

**Public Interest  
Law Centre**

# **INFOSHEET**

## **EEA Nationals' Entitlement to NHS Treatment**

**April 2019**

### **Am I an EEA national?**

You are a European Economic Area (EEA) national if you are a citizen of the European Union (EU). The EU countries are Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

You are also an EEA national if you are a citizen of Iceland, Liechtenstein or Norway. These countries are not part of the European Union but they are part of the European Economic Area.

Switzerland is neither an EU nor an EEA member. However, Swiss nationals currently have the same rights to live and work in the UK as EEA nationals.

### **Do EEA nationals living in the UK have to pay to use the NHS?**

At the moment, most EEA nationals living in the UK should not be charged for using the NHS.

The UK's healthcare system is residence-based. This means entitlement to healthcare in the UK is based on living lawfully in the UK.

The test used by the NHS to decide whether a person can receive free NHS treatment involves asking whether that person is 'ordinarily resident' in the UK.

**Note: Some kinds of NHS treatment are free for everyone all the time. These include services provided by GPs, school nurses and health visitors. You should not have to show you are 'ordinarily resident' to receive free care at a GP surgery.**

### **Am I 'ordinarily resident' in the UK?**

'Ordinary residence' is a technical term. There is a three-stage test to determine whether an EEA national is 'ordinarily resident' in the UK.

To be 'ordinarily resident' an EEA national must be:

- 1) lawfully in the UK
- 2) here 'voluntarily'; and
- 3) 'properly settled for the time being'

#### **1. Lawful residence**

EEA nationals are almost always here lawfully. You do not need to meet the 'right to reside' test that is applied to eligibility for welfare benefits in order to be considered 'lawfully resident' in the UK.

The guidance on implementing the overseas visitor hospital charging regulations states at paragraph 18:

'It is very important to note that an EEA national who is not exercising Treaty rights and does not otherwise have a right of residence under the Directive will not automatically be considered to be in the UK unlawfully. Therefore an EEA national who is not residing in accordance with the Directive may still be considered to be ordinarily resident, provided that they meet the other requirements of that test. The relevant question to consider is if they are properly settled in the UK for the time being, and not are they exercising Treaty rights, or do they have a right to reside or a permanent right to reside.'

### 2. 'Voluntary residence'

The charging guidance states that 'it will be rare for a person not to be in the UK voluntarily'. You are unlikely to be refused free NHS care on this basis. If it happens, you should seek legal advice.

### 3. 'Settled purposes'

Being in the UK for '*settled purposes*' means being in the UK 'as part of the regular order of your life for the time being'. Your residence can be of short or long duration. There must be an 'identifiable purpose' for your residence in the UK. There can be one purpose or several and your residence may be for a limited period. Your purpose for living in the UK must have a 'sufficient degree of continuity to be properly described as 'settled''.

A person can be ordinarily resident in more than one country at once. There is no requirement that your time be equally split between the UK and another country in order to maintain 'ordinary residence' in the UK.

It is therefore perfectly possible to be ordinarily resident here from the day of arrival, when it is clear that a person has, upon arrival, taken up settled residence.

### **When and by whom will the test be applied?**

The 'ordinary residence' test is usually applied by an NHS administrator at the time of treatment. The person in charge of applying the regulations at a hospital or NHS trust is usually called the Overseas Visitor Manager.

### **What can I do if I am refused treatment or asked to pay?**

If you are an EEA national and are refused treatment or asked to pay up front, you should ask for the reasons for the refusal to be given to you in writing. If

you believe you have been wrongly refused treatment, you should seek legal advice.

If you receive a bill for treatment you have received (or for scheduled treatment) you should seek legal advice.

### **Can a homeless person be ‘ordinarily resident’ in the UK?**

Yes. Having an address in the UK is not a requirement of the ‘ordinary residence test’. If a patient cannot provide proof of address, decision makers need to take into account factors such as whether the patient is homeless before using lack of a UK address as an indicator that the person is not properly settled.

### **Are Gypsies, Roma and travellers ‘ordinarily resident’ in the UK?**

Most EEA nationals who are living in the UK as a Gypsy, Roma person or Traveller, will be ordinarily resident in the UK, providing that they are properly settled in the UK for the time being. Having an address in the UK is not a requirement of the ordinary residence test. Not having an address does not necessarily mean that a person is not ‘properly settled for the time being’.

Decision makers will need to take into account factors such as whether the patient is a gypsy, Roma person or traveller before using lack of a UK address as an indicator of not being properly settled here.

### **What if I am the family member of an EEA National?**

A person has to be ‘ordinarily resident’ in their own right. You cannot transfer ‘ordinary residence’ to a family member.

Where a child who normally lives overseas is visiting an ‘ordinarily resident’ parent, they may be ‘ordinarily resident’ in line with their parent’s ordinary residence if the parent can show that the child normally lives with both parents.

### **What about EEA nationals who are visiting the UK?**

An EEA national who is residing in the UK for any length of time and can show that they are ‘ordinarily resident’ should not be charged for NHS care.

If you are an EEA national and are not ‘ordinarily resident’ (e.g you need treatment during a holiday to the UK) you should still be exempt from NHS charges if you are insured for healthcare in another EEA member state and present either an EHIC (European Health Insurance Card) from that member state or a PRC (Provisional Replacement Certificate).

If you have travelled to the UK solely for the purposes of treatment, you may be asked to provide an S2 Form. The S2 Scheme entitles EU residents the opportunity to travel around Europe and receive medical treatment, funded by the individual's country of residence, under certain conditions.

### **What if I have been told I must leave the UK?**

If a removal, exclusion or deportation order has been made against you, you should seek legal advice.

### **How will Brexit change things?**

It is not yet clear how the rules around EEA nationals accessing healthcare in the UK will change after Brexit. The regulations are likely to be amended in future to restrict the access to free NHS care of EEA nationals who do not have settled or pre-settled status in the UK.

### **Where can I get more advice?**

The Public Interest Law Centre operates a free advice line for EEA nationals who are homeless or precariously housed. The advice line number is **07856539582** and the line is open **on Mondays, Wednesdays and Thursdays between 10am and 4pm (excluding public holidays)**. Outside of these times, or if the line is busy, you can leave a message with your name and number in and we will get back to you. The line is answered in English but we can call you back with an interpreter if necessary.