

## QUESTIONS AND ANSWERS – EEA/BREXIT INFORMATION SESSION

Human Resources held a series of information sessions for EEA nationals concerned about their immigration status in the UK, as a result of the EU referendum. Each session involved a presentation on the options for EEA nationals followed by Q&A; in addition HR professionals were able to answer individual queries.

This documents represents some of the frequently asked questions from the sessions and provides general guidance for EEA nationals, and their families, currently at the University. If you have specific questions relating to your own status you are encouraged to speak to Human Resources and make your own enquiries with a solicitor.

Overall, the message from the sessions was that there will be changes and therefore given current uncertainty, staff are encouraged to secure their position in the UK under the current UKVI rules as much as possible. However nothing is certain at present and the University will continue to provide as much support as possible.

The available options for EEA nationals currently in the UK are:-

1. EEA nationals and families who have been living in the UK for five or more years may consider applying for Permanent Residency to avoid any immigration restrictions which may result from Brexit.
2. EEA nationals and their families who have been living in the UK for less than five years may consider applying for an EEA Registration Certificate. Although this is not currently necessary to grant permission to work in the UK, possession of this certificate demonstrates that the EEA national is exercising their freedom of movement rights.
3. Those eligible may also want to explore one of the following:
  - British citizenship - Individuals who have held Permanent Residency for a period of 12 months may be eligible to apply for British Citizenship.
  - Family member of a British citizen.
  - Commonwealth citizens with UK parents/grandparents may be eligible to apply for the right to live and work in the UK through the Right of Abode or a UK Ancestry visa.

**Please note that the status of EEA nationals and their dependents currently in the UK has not changed as a result of Article 50 being triggered in March 2017. The UK remains a full member of the EU and all the rights and obligations of EU membership remain in place until the withdrawal process is complete. That means there has been no change to the rights and status of EU nationals living in the UK while the UK remains in the EU.**

### FREQUENTLY ASKED QUESTIONS

The following FAQs have been split into the following sections -

1. Application process for an EEA residence document
2. European Passport Return Service
3. Absences from the UK
4. Treaty rights/Qualifying period
5. Comprehensive sickness insurance (CSI)
6. Supporting documents
7. Dependants
8. Ireland and Irish nationals
9. Citizenship
10. Appeals
11. Pension
12. Reimbursement
13. Future
14. UK's offer on safeguarding the position of EU citizens
15. Help and Assistance

## **1. Application process for EEA residence document**

### **Why should I apply for documentation if there is no requirement to do so?**

The documents prove you are legally in the UK exercising your EU treaty right or have obtained permanent residency after completing a relevant 5 year qualifying period. While UK Visa and Immigration (UKVI) state that there is no requirement to apply for a document and their status post-Brexit is uncertain; analysis indicates that they may help with any immigration restrictions imposed post-Brexit.

### **Do I need to disclose all my nationalities and surrender all my passports when I apply to the UKVI?**

The application form requires the applicant to indicate all the nationalities they hold. You are required to submit proof of your EEA nationality such as your current passport or identity card.

### **What is the turnaround time for an application to the UKVI?**

There is no definitive guidance on this matter as it will depend on the UKVI workload. However, the UKVI could take up to six months to process your application.

### **I need my passport for travelling and I can't surrender it for six months?**

You should utilise the European Passport Return Service where applicants can take their passports to a participating local authority for verification and copying, and for the local authority to then send the copy to the UKVI. This facility allows you to keep your passport while your applications are being processed. The European Passport Return Service is only available to applicants who are applying online using the EEA (QP) or EEA (PR) application forms and intend to submit their passport with the application. National identity cards and other identity evidence must be submitted as originals only.

### **What passport validity is required when applying?**

There is no explicit guidance on this at present, but the passport should be valid.

## **2. European Passport Return Service**

### **Where is the nearest European Passport Return Service (EPRS) to St Andrews?**

The nearest local authority that operate the EPRS is Edinburgh. There are currently three local authorities that operate this facility: South Lanarkshire, Edinburgh and West Lothian. Details can be found at <https://www.gov.uk/government/publications/european-passport-return-service-scotland>

### **What will the EPRS do for the applicant?**

The local authority will take a verified photocopy of your passport and send the copy, along with your checklist, accompanying documents and application form, to the UKVI on your behalf.

### **How much does it cost to use the EPRS?**

£10 plus the additional cost of the local authority posting your application to the UKVI.

### **Will I be given time off work by the University to attend the EPRS?**

Any time off to attend the EPRS is at the discretion of your line manager in line with any relevant University policy.

## **3. Absences from the UK**

### **What exact absence details are required when applying for Permanent Residency?**

As per the current UKVI guidance, you only need to list your absences where you have been out of the UK for more than 6 months in total in any 12 month period. Exceeding this threshold, means you have broken the 5 years continuous residency. You do not need to list any absences that were before your qualifying period. The UKVI is only concerned about periods of total absence of six months or more in any 12 month period which would break your continuous residence. The online application form only requires a declaration that you have not had more than 6 months absence in any 12 month period of your qualifying period.

**How can I provide absences from the UK if my passport is never stamped at the UK border?**

You should provide the information requested in the application form and where needed detail your absence history; for example, by looking at emails of flight bookings or hotel bookings; or at least those border stamps in your passport which indicate you were out of the UK.

**What counts as an absence? Do family holidays count toward the 6 month limit?**

Yes. Any whole days outside the UK will be counted towards the absence calculation even if they are short family holidays. Absences due to bereavement or compassionate reasons are generally disregarded.

**Do the UKVI not have absence details on file if my passport is scanned on re-entry?**

All applicants are expected, where required, to provide absence data with their application.

**Are there any exemptions to the absence threshold for Permanent Residency?**

The threshold is no more than a total of six months absence outside the UK in any 12 month period during your qualifying period. The exemptions are:

- Periods of absence from the United Kingdom on compulsory military service
- One absence from the United Kingdom not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

This is detailed in Section 3(2)(c) of the EEA Regulations 2016. This means that absences due to fieldwork or fellowships outside the UK that take the applicant over the threshold could be argued as ‘*overseas posting*’. The evidence to cover these periods of absence from the UK would simply be a letter from the relevant Head of School explaining that the applicant was abroad for work purposes and continued to be employed, salaried and conducting duties for the University during this time.

**4. Treaty rights/Qualifying period****What qualifying period should I use if I have been in UK as an EEA national for 20 years?**

You should choose the most recent 5 year period. The application form requires you to indicate when you first arrived in the UK and therefore assumes you will use the first 5 years. However, if this is not the case you should provide a covering letter indicating which specific 5 continuous year period you are relying upon as your qualifying period for permanent residency.

If you are not choosing the most recent five year period (e.g. you apply in 2017 but you choose 2010-2015 as your qualifying period) then you should submit evidence of residence covering 2015 to 2017 (such as P60s or council tax bills). The reason for this is that the caseworker could make the automatic assumption that you have left the UK for two years after gaining permanent residency in 2015 and refuse the application. This is because permanent residence is lost if you have been outside the UK for 2 continuous years after completing 5 years of exercising your treaty rights.

**How many hours of work are required to confirm I am exercising EU treaty rights as a worker?**

There is no threshold but the work must be regular and genuine; not ad-hoc. Relying on part-time employment is acceptable to qualify as a worker. The European Commission confirmed in July 2010 that under EU treaty rights a worker is

- *“any person who undertakes genuine and effective work for which he is paid under the direction of someone else”, and*
- *“Short duration of employment, limited working hours or low productivity cannot prevent an EU citizen from being considered an EU migrant worker”*

**I’m 4 months short of the 5 years qualifying period, should I just wait until I have completed 5 years and apply for permanent residency or should I apply for a registration certificate in the meantime?**

To avoid applying twice in quick succession, it makes sense to wait until you have completed 5 years continuous residency then apply. However, there is nothing preventing you applying for the registration certificate then applying for permanent residency at a later date.

**My current contract ends before the 5 year qualifying period and it’s the only job I’ve had in the UK, what are my options?**

An applicant must demonstrate that they have completed 5 years continuous residency in the UK in order to be eligible for permanent residency. If you do not have 5 years, then you can apply for an EEA registration certificate or once your contract finished exercise another treaty right (working, looking for work, self-employed, self-sufficient or studying) and rely on a combination to establish a continuous 5 year qualifying period.

### **I have gaps in my employment history, what is my position?**

Any gaps in your employment mean you will not be classed as a worker for those periods and therefore you need to meet the qualifying criteria under another treaty right. The five EU treaty rights are

- Working
- Looking for work/job seeker (maximum of 6 months)
- Self-employed
- Self-sufficient
- Studying

The qualifying criteria for each treaty rights and the required document for each can be found at <https://www.gov.uk/government/publications/apply-for-a-document-certifying-permanent-residence-or-permanent-residence-card-form-eea-pr>. Please be aware that if you do not meet the criteria for the specific treaty right you cannot rely on that particular period to establish 5 years continuous residency.

### **I have been a student in the UK for several years, without Comprehensive Sickness Insurance (CSI), but while studying for a PhD I have been working at the same time. What is my status?**

If you are a student and a worker, there is no need for CSI as you could rely on your worker status for your qualifying period. Periods of time as a worker do not require CSI. You would need to provide documentation to prove your employment but the work must be 'genuine and regular' and not just a few ad hoc hours.

## **5. Comprehensive sickness insurance (CSI)**

### **Do I need comprehensive sickness insurance as a worker?**

No. The requirement for comprehensive sickness insurance is only required if you are rely on exercising your treaty rights in the UK as a self-sufficient person or a student to meet the 5 year qualifying period.

### **What is the current issue relating to comprehensive sickness insurance?**

The UK requires EEA citizens who are not economically active to have comprehensive sickness insurance covering all health and medical costs before it will recognize that periods of no economic activity count towards permanent residency. To be able to live in the UK for more than 3 months, the UKVI states that EU nationals must meet the requirements of the EEA Regulations by exercising their EU treaty rights. If an EEA national is in the UK as a self-sufficient person or a student they must have comprehensive sickness insurance due to their lack of economic activity; otherwise those specific periods of time will not count towards permanent residency.

If you were/are a student or self-sufficient person and you don't have CSI, you are not meeting the requirements of the EEA Regulations. This means that any time you spend in the UK without CSI will not count towards permanent residency. This, however, does not mean that you're at risk of being removed from the UK or that you will face criminal or civil sanctions for not holding CSI. The reality is that the UKVI are not going to forcibly remove people from the UK solely on the basis that they don't have CSI.

### **I was never told I needed CSI, so never held it when I was student. What are my options?**

This is becoming a common issue, as a lot of EEA students had no idea they needed it, and had no idea it would be an important part of the permanent residency application. The UKVI will reject all applications where an individual was a student during the five year qualifying period and they didn't hold CSI. Essentially all you can do is wait for a period in which you have been a 'worker' for five continuous years and then apply. This is not falsifying the application, as you are under no obligation to submit any evidence before the relevant five year period, regardless of your entry date.

### **What documents are required to prove I had CSI?**

Only one of the following documents which was valid for the relevant period of study or self-sufficiency is suitable to prove you had CSI:

- Private medical insurance

- European Health Insurance Card (EHIC) issued by an EEA Member State
- Form S1, S2, S3

Cash-back health schemes, travel insurance policies, or access to the UK's National Health Service (NHS) does not meet the requirement of CSI. Please see the permanent residency guidance at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/608088/Form-EEA-PR-guidance-notes-v3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608088/Form-EEA-PR-guidance-notes-v3.pdf).

#### **Does an EHIC card issued in the UK meet the requirements of comprehensive sickness insurance?**

No. An EHIC card must be issued by an EEA member state, but not the UK. Please see page 13 of the EEA (PR) guidance issued in April 2017 - <https://www.gov.uk/government/publications/apply-for-a-document-certifying-permanent-residence-or-permanent-residence-card-form-eea-pr>.

### **6. Supporting documents**

#### **Do I need verified payslips, P60's or bank statements when submitting my application to the UKVI?**

Yes. Any online documents must be verified and Human Resources are able to certify pay documents.

#### **What specific documents are required for permanent residency?**

This is dependent on what treaty rights are being used to complete the 5 year qualifying period. For example, as a worker applying for permanent residency, the applicant only needs to have 5 consecutive P60s. Applicants should check the most recent guidance notes which are available on the UKVI website - <https://www.gov.uk/government/publications/apply-for-a-document-certifying-permanent-residence-or-permanent-residence-card-form-eea-pr>.

#### **How do I prove that I have been exercising my treaty rights as a worker when applying for permanent residency, do I need payslips as well as P60s?**

There is no requirement to have both documents. If you are relying on a 5 year qualifying period as a worker then you need 5 consecutive P60s as detailed in the UKVI guidance notes. If you do not have P60s then you need to submit 3 payslips for each year, ensuring there is no more than a 6 month gap between each document. Ideally this should include March's payslip for each year and 2 other payslips no more than six months apart.

#### **Are the life in UK test and English Language test required for permanent residency?**

No. These are only required when you apply for citizenship. They are not required when applying for permanent residency.

### **7. Dependants**

#### **Does the status of permanent residency differ if I obtain it as worker and my partner obtains it as my dependant or separately as a student?**

No, it doesn't matter how you obtain it. Provided both of applicants met the relevant qualifying period and eligibility requirements you would be issued a document from the UKVI confirming you have obtained permanent residency in the UK.

#### **Do I need to include my children, who have a British nationality and a British passport, on the permanent residency application?**

No. The application only requires details of family members who are EEA citizens.

#### **What application forms are needed for dependants applying for an EEA registration certificate [EEA (QP)]?**

For EEA QP applicants, the 'main' applicant, i.e. the 'worker', completes form EEA QP, but dependants have to complete different forms as follows

- Children, Spouses and Civil partners – EEA (FM)
- Unmarried partners – EEA (EFM)

All the applications should be submitted together at the same time.

#### **Are children born in UK automatically a British citizen and not affected by Brexit?**

Not all children born in the UK are automatically a British citizen: unless they have British citizenship they will be affected by Brexit in the same manner as you. Prior to 1 January 1983, almost any child born in the UK automatically

acquired British citizenship. Since then the rules have changed. A child born in the UK will only have British citizenship if at least one of their parents is a British citizen or is living in the UK with permission to stay here permanently. If the child was born in the UK on or after 1 January 1983, they will be a British citizen if their mother or father was either a British citizen at the time of birth or a 'settled person' in the UK at the time of birth. 'Settled' means the person can stay in the UK without any time restrictions. This includes people who have either the right of abode, indefinite leave to remain or have acquired permanent residence as an EEA national.

#### **Can my unmarried partner apply for permanent residency with me?**

Yes but only if you can prove they have been living in a durable relationship with you and have a valid residence documentation (i.e. a registration certificate), as your partner that covers the relevant qualifying period. If they do not have this documentation, they will not qualify for permanent residence. If they wish to apply for a registration certificate or residence card, they should complete the paper form EEA (EFM) instead.

EEA (EFM) application form - <https://www.gov.uk/government/publications/apply-for-a-registration-certificate-or-residence-card-for-an-extended-family-member-form-eea-efm>.

Unmarried partners could also apply for permanent residency on their own provided they satisfy the requirement of exercising a treaty right in the UK for a continuous period of 5 years.

### **8. Ireland and Irish nationals**

#### **I'm an Irish citizen with a parent born before 1949, can I rely on this to get British citizenship?**

Children of nationals born in the Republic before 1 January 1949 may be eligible for a British passport. Further details can be found at <https://www.gov.uk/types-of-british-nationality/british-subject>

#### **Will the Common Travel Area between Ireland and the UK still exist and Irish citizens be unaffected by Ireland?**

Irish citizens are being treated exactly the same as all other EEA citizens. The EU negotiating guidelines which were published on 29 April 2017, sets out the EU's approach to the Brexit talks with the UK, and suggest the EU will accept the continuation of the Common Travel Area between Ireland and the UK and that implementing a hard Border could impact the peace process. The Irish Government's key aim is to preserve the rights of Irish people to travel freely, live and work in the UK after Brexit, and of UK citizens to do the same in Ireland.

The UK government did confirm on 26 June 2017 that the UK's offer to the EU on the Safeguarding the position of EU citizens living in the UK was without prejudice to Common Travel Area arrangements between the UK and Ireland. Irish citizens will be able to rely on the reciprocal arrangements between the UK and Ireland which pre-date both countries' membership of the EU to continue living and working in the UK. The UK government want to protect the Common Travel Area arrangements, and indicated that Irish citizens residing in the UK will not need to apply for the proposed EU settled status to protect their entitlements.

### **9. Citizenship**

#### **If I apply for British citizenship, does it affect any other nationalities I may have?**

Not from a UK government perspective; the UKVI is happy for people to have multiple nationalities. This might not be the same for other governments and you should check with your own national authorities before applying for citizenship. Securing British citizenship can adversely affect your rights as an EU citizen and the rights of your family members, so you should take advice on this point before applying for citizenship.

#### **Can I obtain British citizenship before the UK's formal departure from the EU if I have nothing just now?**

Possibly, you would need to have obtained permanent residency first and held it for 12 months normally before applying for citizenship. A lot depends on how quickly the application is processed by UKVI or which qualifying period you rely upon, see following question.

#### **Can I apply for citizenship immediately after getting my permanent residency?**

If you are an EEA national you will automatically obtain permanent residence status after exercising EEA free movement rights in the UK for a continuous period of 5 years. You must be issued with a document confirming permanent residency before applying for citizenship. You normally have to hold permanent resident status for 12 months before applying for citizenship. This means that you may need to wait until you have been in the United

Kingdom for 6 years before you can apply. However when you apply for permanent residence you should provide evidence with your application for a 5 year qualifying period that ended at least a year before you want to apply for citizenship. This means that the UKVI will confirm your permanent residency was obtained at the end of that qualifying period and you can apply for citizenship once your document is granted.

For example: If you apply for Permanent Residence on 1 August 2017 and want to apply for citizenship once that application is decided, you should send evidence that shows you were exercising Treaty rights as a qualified person or family member from 1 August 2011 to 1 August 2016. The UKVI will confirm that you have obtained permanent residency in the UK on 1 August 2016.

**Do I need to obtain a permanent residency card from UKVI if I want to apply for citizenship, is it not enough just to provide 5 years' worth of information to show I met the qualifying period?**

You must have a permanent residency document issued by the UKVI. The UKVI explicitly state that in order to be eligible for citizenship, an EEA national must have had permanent residence status for the last 12 months and that you need to provide your permanent residence document with your application.

**What is the English languages requirement for citizenship?**

Applicants need to prove their knowledge of the English language when applying for citizenship. You can prove it by having either:

- An English qualification at B1, B2, C1 or C2 level - <https://www.gov.uk/english-language/approved-english-language-qualifications>
- A degree taught or researched in English - <https://www.gov.uk/english-language/degrees-in-english>

Or you meet one of the exemptions - <https://www.gov.uk/english-language/exemptions>. Please note your application will be refused if you do not provide evidence of your English language skills.

## **10. Appeals**

**If I apply and it's refused what appeal options are available?**

There are plenty of scaremongering media stories which suggest that people will be deported as their application has been refused. If you receive a rejection letter please contact Human Resources or seek legal advice. There could be number of reasons for the rejection such as insufficient information or lack of supporting documents. The UKVI will send you a decision letter telling you why your application has been refused; this will likely state there is "*no requirement to leave the UK*". The letter will also tell you if you have a right of appeal and, if so, how to appeal. Alternatively you can reapply.

## **11. Pension**

**What will happen to my pension as a result of Brexit?**

While there remains huge uncertainty about the deal the UK will have with the EU upon its departure, it should not have an impact on your existing pension entitlements. There has been no indication that Brexit will remove the rights that EEA nationals have to pension entitlements which have accumulated while in the UK.

Your benefits remain in the University pension scheme until your retirement age. The scheme will write to you with information about your pension benefits and options as you approach retirement age. You do have the option of transferring your pension overseas but the receiving scheme must be recognised by HMRC and both pension schemes must agree to the transfer of benefits. Further details can be found at <https://www.gov.uk/government/publications/list-of-qualifying-recognised-overseas-pension-schemes-qrops>.

## **12. Reimbursement**

**What will the University reimburse for employees applying for permanent residency?**

The University will reimburse the application fee for the employee and their EEA dependants for either of the EEA registration certificate or the EEA Permanent residence document.

**Will the University reimburse the fees and travel cost for the European Passport Return Service?**

No. These additional costs will not be reimbursed by the University.

**Will the University reimburse the cost of obtain citizenship?**

No. The University will not reimburse the cost of citizenship for EEA employees. The same rules apply to non-EEA nationals.

**13. Future****What is the worst case scenario if government doesn't confirm rights of EEA nationals to continue living and working in the UK?**

We simply do not know. The Government indicated that securing the status of, and providing certainty to, EU nationals already in the UK was one of the main priorities of the Brexit negotiations.

**Will EEA nationals have to leave the UK once the Brexit date arrives?**

Theresa May has insisted that no EEA national currently in the UK legally would have to leave the UK as a result of Brexit. It continues to be the case that EEA nationals can only be removed from the UK if they are considered genuine threat to the public; aren't lawfully resident or are abusing their EU free movement rights.

**What might a post-Brexit immigration system look like?**

We simply do not know. Government officials have not given any commitments on this matter, certain ministers have said that the UK will need a "bespoke immigration system" post-Brexit for controlling EU migration which could involve different rules for different sectors of the economy. Any future immigration system will be affected if Scotland becomes independent from the UK or if immigration becomes a devolved matter.

**Is Tier 2 a likely options of EEA nationals post Brexit?**

We cannot say for sure. Any future immigration system for EEA nationals who to come to the UK post-Brexit will depend on whether the UK government decides to introduce a visa system of the kind that currently applies to non-EEA citizens, which limits entry to skilled workers with a job offer.

**What are the likely outcomes of the Brexit negotiations in terms of EEA national's immigration status?**

The Government's white paper on the Brexit negotiations stated that the UK Government will

- Design our immigration system to ensure that we are able to control the numbers of people who come here from the EU, and
- Create an immigration system that allows us to control numbers and encourage the brightest and the best to come to this country, as part of a stable and prosperous future with the EU and our European partners.

The answer is we simply do not know what future immigration system and what type of visas will be imposed for EEA nationals who to come to the UK post-Brexit.

**14. UK's offer on safeguarding the position of EU citizens****What impact has the Prime Minister's offer on Friday 23 June 2017 made to EU citizens? Does it mean that all EEA citizen can stay and we automatically get "EU settled status"?**

The offer made by Theresa May as part of the Brexit negotiations is dependent on the EU offering reciprocal arrangements for UK nationals resident in the remaining 27 member states.

In summary the offer proposes the following

- The introduction of "EU settled status" but qualifying EEA migrants must apply once they complete 5 years qualifying period.
- The need for comprehensive sickness insurance for economically inactive EEA citizens will be removed.
- No EEA citizen lawfully in the UK before the cut-off date, which is yet to be agreed, will have to leave as a result of Brexit.
- EEA citizens who arrived before the cut-off date but haven't been here for five years will be able to accumulate the required 5 years continuous residency, after which they will be able to apply for settled status.
- All EEA citizens and their families in the UK will need to apply to the UKVI for permission to stay, regardless of the date of their arrival.
- Those with Permanent Residency obtained through the current free movement rules will be streamlined into the proposed EU settled status system.



The UK Government is under pressure from the EU and other British political parties to unilaterally guarantee the rights of the estimated 3.2 million EEA citizens in the UK. However, the Government has indicated it can not do this until the rights of the estimated 1.2 million UK nationals living in the EU are guaranteed.

The offer does not affect the current status of EU national here or provide any guarantees. It is purely an offer to the EU as part of the Brexit negotiations.

The full offer as at 26 June 2017 can be viewed at: <https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>.

The UK Government released a paper which seeks to provide certainty to EU citizens, and the UK organisations that employ them, of their rights following Brexit. The paper can be found here: <https://homeofficemedia.blog.gov.uk/2017/06/26/fact-sheet-eu-citizens-rights/>.

## **15. Help and Assistance**

If you have any questions, or require further information, please contact Cameron Little on 01334 462497 or [cl81@st-andrews.ac.uk](mailto:cl81@st-andrews.ac.uk) or visit:

<https://www.st-andrews.ac.uk/staff/brexit/>

<https://www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know>

<https://www.gov.uk/eea-registration-certificate>

## **Human Resources**

**July 2017**