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BREXIT

6. EU rights of residence as a self-sufficient person

This information sheet explains how citizens from European Economic Area (EEA) countries and from Switzerland gain the right to reside in the UK as a self-sufficient person under European (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 self-sufficient person?

In order to gain a right of residence in the UK as a self-sufficient person, EEA/Swiss national must have sufficient resources for themselves and their family members not to be a burden on the social assistance system in the UK. They must also have comprehensive sickness insurance cover.

Who might be a self-sufficient person?

A self-sufficient person has enough resources for themselves and their family members without needing to access welfare benefits in the UK. There are no requirements in EU law about where the citizen's resources should come from. A self-sufficient person may therefore be someone who has income or savings of their own, for example someone who has income from investments or a rental property abroad or a retired person receiving a pension from another EU country. Self-sufficient people would also include EEA/Swiss national who are supported by a spouse, partner or other family member. For example, an EEA/Swiss national who is supported by their British citizen husband or wife could qualify for a right of residence (and subsequently) permanent residence) under EU law as a self-sufficient person provided that they also hold comprehensive sickness insurance cover.

What level of resources must self-sufficient people have to support themselves?

Self-sufficient persons 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 they need to have in order to meet this requirement because the personal situation of each individual must be considered. Self-sufficient persons are not required to have an amount of money that is higher than the basic social security threshold, that is, the level of income that a British national may receive in welfare benefits, taking into account all the benefits to which they may be entitled such as housing benefit, free school meals etc.

What is comprehensive sickness insurance cover and how is it obtained?

EU law requires self-sufficient people to have comprehensive sickness insurance cover in order to qualify for a right of residence. The question that has been disputed in the UK is whether the unrestricted right of EU citizens to use the National Health Service (NHS) in the UK qualifies as having comprehensive sickness insurance cover. It is the Home Office position that access to the NHS does not count as comprehensive sickness cover and this has so far been upheld by the courts. ILPA's information sheet on comprehensive sickness insurance cover explains how this may be obtained.

What can people do if they do not qualify?

People may not qualify for a right of residence as a self-sufficient person if they do not have comprehensive sickness insurance cover. Many people will be in this situation because EEA and Swiss nationals living in the UK are entitled to NHS health care in the UK and may never have been asked for insurance or known that it was necessary for their right of residence. People are concerned about how this may affect their rights in the UK after the UK has formally withdrawn from the EU when the negotiations on Brexit have finally concluded.

The status and entitlements of EEA and Swiss nationals in the UK will be determined through a political agreement following negotiations between the UK and the EU. Their rights of residence will be an issue that the EU will prioritise in the negotiations. Whilst self-sufficient persons without comprehensive sickness insurance cover may decide to wait and see whether they will be protected in any settlement and lobby the government in support of this, it may be advisable to consider other routes to acquiring rights of residence in the meantime, for example by undertaking sufficient part-time work or self-employment to qualify for a right of residence as a worker or self-employed person.

EU citizens are also eligible to apply for leave to remain under the normal provisions of the immigration rules, but these applications have detailed requirements and are significantly more expensive than applications made under EU law. EEA and Swiss nationals considering making such applications are strongly advised to get legal advice.

How do self-sufficient people 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 do not know for sure, become more important in the context of Brexit.

Most EEA and Swiss nationals may use an online application process to apply for a registration certificate to confirm their right of residence or to apply for a document certifying their permanent residence. The online process allows the use of a local authority service for checking passports so that these can be retained while the application is considered. Otherwise, people may complete paper form EEA (QP) to apply for a registration certificate, with separate forms for their family members. Applications for permanent residence documents may be made on paper using form EEA (PR).

The application must be accompanied by a fee of £65 for each person in the application, their passport or identity card, proof of the family relationship (where accompanied by family members), and evidence of the financial resources available to the individual and where these are from. A more detailed discussion of the requirements is available in the resource below.

Further information

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