

CAN MY CHILD STUDY IN THE UK THEN RETURN TO BELGIUM?

Welcome to Brexit Brief! In this newsletter for UK citizens living in Brussels or thinking of moving here, we will explore some of the more complicated aspects of life after Brexit. Each edition will start from a puzzling everyday question, using it as a chance to explore the rules that UK citizens should know about. Some newsletters will be relevant for M-Card holders, some for those arriving after Brexit, and some for all UK citizens. The newsletter is part of a project funded by the EU's Brexit Adjustment Reserve, in which we are also offering a series of webinars and a specific Brexit chapter on our website.

Case Study 1: *"My children are UK citizens living in Belgium with an M-Card. Can they go study in the UK then return to Belgium?"*

Before we get started, we should underline a fundamental point: following the end of the transition period on 31 December 2020, UK citizens no longer benefit from freedom of movement across the EU. The only way to reacquire freedom of movement is by acquiring EU citizenship, for example by obtaining Belgian nationality.

As an M-card holder, you have residence rights but they are limited to Belgium alone. Even that status can be lost if rules on absence and return are not respected. This case study imagines a young person wanting to spend time in the UK as a student, but the same rules would apply to any M-Card holder spending an extended period outside of Belgium, even inside the EU. As a general rule, once the M-card status is lost you cannot re-apply for it. After a certain period, M-card protection can be upgraded by applying for an M-card with permanent right of residence. When considering whether to leave Belgium for an extended period (for example to study) we therefore recommended that you first verify whether you qualify for permanent residence and/or Belgian nationality

This case study brings up several fundamental questions for M-card holders, such as:

- **Should I report my absence to the authorities?**
- **How long can I be absent from Belgium before losing my M-card protection?**
- **Do absences impact my eligibility for permanent residence or Belgian nationality?**
- **If I lose my M-card protection, can I get it back?**

These questions will be covered below, as we explore the practical implications for our case study about a young person deciding where to study.

1. Reporting absences to the authorities: Right to absence and return as an M-card holder

Short stays abroad of up to three months do not need to be reported to the town hall.

If you are leaving Belgium for more than three months, you must notify your town hall that you are leaving by completing an attestation of departure (annex 18). Upon your return you must notify the town hall within 15 days. The rules on absences and return referred to below only apply to absences reported to the town hall.

Holders of a standard M-card can be absent from Belgium for up to one year without negative effects on their residence status. For absences exceeding one year you can apply for a return authorisation if you can prove that you maintain your main interests in Belgium. Whether you keep your main interests in Belgium is a question of fact and the authorities have discretion in deciding whether they accept. Proof that you own property in Belgium or proof that your family will continue to live in Belgium during your absence are possible examples.

Holders of an M-card with permanent right of residence can be absent for up to five years without risk of losing their residence status. You are entitled to permanent residence after five years of continuous legal residence in Belgium. Both periods before and after the transition period are taken into account. If you have a permanent right of residence, you will have received an M-card which indicates this, and your card will be valid for ten years.

What does this mean for our case study?

- *Your children should verify whether they qualify for an M-card with permanent right of residence before leaving for studies.*
- *If your children hold an M-card with permanent right of residence, they can study in the UK for up to five years while maintaining their M-card.*

- *If your children hold a regular M-card and the study period is limited to one year, they can maintain their M-card if they notify the town hall of their departure and their return.*
- *If your children hold a regular M-card and their study period exceeds one year, in order to safeguard their M-card status they will need to be able to demonstrate that they still have their main interests in Belgium. They will also have to submit a return authorisation.*

2. Impact on eligibility for permanent residence or Belgian nationality

As we have seen, Belgian rules allow M-card holders absences of up to one year without negative effects on their residence status. However, if you wish to qualify for permanent residence or Belgian nationality in the future, you should also consider the stricter rules on allowed absences in those contexts.

M-card with permanent right of residence

When applying for an M-card with permanent right of residence, the following absences do not affect the required five years of continuous residence:

- absences not exceeding a total of six months a year
- absences of a longer duration for compulsory military service
- one absence of a maximum of twelve consecutive months for important reasons, such as: pregnancy and childbirth; serious illness; study or vocational training; or a posting abroad

If you exceed the allowed absences, you will have to re-start the calculation of the required five years continuous residence.

Belgian nationality

When applying for Belgian nationality absences of less than six months do not affect the required continuous residence. However, a reported absence of more than six months will re-start the calculation. Additionally, the total duration of your registered absences (each of which may not exceed six months) may not exceed one-fifth of the duration required to acquire Belgian nationality. For example, if you need to demonstrate legal residence of five years, the total duration of your cumulative absences over that five-year period should not exceed more than one year.

What does this mean for our case study?

- *To keep building their eligibility for permanent residence, your children can only study in the UK for up to one year.*
- *To keep building their eligibility for Belgian nationality, your children can only study in the UK for six months at a time and one year in total.*
- *If your children exceed these periods of allowed absence, they will need to re-start the calculation of the required years of continuous residence to qualify for permanent residence and Belgian nationality.*

3. Loss of M-card and re-application as family-member of M-card holder

If you lose your M-card status due to an absence that goes beyond the rules outlined above, you cannot re-apply for it independently because the application period ended on 31 December 2021.

However, there is a possible exception for late applications as a family member of an M-card holder.

Specific rules apply to family members of UK citizens holding a valid M-card which, in some instances, are more beneficial than the rules applicable to family members of non-EU citizens. The following family members of an M-card holder can still apply for an M-card if the family tie existed prior to 31 December 2020:

- the spouse
- the registered partner
- the partner with whom the M-card holder has a durable relationship
- descendants under 21 years of age or if older dependent on the M-card holder
- ascendants (parents, grandparents, etc.) dependent on the M-card holder
- parents of a minor child who is an M-card holder

What does this mean for our case study?

- *Should your children lose their M-card status, they can re-apply as your dependents if you are also an M-card holder. If your children are over 21, they will be required to prove their dependence on you.*

UK CITIZENS IN BRUSSELS NEWSLETTER

This newsletter will run throughout 2023, exploring in detail some of the most complex aspects of post-Brexit life for UK citizens living in Belgium or planning to move here. Each edition will focus on a specific case study, starting from one tricky question and then exploring the detail that UK citizens should be aware of. To receive this monthly newsletter straight to your inbox, sign up today!

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