

Briefing Note: Post-Brexit access to European Health Insurance Card (EHIC) rights for people in Northern Ireland (NI)

January 2021

About the European Health Insurance Card “EHIC” and Brexit impact

The EHIC is a free card that provides access to medically necessary, state healthcare during a temporary stay in either an EU member state or in Iceland, Liechtenstein, Norway, or Switzerland, under the same conditions and at the same cost as an insured resident of that country.

In general terms, this has allowed people resident in NI to access free health care needed when visiting another EU/EEA country on the same basis as someone living there (given different countries have different types of health systems), with any bill being picked up by the ‘NHS’.

This system is not based on EU citizenship but rather is linked the coordination of EU healthcare systems and residence in a member state.

As the Brexit transition period has now ended (on 31 December 2020), the previous UK EHIC arrangement has expired. Continued access to similar provision has been provided for certain groups in both the EU-UK Withdrawal Agreement and the EU-UK Trade and Cooperation Agreement. Residual provision was also made for people in NI by the Irish Government.

This briefing note explores the position in which this leaves persons *resident in NI*. In summary the current situation is as follows:

- **EU-UK Withdrawal Agreement (WA) (the ‘UK EHIC’):** Certain *EU/EEA citizens resident in NI prior to the end of the Brexit transition period* are able to retain access to EU rights to the **EHIC** under the WA. **British citizens** are no longer EU citizens and cannot hence retain the EHIC under the WA in NI. **Irish citizens** in NI remain EU citizens but the UK has taken a decision to exclude NI-born Irish citizens from retention of the EHIC on grounds it will treat NI-born Irish citizens as also being British (unless the individual formally renounces British citizenship);
- **EU-UK Trade and Cooperation Agreement (TCA) (the GHIC):** Further to the TCA the UK has introduced a system of a **Global Health Insurance Card (GHIC)** to replace the EHIC. This will be available to NI residents – including British and Irish citizens – as an alternative to the EHIC. Existing valid EHICs can be used by such persons until they expire and a GHIC must then be applied for. The GHIC is to carry a Union Flag, but NI residents are allowed to opt out of this image being on their GHIC.
- **Irish Government scheme for NI residents (the ‘IHIC’)** had made commitments to fund a scheme equivalent to the EHIC for NI residents (British, Irish and other EU citizens in NI) whereby reimbursement of costs could be sought from the HSE. However, in light of the TCA and GHIC, the Irish government states this scheme will no longer be necessary.

1. Retention of EHIC under WA for certain EU citizens in NI

Some people will remain eligible for a UK issued European Health Insurance Card under the Withdrawal Agreement. This will cover most EU citizens residing in the UK before 1 January 2021 and their eligible family members, including non-EU family members. (An equivalent system under the WA applies to British citizens living in the EU, EEA, and Switzerland, but not British citizens resident in NI/GB.)

However, the application process for the UK EHIC card applies the policy of treating Irish citizens born in Northern Ireland as British and therefore excludes them from access to the EHIC card. (The same result is obtained if the person marks that they are a dual British-Irish citizen national.)

This raises concerns about the potential loss of retained EU rights for Irish citizens born in Northern Ireland, who unlike almost all other EU citizens in the UK prior to the end of the transition period, will not be able to retain the UK EHIC under the WA. It also offends the birthright provisions under the GFA whereby the UK entered into a binding duty to 'accept' 'the people of Northern Ireland' as Irish or British or both.¹

The questions in the online NHS application process for UK EHIC are set out below, as screenshots. This as applied to an Irish citizen born in and resident in NI who wishes to exercise GFA rights to be accepted as Irish only and not also as British.

1.



Where do you live?

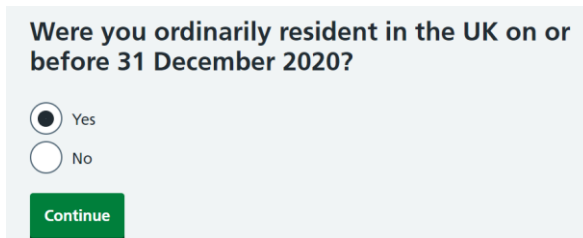
UK

EU, EEA or Switzerland

Other

Continue

2.



Were you ordinarily resident in the UK on or before 31 December 2020?

Yes

No

Continue

¹ “The British and Irish Governments declare that it is their joint understanding that the term "the people of Northern Ireland" in paragraph (vi) of Article 1 of this Agreement means, for the purposes of giving effect to this provision, all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or is otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.”

3.

What is your nationality?

- UK citizen
- A national of the EU, Switzerland, Norway, Iceland, or Liechtenstein
- A dual national, which includes nationality of a country in the EU, Switzerland, Norway, Iceland, or Liechtenstein
- Other

▶ [More information about dual nationality](#)

Continue

4.

Are you a UK national or have you ever held UK nationality/citizenship?

- Yes
- No

Continue

5.

Where were you born?

- England, Scotland, Wales
- Northern Ireland
- Other

Continue

6.

Have you renounced your UK citizenship?

- Yes
- No

Continue

7.

Are you studying, or do you intend to study in the EU, EEA or Switzerland before 1 January 2021?

- Yes
- No

Continue

8.

Based on the information you have given us, we cannot confirm your eligibility for a UK EHIC.

Do EU citizens in NI need to have (pre or full) 'settled status' to obtain the UK EHIC, and where does this leave Irish citizens?

[Title III Article 30](#) of the UK-EU Withdrawal Agreement sets out the persons who fall under the full scope of the social security coordination provisions. This includes Union (EU) citizens subject to the legislation of the UK at the end of the transition period and Union citizens residing in the UK subject to the legislation of a member state at the end of the transition period, as well as their eligible family members and dependants. So EU nationals resident in the UK before the 1 January 2021 should have an ongoing eligibility for an EHIC card.

Persons who do not, or who no longer meet the above but fall within Article 10 of the Withdrawal Agreement also fall within the full scope of social security provisions for as long as they have a right to reside or work in the host state. This broadly covers people who have exercised treaty rights in the UK before the 1 January 2021 and who continue to do so.

Article 32 WA covers those who are partially in scope such as persons who began healthcare treatment before the end of the transition period and continue to require that treatment.

For EU nationals, the wording of Article 30 does not require them to have obtained a specific status in the UK in order to fall within the scope of these rights. Rather the focus seems to be on proving that they were either residing in the UK or subject to the legislation of the UK before 1 January 2021. So EU nationals should not need to hold Settled or pre-Settled status to apply for their EHIC card, but must provide evidence of residing in the UK before 1 January 2021. This is an important distinction for EU citizens such as Irish citizens who were informed they did not need to apply to the EU Settlement Scheme and for dual EU and British citizens who are excluded from it. This seems to have been recently confirmed by the Irish Embassy via [twitter](#).

However, [NHS guidance](#) states that dual EU and British citizens are only eligible for an EHIC card if they meet the following requirements:

- They acquired British citizenship through naturalization;
- They were a citizen of an EU country, Switzerland, Norway, Iceland or Liechtenstein before also becoming a British citizen;
- They have retained their nationality of one of those countries.

This does not address the situation of Northern Ireland born Irish citizens who are treated as automatically as British by the UK government and therefore dual EU/British citizens, who would be precluded from the scheme.

Guidance provided through the EHIC NHS application online form states:

To be eligible for a UK EHIC, you must meet one of the following criteria:

- You are living in the EU, Switzerland, Norway, Iceland, or Liechtenstein with a UK issued registered S1, E121, E106 or E109 form.
- You are living in the EU, Switzerland, Norway, Iceland, or Liechtenstein with a UK issued A1 which is valid after 1 January 2021 in the country in which you are residing.
- You are a UK resident who is studying in the EU, Switzerland, Norway, Iceland, or Liechtenstein.
- You are a national of EU, Switzerland, Norway, Iceland, or Liechtenstein who lawfully resides in the UK and is covered under the Citizens' Rights Agreement.
- You are a family member or dependant of an entitled individual listed above.
- You are a Chen or Ibrahim/Teixeira carer.

The phrasing above: *“and is covered under the Citizens' Rights Agreement”* seems to refer to [Part 2 of the Withdrawal Agreement](#) concerning citizens' rights. To fall within the scope of this, an EU citizen resident in the UK must show that they were resident in the UK before the end of the transition period *“in accordance with union law”* i.e. exercising EU treaty rights. This is reflected in further government [guidance](#) which states: *“EU, EEA and Swiss nationals living in the UK, who are eligible under the Citizens' Rights Agreement for reciprocal healthcare based on current EU regulations, can continue to apply for an EHIC.”* Therefore if an Irish citizen in NI is able to successfully argue their presence was due to having exercised EU treaty rights pre Brexit they may fall within the scope of the WA.

It would appear that the domestic provisions for dual nationals in line with the case of [Lounes](#) have been provided for (i.e. those who naturalised as British after coming to the UK as an EU national), but no similar provision has been made for Irish citizens born in Northern Ireland. **This will lead to NI born Irish citizens being some of the only EU citizens resident in the UK excluded from applying for an EHIC card.** Whether this will cause a loss of rights comes down to the alternative provision provided by the UK government through the GHIC.

2: The UK Global Health Insurance Card (GHIC)

The UK government has [announced](#) that following agreement with the EU, UK residents' rights to emergency and medically necessary care when travelling in the EU will continue. The UK-EU Trade and Cooperation Agreement, [protocol on Social Security Coordination](#) provides the legislative basis for this agreement. [Article 26](#) of the EU (Future Relationship) Act 2020 incorporates this protocol into UK domestic law. The [summary explainer](#) to the UK-EU Trade and Cooperation Agreement states; *“the Protocol will ensure necessary healthcare provisions – akin to those provided by the European Health Insurance Card (EHIC) scheme – continue.”*

As part of this agreement the EHIC is being replaced in the UK by the Global Health Insurance Card or [GHIC](#). UK residents are advised that in date EHICs remain valid and should continue to be used up until their expiry date, after which the holder applies for a GHIC, with the GHIC gradually replacing all EHIC cards.

The GHIC will entitle holders to free or reduced cost, state provided healthcare during a temporary visit to the European Union. It includes necessary treatment for pre-existing or chronic conditions. The card is free and all UK residents are eligible to apply for one, including EU nationals who become resident in the UK after 1 January 2021, as well as non-EU nationals with residence in the UK. This would therefore cover British and Irish and dual British/Irish citizens born in Northern Ireland.

It is clear that the GHIC is intended to be used by the people of Northern Ireland as the government has [committed](#) to providing an alternative GHIC which recognises the '*sensitivities around flags in Northern Ireland*'. This is because the GHIC will have a Union Flag background, and this concession permits residents of Northern Ireland to request a plain card without the Union flag on it. This is a welcome gesture but a rather ironic one given that the UK government is simultaneously choosing to treat all Irish citizens from NI as British if they apply for an EHIC card.²

Is the GHIC equivalent to the EHIC?

The UK government announcement makes it clear that the intention is for the GHIC to provide for healthcare at the same level as the EHIC currently does. Whether this will prove to be accurate remains to be seen as the GHIC is rolled out and further guidance is issued.

One way that the GHIC is already more limited than the EHIC is that it does not cover Norway, Iceland, Liechtenstein, or Switzerland. The UK government has [stated](#) that they are seeking agreements on reciprocal healthcare with the EEA EFTA States, and with Switzerland. They [state](#) that until an agreement is reached with Norway, an amended version of the 1991 Convention on Social Security and Protocol on Medical Treatment between the governments of the UK and Norway will apply which includes necessary healthcare. Until agreements are formalised with these countries, the GHIC remains more limited than the EHIC.

NHS [guidance](#) suggests that the GHIC may hold an advantage as it will also cover non-EU countries. Presumably the government hopes to include non EU countries with which the UK has an existing reciprocal healthcare arrangement under the GHIC, hence the 'global' title for the card. However, [guidance](#) states that currently different proof of eligibility is required within 'Rest of World' countries where the UK has reciprocal healthcare agreements which contradicts this.

² The UK Home Office had previously taken the same position as regards its (ultimately aborted) scheme to introduce identity cards into the UK – whereby NI born Irish citizens were to be permitted to carry a different UK issued identity card that did not identify them as British.

3. Irish government commitment ('the IHIC')

The Irish government previously made [commitments](#) to covering the loss of the EHIC card for residents of Northern Ireland post Brexit. This was planned to come through the provision of Irish legislation which would allow Ireland to reimburse travellers from Northern Ireland who accessed healthcare in the EU. This would have covered UK, Irish and EU residents of Northern Ireland.

The [Withdrawal of the United Kingdom from the European Union \(Consequential Provisions\) Bill 2020](#) legislated to make provision for this scheme and enabled the *"reimbursement of necessary medical expenses incurred by eligible residents of Northern Ireland during a temporary stay in a Member State of the European Union, other than the State, a member of the European Economic Area and Switzerland"*.

The legislation states it does not cover a person who holds a document equivalent to the EHIC issued by the UK government. The Irish government has now [stated](#) that they will not be implementing the reimbursement scheme for residents of Northern Ireland because the GHIC provides the equivalent to the EHIC card rights. However, it remains plausible that the GHIC card provided will not be equivalent to the EHIC. If so, could the Irish government step in to reimburse a resident of Northern Ireland who is not covered but would have been had they been eligible for an EHIC? A clear example already is a resident of Northern Ireland who needs to access healthcare in Switzerland, which is not covered by the GHIC, but would be covered under the EHIC.

14 January 2021

The information in this brief is accurate at the time of writing. This brief is not intended to provide legal advice or guidance. For guidance on applying for an EHIC or GHIC card please see: [Apply for a free UK Global Health Insurance Card \(GHIC\) - NHS \(www.nhs.uk\)](#)