

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](http://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](http://www.ilpa.org.uk/infoservice.html)

Zoe Harper, ILPA Legal Officer [zoe.harper@ilpa.org.uk](mailto:zoe.harper@ilpa.org.uk)

Immigration Law Practitioners' Association [www.ilpa.org.uk](http://www.ilpa.org.uk) 020-7251 8383 (t) 020-7251 8384 (f)



18 April 2017

## 5. EU rights of residence as a student

This information sheet explains how nationals of European Economic Area (EEA) countries and of Switzerland gain the right to reside in the UK as a student under European Union (EU) law.

### EU rights of residence

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 are a 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. Those 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 qualifies for a right of residence as a student?

In order to gain a right of residence in the UK as a student, an EEA or Swiss national must be enrolled at a recognised public or private educational institution to follow a course of study or vocational training in the UK. They must also have comprehensive sickness insurance cover and sufficient resources for themselves and their family members without needing to access welfare assistance in the UK. Students have more limited rights to be accompanied by family members after their initial three month residence in the UK than others exercising Treaty rights. They may only be accompanied by their spouse or civil partner, their dependent children and the dependent children of their spouse or civil partner, not by parents.

### Can students qualify for a right of residence as a worker?

Students may qualify for a right of residence as a worker or self-employed person if they work in 'genuine and effective' economic activity that is not so small scale as to be marginal. This may include part-time work. People undertaking vocational training after having worked or been self-employed in the UK may have retained their status as a worker or self-employed person in certain circumstances. This is advantageous as workers and self-employed people have greater rights, including the right to be accompanied by a wider range of family members, and do not need to have comprehensive sickness insurance cover or sufficient resources to support themselves. See ILPA's information sheets on EU rights of residence as a worker or self-employed person. A student who is a family member of an EEA or Swiss national exercising Treaty rights in the UK may have acquired residence rights on the basis of that relationship. ILPA's information sheet on family members explains further.

### What kind of studies must students undertake?

There is no fixed definition of 'a course of study' and this can be interpreted widely to include attendance at school, attendance at a public or private college, attendance at university and other types of formal studies. Vocational training is specifically included within the definition.

### **What level of resources must students have to support themselves?**

Students must have sufficient resources to support themselves and their family members without needing to access welfare assistance in the UK. Under EU law, the UK may not set a fixed minimum level of income or savings that students need in order to meet this requirement because the personal situation of each individual must be considered. For example, a person might receive full board and lodging during term time and so need less money to support themselves. In addition, students may not be required to have an amount of money that is higher than the basic social security threshold, that is, the level of income that a person may receive in welfare benefits.

### **What is comprehensive sickness insurance cover?**

EU law requires students to have comprehensive sickness insurance cover to qualify for a right of residence. This requirement is applied to students in the UK but has only been applied to their family members since 22 June 2015 who therefore do not need to have had insurance cover before that date. Many people are unaware of this requirement because EEA and Swiss nationals have an unrestricted right to use the National Health Service (NHS) in the UK and may never have been asked for proof of insurance cover. It is the Home Office position that the right to use the NHS does not count as comprehensive sickness insurance and this has so far been upheld by the courts.

### **How can students obtain comprehensive sickness insurance cover?**

Many students can satisfy the requirement if they hold a European Health Insurance Card (EHIC) from their home State, which provides cover for EEA and Swiss nationals staying in the UK on a temporary basis. The Home Office may seek a 'statement of intent' confirming that they are in the UK on a temporary basis if a European Health Insurance Card is submitted as proof of comprehensive sickness insurance when applying for a residence documents. At the same time, however, Home Office guidance provides that it is acceptable to submit evidence of five years of relying on a European Health Insurance Card to prove five years of living in the UK as a qualified person when applying for a document to evidence a right of permanent residence. ILPA's information sheet on comprehensive sickness insurance cover discusses other options, for example for students who do not have a European Health Insurance Card because they intend to stay in the UK permanently.

### **How do EU students apply for residence documentation?**

There is no requirement to apply for residence documents as the right of residence is acquired automatically through exercising Treaty rights but they can help prove that a person has the right to reside in the UK, which may, although we cannot be sure, become more important in the context of Brexit.

EEA and Swiss nationals may apply for a registration certificate to confirm their right of residence using paper form EEA (QP) with separate forms for their family members. Applications for permanent residence documents are made on form EEA (PR). An online application process is available for these applications except for students who are financially responsible for dependents or who are dependent on a family member for financial support who must use the paper form. The online process allows the use of a local authority service for checking passports so that these can be retained by the student and their family while the application is considered. The application must be accompanied by a fee of £65 for each person, their passport or identity card, proof of the family relationship (where accompanied by family members), evidence of enrolment at an educational establishment, of comprehensive sickness insurance cover and a declaration that they have sufficient resources for themselves or their family members. More detailed information is available in the resource below.

### **Further information**

*EU rights guide. Students: guide to making an application in the UK*, by Colin Yeo (barrister): <https://www.freemovement.org.uk/free-ebook-application-guides-for-eu-citizens/>

All ILPA's Brexit information sheets are available at: <http://www.ilpa.org.uk/pages/brexit-information.html>