reside include the right to be accompanied by certain family members and protection from discrimination. People who have exercised Treaty rights for a continuous period of five years in the UK will acquire permanent residence, though there are circumstances in which this may be acquired sooner.

Who has residence rights as a family member of an EEA or Swiss national?

EEA and Swiss nationals with a right of residence (including the initial right of residence) have a right to be accompanied by their **family members**, defined as:

- the EEA/Swiss national's spouse or civil partner;
- the children, grandchildren or great grandchildren (including stepchildren and children adopted under recognised provisions) of the EEA/Swiss national or their spouse/civil partner where they are either under the age of 21 years or are dependent on them;
- the parents or grandparents of the EEA/Swiss national or their spouse/civil partner where they are dependent on them.

Students have a more limited right to be accompanied by family members after their initial three-month period of residence and may only be accompanied by their spouse or civil partner, their dependent children and the dependent children of their spouse or civil partner.

The Home Office may describe the EEA/Swiss national with the right to be accompanied by their family members as the 'sponsor' of those family members even though only students and self-sufficient persons need to have sufficient financial resources to support their family.

Family members may be EEA/Swiss nationals themselves or they may be from a country from outside the EEA. Family members who are EEA/Swiss nationals may have their own right to reside if they are exercising Treaty rights, and may gain permanent residence in the UK either through their own activities or through their family relationship with a qualifying person.

Who may be recognised as an extended family member?

Under EU law, the UK has a duty to examine the relevant circumstances and 'facilitate' residence for **other family members (known in the UK as 'extended family members')**:

- other relatives, not listed above who are dependents of the EEA or Swiss national or members of their household;
- other relatives of the EEA or Swiss national who require their personal care because of serious health issues;
- an unmarried partner in a durable relationship with the EEA or Swiss national.

The UK has some freedom to decide how it applies these provisions. People need to apply for recognition as an extended family member by making an application to the Home Office for an EEA family permit. The Home Office considers applications for adult relatives of the EEA or Swiss national in line with equivalent provisions in the immigration rules for family members joining a British or settled person in the UK, which have restrictive requirements. Its guidance on unmarried partners in a durable relationship states that it normally considers a durable relationship of unmarried partners to be one where there is evidence of the relationship having lasted two or more years (for example through evidence of cohabitation, joint finances or other evidence), although other circumstances demonstrating a subsisting and durable relationship (for example having children together) may be considered. Once a person is recognised as an extended family member, they have the same rights of residence in the UK as family members generally.

Retained rights of residence for family members

A person may continue to be recognised as the spouse or civil partner of an EEA/Swiss national exercising Treaty rights in the UK, even if they are separated or divorcing, until a 'decree absolute' is issued finally ending the marriage or civil partnership. Separate provisions on 'retained rights of residence' allow family members to continue a right of residence in certain circumstances following the death of the family member, divorce or domestic violence.