EU law currently gives a right of entry to the UK to any EEA citizen. However, only certain EEA citizens qualify for a right of residence, which brings with it the right to be accompanied by family members, the right to claim certain benefits, protection from removal from the UK and the right to acquire permanent residence after five years of qualifying activity.

The main categories of EEA citizen who qualify for a right of residence are:

- Workers
- Self-employed persons
- Self-sufficient persons with comprehensive sickness insurance
- Students with comprehensive sickness insurance

Two of these categories require the EU citizen to hold comprehensive sickness insurance.

The family members of self-sufficient persons and students will also need comprehensive sickness insurance to qualify for their own right of residence.

There are lots of Self-sufficient EEA nationals currently living in the UK. For example they may be married to a British Citizen and not currently working or self-employed. Unless they have already acquired permanent residence through five historic continuous years of work or self-employment (and be able to prove it), they will need to show they have comprehensive sickness insurance to show that they have a current right of residence in the UK.
WHAT COUNTS AS COMPREHENSIVE SICKNESS INSURANCE?

The rest of the EU uses a system of health insurance to provide the public with health care. In the UK, uniquely, we have the NHS instead, which is not insurance based but instead simply provides free health care at the point of need. The EU rules on the need for comprehensive sickness insurance were not written with the UK’s unusual situation in mind.

The purpose of the rules is that self-sufficient persons and students should not become burdens on state resources.

IS ACCESS TO THE NHS NOT ENOUGH?

An EEA national living in the UK is allowed to use the UK’s NHS. The Home Office has argued that this does not count for the purposes of EU law as having comprehensive sickness insurance.

EUROPEAN HEALTH INSURANCE CARD

The EEA(QA) form states that you can use a European Health Insurance card (EHIC or E111) as evidence of comprehensive sickness insurance, but only if you make a declaration that you do not intend to stay in the UK permanently.

WHY IS IT NOW AN ISSUE?

As an example, Helga is a German citizen. She is married to Ben, a British citizen, has lived in the UK, married to Ben for 30 years. She has never worked in the UK.

Before Brexit, that was not a problem, as nobody was likely to try and remove her and she had a right of entry. When the UK leaves the EU and assuming EU free movement laws come to an end, Helga will no longer be able to freely enter the UK, will have no right of residence as an existing resident and unless the UK Government makes provision for her she will be residing illegally in the UK. Helga could potentially qualify for a right of residence as a self-sufficient person, however to do that she would need to show she has comprehensive sickness insurance.

WHAT DO YOUR NON-UK CLIENTS NEED TO DO NOW?

Wait and see what happens with the UK’s negotiations to leave the EU. It is highly likely that some arrangement will be made for EEA nationals who happen to be living in the UK at a certain date but do not have a right of residence or permanent residence.

Become a worker or self-employed person. Neither of which requires comprehensive sickness insurance.

Buy comprehensive sickness insurance.

What can you do to help – Comprehensive private health insurance

Purchasing private health insurance from a private company is not very expensive if your client is young and healthy, however it may be prohibitively expensive if your client is older or in ill health.

The cover needs to be ‘comprehensive’, however what this means is not clear. The Government refers to ‘full health insurance’, but does not explain what ‘full’ means.

One document states that a plan needs to ‘cover you (and your family members if applicable) for the majority of risks while you are in the UK’.

Another document states ‘a policy may contain certain exemptions but if the policy covers the applicant for medical treatment in the majority of circumstances you can accept it’.

Decisions will be made on a case by case basis with no further guidance from the Home Office.