

## FAQ: EU Migrants' Rights in the UK

EU citizens in the UK by reported economic activity (2015)

### Contents

If you are a citizen of an EU Member State, then you are an EU citizen and have a number of rights, including the right to move and reside freely in any EU Member State.

#### This FAQ discusses:

- EU citizens' free movement rights
- Attendant benefits
- Permanent residency
- Exceptions to free movement
- The future of EU migrants' rights post-Brexit

It is intended to present an outline of the main issues relating to EU migrants' rights in the UK, and is therefore not comprehensive.

Citizens of European Economic Area (EEA) Member States (Iceland, Liechtenstein and Norway), and Switzerland have rights equivalent to EU nationals and should be presumed as included in the term 'EU citizen/national' when used in this FAQ.

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Activity Status	Number of people	Share of all EEA+ citizens
Working	2018000	0.61
Employee	1695000	0.51
Self-employed	314000	0.09
Not working	1307000	0.39
Unemployed	111000	0.03
Student	135000	0.04
Under 16	563000	0.17
Looking after family	162000	0.05
Retired	221000	0.07
Other	115000	0.03
Total	3324000	1

Source: [Migration Observatory](#)

## 1. Introduction

### Q: Who is an EU citizen?

**A:** Citizenship of the EU is dependent upon the individual being a national of an EU Member State. EU citizenship is in addition to nationality of a Member State and brings with it a number of rights in addition to the right to move and reside freely in any EU Member State, the focus of this FAQ. This includes, but is not limited to, the right to vote and stand as candidates in the European Parliament election and the right to petition the European Parliament, to contact the European Ombudsman and to contact directly any European institution or advisory body.

### Q: What rights of entry and exit to Member States apply to EU citizens?

**A:** EU citizens with a valid identity card or passport must be permitted to leave the territory of a Member State to travel to another Member State without being subject to exit visa or equivalent formalities. Conversely, EU citizens must be granted entry to the UK (and other Member States) upon production of a valid identity card or passport free from entry visa or similar requirements. Family members with a valid passport who are not EU citizens also may not be subject to exit formalities, though they may be required to possess an entry visa in certain circumstances.

### Q: When will an EU citizen qualify as a permanent resident in the host Member State?

**A:** In the UK, EU migrants will qualify as permanent residents after a period of five years, as long they have been continually resident in the UK during that period.

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### Q: Are there any exceptions to the right to free movement and residence of EU citizens?

**A:** Yes. Member States can limit the free movement of EU citizens and their families on grounds of:

- public policy
- public security
- public health

These grounds can be used to restrict entry, or to expel those already resident in a host Member State.

However, these exceptions cannot be used to improve the national economic position of the Member States. Any limits placed on free movement using these exceptions must be proportionate and must apply equally to the Member States' citizens and other EU citizens

## 2. Economic Migration

### Q: Can EU citizens work in other EU Member States?

**A:** Yes. EU citizens have the right to reside in another Member State (the host state) to work without being subject to work visa or residence permit requirements. This includes the right to access employment on par with nationals of the host state and the right to equal treatment during employment (including remuneration, social and tax advantages).

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### Q: Who is a worker?

**A:** To exercise the right to move and reside freely as a [worker](#) (and enjoy derived rights discussed below), EU migrants must be remunerated for their work, and such work must be "effective and genuine". However, this does not necessarily exclude part-time work, or work for less than the minimum wage. This is true even if a person in part-time employment receives welfare or social assistance to supplement his/her income.

[Self-employed](#) EU citizens also enjoy the freedom to move and reside in another Member State along similar lines as workers. This is known as the freedom of establishment and also applies to companies, e.g., setting up and managing companies, firms, agencies, branches or subsidiaries in another Member State.

[Job-seekers](#) have the right to enter and remain in the UK to seek employment for a reasonable period of time. The UK requires job-seekers to be resident in the Common Travel Area (the UK, Isle of Man, Channel Islands or Ireland) for at least three months before being able to claim job-seeker's allowance. At this point, the job-seeker will be required to satisfy a [habitual residence test](#). In addition, job-seekers must demonstrate that they are actively seeking employment and have a genuine chance of being engaged. If the job-seeker satisfies the habitual residence test, he or she is entitled to 91 days of job-seeker's allowance.

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### Q: What if an EU migrant worker loses his or her job?

**A:** Loss of a job will not automatically result in the loss of 'worker' (or self-employed) status and attendant benefits. However, in the UK, EU migrants who do not satisfy a 'Minimum Earnings Threshold' may be unable to retain status as a former worker or self-employed person.

An EU migrant will still be considered a worker in the host state in certain situations, e.g., due to temporary illness or accident, or temporary unemployment after completion of a fixed-contract. However, if an EU migrant leaves his/her job voluntarily without good cause, eligibility for job-seeker's allowance may be affected.

### Q: What access do EU migrant workers have to social and other benefits in the host Member State?

**A:** EU migrant workers are entitled to in-work and social benefits.

**In-work benefits** refer to equal treatment with respect to initial access to employment, conditions of employment (including remuneration and severance pay) and tax advantages.

**Social benefits** are advantages granted by the host state by virtue of the person's status as a worker or simply because of his/her residence in the host state. This includes benefits such as entitlement to a discounted rail card, housing benefit or council tax benefit, and access to the National Health Service. In the UK, access to these benefits is conditional upon satisfaction of a [habitual residence test](#) and a 'right to reside' test, which has been upheld by the European Court of Justice, despite criticism by the EU Commission.

## 3. Non-Economic Migration

### Q: Does the right to reside in another Member State have to be tied to economic movement?

**A:** No. EU citizens are entitled to reside in the UK for an initial period of three months [without exercising any free movement right](#) other than exit from their home state and entry to a host state. After that, however, they must exercise a free movement right in an approved category, such as:

- **Students** and those undertaking [vocational training](#) have the right of residence to pursue education at a private or public establishment. Along with this right comes the right to equal treatment with nationals in terms of tuition fees and tuition fee loans. In the UK, an EU citizen student cannot receive a maintenance grant unless he/she has been resident [in the UK](#) for at least three years (unless they are also considered migrant workers).
- **Retired EU migrants** already living in the UK may continue to reside here if they can demonstrate that they have enough income (whether through a pension in another EU state, or investments) to cover expenses while residing in the UK. A minimum residency period may apply.
- **EU migrants** of independent means (i.e. self-sufficient people) who are exercising their free movement rights may also have a right of residence.
- **Primary caretakers** of self-sufficient EU citizen children under the age of 18 are entitled to remain in the UK if his/her removal from the UK would result in the EU citizen child having to leave as well.

In these cases, there is typically a requirement to demonstrate possession of sufficient financial resources and resources so as not to become a burden on the social assistance programme in the host state, and that they possess comprehensive sickness insurance in the host state ([which does not include the NHS](#)).

## 4. Family

### Q: Can the family of an EU migrant join him/her in the host Member State?

**A:** Yes. EU migrants that have exercised their freedom of movement have the right to be accompanied (or joined later) by family. This gives family members the right to reside in the host Member State. They must have sufficient resources and comprehensive sickness cover.

In the UK, qualifying non-EU family members can apply free of charge for an [EEA family permit](#) to facilitate access to the UK, though this is not required.

### Q: Who qualifies as the family of an EU citizen migrant?

**A:** 'Family' includes: the spouse, registered partners (as long as the host Member State treats such partnerships as equivalent to marriage), direct descendants under 21 or dependents of the spouse/partner and dependent direct relatives in the ascending line, including those of the spouse or partner. **Extended family**, such as siblings, aunts, uncles, etc., may also qualify for residence if they can demonstrate that they are dependent upon the EU migrant or are a member of their household.

**Q: Are the family members of EU migrants entitled to social benefits?**

**A:** Yes. The EU national who the family member is joining must be one of the following: a worker, a self-employed person, a former worker, a student, a self-sufficient person or a job-seeker. If the family member qualifies, then he or she must be treated the same as the EU migrant worker with regard to benefit access.

## 5. Free Movement Rights Post-Brexit

**Q: What will happen to EU citizens' free movement rights after Brexit?**

**A:** The answer to this question is not yet clear. It depends on the deal that the UK strikes with the EU during Brexit negotiations and the resulting terms of the withdrawal agreement.

**Q: Has the UK Government indicated a preferred method to manage EU migrants in the UK post-Brexit?**

**A:** The only thing that is clear is that Prime Minister Theresa May will not permit free movement to remain as it is now. The UK Government has issued a number of statements since the referendum regarding possible options. For example, David Davis, the Brexit Minister, [suggested](#) that there might be a cut-off date imposed on EU migrants, after which they would not be permitted to remain in the UK post-Brexit. He has also [indicated](#) that the UK will not fully guarantee EU citizens' rights without reciprocity for UK citizens.

Though there has been [some indication](#) that some EU Member States might consider allowing the UK to restrict migration for a certain number of years, while still permitting it to access the EU single market, it is unlikely that it would be a permanent solution, or that future restrictions on EU migration could be significant if the UK wishes to maintain market access.

Towards the end of 2016, Prime Minister Theresa May [considered and rejected](#) the use of a points-based system to control EU migration, which typically assigns points based on things such as educational qualifications or employment skills. She is now [considering](#) the possibility of using a work permit system, and the Home Affairs Committee in the House of Commons is conducting an [inquiry](#) into the future of immigration policy, which includes consideration of options for EU migration. This suggests that the UK is open to creating an immigration policy specifically for EU migrants post-Brexit, rather than applying general immigration policy.

**Q: What will happen to EU migrants already residing in the UK?**

**A:** If the withdrawal agreement does not include any free movement rights or special concessions for EU citizens, it is likely that EU nationals who have not obtained [permanent residence](#) in the UK will be treated the same as non-EU migrants in terms of entry and qualifying for 'indefinite leave to remain' - the non-EU national equivalent of permanent residence. This means that they will have to legitimise their presence in the UK by other means, such as through a work permit system or through a familial relationship with a British national. Such a system would negatively impact migration of unskilled workers.

**Q: What will happen to UK nationals abroad, post-Brexit?**

**A:** As with the above, the answer depends on the withdrawal agreement. However, whatever arrangements are in place for EU nationals in the UK would apply equally to [British citizens](#) abroad.

