

Your Rights Information Note

Freedom of Movement and Access to Services for European Union ('EU') Nationals

The Irish Human Rights and Equality Commission ("IHREC") operates the Your Rights service to provide individuals with information in respect of their rights, and the remedies that may be available if they have suffered discrimination and/or a breach of their human rights in Ireland. IHREC can only provide information through this service, and cannot provide advice or comment on individual cases. This is not a legal document and it is not a substitute for legal advice.

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Rights of Residency of EU Citizens in Ireland

Citizens of Member States of the EU (as well as citizens of Switzerland, Iceland, Liechtenstein and Norway) have the right to freedom of movement within all EU states. As a result of this right, as regards employment, remuneration and other conditions of work, it is unlawful to discriminate against an EU worker based on their nationality. Citizens of the EU can reside in the territory of another Member State for three months (six months if they are looking for a job) without restriction, other than the need to have ID. EU citizens can also bring their family members to live with them in another Member State for this period without any further conditions. However, to stay in another Member State for *over* three months (or, as above, six months if looking for a job), EU citizens must fit into one of the following categories:

- a) They must be working or self-employed in the Member State;
- b) They must have sufficient resources for themselves and their family members so as to not burden the social assistance scheme of the Member State during their period of residence and have comprehensive sickness insurance;
- c) They must be enrolled in a course of study including vocational training and have comprehensive sickness insurance cover; or
- d) They must be a family member accompanying a Union citizen who satisfies any of the above conditions.

With regard to the first category – that they must be working or self-employed in the Member State – there is not a particular amount of money that is necessary to be deemed an EU worker, nor must a worker be employed for a particular number of hours per week. An EU citizen will be deemed to satisfy this requirement, even if they are not currently working, if:

- a) They are temporarily unable to work due to illness or accident;
- b) They are involuntarily unemployed, after having been employed for more than a year, and registered as a jobseeker; or
- c) They are involuntarily unemployed, after having been in a fixed-term employment contract of less than a year or having become involuntarily unemployed during the first twelve months, and have registered as a jobseeker.

Derivative Rights of Family Members

Family members – including non-EU citizen family members - who are accompanying Union citizens who are here as workers, students or otherwise self-sufficiently, have freedom of movement if they are:

- The spouse or civil partner of an EU citizen worker.
- A child under the age of 21, or a dependent child or parent of an EU citizen worker.
- Dependent parents or grandparents of either an EU citizen worker or of their spouse.
- Other family members who may be given residence at the discretion of the Irish government, such as a partner or a relative of an EU citizen worker who is not a

direct relation, who needs personal care because of illness or disability (for instance, a nephew who is sick for whom an EU citizen cares for)

These rights of family members apply to family members who are themselves from an EU member state and to those from outside the EU. However, for those family members from outside the EU, they will need to apply for a 'residence card,' which will permit the family member to reside for five years, or for the envisaged period of residence of the Union citizen, if it is less than five years. This residence card will be valid even if the non-EU national leaves the EU for a period of less than six months a year.

These rights of family members are based upon the right to reside of their working EU family member. As a result, they are often called 'derivative rights' because they derive not from the person themselves, but rather from the person's relationship to an EU citizen working in Ireland. However, if the relationship between the EU worker and their family members changes, the family members may be able to apply to retain their right to residency.

Where the family member with a derivative right of residence is themselves an EU citizen, they can apply to retain their right to residency where:

- the EU citizen worker from whom they derived their residence dies or departs Ireland;
- They divorce, annul, or terminate their partnership with the EU citizen worker from whom they derived their residence;

Where the family member with a derivative right of residence is not an EU citizen, they can apply to retain their right to residency where:

- They lived in Ireland for at least one year before the death of the EU citizen worker from whom they derived their residence died;
- They have custody of children who are in education, whom they had with the EU citizen worker from whom they derived their residence, and the EU citizen worker has since died or departed Ireland;
- Prior to a divorce, annulment or termination of partnership, they were married or in a registered partnership for at least three years, one of which

was in Ireland, with the EU citizen worker from whom they derived their residence;

- Prior to a divorce, annulment or termination of partnership, they were married or in a registered partnership to an EU citizen worker from whom they derived their residence, and they have retained custody of the children from this marriage or partnership.
- Prior to a divorce, annulment or termination of partnership, they were married or in a registered partnership to an EU citizen worker from whom they derived their residence, and suffered domestic abuse while within the marriage or partnership.

Family members that seek to retain a residence card must also show that they are either employed, self-employed, or have sufficient resources to avoid being a burden on the State. If successful, the family member will be granted a residence card.

As well as these rights of residence, the European Court of Justice has also found that primary carers of EU citizens can, in limited circumstances, claim residency rights in order to ensure that the EU citizens are able to stay within the EU.

The European Court of Justice, in a decision called *Chen*, found that a non-EU national who is the primary carer for an EU citizen child being educated in an EU Member State, where the child has sufficient resources to prevent them becoming a burden on the social assistance system and comprehensive sickness insurance, has a derivative right to reside in the EU until the child completes their education. The self-sufficiency of this child can be shown by relying upon the income of their primary carer, where their income comes from lawful employment.

For instance, take a Chinese national who is the primary carer for their Irish national child. The child is studying in Ireland, and the Chinese national parent has bought the child sickness insurance and provided enough resources for the child that they are considered financially self-sufficient, and not a burden upon the social assistance system. In this case, the Chinese national, because they are the primary carer of their Irish child, has a right to reside in Ireland, even though they have no independent right to reside outside of their relationship as primary caregiver to their child.

The European Court of Justice, in a case called *Ibrahim Teixeira*, also found that a former worker – whether an EU worker or a non-EU worker - who has lost their worker status can claim a derivative right to reside to care for their EU citizen child, if the child is still in full time education. This is because, if the worker is removed from the country where their child is in education, this would prevent their child from continuing their education. This right to reside lasts as long as the child is in full time education and includes children who are separated from their parents.

For instance, take a German mother of an Irish child who is currently in education in Ireland. The German mother was previously employed, however has been unemployed for over a year and would, usually, following the rules discussed above, have to leave Ireland. However, the mother can claim a derivative right to reside in Ireland in order to guarantee that her child continues their education. This right to reside will last up to the end of her daughter's education. This is equally true of a non-EU national worker whose child is in full-time education in Ireland. If, rather than being a German mother, this example was of an Egyptian or Argentinian mother, she equally could claim a derivative right to reside following the case of *Ibrahim Teixeira*.

The European Court of Justice, in a case called *Ruiz Zambrano*, found that a non-EU national primary carer of either an EU Citizen child or dependent adult has the right to reside in the EU where their removal from the EU would require the EU citizen child or dependent adult to leave too.

For instance, an Australian father and primary carer of an Irish child, may have a derivative right to reside in Ireland, because to deport the Australian father would lead to his child being removed from Ireland too. To avoid this happening, the Australian father may have a right to reside until his child turns 18.

RIGHT TO PERMANENT RESIDENCE:

After five years of continuous residence, a citizen of another EU Member State has a right to permanent residence, without having to demonstrate that they are not an unreasonable burden on the social assistance scheme. For example, a Greek national who moves to Ireland, and lives in Ireland for five years while working, studying, or with

such resources as to not burden the state, has a right after those five years to stay in Ireland indefinitely and to access social assistance.

Importantly, continuity of residence in the 5 year period is not affected by temporary absences not exceeding 6 months in a 12 month period, absences of a longer duration for military service, or one absence of 12 months for issues such as pregnancy and child birth, serious illness, study or a posting to another Member State or non-EU country. A person may also qualify for permanent residence where they have reached pension age or taken early retirement without being resident for 5 years. In order to qualify the person must have been resident for at least 3 years and been employed or self-employed for at least the previous 12 months. Further, a person may qualify for permanent residence where they have lived in Ireland for 2 years and cease employment due to permanent incapacity, entitling them to a pension or benefit payable in whole or part by this State.

Rights of a Resident Under EU Law

While lawfully resident in in another EU Member State, EU citizens are entitled to equal treatment as nationals of their host Member State. This right of equal treatment extends to the family members of EU citizens, including family members who are not themselves a EU citizen.

EU workers in Ireland – and Irish workers in any other EU member state – have the same rights as nationals to access social assistance. It is important to emphasise that this applies from the first day of employment: Member States do not have to provide social assistance to economically inactive EU migrants during the first three months of residence.

An EU national residing in Ireland is also entitled to receive the same medical care, services and entitlements as an Irish citizen. For example, a Belgian national living and working full-time in Ireland is equally entitled as an Irish national to access public healthcare. Furthermore, EU citizens working in other Member States also enjoy the same social and tax advantages as national workers.

ACCESS TO EDUCATION

EU law guarantees that the children of EU citizens who are working in another Member State are entitled to be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, so long as the children are residing in its territory. As such, the children of EU citizen workers residing in Ireland must be treated the same as Irish children as far as education is concerned. They have the right to be placed in a class with their own age group, at the equivalent level to their class in their country of origin, regardless of their language level. Furthermore, EU citizen children are entitled under EU law to receive free language tuition in their new home country to help them adapt to the school system there.

For instance, if a family with a nine-year-old child moves from Portugal to Ireland, that child is entitled under EU law to be entered into the same grade in an Irish primary school as they were in Portugal, alongside additional tuition in English.

Where grants are available to Irish children to study abroad, these must also be made available to the children of migrant EU workers, even if the studies abroad are to be in the Member State of the child's nationality. EU citizen children can also access the Free Fees Scheme and the Student Universal Support Ireland grant, where they have lived for three of the last five years within the EU.

Access to Housing

EU Law guarantees that an EU citizen working in another Member State is entitled to access the social housing list on the same basis as nationals. Housing policies differ substantially across Member States. In Ireland, direct social housing provision is limited and often associated with relatively long waiting times, making it a largely unviable option for newcomers.

In Ireland, the Department of Housing has a policy to regulate the provision of social housing support to non-Irish nationals. This policy, known as Circular 41/2012, advises that Irish and UK nationals should be considered for social housing support without any residency or employment requirements. For EU citizens however, the housing authorities will consider applicants for assessment where the applicant is either currently employed in the state, unable to work due to illness or accident, or currently registered as a job-seeker after having been employed for longer than one year. EU nationals with rights of continuous residence who do not fall into these categories are thereby not considered for social housing support. For example, a German national who has been resident in Ireland for a decade but has been unemployed during this time is under this Circular not entitled to social housing support.

A question arises as to the compatibility of this Circular with EU law, given that EU citizens who have exercised their free movement rights and become lawfully resident in the State are entitled to equal treatment with regard to entitlement to social assistance as nationals after three months.

Access to Social Welfare

An EU citizen working in another Member State enjoys the same social and tax advantages as national workers. However, with the exception of single payments for exceptional need or supplementary welfare allowance in cases of urgency, EU citizens are not entitled to receive any assistance under the Social Welfare Acts for the first 90 days.

In EU law, there is a distinction between social assistance and social security.

- Social assistance: Seeks to relieve the state of need or poverty. This is means-tested, such as housing benefit or income support.
- Social security: Protects citizens against certain social risks by providing them with a supplementary or substitute income such as state pension, maternity benefit, Jobseeker's Allowance, or sick pay.

EU citizens have no automatic Irish social welfare entitlements on arrival in the state. EU citizens have the right to reside in another Member State for three months so long as they do not become a 'burden on the social assistance system' of the state. EU citizens can be excluded from social assistance payments for the first three months of residence in another member state where they are not working.

Whereas generally EU citizens do not have to register their presence in the State with the authorities, they do if they apply for a social assistance payment. This is because, to access social assistance, applicants must pass what is known as the Habitual Residence Condition. All applicants – including Irish applicants – are required to be habitually resident in the State in order to qualify for all means tested social welfare payments and Child Benefit. For instance, an Estonian national who has been residing full time in Ireland for several years can satisfy the Habitual Residence Condition, enabling them to access social assistance, such as housing benefit. However, an Estonian national who predominantly lives in Estonia but is in Ireland for a couple of months, may not be able to access such social assistance.

Family Benefits and Supplementary Welfare Allowance can be provided to an EU citizen who is currently employed in Ireland, or on a benefit deriving from their employment, without needing to demonstrate habitual residence. The following Irish social welfare payments are classified as family benefits under EU Law:

- Back to Work Family Dividend
- Child Benefit
- Domiciliary Care Allowance
- Guardian's Payment (Non-Contributory)
- Working Family Payment
- One-Parent Family Payment

These benefits are payable to an EU citizen worker on behalf of their dependants, whether the dependents are resident in Ireland or in another EU state. This may change if the child is resident in another state.

If not employed currently or on a benefit deriving from employment, EU citizens who are habitually resident in Ireland may nevertheless qualify for:

- Back to Work Family Dividend
- Blind Pension

- Carer's Allowance
- Child Benefit
- Disability Allowance
- Domiciliary Care Allowance
- Guardian's Payment (Non-Contributory)
- Jobseeker's Allowance and Jobseeker's Allowance Transitional payment
- One-Parent Family Payment
- State Pension (Non-Contributory)
- Supplementary Welfare Allowance
- Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension

EU Citizens can use their contributions to the welfare states of another EU country to qualify for social welfare in Ireland, however the most recent contribution must have been paid in Ireland.

With regard to unemployment benefit, the type of payment an EU citizen working in Ireland can get depends on how long they have worked here, or if they can use their social insurance contributions from another EU country:

- Jobseeker's Benefit is available to those who worked in another EU country before they came to Ireland and have paid enough social insurance. The most recent contribution must have been paid in Ireland.
Illness benefit is provided on the same basis.
- Jobseeker's Allowance is available if the habitual residence condition is satisfied. This payment is means-tested.
- Means-tested Supplementary Welfare Allowance is available for up to six months after becoming involuntarily unemployed, if the applicant worked in Ireland for less than a year. If the applicant worked in Ireland for over a year and has become involuntarily unemployed, they can apply for Supplementary Welfare Allowance for as long as they need while looking for work in Ireland.

PENSION

Pension age is not the same across the EU. This means someone who is considered a pensioner in one EU Member State may not yet be in Ireland. Irish contributions cannot be assessed for pension purposes until applicants reach the Irish pension age of 66. Invalidity Pension is available, if there are sufficient contributions made. If insufficient contributions have been made to get the full rate of Invalidity Pension, a reduced payment is possible if contributions from another EU country compensate for the difference.

For instance, in Slovakia, the pension age is currently 62. A Slovakian national who has moved to Ireland will not be able to access their pension contributions in Ireland until they reach the age of 66.

MEDICAL CARD

A person may qualify for a medical card in the following circumstances:

- if they have no link to the Irish social security system and are living in Ireland and receiving benefits from an EU country;
- if they are living in Ireland but working in another EU country and paying social insurance contributions in that country;
- if they are living in Ireland and are the dependent spouse or child of someone living in another Member State.

The European Health Insurance Card (EHIC) also entitles an EU citizen to necessary healthcare in the public system of any EU Member State, if they become ill or injured while on a temporary stay in that country. However the card does not entitle a person to intentionally travel abroad with the aim of getting healthcare through the public system.

Further Information

Europa.eu, 'Starting School in another EU country'

https://europa.eu/youreurope/citizens/education/school/enrol/index_en.html

Citizen's Information, 'Residence rights of EU/EEA Citizens and their families in Ireland'

https://www.citizensinformation.ie/en/moving_country/moving_to_ireland/rights_of_residence_in_ireland/residence_rights_eu_national.html

Citizen's Information, 'Social Welfare System in Ireland'

https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_welfare_system_in_ireland.html

Citizen's Information, 'The Habitual Residence Condition'

https://www.citizensinformation.ie/en/social_welfare/irish_social_welfare_system/social_assistance_payments/residency_requirements_for_social_assistance_in_ireland.html#f8540