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BREXIT

18 April 2017

7. Comprehensive sickness insurance

This information sheet explains who needs to hold comprehensive sickness insurance cover to qualify under European Union (EU) law for a right of residence in the UK and how this requirement can be met.

Rights of free movement under European Union law

People exercising rights of free movement under European Union (EU) law beyond an initial three months are known as qualified persons. Qualified persons can be workers (employees); self-employed; students or self-sufficient. An example of a self-sufficient person would be a European Economic Area (EEA) or Swiss national husband or wife of a British citizen who is not working but relies on the earnings of the British citizen. After five years exercising rights as a qualified person (shorter in some cases) rights of permanent residence are acquired. Qualified persons and those with permanent residence can apply to the Home Office for documents as evidence that they are exercising rights of free movement and/or that they are permanent residents.

A number of people who have applied for documents to evidence their permanent residence have been told that they do not have rights of permanent residence and have not, as they had thought, been exercising rights of free movement because they do not hold 'comprehensive sickness insurance'.

Who must have comprehensive sickness insurance?

Students and self-sufficient persons must hold comprehensive sickness insurance cover to be qualified persons. So must their family members, although this was only made a requirement for family members of students from 22 June 2015 and they need not have held comprehensive sickness insurance before that date. Workers and the self-employed do not require such insurance.

What does the requirement to hold comprehensive sickness insurance mean?

The Home Office has said that a person's right to use the National Health Service does not, without more, satisfy the requirement to hold comprehensive sickness insurance cover. While the European Commission does not agree with the Home Office's interpretation of European Union law on comprehensive sickness insurance, the Court of Appeal agreed with the Home Office in the case of *Ahmad v Secretary of State for the Home Department* [2014] EWCA Civ 988 (16 July 2014) and said that being entitled to use the National Health Service is not enough.

How can a person satisfy the requirement to hold comprehensive sickness insurance?

Private health insurance

A person can obtain private health insurance, but this cannot be backdated, so a person starts to be a qualified person once they get the insurance, not before. Home Office guidance says that this will satisfy the requirement to be comprehensive if it covers "the majority of

medical treatment” a person may receive in the UK. Most insurance does not cover pre-existing medical conditions and in the case of *Tzur v Secretary of State for the Home Department*, UKUT, IA/10402/2015, 16 September 2015 (unreported), the Upper Tribunal judge said that it would not be proportionate to require a person to obtain insurance that it is in practice impossible to obtain. The Home Office conceded the case, confirming that it is not its policy to require the impossible: sickness insurance that covers pre-existing conditions. It is also relevant if a person has evidence that they have no pre-existing conditions so that a policy that says that it does not cover pre-existing conditions will nonetheless cover them.

European Health Insurance cards

A national of a member State of the European Economic Area or of Switzerland can obtain a European Health Insurance Card from their home State which will cover them for health care in another member State in which they are staying on a temporary basis: for example as a tourist, or as a student. To be used in the UK, a card must be issued by a member State other than the UK. This will be the way in which most students satisfy the requirement.

A person, for example a student, may have spent five years in the UK on a temporary basis before deciding to make the UK their permanent home. The Home Office may ask a qualified person such as a student to submit a ‘statement of intent’ confirming that they are in the UK on a temporary basis when they submit a European Health Insurance Card as proof of comprehensive sickness insurance when applying for a registration certificate to evidence that they are a qualified person. Nonetheless, 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.

Reciprocal Health Care arrangements

In the case of *Ahmad* the Home Office conceded that if a national of a European Economic Area State or Switzerland, or the family member of such a national could show that reciprocal arrangements between their home State and the UK mean that the UK can recover the costs of any health care provided in the UK from the home State, this would meet the requirement for comprehensive sickness insurance. No evidence had been provided in the case that Mr Ahmad was in this position and therefore the concession did not help him. It will not help everybody because in very many cases where a person is now living in the UK, as opposed to visiting temporarily, the home State will not cover the costs of health care. Many States attach residence requirements to covering health care costs in other countries. There are, however, States in which the right to health care is a constitutional right, and not linked to residence. In addition, circumstances in which a State will cover health care costs include for its pensioners who receive only a pension from the other EEA State (or Switzerland) and do not receive any UK pension.

Practicalities

European forms S1 (for those who do not live in the country where their health care is covered), S2 (for those authorised to received planned treatment in another State or S3 (for those entitled to health care in an EEA country or Switzerland in which they have been employed, can be obtained from the home State (or State of former employment), completed, translated and sent to the overseas healthcare team in the Department of Work and Pensions (Durham House, Washington, Tyne and Wear, NE38 7SF). The forms may be obtained retrospectively to provide cover for previous residence in the UK. EU law does not insist on the forms and other evidence, such as expert evidence from a lawyer in the home State, may be used instead. The Court of Appeal in *Ahmad* held that it is for the applicant to provide the information; the Home Office is not obliged to make its own enquiries.

Further information

Free ebook application guides for EU citizens, by Colin Yeo (Barrister, Garden Court Chambers): <https://www.freemovement.org.uk/free-ebook-application-guides-for-eu-citizens/>