



DEPARTMENT OF JUSTICE AND EQUALITY
IRISH NATURALISATION & IMMIGRATION SERVICE

Explanatory Leaflet for FORM EU5

APPLICATION FOR RETENTION OF A RESIDENCE CARD (FOR NON-EEA NATIONAL FAMILY MEMBER)

01/02/2016

1. Who should apply on Form EU5?

Form EU5 is to be completed by each non-EEA national applying to retain a residence card under the European Communities (Free Movement of Persons) Regulations 2015 after the divorce or annulment of the marriage to the EU citizen, the annulment or dissolution of a civil partnership with the EU citizen, the death of the EU citizen, or the departure of the EU citizen from the State.

Form EU5 can be downloaded from the website at <http://www.inis.gov.ie>.

2. Legislation

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the "Directive") is given effect in Ireland by the European Communities (Free Movement of Persons) Regulations 2015 (the "Regulations"). The Directive and the Regulations apply to citizens of the European Union, citizens of EEA member states and citizens of Switzerland who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them.

Regulation 9 of the Regulations provides for retention of the right of residence by a family member of an EU citizen in the event of death or departure from the State of the EU citizen (see Part 7b and 7c of this leaflet for further information).

Regulation 10 of the Regulations provides for retention of the right of residence by family members of an EU citizen in the event of divorce or annulment of marriage to the EU citizen, or annulment or dissolution of a civil partnership with the EU citizen (see Part 7a of this leaflet for further information).

3. Making sure your application is complete

Your application will not be accepted if it is incomplete.

No original documents should be sent with your application form. However you may be requested to submit original documents during the course of your application. Any original documents which are requested will be returned to you by Registered Post at the end of the application process. To avoid delay, please observe the following.

- Complete all relevant sections of the form
- Provide **photocopies** of all required documents (see **Part 10** of this leaflet)
- Sign and date the declaration in **Section 6** of the form
- If you are presently unable to provide any of the information or details requested in any of the relevant sections, please explain the reasons in a letter and enclose it with the application form

Applications should be posted to:

**Retention of Rights
EU Treaty Rights Unit
Residence Division
Irish Naturalisation and Immigration Service
13/14 Burgh Quay
Dublin 2**

If you need to contact the EU Treaty Rights Unit regarding your application you can do so by post at the above address or by email to eutreatyrights@justice.ie. Please ensure that you include your Application ID number in all correspondence.

4. Application times

Due to the large volume of applications it can take up to 6 months for an application decision to be reached. All applications are dealt with strictly in chronological order of the date of receipt.

5. Changes in circumstances

The onus is on the applicant to keep this office updated regarding their circumstances and to submit any relevant supporting documents in relation to new circumstances. It should be noted that any person seeking to assert rights or entitlements under the Regulations is under an obligation to ensure that they comply with all appropriate provisions of the Regulations. Failure to comply may result in the person being guilty of an offence or offences as provided for in Regulation 30 of the Regulations, and that person may be liable to the sanctions set out therein.

6. Data Protection notice

All information provided will be treated in confidence but may be disclosed to other government departments, agencies, the Garda Síochána, local authorities, foreign governments or other bodies strictly for purposes connected to the application.

7. When do I qualify to retain a right of residence under EU Treaty Rights?

(A) Divorce or annulment of marriage

To retain a right of residence after divorce or annulment of marriage or dissolution of a civil partnership under Regulation 10, you must meet one of the following criteria.

- i. Prior to initiation of the divorce, annulment or dissolution proceedings, the marriage or civil partnership lasted at least three years, including one year in the State, and the EU citizen was exercising their EU Treaty Rights in the State at the time that the decree of divorce, annulment or dissolution was made.
- ii. You have custody of the EU citizen's children by agreement between you and the EU citizen, or by court order.
- iii. You have the right of access to a minor child, provided that the court has ruled that such access must be in the State, and for as long as is required.
- iv. The retention of such right of residence is warranted by particularly difficult circumstances, such as the applicant having been a victim of domestic violence while the marriage or civil partnership was subsisting.

(B) Death of the EU citizen

To retain a right of residence under Regulation 9 after the death of the EU citizen, you must meet the following criteria.

- i. You must have resided in the State with the EU citizen for at least one year prior to the death of the EU citizen, and
 - ii. You must be employed or self-employed in the State, or possesses sufficient resources to support yourself and any dependants
- OR
- iii. If the EU citizen's children, being resident in the State, are enrolled in an educational establishment in the State for the principal purpose of following a course of study there, then the children and the parent who has actual custody of the children will be entitled to reside in the State until the completion of the course of study.

(C) Departure of the EU citizen from the State

Where an EU citizen has left the State and his or her children, being resident in the State, are enrolled in an educational establishment in the State for the principal purpose of following a course of study there, then the children and the parent who has actual custody of the children will be entitled to reside in the State until the completion of the course of study.

8. Activities

Under Regulation 12(4) of the Regulations, an applicant retaining a residence card following the death of the EU citizen or the divorce, annulment or dissolution of a marriage or civil partnership with an EU citizen, who is subsequently seeking a permanent residence card (Form EU3), must be engaged in one of the following activities.

Employment

Where the applicant is working for an employer in the State. This may include vocational training programmes and some non-proprietary directors of a registered company.

Self-employment

Where the applicant is a sole trader, in a business partnership, or is a proprietary director of a registered company operating in the State.

Residing with sufficient resources

Where the applicant has sufficient resources to maintain themselves and any dependants in the State, while possessing comprehensive sickness insurance for themselves and any dependants. A person residing on this basis must have sufficient resources such that they would not become an unreasonable burden on the social assistance system of the State.

9. Outline of the form

- Use **BLOCK CAPITALS** and a **black pen** to complete the form
- Please leave a space between each word
- Complete **all** sections relevant to your application

If you are at present unable to provide any of the information or details requested in any of the relevant sections, please provide a letter of explanation with this application form.

Section 1 - Applicant Details

This section is for details of the applicant.

Section 2 - Details of EU citizen

This section is for details of the EU citizen.

Section 3 - Basis of Retention of Rights

This section is to indicate the basis of the application for retention of the residence card, and to give details accordingly. Only one basis should be chosen. There is a space at the end of this section for noting any additional circumstances or information which may be relevant to the application.

Section 4 - Applicant's Current Activity in the State

This section is for details relating to the applicant's activities in the State. Activities include employment, self-employment, and residing with sufficient resources.

Section 5 - Document Checklist

This section contains the checklist for the supporting documents which must be submitted with your application. Documents in the shaded boxes are only required for certain circumstances as specified.

Section 6 - Declaration

This section is for the declaration to be signed by the applicant, affirming that the contents of the application are truthful. Unsigned forms will be returned and will not be treated as applications.

10. Documentation to support an application for retention of a residence card (Form EU5)

When submitting documents please note the following:

1. All documents submitted must be **photocopies**.
2. Passports should be photocopied in colour, and photocopies should include all pages of the passport including blank pages.
3. Civil certificates (e.g. marriage certificates and birth certificates) should be photocopied in colour and should include any Apostilles or legalisation stamps. Copies of translations of documents should also be supplied where appropriate.
4. Other documents may be submitted as colour or as black-and-white photocopies.
5. Photocopied pages of multiple-page documents should be stapled together.
6. Any documents which are not in English must be accompanied by a certified translation.
7. Do not submit GNIB Certificates of Registration – a holder of a GNIB card is required to be in possession of it at all times.
8. Do not submit documents which have not been requested.

The obligation is on the applicant at all times to provide satisfactory evidence as outlined below and to notify this office of any changes to their circumstances.

Required Supporting Documents

(a) Evidence of identity

For the applicant:

- A valid passport (colour photocopy of all pages)
- Two passport-size photos of the applicant

(b) Evidence of basis of retention of rights

For divorce, annulment or dissolution of marriage or civil partnership:

- The decree of divorce or nullity
- Evidence of date of initiation of divorce, annulment or dissolution proceedings
- Evidence that marriage or civil partnership has subsisted for at least 1 year in the State
- Evidence of the activity and residence of the EU citizen at the time of the divorce, annulment or dissolution

For death of EU citizen:

- The death certificate

Where relevant, for each child of the EU citizen:

- A birth certificate
- Letter(s) from educational establishment(s)
- Written agreement of EU citizen granting custody or right of access OR court order appointing custody or right of access (as applicable)

(c) Evidence of applicant's current activity in the State

If applicant is in employment, copies of the following documents should be provided:

- Current letter from employer setting out terms and conditions of employment and full contact details for employer AND/OR signed contract of employment
- Two recent payslips
- Most recent P60 or Tax Credit Certificate

If the applicant is self-employed, copies of the following documents should be provided:

- Agreed Tax Assessment from the Revenue Commissioner for the last financial year (if applicable) OR Letter of Registration for Self-Assessment (Income Tax) from the Revenue Commissioner
- Receipts issued for sales or services in the last six months
- Bank statements of the business for the last six months
- Companies Registration Office certificates (if applicable)

If the applicant has sufficient resources, copies of the following documents should be provided:

- Evidence of financial resources and corresponding bank statements
- Current letter from Department of Social Protection with details of any benefit claims, or stating that there are no claims (as applicable)
- Letter from private medical insurance provider for applicant and any dependants

(d) Evidence of residence of applicant in the State

If renting:

- Letter from landlord/agency, rental contract or rent book
- Letter of Registration of Tenancy from the Private Residential Tenancies Board
- Utility bills

If home-owning:

- Letter from mortgage provider, local authority or County Council
- Title or deeds, as applicable
- Utility bills

Other evidence of residence may be considered if deemed satisfactory. If you are not renting or a homeowner, then the person you are living with should provide the above documents with a written declaration of your residence in addition to any other evidence of your residence.

Note: If for any reason you cannot supply some or all of the required documentation above, you must provide a written statement explaining why. Provision of some or all of the above documentation is not a guarantee of a successful application.