

# Right to Reside for European Nationals

Any EU national wishing to claim benefits in the UK must show that they have a 'Right to Reside'. If they cannot do so, they will be deemed to be 'persons from abroad' and cannot receive benefits. There are a number of routes to passing the Right to Reside test:

*The rules regarding Right to Reside are extremely complicated. If you think your client may fit into one of the groups described below, you should seek specialist support or refer the client to a specialist caseworker.*

## 1. Employed workers

- Work must be 'genuine and effective', not 'marginal or ancillary'
- There is no minimum number of hours/weeks or minimum earnings requirement, but DWP look at whether EU nationals have earned at least £153 p.w. (gross) for at least 3 months prior to a benefit claim – if so the work will automatically be 'genuine and effective'; however where this requirement is not met they should still consider whether the employment qualifies – and previous case law suggests that very few jobs are 'marginal or ancillary'
- Maternity leave (paid or unpaid) counts as employment provided the worker can return to their job.

## 2. 'Retained' worker status

- Applies where the claimant has previously been in employment as above but is not employed at present.
- Worker status can be retained where the employment was lost involuntarily and a claim for Jobseekers Allowance has been made, or the job was left due to temporary illness or accident and Employment and Support Allowance has been claimed.
- People can move in and out of the above categories provided they are well enough to work at some periods
- Pregnancy is not counted as a temporary illness, but if a job was given up because of pregnancy-related illness, worker status will be retained.

## 3. Self-employment

- Claimant can count as self-employed even if they are not currently making any money
- The 'genuine and effective' rule also applies to self-employed work - the longer the period where no money is being made, the harder it will be to pass the 'Right to Reside' test.
- Self-employed workers earning less than £153 p.w. (gross) may find it difficult to prove their work is not 'marginal or ancillary'

**4. Retained self-employed status**

- Status may be retained where the claimant has stopped work due to temporary illness or accident
- To pass the test in this way, must claim ESA and not JSA.

**5. Work seekers**

- In most instances, claimant must be claiming and receiving JSA to qualify by this route
- To claim JSA, claimant will need to have been living in the UK for at least three months
- Status as 'work seeker' can be taken away by the DWP after six months on JSA unless they can demonstrate a genuine prospect of finding work in the UK.
- Work seekers cannot claim Housing Benefit, unless they have worked before and have 'retained worker' status.

**6. Primary carer for a child in general education in the UK**

- Must have previously, at some time, been employed in the UK
- Previous self-employment does not count
- Child must have been resident in the UK with the carer for at least some of the period of employment but need not have been in education at that time.

**7. Self-sufficient person or student**

- A 'self-sufficient person' is someone who has sufficient resources not to become a burden on the UK social assistance system **and** has comprehensive sickness insurance cover in the UK
- A 'student' must be enrolled as a student in a government recognised college, have sufficient resources not to be a burden on the UK social assistance system **and** have comprehensive sickness insurance cover in the UK.
- Some family members of students can also have a Right to Reside (spouse/civil partner and dependent children)

**8. Family member of a EU national who has a right to reside**

- Includes a wide range of close-relatives, but other than spouse/civil partner or child/grandchild/great-grandchild (or their spouse/civil partner) under 21, must be 'dependent' on the person with a right to reside.
- This right applies even if the family members are not themselves EEA nationals but have a valid EEA Family Permit.
- Family members of people with a 'derived' right to reside cannot qualify under this route

**9. Derived Right to Reside**

- Claimant cannot pass the test personally, but 'derives' the right from someone else
- Most common example is a person who is in education and is the son or daughter of an EU citizen living in the UK who achieved 'worker' status at some time and that period overlapped at some point with the period the claimant was living in the UK
- Derived Right to Reside can also be retained after the death or departure of the qualified person in some circumstances.

#### **10. Permanent Right of Residence**

- Claimant has satisfied the '5 year rule' – they have spent at least 5 years continuously in the UK as a worker or with retained worker status, or as a self-employed person, or as a student or self-sufficient person, or as a family member of someone in one of those categories.
- The 5 year period can be made up of a mixture of these qualifying categories
- Time spent in the UK not in one of these categories does not count towards the 5 years
- Citizens of A8 or A2 countries must show that if they were required at the time of their residence to be on the workers registration scheme, they were so registered.
- If the claimant wishes to count time spent in the UK before their country joined the EU, they must show that they had permission to be in the UK at that time (and permission to work if they are relying on a period as a worker).
- Temporary absences of not more than 6 months in any year are not a problem
- One long absence of up to 12 months is allowed for 'important reasons', such as pregnancy and childbirth, serious illness, study or vocational training, or an overseas posting.
- Confirmation of permanent resident from UKBA is not necessary provided the conditions are met
- Once acquired, permanent right of residence will only be affected by an absence from the UK of 2 years or more.
- Family members of people with a permanent right to reside will also have a right to reside.

#### **11. Permanent Right of Residence in under 5 years**

- This can be obtained in certain circumstances by people who have worked in the UK in the past and their family members – if you think this might apply you should seek specialist advice/support.

