



Briefing: the status of EU National Children in Britain

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As the Government begins Brexit talks, the Children's Commissioner for England is warning that 588,000¹ children in England who are EU nationals – 260,000² estimated to be born in Britain – do not currently know what rights they will have to remain in the UK after Britain leaves the EU.

Anne Longfield has written to Home Secretary Amber Rudd and Brexit Secretary David Davis, sending them detailed legal advice commissioned from Lisa Giovanetti QC, and calling on them to clarify the Government's plans for these children post Brexit.

The implications for children who may have to leave the UK post-Brexit are huge – they would be leaving behind their friends, often other family members and seriously disrupting their school lives. Yet the rights of children living in the UK have been given no more than passing references in either of the White Papers published by the Government on Brexit, nor have they featured substantially in any of the three reports of the House of Commons Select Committee on Exiting the EU or the House of Commons Library's 200-page briefing on Brexit published last year.

The current position for these children is extremely complex – some of those born in Britain will automatically be British citizens, but they may not know it, and proving it will depend on when their parents came to the UK and what paperwork they've kept. For children born in the UK but not automatically British citizens or who have moved to the UK as children the situation is even more complicated. They face a range of uncertainties coupled with numerous legal and bureaucratic obstacles.

The Children's Commissioner has spoken to children who have told her they are worried about both their own immigration status, but also that of other family members. She has also spoken to children who initially didn't think Brexit would affect them – because they were born and brought up in Britain – but are increasingly worried because of the ongoing uncertainty. Sometimes if children were born here but their parents or grandparents were not, they may be entitled to citizenship but not their parents. They are also worried about the paperwork, the confusion, the £1000 cost of applying for citizenship and the lack of clarity over issues such as family members' right to stay or whether they will have to pay international fees if they want to stay in Britain for university. Some, who consider themselves British, were concerned that if they went to study in another EU country they would not be allowed back into Britain, despite having grown up here.

There are also serious administrative complications. Children are disadvantaged in these processes because they don't have documents such as tax receipts or lease agreements to prove they were resident in Britain for the requisite number of years. Even if the Government decided to extend a right of residence to all these children, at current capacity it would take the Home Office 140 years to process their applications and those of their parents, due to the need to assess complex documentary evidence. The Children's Commissioner believes much of this administrative burden could be lifted if children were allowed to use schools admissions data to prove they were resident in Britain. At the moment they cannot.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/adhocs/06151annualpopulationsurveyestimatesofnonukbornandnonbritishnationalsresidentinenglandin2015aged0to19byregion>

² <http://www.migrationobservatory.ox.ac.uk/resources/commentaries/today-gone-tomorrow-status-eu-citizens-already-living-uk/>

British Citizenship

The rules governing whether a child is British, or can apply for British citizenship are complex:

- If a child was born in the UK before 2000, to EU nationals who can show they were studying or working in Britain when the child was born, the child is a British citizen
- If a child was born in the UK between 2000 and 2006, to EU parents with a permanent residency card, then the child is British
- If a child was born in the UK after 2006, to parents who can show they had lived and worked in Britain for at least 5 years prior to the birth, then the child is British
- Children who were born in the UK but whose parents don't meet the conditions above don't have any status in British law and are only eligible to apply for British citizenship in certain circumstances.
- Children who were born in the EU but have grown up in Britain may be able to be included in their parents' application for British citizenship, but cannot normally apply in their own right.

Two simple examples:

Child A – aged 2, parents French nationals who have lived in the UK seven years. Child A is a British citizen because her parents had lived in the UK for five years prior to her birth

Child B – aged 13, parents Danish nationals who have lived in the UK for 25 years. Child B is not a British citizen (unless her parents have registered for permanent residency before her birth). If they haven't done this, child B has no entitlements under British law but her parents can make an application for her to get British Citizenship as long as they also apply. This would incur a cost of around £1000 for each applicant and both the parent and child may have to relinquish their Danish nationality.

Permanent Residency

EU nationals, including children, may be eligible for 'permanent residency'. According to the advice provided by the Home Office on .gov.uk this means "*EU nationals who have lived continuously and lawfully in the UK for at least 5 years automatically have a permanent right to reside. This means that they have a right to live in the UK permanently*". However, permanent residency is a right under EU, not British, law so there is no guarantee these rights will continue to be honoured post Brexit. Despite this, some children are applying now for permanent residency cards to prove that they have lived in the UK for five years. In doing this, however, children encounter particular administrative obstacles because the evidence the Home Office normally requires to establish residency is evidence that children do not have, such as tax receipts.

The complexity of the rules can leave siblings with different nationality status, as the examples below show.

Family A – The Moreaus

French nationals who have lived in the UK since 1996. They have three children. The childrens' status:

Pierre (born 1997) – legally born a British citizen. But, he can only establish British citizenship if his parents can show they were working when he was born. In this case, Pierre's parents haven't kept this documentation from 1997 so he can't apply for a passport. He can apply for naturalisation as a British citizen. As he is over 18, to do this he needs to establish he has spent less than 90 days out of the UK in each of his first ten years and pay a fee of £1282.

Francoise (born 1999) – also legally born a British citizen. In this case the parents have tax receipts from 1999 so she can meet the administrative burden and receive a British passport.

Brigitte – born in 2002. Although her parents had lived here for 6 years by the time she was born, she doesn't meet the legal or administrative hurdles for British citizenship. Children born between 2000 and 2006 are only British citizens if their parents applied for permanent residency cards prior to the birth. Brigitte's parents didn't apply for this card, so she can't apply for a passport. Brigitte can apply for naturalisation under section 1(3) of the Immigration Act³ until she turns 18. She doesn't have to prove she didn't spend time out of the country between 0-10yrs old, but she would need to pay £973.

Family B – the Knausgaards

Norwegian nationals living in the UK since 2005. They have four children; Gunvor born in 2004 in Norway, and three born in the UK (Karl Ove, born 2006, Tonje, 2010 and Yngve, 2013). Their status:

Gunvor – is not a British citizen. Gunvor can't apply for naturalisation as a British citizen in her own right until she turns 18. Before then she can be included in a family application if her parents were to apply for British citizenship. Post Brexit she may also be eligible to apply for Indefinite Leave to Remain on the basis of having lived in the UK for ten years.

Karl-Ove – as Karl-Ove was born post-2006, his parents need to have lived in the UK, exercising treaty rights, for 5 years for him to be British by birth. He therefore isn't legally a British citizen. He can apply for naturalisation (see Brigitte above).

Tonje – is legally British, but can only apply for a passport if her parents can show they were working or studying in the UK 2005-2010. In this case the first tax receipts they have are for 2007, so Tonje can't apply for a passport. She can apply for naturalisation once she turns 10.

Yngve – is legally British, and his parents do have tax receipts covering the five years prior to his birth, so he is British and can apply for a passport – he doesn't need to apply for naturalisation.