

EU children, young people and families

This fact sheet provides an overview of information on your rights in the UK as a European Union (EU) citizen, or as the family member of an EU citizen following the vote for the UK to leave the EU.

Please note that, for ease of reference, we are using the terms EU and EU citizens, but these terms will also cover rights of citizens in the EEA and Switzerland in this fact sheet unless specifically stated otherwise.

For information on current negotiations and future rights check our information page on protecting EU children's rights, available here:

www.childrenslegalcentre.com/resources

EU, EEA and Switzerland

The EU countries are:

Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

The EEA includes all 28 EU countries, as well as Iceland, Liechtenstein and Norway. Switzerland is not an EU or EEA country, but is in the single market, meaning that its citizens have the same rights to live and work in the UK as other EU and EEA nationals. These rights are called 'free movement'.

More specifically, free movement involves the right that an EU citizen has to live, work, retire and study in any country within the EU. These rights come from the EU free movement directive 2004/38/EU. [1]

Together with free movement of capital, goods and services, free movement of citizens is a key principle of the EU. [2]

Leaving the EU

Currently the UK's position within the EU has not changed.

When the UK leaves the EU (expected to happen on 30th March 2019, although there is a proposed implementation/transition period which would extend this date) rules for EU nationals in the UK will begin to change.

For further information on future changes, please see our fact sheet on protecting EU children's rights, available here:

www.childrenslegalcentre.com/resources.

Do I need documentation?

The right to free movement does not rely on an EU national having documents issued by an EU country to prove their entitlements. However, in some circumstances family members are required to apply for documents.

Documents for EU family members are called family residence cards and will normally expire after five years. An EU family member residence card is only valid while the EU national is in the UK exercising treaty rights. As such, having an EU or EU family member document in the UK does not demonstrate an on-going entitlement to EU rights (except for Permanent Residence).

Am I exercising EU rights in the UK?

All EU citizens have the right to enter the UK for up to three months. At the end of the three months, the right to stay in the UK becomes a 'qualified right'.

This means that, after three months, you must be engaged in one of the following:

- working,
- being self-employed,
- studying (with comprehensive sickness insurance),
- being self-sufficient or retired (with comprehensive sickness insurance), or
- looking for work.

The EU citizen should be treated the same as a British national when doing any of these activities. This includes when accessing in-work welfare benefits as well as job-seeking benefits, although there may be additional criteria depending on the type of benefit. [3]

If someone is not exercising a treaty right and they are a burden on the host state then they can be returned to their country of nationality in some situations. [4]

After five years (or three in some cases [5]) of exercising treaty rights, someone can apply for permanent residence (PR).

Permanent residence (PR)

PR means that someone no longer has to demonstrate that they are exercising treaty rights to be treated in the same way as a British national while they are in the UK.

Once someone has had PR for a year, they may apply for British citizenship. They will need proof of PR to do so.

Children who are born in UK after 30 April 2006 to a parent who has PR will automatically be British nationals.

Where a parent of a child born in UK later gains PR, the child can subsequently register as British by entitlement (a fee is payable). For more information please see the fact sheet on citizenship at www.childrenslegalcentre.com/resources.

The rights of non-EU family members are dependent on the EU national. A non-EU family member will need to spend five years in the UK with an EU national exercising treaty rights to gain PR, and usually would need to complete a preliminary 5 year period of residence even if they join someone with PR.

What about family members?

Family members can enter with or join an EU national and can stay in the UK with them while their EU family member is exercising their qualified rights.

Which family members can come to the UK largely depends what the family relationship is.

Direct family members can always accompany or join an EU national in the UK. The following are considered direct family members: [6]

- Spouse (including same-sex spouse) or civil partner (recognised under UK law as a same-sex partnership)
- Direct descendants who are under 21: children or grandchildren of the EU national or their spouse/civil partner, and
- Dependent direct ascendant relatives (this is usually dependent parents).

Family members who are from outside the EU will be treated like an EU national whilst they and their EU family member are in the UK. As with EU nationals, direct family members are not required to obtain documents to prove their rights, but may want to do so in order to work, study or rent property.

Indirect or extended family members include the following: [7]

- A dependent relative (a relative can include brothers, sisters, aunts, uncles, nieces and nephews, and others)
- A relative who is a member of the household
- A relative who strictly requires the personal care of the EU national or their spouse or civil partner for medical reasons
- The partner of an EU national who is in a durable relationship with them for two or more years.

An extended family member will be required to apply for a family permit (for entry) and residence card to demonstrate their EU rights. The decision is at the discretion of the UK government – if successful, the extended family member will have the same rights of free movement as direct family members.

Retained rights of residence

There may be some situations where a family member can retain their rights of residence in the UK, even where they lose the connection to the EU national, for example through death or divorce.

The family member must have had a right to reside in the UK as a family member of an EU national who either had PR or was exercising treaty rights. The family member must also show that they themselves are working, self-employed or self-sufficient without the EU national.

The rules and requirements relating to retained rights of residence are complex. These rights can occur in the following situations:

- Where the EU family member's marriage or civil partnership to an EU national has been terminated (e.g. through divorce)
- Where an EU family member was a family member of a person who has died, and they had lived in the UK for at least a year before the death
- Where a child family member of an EU national who has died/left the UK, who was in education when that person died/left the UK, continues to be in education
- Where a parent has custody of a child who has a retained right of residence because they are in education in the UK.

Please note that in addition there are different requirements for different retained rights, including length of residence and economic requirements.

It can be difficult to evidence retained rights and it is recommended that an individual gets legal advice as a matter of urgency if they are in such a situation.

Derivative rights (including Zambrano carers)

In some cases, family members who are not EU or British nationals will have been unable to demonstrate that they have rights under the free movement directive. There are some rights which have come from

case law of Court of Justice for the European Union (CJEU) to address these situations. [8]

These are known as derivative rights, and form three categories:

- Teixeira/Ibrahim carers: non-EU primary carers of children who entered education when an EEA parent was working in the UK
- Chen carers: non-EU national primary carers of EU children who can support themselves financially
- Zambrano carers: non-EU national primary carers of British children who must stay in the UK so that the British child can remain here.

Dependent children of primary carers in the above categories also benefit from derivative rights. For further information on these rights, please see our fact sheet on derivative rights, available here: www.childrenslegalcentre.com/resources.

Separated children

Children who are not with their parents in the UK but who are EU nationals or family members currently face a number of obstacles to demonstrating their entitlement to reside in the UK, particularly on turning 18. A child who is an EU national but who is unable to demonstrate that they or their parents or carers are exercising treaty rights or have PR will not have a qualified right to reside.

Separated children in care, in private fostering arrangements, living with family or friends or in kinship care are at particular risk of losing their rights to reside in the UK. It is very important that they access legal advice as soon as possible, and that their cases are not delayed until they become adults.

NOTES

[1] The free movement directive 2004/38/EU <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133152> .

[2] see for example <http://ec.europa.eu/social/main.jsp?catId=457>

[3] For more information, see Homeless Link's EEA nationals resources, May 2018, <https://www.homeless.org.uk/connect/blogs/2018/may/29/g>

[guidance-on-supporting-eea-nationals](#)

[4] Home Office, Removals and revocations of European Economic Area (EEA) Nationals, 1 February 2017

<https://www.gov.uk/government/publications/removals-and-revocations-of-european-economic-area-eea-nationals>

[5] gov.uk website <https://www.gov.uk/uk-residence-eu-citizens/getting-permanent-residence-early>

[6] Home Office, Direct Family Members of European Economic Area Nationals, 24 July 2018

<https://www.gov.uk/government/publications/direct-family-members-of-european-economic-area-eea-nationals>

[7] Home Office, Extended Family Members of EEA nationals, 8 June 2018, p8

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488450/Extended_Family_Members_v2.0_ext_clean.pdf

[8] Home Office, Derivative Rights of Residence, 27 February 2018

<https://www.gov.uk/government/publications/derivative-rights-of-residence>

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line by emailing mcpadvice@coramclc.org.uk.