



A Brexit Guide for EEA⁺ Nationals & Family Members

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Joint Council for the Welfare of Immigrants

Campaigning for justice in immigration, nationality & asylum law & policy since 1967

About JCWI

JCWI is a national charity campaigning for justice in immigration, nationality and asylum law and policy. We work to promote the rights of migrants within a human rights framework. One of the ways we seek to achieve this aim is through our research, reports and lobbying work.

JCWI also undertakes immigration casework, dealing with all areas of asylum and immigration law. We have built up expertise over decades fighting for justice for those who are vulnerable and have particular experience of dealing with complex immigration issues. This expertise informs our policy and campaigns work.

For more information about booking a consultation with one of our solicitors please go to www.jcwi.org.uk

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Introduction

1. This booklet is designed as a simple and easy to understand overview of the residence rights of European Economic Area+ (EEA+) nationals in the UK.¹ Since the UK referendum vote to leave the European Union (EU), many EEA+ nationals and their families are worried about their future rights to remain in the UK. This booklet outlines the current position and also contains some suggestions of steps that EEA+ nationals could take that may help secure their right to reside after the UK leaves the EU.
2. EU free movement law and UK immigration law are vastly complex. There are many areas of uncertainty and exceptions. The exact rights of EEA+ and their family members to live, work, access services and reside with their family members in the UK can often depend on the very precise circumstances of an individual case. As such, this booklet is not intended to, and cannot substitute for, advice from a qualified immigration adviser, nor can it replace many of the more detailed information resources that we have provided links to at page 19. You may wish to seek further advice and information, especially before incurring any application costs or risking any prejudice to your position. In some cases, a rejected application may result in the Home Office taking the view that you are in the UK without a right to reside. You should therefore try to get any application right the first time.

To whom does this booklet apply?

3. The rights detailed in this booklet apply to nationals of EU countries, of countries in the EEA, and Switzerland. Taken together we refer to them as EEA+ nationals. It also applies to their immediate (and in some cases extended) family members, where rights are conferred to them under EU law.
4. The EU countries are **Austria, Belgium, Bulgaria, Croatia², 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 **UK³**.
5. The EEA countries who are not also members of the EU are **Iceland, Liechtenstein, and Norway**.
6. It also applies to **Swiss nationals** as Switzerland is in the single market and its citizens have the same rights to work and live in the UK as EU and EEA nationals.

¹ Nationals of EEA countries and also Switzerland.

² Croatian nationals need to apply for a special registration certificate in order to work in the UK.

³ UK nationals residing in the UK are not normally considered to be exercising free movement rights under EU law. That means that in some circumstances they actually enjoy lesser rights than citizens of other EEA countries residing in the UK.



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What if I am a Croatian national?

7. There are currently different immigration rules regulating work and residence rights in place for Croatian nationals living and working the UK under a transitional agreement relating to Croatia's accession to the EU. Croatian nationals need to apply for a registration certificate in order to work in the UK. If you are a Croatian national living or working in the UK we advise you to seek specific advice from JCWI or one of the organisations listed at page 19 below.

When will we know what the position of EEA+ nationals and their family members will be once the UK leaves the EU?

8. On 29 March 2017 Theresa May triggered Article 50 of the Treaty of the European Union by notifying the EU Council of the UK's intention to withdraw from the EU. According to the Treaty this sets a two year clock running. At the end of the two years, so by April 2019, the UK will automatically cease to be a member of the EU. At this point the UK will no longer be bound by the EU treaties and all EEA+ nationals resident in the UK will no longer have any status under EU law. This means that unless another deal is reached, or a transitional arrangement is put in place, every EEA+ national and their dependent family members will lose their right to reside in the UK under EU law.
9. This is a worst case scenario and even here it is extremely unlikely that the UK would attempt to deport all EEA+ nationals and their family members. To do so would be an unprecedented human rights and logistical catastrophe. However, even without the prospect of deportation, leaving without a deal would cause a lot of unnecessary uncertainty and hardship to EEA+ rights holders who may not know whether the UK will accept their human rights or other arguments for being allowed to remain in the UK.

Everyone urgently wants a better deal

10. A promising sign is that the major players in the negotiations are all eager to guarantee the rights of EEA+ rights holders in the UK and UK nationals living in other EEA+ countries as a priority. The UK, the European Parliament and the European Council have all explicitly referred to this issue in their position documents on the negotiations.⁴ It is in no one's interest for their citizens who are resident in other countries to lose rights. While no legal or official guarantee has been given, the UK Government has given strong indications that EEA+ nationals currently legally resident in the UK will be allowed to stay.
11. While the EU position remains that no part of the deal will be agreed until the whole deal is finalised, it looks likely that EU nationals may get some security earlier in the process. All sides want to reach an early reciprocal arrangement and there is hope that they will be successful in doing so.

⁴ Brexit: red lines and starting principles, House of Commons Library Briefing Paper, No. 7938, 31 March 2017



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A transitional agreement

12. Responding to fears of a 'cliff-edge' (that the UK would drop out of the EU automatically two years from Article 50 being triggered with no trade deal, and with EEA+ nationals in the UK and UK citizens in EEA+ countries having no free movement rights), the Prime Minister has said she intends to seek an 'implementation phase' after 2019. This suggests that the Prime Minister will work to avoid the worst case scenario described above. It raises the possibility that current free movement rules could be extended a number of years past the April 2019 date for the UK leaving the EU.
13. A transitional period or 'implementation phase' would not alter the ultimate need for a new settlement for EU nationals, but it does mean that it is entirely possible that current free movement rules could continue to apply for a number of years, before a new system is put in place.

What can you do now?

14. At the moment, the only way to completely guarantee your continued right to live and work in the UK is to be a British citizen. However, as we explain further at pages 10 and 18, there may also be disadvantages to becoming a British citizen if you have non-British family members living with you in the UK and relying on your status under EU law to continue living here.
15. It is also unlikely that those who have established permanent residence in the UK would lose their rights and be required to leave. For example, in July 2016 senior Home Office official Mark Sedwill gave evidence to the Home Affairs Select Committee and told them that those with permanent residence status had a right that would be respected by the UK outside of EU law:⁵

"People have got that right of permanent residence and that right is associated with other international treaties that the UK is members of such as human rights legislation under the human rights act," he said. "It is under EU law at the moment but it is a right the UK respects."

16. Finally, for the reasons given above, and the rhetoric coming from all sides of the negotiating table, it is likely that everyone who can prove that they are lawfully resident in the UK under EU law will be given some sort of legal status after the UK's exit from the EU. What that status will be, and what will happen to those who cannot prove this, is still very unclear.
17. There is no strict legal reason for EU nationals and their family members to apply for residence documents that confirm your legal residence in the UK under EU law. Status under EU law is not granted by the UK. If you are exercising treaty rights in the UK under EU law, or you are the family member of someone in this position, you are legally resident. If you have been in this position for over five years and have fulfilled the relevant criteria during that time, you are a Permanent Resident. Getting a document from the UK certifying this does not make a difference to your rights.

⁵ <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news-parliament-2015/160718-brexitevidence/>



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18. However, in practical terms we would recommend applying now for documents proving your residence or permanent residence status, whether as an EU national or a family member of an EU national. This may make things easier in future, and those with such documents may find it easier to prove their status to the UK authorities if it is necessary in the future to apply under a new process. Currently, the processes in place for non-EEA+ nationals applying for legal status in the UK can be complex and inaccessible. We hope this is simplified for the millions who may need to make applications under a new system, but it is entirely possible that this will not happen. If so, it would be helpful to have taken the time to gather the necessary evidence and to check whether the UK accepts that evidence now. If you find you don't meet the requirements you will still have time to gather new evidence, or to work to fulfil them.

Can I continue to live and work in the UK?

19. Currently, yes. The UK has not yet officially left the European Union. Now that Article 50 has been triggered the current date for exit will be April 2019. It is possible that the process for leaving the EU could take longer, but this is unlikely.
20. EEA+ nationals will be able to exercise their EU treaty rights on the same terms as before the referendum until a new agreement comes into force once the UK officially leaves the EU. This includes the right to live, work, study, travel in and out of the UK, and exercise rights as the family member of an EEA+ national exercising treaty rights in the UK. If there is a transitional arrangement, free movement could continue past April 2019, but as yet there are no clear details.
21. The rights of EEA+ nationals in the UK after the UK's exit from the EU will depend on the outcomes of negotiations between the UK and the other 27 EU states. We do not currently know what this will look like.

Will I lose my job as a result of the referendum result?

22. No. EEA+ nationals currently retain the same rights Your job, study or entitlement to housing or benefits should not currently be affected.
23. If you have been told by your employer, landlord or anyone else that your rights have changed as a result of the referendum result, this could amount to discrimination and you may also be able to lodge a claim for unlawful dismissal. If you are in this position, we encourage you to get in touch with JCWI on the contact details on page 19.

What will happen to my family members who are living with me in the UK?

24. Currently, the rights of your family members also remain unchanged. If you are an EEA+ national exercising treaty rights along with your non-EEA+ family members, they will retain the same rights until such a point that the UK officially leaves the EU following negotiations.
25. The position of non-EEA+ family members of EEA+ nationals living in the UK, as with EEA+ nationals themselves, will be decided during these negotiations with the remaining 27 EU members states. It is not known what the outcome of these negotiations will be.



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26. However, it is important to note that your family members may lose their rights to live and work in the UK if you become a British citizen. You can find out more on page 8.

Does it matter when I entered the UK?

27. The UK remains within the EU and the EEA on the same terms as existed before the referendum result on 24th June. Nothing has changed in terms of free movement rights, or the other rights of EEA+ nationals who have entered or wish to enter the UK. EEA+ nationals are still free to live and work in the UK, and to enter and leave it, providing they do so within the terms of the EU Treaties. Their family members are likewise entitled to enter and to live here in accordance with their EU Treaty rights. Neither has the triggering of Article 50 changed anything yet. The UK will remain part of the EU, either until two years has passed (April 2019), or unless an earlier agreement for withdrawal is reached between the UK and the remaining 27 EU member states.
28. Nevertheless, the Prime Minister has made it clear the UK will not remain in the Single Market, and by extension that the UK will not accept an indefinite continuation of free movement principles. Thus the date on which you entered the UK, or the date at which you took up employment in the UK, may become relevant once a new agreement is reached. Whatever the form of the agreement, the UK could assign different levels of rights to EEA+ nationals and their family members depending on a variety of factors, including when they entered the UK. It is unknown what date or dates could be chosen to differentiate. The more likely dates include:
- a. 29 March 2017, the date of the Article 50 trigger. (We would strongly argue against this past date for a future decision as we believe that is unfair, and contravenes the general principle that rights should not be changed retrospectively. This has also been rejected by the EU);
 - b. 29 April 2019, the current most likely date for the UK's exit from the EU;
 - c. The date any agreement is reached as to the deal for the UK's exit and the future rights of EEA+ nationals in the UK.
29. If you entered the UK **more than five years ago** and have been exercising treaty rights during that period you are entitled to apply for recognition of your status as a Permanent Resident. Your family members can do the same. This may assist in securing your long-term future in the UK, as it is unlikely that anyone with Permanent Residence will lose their right to live in the UK. It is particularly important for non-EEA+ family members of EEA+ nationals to apply for official recognition of their rights to live and work in the UK, as they are more likely to be affected by rule changes. Please see page 16 for more information.
30. If you have been in the UK for **six years**, exercising treaty rights, and you have obtained proof of Permanent Residence, you can apply for British citizenship, as can any of your family members who are in the same position. Please note that acquiring British citizenship will cause any family members relying on your status as an EEA+ national to live in the UK to potentially lose these rights. To apply for British citizenship, you need to show that you have had Permanent



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Residence status for the past 12 months prior to your citizenship application. You can find out more about obtaining proof of Permanent Residence status on page 17.

Rights of EEA+ nationals and family members to reside in the UK

Who has rights under freedom of movement?

31. This booklet is intended as a guide for EEA+ nationals already living in the UK. We do include some information about the position of family members of EEA+ nationals also residing in the UK, as in many instances they will have the same rights to acquiring permanent residence and citizenship as their EEA+ national family member. Nevertheless, this is not intended as a resource for those wishing to bring non-EEA+ family members into the UK.
32. Please note that if you are both a British citizen and a national of an EEA+ country the rules are different. You can find out more at page 10.

EEA+ nationals

33. This includes:
- a. European Union (EU) citizens and their family members.
 - b. Nationals of Iceland, Liechtenstein, and Norway (EEA countries not in the EU).
 - c. Swiss nationals (not in the EEA or EU, but treated the same for the purposes of free movement).

Direct family members of EEA+ nationals

34. This category includes:
- a. Spouses and civil partners;
 - b. Direct descendants (children, grandchildren etc.) under the age of 21 of the EEA+ national or their spouse or civil partner;
 - c. Direct descendants over the age of 21 who are dependent upon the EEA+ national or their spouse or civil partner;
 - d. Direct ascendants (parents, grandparents etc.) of the EEA+ national or their spouse or civil partner who are dependent upon them.
35. In this context, 'dependence' does not have to be financial support, but it must be 'material'. This means providing necessities such as clothing, food, and housing.
36. Direct family members of EEA+ nationals have an automatic right to reside in the UK for as long as they remain a family member, and the EEA+ national in question is either:
- a. In their first three months of residence in the UK;



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- b. 'A qualified person'. This means a person exercising Treaty Rights. (See more on page 12.)
- c. Has established permanent residence. (See more at page 16.)

37. EEA+ nationals themselves may also benefit from rights derived from a family member. For example, if you are an EEA+ national, but are not working or otherwise exercising Treaty rights, you would be entitled to reside in the UK if your spouse is also an EEA+ national and is exercising Treaty Rights, in their first three months of residence in the UK, or has established permanent residence.

Those who used to be family members of EEA+ nationals

38. The rights described below fall under the category of 'retained rights'. In our experience it can be very difficult to show that you have actually retained rights of residence. You must not assume that because your situation fits within one of the categories described below that the Home Office will accept that you have retained rights of residence under EU law. It is likely that you will have to fight for recognition, and it is difficult to succeed in such an application.

39. If an EEA+ national living in the UK exercising treaty rights either dies or leaves the country, their family members (as outlined above) may be able to keep their right to live and work in the UK. The rules surrounding when residence rights may be retained are complex. If you are in this situation you should seek legal advice.

40. If you are a spouse or a civil partner of an EEA+ national and you get divorced or dissolve the civil partnership, you may be able to retain your residence rights if you are self-sufficient (with comprehensive sickness insurance), working, or self-employed, and one of the following applies:

- The relationship (i.e. marriage or civil partnership) lasted a minimum of three years, with one of those years in the UK;
- If you have custody of or a right of access to the EEA+ national's children;
- If you have been subject to particularly difficult circumstances, such as being the victim of domestic violence.

41. If you do retain a right of residence and you continue to fulfil the conditions of residence by working, being self-sufficient with comprehensive health insurance, or being self-employed, you will acquire permanent residence after a total of five years residence. This includes the period during which you were living in the UK as a family member of the EEA+ national.

42. In some circumstances parents and primary carers of EEA+ nationals who would not otherwise qualify as family members may have rights of residence in the UK.

Extended family members of EEA+ nationals

43. This includes:



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- Relatives of the EEA+ national or their spouse or civil partner who require their personal care on serious health grounds;
- The partner of an EEA+ national who can prove that they are in a 'durable relationship', which is normally one that has continued to exist for two years or more.

44. Extended family members of EEA+ nationals can also acquire rights of residence in the UK if they are dependent on the EEA+ national living here. The family member must demonstrate that they were dependent on the EEA+ national or a member of the EEA+ national's household. This dependent relationship must have existed in a country other than the UK prior to their arrival here.

45. "Relatives" is a broad term that includes relatives by marriage and from generations above and below. It can include anything from siblings, to great-aunts and second cousins. However, the relationship and dependence needs to be proven.

Adoption

46. Provided it is carried out by a recognised adoption order, UK law treats adopted family members in exactly the same way as biological family members.

EEA+ family members of dual British & EEA+ nationals

47. If you are both a British citizen and a citizen of another EEA+ country and you are residing in the UK, your position is very different with regard to your family members. You are not treated like an EEA+ national for these purposes, and your family members do not have a right of residence under EU law on the basis of their relationship to you.

48. If your family members were already residing in the UK on 16 July 2012 on the basis of their relationship with you (i.e. as a family member of an EEA+ national who is exercising treaty rights) then they may continue to hold a right of residence. The same applies to anyone who applied for an EEA family permit before 16 July 2012.

Family members may lose their right to live in the UK if the EEA+ nationals become British

49. As dual EEA+/British nationals are not considered EEA+ nationals for immigration purposes, there may be some risk in becoming a British citizen if you have family members who are relying (or may rely in the future) on your status as an EEA+ national in order to reside in the UK.

50. If your family members resident in the UK have acquired citizenship with you, are exercising treaty rights as EEA+ nationals themselves, or have acquired permanent residence, then they will have an independent right to be here.

51. If not, the position is unclear. We would argue that a good interpretation of EU law requires family members already resident in the UK on the basis of their relationship with an EEA+ national to retain their EU free movement rights when the EEA+ national becomes a British citizen. However, it is very possible that the Home Office would not agree with this, and would



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treat them the same way as family members of British citizens. The rules for British citizens who want to live with non-EEA+ family members are in many cases much harsher than for EEA+ nationals who are exercising treaty rights in the UK.⁶

52. For example, as a British citizen you are required to show a minimum income of £18,600 a year in order to sponsor a non-EEA+ spouse or civil partner to live with you in the UK. It is also very difficult for British citizens to sponsor non-EEA+ 'adult dependent relatives' (such as parents or grandparents) to come to live with them in the UK. A British citizen has to show not only that their 'adult dependent relative' needs a high level of personal care owing to age, illness or disability, but also that they are unable to pay for them to obtain that care in the country where their relative is currently living.
53. Thus, becoming a British citizen could cause serious problems if you had intended to have non-EEA+ family members who are living abroad join you in the UK or if your family are in the UK but have not acquired any independent right to reside.
54. This issue of family members of dual EEA+ nationals is currently being considered by the European Court of Justice (ECJ) in the case of *R (Lounes) v Secretary of State for the Home Department [2016] EWHC 436 (Admin)*. We are expecting a judgment on whether the UK position on this is lawful later this year. However, for now we would strongly recommend anyone in this position to seek legal advice before taking steps to naturalise as British.

Children of EEA+ nationals born in the UK and acquiring British Citizenship

55. Children born in the UK with an EEA+ national parent will automatically be British citizens at birth if:
 - a. They were born before 2nd October 2000 and the relevant parent was exercising Treaty rights at the time of birth;
 - b. They were born between 2nd October 2000 and 30 April 2006 and a parent had indefinite leave to remain (ILR) in the UK at the time of their birth;
 - c. They were born after 30 April 2006 and the relevant parent had acquired permanent residence status, or had indefinite leave to remain in the UK at the time of their birth.
56. You do not need to have a permanent residence card for British citizenship to be conferred to your child, but it is possible that the Home Office may dispute your child's British citizenship if they later consider that you were not in fact entitled to permanent residence at the time they were born. Even if your child has been since issued with a passport, they may argue it was issued in error. It is extremely important that you retain all documents that prove you had achieved permanent residence before the birth of your child in such circumstances.

⁶ Some British citizens have been able to bring family members into the UK under EU rules, but only where they had previously lived with those family members in another EU country. This is beyond the scope of this booklet, but you can find out more about this *Surinder Singh* route [here](#).



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57. If the child did not become a British citizen at birth, you still may be entitled to register them as British if their EEA+ national parent has since become settled in the UK. This means that they have been granted indefinite leave since the birth, or they have acquired permanent residence.
58. If none of the above applies there are other circumstances in which children born in the UK may be entitled to register as British citizens.
59. This is a complex area. It has been known for the Home Office to dispute British passports issued to children of EEA+ nationals and claim that they are not entitled to them. Please seek legal advice if you have any concerns over your child's status.

What do I need to do to keep my right to reside in the UK?

The first three months

60. EEA+ nationals and their family members may spend **up to three months** in another EEA+ member state. The only condition is that they hold an EEA+ passport or identity card. For these three months you have no rights to social assistance benefits and must not become an 'unreasonable burden' on the social assistance system. If you become homeless and destitute because you cannot support yourself during this period, you could be required to leave, or removed from the UK.

Exercising Treaty rights after the first three months

61. After these first three months, if you want to continue to reside in the UK you must be a 'qualified person'. This means that you must be exercising a Treaty right or be the family member of an EEA+ national who is exercising a Treaty right.
62. Those exercising Treaty rights are:⁷
 - a. Workers;
 - b. Jobseekers;
 - c. The self-employed;
 - d. Those who are self-sufficient;
 - e. Students.

Workers

63. To be exercising Treaty rights and have a right to reside in the UK, workers are required to be in 'genuine and effective work', which must not be 'marginal and ancillary'. There is no agreed definition of what this means. An indication of the UK government's thinking on this can be

⁷ For a more detailed treatment of these categories please see Colin Yeo's set of extremely comprehensive free ebooks at <https://www.freemovement.org.uk/free-ebook-application-guides-for-eu-citizens/>



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found in the 'minimum earnings threshold' for benefits claims by EEA+ nationals, which as of 6 April 2016 is £155 a week. If you claim for benefits as an EEA+ national and your earnings over the previous 3 months are below that level then you will be subjected to an additional test to see if in the work was 'genuine and effective'. This can include consideration of the hours worked, the regularity of the work, and how much you earn. Receiving benefits is not necessarily a bar to being classed as a worker.

64. Your status as a worker lasts for as long as your contract of employment, including if you are on leave (such as maternity leave). This includes unpaid maternity leave. You will also retain worker status if you are temporarily unable to work owing to an accident or illness.
65. If you are recorded as being in involuntary unemployment after at least a year's employment and have registered as a jobseeker you will retain worker status. However, after six months of unemployment you will have to provide evidence that you are seeking employment in the UK and have a genuine chance of being engaged in future employment.
66. You can also retain worker status if you cease employment and then begin vocational training. If the end of your employment was voluntary then the vocational training must be related to your last employment.

Jobseekers

67. You are exercising Treaty rights and have a right to reside in the UK under EU law if you are an EEA+ national and you are looking for work in the UK and have a 'genuine chance' of being engaged in employment. You need to be registered with a Jobcentre Plus and to be signing on. You can claim Jobseeker's Allowance if you satisfy the habitual residence test. This can give you access to other benefits, such as Housing Benefit, Council Tax Benefit, Child Benefit and Child Tax Credit. However, as a jobseeker you cannot get housing or homelessness assistance from a local authority.

Self-Employed

68. You are exercising Treaty rights and have a right to reside in the UK if you are doing 'genuine and effective' work as a self-employed person. This includes the process of establishing yourself as a self-employed person and includes periods of maternity leave. If you are temporarily unable to work owing to an accident or illness you also retain your status as a self-employed person. Receiving benefits does not necessarily disqualify you from being in 'genuine and effective' work as a self-employed person.

Self-Sufficient

69. In order to be considered to be exercising Treaty rights as someone who is 'self-sufficient', you must have sufficient resources to avoid becoming a burden on the UK social benefits system. You must also hold Comprehensive Sickness Insurance (CSI).



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70. There is some dispute over in the exact amount in income or savings that you need to have in order to be considered self-sufficient. EU law prohibits a fixed amount being prescribed and states that individual circumstances should be considered.
71. Current UK Government policy only regards an EEA+ national as self-sufficient if s/he can show that s/he is earning enough not to be eligible to claim means-tested benefits. Free long-term accommodation can be taken into account.

Students

72. This category covers EEA+ nationals who are enrolled in an accredited university or college. To be considered to be exercising Treaty rights, students must have Comprehensive Sickness Insurance (CSI) and be able to provide assurances that they and their family members have sufficient resources to avoid becoming a “burden on the UK social benefits system”.

Comprehensive Sickness Insurance

73. If you are a student or self-sufficient (or the family member of such a person), you need Comprehensive Sickness Insurance (CSI) to be considered to be exercising Treaty rights in the UK. In most EU states this is simple, because they operate a state insurance scheme that can be signed up to. In the UK the equivalent is the National Health Service (NHS). EEA+ nationals are entitled to use the NHS. However, confusingly the Home Office does not regard this as fulfilling the CSI requirement.
74. This position has been challenged in the UK courts, but the Home Office succeeded in their argument before the Court of Appeal. The European Commission has begun infringement proceedings arguing that the UK’s position on this is wrong, but these proceedings do not appear to have been pursued with any great alacrity and we have no idea when or what the outcome might be.
75. The current position is that you do need to show that you had CSI during any periods that you were exercising Treaty rights as a student or a self-sufficient person. It is not clear what counts as Comprehensive Sickness Insurance, as almost all insurance carries with it certain restrictions. The Home Office has not provided clear guidance. For now, there are three main ways you can show you meet, or did meet, the requirement:
 - a. To buy private health insurance. As we state above, it is not clear how ‘comprehensive’ it needs to be, so the safest option is to get the widest cover that you are able to.
 - b. You can use a European Health Insurance Card (EHIC) as evidence of CSI when making a residence application, but you need to make a declaration that you do not intend to stay in the UK permanently. The declaration is not legally binding, but it is unclear what effect it could have on your future status if you had to make an application under the new rules.



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- c. You can prove that there is a reciprocal arrangement between your country of nationality and the UK that allows the UK to reclaim any healthcare costs you incur from them. For more details on how to do this, see page 46 and 47 of [this guide by Immigration Barrister Colin Yeo](#).

76. If there is a period in which you did not have any of the above, then there is still hope. Many people are lobbying the government to remove the CSI requirement they have imposed and to accept NHS cover as satisfactory for future applications for permanent residence by EEA+ nationals and family members. There is a reasonable chance the rules will be relaxed given the large numbers of people that will be affected by not having had CSI.

77. A more detailed overview of this issue can be found in Colin Yeo's free e-books for [Students](#) and for [Self-Sufficient People](#).

Permanent Residence

78. Once you have continuously been exercising Treaty rights in the UK for a period of five years (without having left the UK for more than six months at any time), you automatically acquire Permanent Residence status under EU law. At this point you no longer have to fall within one of the categories listed above in order to remain in the UK. However, you can still lose your Permanent Residence under some circumstances. For example, if you live abroad for over two years, or if you commit a serious criminal offence and are subject to deportation proceedings. For more information on proving Permanent Residence please see page 16 below.

79. Family members of EEA+ nationals also acquire Permanent Residence if they have lived in the UK for five years whilst the EEA+ national has been exercising treaty rights.

What can I do to help secure my future in the UK?

Overview

80. Although the future is unclear with regards to what rights EEA+ nationals will have to live, work and study in the UK after the UK officially leaves the European Union, there are a number of ways you can make your status likely to be more secure.

81. This booklet cannot provide a comprehensive guide to making the applications below. It is intended to make you aware of the different kinds of status that EU nationals and their family members can have in the UK, and inform you of the different ways you can obtain proof of your rights in the UK.

82. We encourage all EEA+ nationals currently living, working and studying in the UK to retain relevant proof of the fact that you have been exercising Treaty rights. This includes wage slips, contracts of employment, tax returns, student enrolment documents, exam results, bank statements, and any other credible documentary evidence that you have been a student, a worker, self-employed, self-sufficient or looking for work over the period of your residence in the UK following the first three months.



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83. As a family member of an EEA+ national, you should retain all of the above evidence from the EEA+ national concerned, together with proof of your relationship.

Registration Certificate or Residence Card

84. Certificates and cards give exactly the same evidence of rights. The difference is that EEA+ nationals get a certificate, and non-EEA+ nationals get a biometric card. The same applies with Permanent Residence cards below, where EEA+ nationals will receive a certificate of permanent residence instead of the card that non-EEA+ nationals receive.
85. On the government website and other websites, the words card and certificate are often used interchangeably. However, read carefully the application form that you are using and make sure that it applies to your situation.
86. If you are an extended family member of an EEA+ national you will need to apply for a registration card. If you are an EEA+ national who is a qualified person (working, studying, self-employed, looking for work, or self-sufficient) you do not have to have a registration certificate in order to have a right to live in the UK. Nor do you need one if you are a family member of a qualified person or if you have a retained right of residence. To see which of these categories you fall into see the section at page 8.
87. A registration certificate may make it easier to claim benefits and services and to prove that you have a right to live and work in the UK. With the new landlord immigration checks, and other measures designed to create a 'hostile environment' for migrants in the UK unlawfully, non-EEA+ family members may find they need to show a registration card to access private rented accommodation and to avoid other difficulties.
88. With the prospect of changes to the rights of EEA+ nationals and their family members following the UK's departure from the EU, a registration certificate may also assist EEA+ nationals and their family members to prove that they have been in the UK in accordance with their Treaty rights. Please remember that a residence card is not in itself proof that you have been exercising treaty rights for a certain period. You should still keep all the evidence you have relating to your stay in the UK and continue to collect this evidence going forward.
89. The certificate or card is issued for five years at a time.

Permanent Residence Card or Certificate

90. As you might expect, if you have Permanent Residence you have the right to live permanently in the UK. This right no longer depends on you being a worker or a family member or otherwise exercising Treaty rights. It is an independent right to continue to live in the UK without having to fulfil any of the other conditions applied in the first five years. It is possible to lose this right if you are absent from the country for over two years or in other circumstances, such as if you are convicted of a crime.
91. Permanent residence is an automatic right after five years of continuous legal residence in the UK while exercising treaty rights. You do not need to make any application to get Permanent



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Residence. Nevertheless, we would strongly advise you obtain a Permanent Residence card in order to show official recognition of your rights.

92. In some circumstances you can get Permanent Residence after less than five years, for example following the death, retirement, or permanent incapacity of an EEA+ family member with whom you were living. Or if the EEA+ family member is working or self-employed now in another EEA+ state but is still resident in the UK and returns weekly. Please seek advice if you think you are in this situation.
93. You must have a Permanent Residence card in order to apply to naturalise as a British citizen.

Continuity of residence during the 5 year period

94. In order to acquire Permanent Residence you must have resided in the UK lawfully for a continuous period of 5 years. Temporary absences from the UK are permitted:
- If they add up to less than 6 months in any one year;
 - If they are a single absence of up to 12 months consecutively for 'important reasons', such as serious illness, study, employment posting abroad, or pregnancy and childbirth; or
 - Are for compulsory military service.
95. The kinds of absences above will normally not count towards your five years in the UK, but will not break the continuity of your residence for the purposes of Permanent Residence.

Difficulties with applications

96. JCWI has received reports that Home Office caseworkers are taking a stricter line on current applications from EEA+ nationals and their family members. We have heard of many instances of applications being rejected on minor technicalities or because evidence submitted in support of an application is considered insufficient (for example that copies of documents have been provided where originals were required).
97. If your application is refused, the Home Office may take the line that you are not exercising Treaty rights and therefore have no right to reside in the UK. As long as you are exercising Treaty rights, you are entitled to continue to live in the UK, but it can create significant difficulties if the Home Office takes an opposing view.
98. We understand that seeking professional legal advice for these sorts of applications may not be financially possible for all applicants. However, we do encourage all applicants to make the most of the resources available online and to seek legal advice where possible.
99. You can contact JCWI for legal advice on making any of the applications outlined below. Links to further resources and other organisations that may be able to assist can be found on page 19.



Making an Application

100. Before making any application you should carefully look at the application forms and the accompanying guidance. Ideally, you should consider seeking legal advice from a registered immigration adviser. This booklet should therefore be considered as a starting point, rather than a comprehensive guide to how to make an application. Colin Yeo's guides, available to download for free, are an excellent further resource and contain detailed information about the forms and the application process.⁸ Even if your situation does not fall within one of the categories of the guides, the information on the application process is general and should prove useful to anyone.

Cost

101. The cost of an application for recognition of Residence or Permanent Residence is £65.

Citizenship

Should I apply for British Citizenship?

102. The decision on whether or not to become a British citizen is a serious one that requires careful thought and consideration. It is also a very personal decision, influenced by your emotions, feelings of belonging and identity. In addition, there are some practical considerations that you may wish to take into account.
103. A benefit of naturalising as a British citizen is that you will have the same rights as any other British citizen. Given the current uncertainty around Brexit, this is the best way to be absolutely certain that you will continue to be able to work and reside in the UK.
104. However, there are some disadvantages you should be aware of. One is that you will lose many of the free movement rights for family members that you have as an EEA+ national residing in the UK. See page 10 for more details.
105. You should also check what the rules for holding dual-nationality are in your home country. Most EEA+ countries allow dual nationality, but some countries, such as Norway, do not permit their nationals to be citizens of more than one country. This means that you may have to sacrifice your current citizenship rights in order to become British. The UK allows nationals to be citizens of more than one country.

Applying for naturalisation

106. Applications to naturalise as a British citizen are expensive and complicated. We recommend that you contact JCWI or another immigration advice organisation before applying. If an application is refused the fee will not be refunded.
107. You may be able to apply for naturalisation if:

⁸ <https://www.freemovement.org.uk/free-ebook-application-guides-for-eu-citizens/>



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- you have been living in the UK for 5 years and exercising treaty rights, and
 - you have been a *permanent resident* for at least 12 months.
108. This means that most EEA+ nationals must be in the UK for 6 years before becoming eligible to naturalise as a British citizen.
109. Remember that acquisition of permanent residence is automatic after five years of lawfully living in the UK and exercising treaty rights. Thus, while you need a permanent residence card before you apply for naturalisation, you do not necessarily need to wait 12 months after getting the card if you acquired permanent residence before that date.

Cost of Naturalisation

110. The fee to naturalise as a British citizen is £1282 for an adult. Only £80 of this amount is refundable if your application is withdrawn or refused.
111. The fee for a child is £973, but an extra £80 is payable if the child turns 18 during the application process. This is to pay for the citizenship ceremony.

Help from JCWI

JCWI deals with all areas of asylum and immigration law. We are recognised as experts in this field. We have almost 50 years' experience of fighting for justice for those who are vulnerable. We are known for dealing with complex immigration issues and challenging government policy and legislation.

We represent clients at all stages of the legal process including applications to the Home Office, entry clearance, appeals and judicial review.

JCWI employs three solicitors.

To find out more, visit <https://www.jcwi.org.uk>.

Further Brexit Resources and Information

Immigration Policy after Brexit

JCWI is developing a policy and communications strategy to ensure that we are able to respond to Government proposals on immigration, and to argue for a fair and equal immigration system. We will respond to Government consultations and proposals on new immigration rules, in order to advocate for the rights of immigrants and for fairness and equality in our immigration system. You can read our Brexit [briefings here](#):

- [Post-Brexit Immigration Policy Position Paper](#) – JCWI sets out six recommendations for changing UK immigration policy after we leave the EU;
- [A future settlement for EU treaty rights holders in the UK](#) – An examination of the groups of people who currently reside in the UK under the EU treaties, and how they should be protected under any new settlement.



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- [JCWI's 5 Immigration Principles](#) – Five fundamental principles that should underpin any effective immigration policy or law.

With the help of funding from Unbound Philanthropy, JCWI is also working closely with the [Immigration Law Practitioners' Association \(ILPA\)](#) and [Free Movement](#) to provide resources for and to advocate on behalf of those whose rights to live and work in the UK may be affected by the UK's departure from the EU.

ILPA Brexit Advocacy Series

[ILPA](#) has commissioned a series of papers from leading practitioners and academics on what a post-Brexit immigration policy may look like. These are available to download from their [website](#), or by following the links below.

- [Approaches to Employment Migration](#) Nicolas Rollason & Kim Vowden, Kingsley Napley
- [Securing EEA Nationals' Residence Rights](#) Matthew Evans, Director of the AIRE Centre.
- [Rights to Remain after Brexit](#) Bernard Ryan, Professor of Migration Law at Leicester University.
- [After a hard Brexit – British citizens and residence in the EU](#) Elspeth Guild, Kingsley Napley, Steve Peers, University of Essex & Jonathan Kingham, LexisNexis

Resources for EU Rights Holders

Those living in the UK under EU law currently face enormous uncertainty as a result of the UK's planned departure from the EU. [Free Movement](#), run by the immigration barrister [Colin Yeo](#), has produced a series of free advice guides for people with EU residence rights in the UK. The guides contain clear and detailed information about exercising treaty rights in the UK and the process for making an UK application for recognition of your rights.

Those who may benefit from these resources include:

- Nationals of European Union (EU) or European Economic Area (EEA) countries and Switzerland residing in or planning to move to the UK;
- Non-European family members of such nationals residing in the UK;
- Those who used to be family members of such nationals (e.g. before a divorce);
- Those caring for a child who is an EU/ EEA/ Swiss national in the UK.

You can download the guides below:

- [Guide for Workers](#)
- [Guide for Self-Employed people](#)
- [Guide for Self-Sufficient people](#)
- [Guide for Students](#)



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Other Organisations

The AIRE Centre (C)

The AIRE Centre is a specialist charity who aims to promote awareness of EU law rights. They usually provide specialist legal advice to advisers but can provide direct legal advice to individuals if the advice concerns EU law on the free movement of persons or is about making an application to the European Court of Human Rights.

Please note that the AIRE Centre only provides written legal advice which takes two to four weeks.

Telephone: 020 7831 4276

Monday to Friday, 10am to 6pm

Citizens Advice Bureaus

CABs can help resolve immigration issues with free advice. There is a national helpline which may incur a charge depending on your phone contract.

For England: 03444 111 444

For Wales: 03444 77 20 20

Or visit your local Citizens Advice Bureau. This can be found by using their 'Search for Citizens Advice local to you' tool on their website <https://www.citizensadvice.org.uk/about-us/how-we-provide-advice/advice/>

Local Law Centres(C)

Law Centres are independent, non-profit organisations offering legal advice, casework and representation to individuals and groups. This may include immigration and asylum law. Due to funding cuts, some law centres now charge for advice.

Use the 'Find your local Law Centre' tool at <http://www.lawcentres.org.uk/i-am-looking-for-advice>

If your local Law Centre cannot help you, they will try to refer you to another nearby organisation that can

Office of the Immigration Services Commissioner (C)

The OISC maintains a register of regulated immigration advisors (both fee charging and non-fee charging) who are approved by them to give immigration advice. The list is held on their website:

<https://www.gov.uk/find-an-immigration-adviser>

or telephone their helpline: 0345 000 0046

Migrants Resource Centre (C)

This organisation offers a range of immigration advice services at a reduced price or free in certain circumstances. For more information or to find out what service you need:

Telephone: 020 7402 6750

Monday to Friday, 10am to 5pm



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Or use their drop-in service

Thursday, 10am to 12pm

Praxis (C)

This organisation provides a free immigration advice line.

Telephone: 020 7729 7895

Tuesday, 2pm to 4:30pm

Thursday, 2pm to 4:30pm

The Rights of Women (C)

The Rights of Women is a women's voluntary organisation committed to informing and educating women about their legal rights. They offer a free immigration and asylum law helpline.

Telephone: 020 7490 7689

Monday, 12pm to 3pm

Thursday, 10am to 1pm

Please note this service is only available for women or professionals supporting migrant women.

Scotland (B)

The OISC website and helpline can be consulted for non- solicitor agencies.

<https://www.gov.uk/find-an-immigration-adviser>

or telephone their helpline: 0345 000 0046

For solicitors' firms, the Law Society of Scotland provides names of firms who give immigration/nationality advice. Details can be obtained from its website:

<http://www.lawscot.org.uk/> under the 'Find a solicitor' section.

Or telephone: 0131 226 7411

Northern Ireland (B)

The OISC website and helpline can be consulted for non- solicitor agencies.

<https://www.gov.uk/find-an-immigration-adviser>

or telephone their helpline: 0345 000 0046

For solicitors' firms the Law Society of Northern Ireland provides names of firms who give immigration/nationality advice. Details can be obtained from its website:

<http://www.lawsoc-ni.org/> under the 'Solicitor Directory' section.



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Glossary

Article 50

This relates to the process by which the UK will exit the EU. Article 50 was triggered by Prime Minister Theresa May on 29 March 2017, starting a process by which the UK will automatically leave the EU in two years' time, whether or not any agreement has been reached. The UK could leave earlier if an agreement is reached rapidly and an earlier withdrawal date is set. It is theoretically possible that the date can also be postponed, but this is unlikely to happen.

Dual British/EEA+ national

Someone who is both a British citizen and a citizen of another EEA+ country. They are treated in UK immigration law only as British citizens and may lose some rights that they would have as an EEA+ national. However, they also have an individual permanent right to reside in the UK, without any of the conditions that attach to EEA+ nationals.

European Economic Area+(EEA+) nationals

Citizens of EEA countries and Switzerland. The EEA+ countries are: *Austria, Belgium, Bulgaria, Croatia,* Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the UK.*

** Different rules apply to Croatian nationals. See page 4.*

Free Movement

The free movement of people is one of the fundamental principles of the EU. It applies to EEA+ nationals, and nationals of EEA countries and Switzerland. It means that, with certain restrictions, citizens of these countries and their family members have the right to move free between them, and to reside, work, and study anywhere within the EEA.

'Leave to enter' or 'Leave to remain' in the UK

A person who has permission from the Home Office to be in the UK. Permission may be 'time-limited' or 'indefinite'.

Permanent Residence

After a continuous five year period of lawful residence in the UK EEA+ nationals, and their family members automatically acquire a permanent right to reside in the UK. After this they do not have to fulfil the requirements outlined below of being a qualified person in order to retain their rights or their family's rights to reside. This can be lost in certain circumstances.



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Qualified person

This is an EEA+ national residing in the UK while exercising Treaty rights through, working, studying, being self-employed, looking for work, or being self-sufficient.

Treaty Rights

In this booklet this refers specifically to the rights of EEA+ nationals to work, study, look for work, be self-employed, or reside in a self-sufficient manner in any EEA+ country. The fact that an EEA+ national is exercising these Treaty rights can give family members of that person a right to reside and work in the same country.
