

THE RIGHTS OF EU NATIONALS IN THE UK



The Greens | EFA
in the European Parliament

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Under EU law, any EU citizen can enter and live freely in any other EU Member State. Many EU citizens have chosen to make the UK their home: it is estimated that there are 3.5 million (non-UK) EU citizens currently living in the United Kingdom.

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WHAT IS AN EU LAW RIGHT OF RESIDENCE?

The EU law right of residence is slightly different to the right to enter and live in another Member State. A person with a right of residence has additional rights, such as:

- **Being accompanied by certain family members even if the family members are from outside the EU**
- **Entitlement to equal treatment for welfare benefits such as Jobseeker's Allowance and Housing Benefit**
- **After five continuous years, automatically acquiring a right of permanent residence**

Until the UK formally leaves the European Union (Brexit), EU nationals can continue to enter and live in the UK without a formal right of residence. After Brexit, it is expected that EU citizens with rights of residence and permanent residence will retain their rights, but it is not yet known what rules, if any, will apply to other EU citizens without a formal right of residence.

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WHO HAS A FORMAL RIGHT OF RESIDENCE IN EU LAW?

The formal right of residence is acquired automatically if the EU citizen engages in certain activities:

- **Employment**
- **Self employment**
- **Studies**
(if in possession of comprehensive sickness insurance)
- **Self sufficiency**
(if in possession of comprehensive sickness insurance)

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WHAT COUNTS AS EMPLOYMENT?

A worker is a person in employment, which is a person who is paid for work undertaken under the supervision and direction of another. Part time work and low paid work both count as work in EU law, although not if the earnings drop below a certain level. Zero hours contracts can also count, as can periodic or seasonal work.

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WHAT COUNTS AS SELF EMPLOYMENT?

It is not always easy to tell the difference between employment and self employment, but both confer a right of residence so it does not really matter. A person who is registered as self employed and who undertakes contract work is self employed, for example. As with workers, part time working and low earnings are not necessarily a problem, maternity leave is allowed for and the status can be retained in some circumstances. It can be more difficult to prove self employment, though.

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WHAT COUNTS AS STUDIES?

Study at school, college or university counts as studies in EU law. However, the student must also have comprehensive sickness insurance to have a formal EU law right of residence.

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WHAT COUNTS AS SELF SUFFICIENCY?

Having enough money to live on without having to draw on public funds counts as self sufficiency. The money available need not be very considerable and can come from a spouse or family members or from a pension, savings or investments. However, the person must also have comprehensive sickness insurance to have a formal EU law right of residence.

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WHAT IS COMPREHENSIVE SICKNESS INSURANCE?

EU citizens in the UK are allowed to use the National Health Service, but this does not count as comprehensive sickness insurance for students and the self sufficient. There are two ways to show you have comprehensive sickness insurance:

- **Acquire a European Health Insurance Card (EHIC) or use EU forms S1, S2 or S3 to show you have reciprocal health insurance cover from your country of nationality**
- **Purchase a private comprehensive sickness insurance policy**

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WHO COUNTS AS A FAMILY MEMBER?

Family members are defined in EU law as:

- **Spouse or civil partner**
- **Children or grandchildren under 21 (or over 21, if dependent) of the EU citizen or his or her spouse or civil partner**
- **Dependent parents or grandparents of the EU citizen or his or her spouse or civil partner (but not for students)**

Some extended family members can also benefit from EU law, including durable partners and relatives or household members who were dependent before the entry of the EU citizen to the UK.

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HOW DO I GET PERMANENT RESIDENCE?

Permanent residence is the right permanently to reside in the UK. It is acquired automatically after five years of qualifying activity (work, self employment, study or self sufficiency). The five years does not need to be the most recent five years: for example, if you worked for five years from 2004 to 2009 and continued to live in the UK since then, you would have acquired permanent residence in 2009 and still possess it today. Once acquired, this right is only lost through being absent from the UK for two years continuously or through deportation action being taken against you (because of criminal offending, for instance).

An EU citizen can, but does not have to, apply for proof that he or she has acquired permanent residence.

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DO I NEED TO APPLY NOW?

Brexit has caused considerable anxiety amongst EU citizens and their family members living in the UK. The UK Government has offered some limited assurance that EU citizens currently in the UK will be allowed to remain. However, there is no further detail available at the time of writing and it is not known what kind of status will be offered or if there will be any difference in the treatment of those with permanent residence, residence and no formal right of residence.

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HOW DO I APPLY?

Many EU citizens are choosing to apply for proof of their right of residence or permanent residence in preparation for Brexit. There is no need to apply now but many immigration lawyers advise that it might be better to be aware of any problems sooner rather than later so that remedial action can be taken. Applications currently cost £65. You do not need to use any specific form but the Home Office provides forms on its gov.uk website and is also launching an online application process.

* Please note that this factsheet is designed to provide information only. The law may have changed since this was produced in **November 2016** and you should always seek up-to-date legal advice. The author and publisher cannot accept responsibility for any reliance placed on the information contained in this factsheet.

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