

Information session on Brexit for EU/EEA Staff

September 2016



Welcome & Introduction

Contents:

- Our EU staff are vital
- About the Staff Immigration Team
- Support for EU Staff

Any reference to EU staff also includes EEA countries and Switzerland

Importance of EU staff to the collegiate University

“This is an institution that values our EU and indeed all our international students and staff, and believes that part of our strength lies in our diversity and that diversity contributes to our strength. We absolutely believe that.”

Professor Louise Richardson, Vice-Chancellor

- We understand the referendum outcome was a huge shock and appreciate the feeling of uncertainty it brings to our EU staff. We want to support you through these uncertain times.
- We want to make sure that all our EU staff and their families feel welcome and want to stay at Oxford as they are such a valuable part of our teams, values and culture.
- EU staff are absolutely essential to Oxford’s research and education endeavours.

Staff Immigration Team

- Arrange over 600 visas for international staff every year.
- Support the 1,100 visa holders who work and carry out research at Oxford.
- Support departments and colleges with international visitors.
- Maintain our Tier 2 and Tier 5 Licenses.
- Lobby Home Office to minimise the regulatory burden and affect legislation.
- Ensure the collegiate University is compliant with right to work legislation.
- New – supporting EU staff and their dependents.

Supporting EU Staff

The Staff Immigration Team have:

- Been supporting non EU family members of EU nationals.
- Undergone training in EU immigration, including on Permanent Residence and Residence Certificate applications.
- Can request help from the Home Office via the Premium Customer Service.
- Have access to professional legal support for more complex cases.

Turpin and Miller LLP

- Philip Turpin – external immigration lawyer based in Oxford.
- Engaged by the University for immigration related legal advice.
- Will now talk you through the EU free movement rules in light of Brexit.

EU and EU Family Members
Information Sessions
for University and College staff

Turpin & Miller LLP

“When we do leave the EU, we fully expect that the legal status of EU nationals living in the UK, and that of UK nationals in EU member states, will be properly protected”

<https://www.gov.uk/government/news/statement-the-status-of-eu-nationals-in-the-uk>

The European Economic Area and Switzerland

The European Economic Area (EEA) was established on 1 January 1994.

- European Union (EU) countries
- Plus Iceland, Liechtenstein and Norway

Within the EEA there is free movement of persons

Switzerland is neither an EU nor EEA member but is part of the single market and so its citizens have the same free movement rights.

The UK and the Republic of Ireland constitute the Common Travel Area, an area of free travel for UK & Irish citizens dating from 1953.



28 EU Countries

**Iceland,
Liechtenstein
and Norway, the
EEA Countries**

Switzerland

Croatia

- ❑ The Referendum did not change anything legally. The rights of EEA citizens are exactly the same now as before the Referendum.
- ❑ Leaving the EU is governed by Article 50 of the EU Treaty: The UK notifies the EU of its intention to withdraw. This is followed by withdrawal negotiations.
- ❑ The UK ceases to be a member of the EU on conclusion of negotiations or, failing that, two years after the notification (unless the UK and the EU Council agree to extend the period)

European Directive 2004/38/EC of 29 April 2004

(Also known as the Free Movement Directive or the Citizens Directive)

This is the primary source of the free movement rights of the EEA citizens and their family members.

Immigration (European Economic Area) Regulations 2006

(The 2006 Regulations)

These Regulations “apply and interpret” the UK's obligations under the Free Movement of Persons Directive into UK law.

Derivative rights of residence

9 April 2015 Guidance

Direct family members of EEA nationals

30 September 2015 Guidance

EEA and Swiss nationals: free movement rights

13 November 2015 Guidance

EEA case law and appeals

1 October 2015 Guidance

EEA nationals qualified persons

9 April 2015 Guidance

Excluding EEA nationals and their families from the UK

22 July 2013 Guidance

Extended family members of EEA nationals

9 April 2015 Guidance

Family members of EEA nationals who have retained the right of residence

9 April 2015 Guidance

Processes and procedures for EEA documentation applications

30 August 2016 Guidance

Removals and revocations of EEA nationals

19 February 2015 Guidance

<https://www.gov.uk/government/collections/eea-swiss-nationals-and-ec-association-agreements-modernised-guidance>

Free Movement Rights of EEA Citizens

Initial right of residence for three months on production of a valid EEA identity document or passport.

After three months must be a **Qualified Person**:

- Jobseeker
- Worker
- Self-employed person
- Self-sufficient person (with comprehensive medical insurance)
- Student (with comprehensive medical insurance)

Self Sufficient Persons and Students

Students and the self sufficient are only 'qualified persons' if they have comprehensive sickness insurance for themselves and family members that would cover the costs of most medical treatment they may receive in the UK.

This means private health insurance or, in some circumstances, an EHIC/E111 issued by another EEA state.

If no comprehensive sickness insurance held the EEA person is not a qualified person.

This is significant when it comes to the residence of family members and/or obtaining permanent residence after five years.

www.gov.uk/government/uploads/system/uploads/attachment_data/file/488449/Qualified_Persons_v3.0_ext_clean.pdf at pages 44-47

Students also in employment

For a student to be a Qualified Person on the basis that they are also a ‘worker’ they must be in employment which is “genuine and effective”

“HMRC has a Primary Earnings Threshold (PET), which is the point at which employees must pay class 1 National Insurance contributions. *If an EEA national is earning below PET you must make a further enquiries into whether the activity relied upon is genuine and effective.*”

The PET for the financial year 2016- 2017 is £155 each week, or £672 each month

Direct Family Members of EEA Citizens

- spouse or civil partner
- children/grandchildren of the EEA citizen or their spouse or civil partner who are:
 - under the age of 21, or (if over 21)
 - dependants of the EEA citizen or their spouse or civil partner
- dependent direct relatives in the ascending line of the EEA citizen or their spouse or civil partner

Free Movement Rights of Direct Family Members of EEA Citizens

Direct family members have an automatic right of residence in the UK for as long as they remain the family member of the EEA citizen and the EU citizen is either:

- entitled to reside in the UK for the initial period of three months
- a qualified person
- has a right of permanent residence

Extended Family Members of EEA Citizens

Extended Family Members are usually:

- ❑ A partner who can prove they are in a durable relationship with the EEA citizen (this is a relationship 'akin to marriage' and normally with at least two years cohabitation)

- ❑ A relative of an EEA citizen or their spouse or civil partner who is dependent on the EEA citizen or is a member of their household

Free Movement Rights of Extended Family Members of EEA Citizens

Extended family members do not have an automatic right of residence in the UK but will be considered for a Residence Card as the family member of the EEA citizen who:

- is a qualified person, or
- has a right of permanent residence

Document Confirming Right of Residence: EEA Qualified Persons

Although it is not compulsory, those who qualify can apply for a Registration Certificate confirming the right to reside. In practice few EEA citizens have bothered.

The application is made either on a 35 page paper form: EEA (QP) or on a new on-line application form:

<https://visas-immigration.service.gov.uk/product/eea-qp>

With the on-line application there is also a new passport return service: www.gov.uk/government/collections/european-passport-return-service

The fee is £65. It is the only application which can be made on a same day basis (for an additional fee of £500).

UKVI must determine applications within six months.

Document Confirming Right of Residence: EEA Family Members

Although it is not compulsory, those who qualify can apply for a Registration Certificate (EEA nationals) or Residence Card (non-EEA nationals) .

In practice it is essential for non EEA Family Members to apply for a Residence Card in order to have some evidence of the right to reside (for work, travel, health care, right to rent, etc)

The application is made on form EEA (FM) for direct family members. The form has 91 pages. The fee is £65

The application is made on form EEA (EFM) for extended family members. The form has 76 pages. The fee is £65

UKVI must determine applications within six months.

Permanent Residence for an EEA citizen

An EEA citizen is automatically entitled to live permanently in the UK once they have lived here continuously for a period of five years in accordance with the EU rules.

Usually this means living here for five years as a Qualified Person (job seeker, worker, self-employed person, self-sufficient person, student).

An absence from the UK of less than six months, or for up to 12 months for an important reason, will not break continuity of residence for the purposes of acquiring a right of permanent residence

A worker does not cease to be a Qualified Person if temporarily unemployed due to sickness/accident or registered unemployed and seeking work.

Permanent Residence for an EEA citizen (cont)

For most EEA citizens *nobody knows* if and when they acquired Permanent Residence...

If an EEA national has the right of permanent residence in the UK they will only lose this right if they are absent from the UK for more than two consecutive years.

Document Certifying Permanent Residence

Although it is not compulsory those who qualify can apply for a document certifying permanent residence.

It is a mandatory requirement for applications for naturalisation as a British citizen

The application is made either on an 85 page paper form: EEA (QP) or on a new on-line application form:

<https://visas-immigration.service.gov.uk/product/eea-qp>

With the on-line application there is also a new passport return service: www.gov.uk/government/collections/european-passport-return-service

The fee is £65. UKVI must determine applications within six months

Permanent Residence for a Family Member of an EEA Citizen

An EEA Family Member automatically acquires permanent residence in the UK once they have lived in the UK for a continuous period of five years in accordance with the EU rules.

The EEA citizen must have been a Qualified Person or Permanent Resident in the UK for the whole of the five year period

As with EEA citizens who are qualified persons, there is no process for alerting the Family Member at the point at which they acquire Permanent Residence.

Permanent Residence is lost on leaving the UK for a continuous period of two years

Document Certifying Permanent Residence

Although it is not compulsory, those who qualify can apply for a permanent residence card.

The application is made on form EEA (PR). The form has 85 pages. The fee is £65.

UKVI must determine applications within six months.

The new online application process does not include non EEA Family Members

Summary of the Application Forms

- EEA citizens: EEA (QP) **Paper or on-line**
- Direct family members: EEA (FM) **Paper only**
- Extended family members: EEA (EFM) **Paper only**
- EEA citizens (PR after five years): EEA (PR) **Paper or on-line**
- Family members (PR after five years): EEA (PR) **Paper only**

Applicants using the on-line application can also utilise the European Passport Return Service:

www.gov.uk/government/collections/european-passport-return-service

European Passport Return Service

www.gov.uk/government/collections/european-passport-return-service

In Oxford this is provided by:

Oxfordshire Register Office

1 Tidmarsh Lane

Oxford OX1 1NS

Phone: 0845 129 5900

Email: registeroffice@oxfordshire.gov.uk

Pros & Cons for EEA citizens applying for a Registration Certificate (before completion of five years residence)

PROS

- It proves your residence in the UK and your right to work here
- It shows you were a 'qualified person' at the time the certificate is issued
- It facilitates applications by family members
- It is relatively straightforward (if you are an employee) and might become more straightforward if an on-line process is introduced
- It might prove an advantage in relation to as yet unknown changes in the immigration rules

Pros & Cons for EEA citizens applying for a Registration Certificate (before completion of five years residence)

CONS

- It costs £65 (or £565 for a same day application)
- It is necessary to submit either an original and valid passport or National Identify Card and be without that document for two months or so (*unless using the new European Passport Return Service*)
- If close to five years it might not be worth the bother – wait and then apply for a PR card.
- Different arrangements post Brexit might make the Registration Certificate irrelevant

Pros & Cons for EEA citizens applying for a Document Confirming Permanent Residence (after completing of five years residence)

PROS

- It proves your permanent residence in the UK, which might well be more important after Brexit
- People applying for permanent residence under the UK law (not EU rules) have to pay an application fee of £1813
- Having the PR document is a requirement for any application for British citizenship
- It facilitates applications by family members
- It proves British citizenship by birth for any children subsequently born in UK
- It is relatively straightforward (if you are an employee) and might become more straightforward if an on-line process is introduced

Pros & Cons for EEA citizens applying for a Document Confirming Permanent Residence (after completing of five years residence)

CONS

- It costs £65
- It is necessary to submit either an original and valid passport or National Identify Card and be without that document for two months or so (*unless using the new European Passport Return Service*)
- It might be superseded by different arrangements and/or documentation after Brexit.

Children born in the UK

- ❑ A child born in the UK is not a British citizen by birth unless either the mother or father is British or has Permanent Residence.
- ❑ If one parent already has a Permanent Residence card at the time of the birth, it is clear that the child is a British citizen by birth.
- ❑ If one parent already has permanent residence (having completed five years by the time of the birth) but no PR card it is possible to apply for a British passport, along with evidence of five years residence as a family member or qualified person prior to the child's birth.
- ❑ If a child is not British by birth the child can be registered as a British citizen as soon as either parent acquires Permanent Residence (form MN1). The fee is currently £936.

Citizenship for Adult EEA Citizens and Family Members

- Five years residence in accordance with the 2006 Regulations (permitted absences of 450 days over the five years & 90 days in the final year)
- One year with Permanent Residence
- Hold a Permanent Residence Card
- Life in UK test
- Meet English language requirement
- Meet the 'good character' requirement
- Form AN - The fee is currently £1236.

The Permanent Residence Card will not state when Permanent Residence was acquired but UKVI will have noted the 'deemed date' - so if possible provide evidence of being a Qualified Person for six years or more.

Pros & Cons for Obtaining British Citizenship

PROS

- If existing nationality allows dual citizenship then the British citizenship will be in addition
- Can hold a British passport
- Right to reside in the UK forever; status is not lost through absence
- Right to vote, consular assistance overseas and access to employment in the Civil Service
- Pass on British citizenship to children born outside the UK

Pros & Cons for Obtaining British Citizenship

CONS

- Possible loss of existing nationality
- Possible loss of right to reside of Family Member who has not yet acquired PR
- Cost

We offer a Checking Service for your EU application or your citizenship application

- You prepare your application form and the supporting documents yourself
- We will review the application and alert you to:
 - any missing documents or evidence
 - any information missing from the form
 - any potential reasons for refusal

The cost is £240 (incl VAT) plus £120 (incl VAT) for any dependants applying at the same time

Oxfordshire County Council offers a Nationality Checking Service for a fee of £80 (adult) and £50 (child)

www.oxfordshire.gov.uk/cms/content/nationality-checking-service-citizenship-applicants

Further Contact:

Philip Turpin: pturpin@turpinmiller.co.uk

Justyna Frac: jfrac@turpinmiller.co.uk

Jo Renshaw: jrenshaw@turpinmiller.co.uk

Protecting our Staff

The University condemns racism or any other form of hate crime and wants to ensure all our staff are protected and safe.

If you have experienced harassment based on your ethnicity, nationality, religion or belief, there is a service to help:

www.admin.ox.ac.uk/eop/harassmentadvice

Or if you want to speak to a harassment advisor or your trade union representative, please contact

www.admin.ox.ac.uk/personnel/staffinfo/joint/ar

Anyone who is a victim of, or witness to, a hate crime in the local area is advised to contact the police (on 999 in an emergency, or 101 in a non-emergency, 24/7).

If you would prefer to report a hate crime in confidence, please contact the [Hate Crime Network](#) on 0300 1234 148 or [Crimestoppers](#) on 0800 555111

Pensions

What will happen to my pension if I decide to leave the UK? Can I transfer it overseas?

Your benefits remain in the pension scheme until your retirement age. The scheme will write to you with information about your pension benefits.

Defined benefit pensions while they remain in the scheme are linked to price inflation and so will increase in value. Any defined contribution funds you have built up will continue to be invested for you and you will still be able to manage these investments as usual, but you will not be able to contribute further.

You do have the option of transferring your pension overseas, but the receiving scheme must be recognised by HMRC. A list of recognised schemes is available on the [HMRC website](#).

Pensions

Can I receive pension payments outside the UK?

Yes. You have two choices:

- Payments can be paid directly into your UK bank account and you can transfer them to an overseas account when you wish to do so.
- Payments can be paid directly to an overseas account. Please be aware that there may be a small charge for this service

Please contact the Pensions Office with further queries. Contact details can be found at www.admin.ox.ac/finance/epp/pensions.

Who do I contact?

The Staff Immigration Team will not be able to check applications but we are very happy to help with general immigration advice and questions about completing the application forms.

We will also provide guidance that we hope will help with most applications.

Please contact:

James Baker 01865 289908
james.baker@admin.ox.ac.uk

Tim Currie 01865 289903
tim.currie@admin.ox.ac.uk

Mailing List

Everyone who signed up to this session (who did not opt out) will be subscribed to a mailing list.

We will use the mailing list to update you when more information on Brexit becomes available.

Thank you

EU staff are an invaluable part of the University

We are here to help

Please contact the Staff Immigration Team if you need assistance