

EEA Nationals & their family members (General Guidance)

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1. Introduction

European Community law provides all European Union (EU) citizens and their family members the right to move freely and reside within the EU. Free movement rights are governed by the Free Movement Directive 2004/38/EC, which all EU Member States are obliged to incorporate into domestic legislation. In the UK this takes the form of the **Immigration (European Economic Area) Regulations 2006** (referred to as [EEA Regulations](#)).

These free movement rights are subject to judgements by the European Court of Justice (ECJ). Court cases may arise after a Member State has been challenged over its implementation or after a Member State raises a question about the implementation of the legislation. The resulting case-law from ECJ judgements will be binding on all Member States.

People coming to the UK who are entitled to free movement do **not** require leave to enter or remain. All EU, EEA and Swiss nationals and their families should be dealt with as seeking admission under the EEA Regulations and not under the Rules.

1.1 A2 countries

Nationals of Romania and Bulgaria who joined the EU on 1 January 2007 have a right to travel freely across the EU allowing them to visit, live and study in any other Member State. The Treaty allows Member States to restrict the freedom to work for a transitional period of up to 5 years.

The UK allows nationals of Romania and Bulgaria to exercise their Treaty rights as:

- a student
- a self employed person
- a self-sufficient person

Under transitional arrangements the UK is limiting access for low-skilled workers from A2 countries to its labour market. Skilled workers will continue to be able to work in the UK if a) they have a work permit or qualify under the Highly Skilled Migrant Programme, b) they already have leave in force that does not prohibit employment, c) they are a family member of an EEA national who is not subject to work authorisation restrictions, or d) they are married to a UK citizen or someone living in the UK. These arrangements are given effect by the Accession (Immigration and Worker Authorisation) Regulations 2006. Extensive guidance on A8 and A2 nationals can be found in the European Casework Instructions [ECI – Accession State](#)

1.2 A8 nationals

Nationals of A8 Member States who wish to exercise their Treaty rights in the UK, have a right of residence here under the 2006 Regulations provided that they are:

- Self-employed

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Border Force Operations Manual

Categories of Passenger

- Self-sufficient
- Students
- Self-employed persons who have ceased activity

EEA Nationals & their Dependents

The above are eligible to apply for registration certificates and should be treated in the same way as nationals of the other Member States. Their family members are entitled to the same rights as family members of other EEA nationals.

An A8 national who wishes to work in the UK may be required to register under the [Worker Registration Scheme](#). A8 nationals who have completed 12 months legal employment are eligible to apply for a Registration Certificate.

1.3 Status of British nationals

A British national cannot exercise a Treaty right in the UK because by definition a Treaty right is something that is exercised by an EU national when in another Member State. A British national, and his third country national family members, can only benefit from free movement rights under the precedent set in the ECJ case of Surinder Singh. See [paragraph 5.9](#) below for further details on this case.

1.4 Switzerland

Switzerland are not part of the EEA. However, Swiss nationals should be treated in the same way as nationals of the EEA. The Swiss Regulations 2002 have now been revoked and incorporated into the EEA Regulations.

1.5 Isle of Man and the Channel Islands

The above are not part of the EEA although - Persons exercising Community rights and nationals of Member States of the [Immigration Act 1988](#) provides for EEA nationals and their families seeking to enter or remain in the Islands to be dealt with in the same way as they were if seeking entry to the UK under EEA Regulations.

However, an EEA national undertaking an activity in the Isle of Man or Channel Islands that would constitute exercising a Treaty right under Community law is not considered to be exercising a treaty right by virtue of the Islands not being part of the EU or the EEA. For guidance regarding the 'Common Travel Area' see [here](#).

1.6 Andorra, Monaco and San Marino

The above States are not part of the EU or EEA. Nationals of these States require leave to enter and should be granted leave to enter if they qualify under the relevant category of the Immigration Rules.

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1.7 Gibraltar

For immigration purposes Gibraltar is part of the EU and should be treated as such.

1.8 Danish Nationals travelling on a Faroe Islands Passport

The Faroe Islands remain a province of Denmark. Danish Nationals travelling on a Faroese Islands passport will have the ICAO nationality code of DNK; therefore they are to be afforded the normal entry entitlements of an EEA national. If the passenger is a Faroese national their ICAO nationality code is FRO, their entry to the UK will be subject to the Immigration Rules.

2. Schedule 2 (1971 Act) powers in the EEA Regulations

Immigration officers have powers to: examine, conduct embarkation checks, secure the provision of information and documents including bag searches, carry out a referral for a medical examination, detain, temporarily admit and to remove EEA citizens who seek admission or are embarking from the UK.

However, immigration officers should **not** routinely conduct enquiries which are as thorough as those conducted on passengers seeking entry under domestic immigration legislation, nor should cases be assessed on credibility.

Where a person has passed through the control, the responsibility of any further action passes to other enforcement agencies such as Customs or the Police.

3. Duty of care for EEA minors

Where there are concerns over the safety and protection of any child presenting a valid EEA ID card or passport, it is appropriate for an immigration officer to establish that the child is travelling with or going to join a legitimate guardian. Further guidance regarding 'children arriving in the UK' can be found [here](#) (to be added).

4. Right of residence for EEA nationals

For the first three months of any time spent in the UK an EEA national is considered resident by virtue of his nationality and does not need to be a "qualified person". This also applies to his non-EEA family members. An EEA national cannot be refused and removed on the basis that he is not a qualified person.

4.1 "Qualified person" Regulation 6

A qualified person is an EEA national exercising a Treaty right(s) and is defined as:

- a jobseeker;
- a worker;
- a self-employed person

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- a self-sufficient person; or
- a student

4.2 EEA nationals in prison

An EEA national in prison is not a qualified person on the grounds that he cannot exercise a Treaty right. Therefore any non-EEA family members would not be entitled to admission on the basis that they are a family member of a qualified person.

4.3 Landing cards for non-EEA family members

Family members do not normally need to produce landing cards. However, this does not apply when a person's claim to be a family member is assessed and accepted for the first time at port and admitted on a Code 1A. This is because we do not otherwise have a record of the person.

5. EEA family permit holders

EEA family permits are a form of evidence that the holder is a family member of an EEA national and acts to confirm the right of admission. Although issued on a UK vignette they do not confer leave and are not subject to any domestic legislation governing entry clearance. Examination should be to establish that the passenger is the rightful holder of the document and that they are still the family member of an EEA national. Immigration officers should continue to date stamp a passport containing an **EEA Family Permit** on the holder's first arrival in the UK and may also use their discretion to date stamp such documents on each subsequent arrival.

Concerns have been expressed about the potential abuse of EEA Family Permits. It is thought that the presence of a series of UK date stamps may provide valuable information where there are doubts about a passenger's immigration history. Date stamping a non EEA Family Member's passport endorsed with a Family Permit does not breach free movement rights under the Immigration (European Economic Area) Regulations 2006.

If they are joining the EEA national the **onus is on the passenger** to prove that the EEA national is in the UK and it is expected that officers will need more time to be satisfied that this is the case.

Regulation 20 gives power to revoke family permits on grounds of public policy, security and health **OR** if the person is no longer the family member of an EEA national **OR** the family member is refused admission because he is not accompanying or joining an EEA national who has a right to reside under the EEA Regulations.

Such persons are entitled to an **in country right of appeal**, ports should not cancel the permit until all appeal rights are exhausted or the passenger signs a disclaimer.

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5.1 Residence card holders

Residence cards also do not confer leave and are not subject to any domestic legislation governing returning residents. It is appropriate for immigration officers' to establish on what ground the card was issued, these being:

- He is the family member of an EEA national who is a qualified person. Examination should be to establish that the passenger is the rightful holder of the document and that he is still the family member of the EEA national who is a qualified person.
- Because he is a person who has retained the right of residence (see paragraph 5.7.2 below). In this case there is **no** requirement for the EEA national to be in the UK.

A residence card can be revoked if the holder of the card is no longer the family member of a qualified person or an EEA national with a right of permanent residence and has not retained the right of residence or acquired permanent residence.

If the family member is refused on the grounds of public policy, health or security the residence card **cannot** be revoked by an immigration officer unless the family member is in addition no longer the family member of a qualified person or an EEA national with a right of permanent residence and has not retained the right of residence or acquired permanent residence.

Such persons are entitled to an **in country right of appeal**. Ports should not physically cancel the card until all the appeal rights have been exhausted or the passenger signs a disclaimer.

5.2 Endorsing the passports of residence card holders - Regulation 11(3)

An immigration officer **may not** place a stamp in the passport of a person who holds a residence card when he is admitted to the UK. Regulation 11(3) expressly prohibits an immigration officer from endorsing the passport of a person who holds a valid residence card or permanent residence card.

5.3 Permanent residence card holders

An EEA national and/or family member acquires a permanent right of residence if they have been resident in the UK in accordance with the EEA Regulations for five years; this applies to all EEA nationals including the accession states. Once permanent residence has been acquired there is no requirement for the EEA national to be in the UK in order for the family member to be admitted and to reside.

Examination should be to establish that the passenger is the rightful holder of the document and that he has not been absent from the UK for more than 2 years.

If a person has been absent for more than 2 years and does not hold an EEA family permit, **refusal should not be automatic**. His permanent residence card should be revoked but re-admissibility under the EEA Regulations should be assessed and if he

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still qualifies for admission as a family member he should be admitted for 6 months on a Code 1A and advised to apply for a residence card from European Casework.

5.4 No evidence that the EEA national is in the UK

When a person's admission is based on the EEA national being in the UK the onus is on the passenger to provide this evidence. It's reasonable to expect the family member to provide evidence on the day of arrival. If not, one further interview represents adequate opportunity. When considering the location of the EEA national ports must take account of the fact that an EEA national can be absent for up to 6 months per year without affecting the family members right of residence. [Paragraph 6.5](#), below, explains.

5.5 Procedures when no EEA family permit or residence card is held

5.5.1 Admission of family members who are unable to produce a valid passport, family permit or residence card

Immigration officers will need to assess whether or not a person qualifies for admission under the EEA Regulations in the above situations. Ports should take particular note of the guidance on those who seek admission under the extended family member provisions as dependents relatives and as family members of an EEA national with whom they have a "durable relationship" (unmarried partner); the relevant criteria in [Part 8 of the Rules](#) (excluding entry clearance) should be used to make a decision on whether or not to admit under EEA Regulations. Unlike immediate family members the EEA Regulations allow for an "extensive examination of the personal circumstances" of extended family members.

5.5.2 Seeking admission at port

Applicants at port should be treated as persons seeking admission unless reference is made to applying for a residence card. Admission will fall into one of the following:

- produces satisfactory evidence on arrival

The person should be admitted for 6 months on a Code 1A. Complete landing card.

- Is unable to produce satisfactory evidence on arrival

The person should be given "every reasonable opportunity" to prove by other means that he is the family member of an EEA national; a person should **not** automatically be refused admission as a result of not being able to produce adequate evidence. As a guide within a week of arriving at port should be adequate; ports can consider refusing admission at this point, unless the situation suggests more time is needed.

- submits an application for admission post arrival

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The person has arrived seeking entry in another capacity and whilst on temporary admission (TA) seeks admission under the EEA Regulations. In such circumstances the same guidance as in the point above should be followed. If a person has been on TA for more than 3 months any decision will attract an in country right of appeal.

5.5.3 Passenger applies for a residence card

Where a person on TA applies for a residence card, either directly to port or to European Casework it is strongly advisable for European Casework to handle the application. Ports can deal with the application but should be aware of the following:

- A decision must be made within 6 months, this is a requirement in the Directive. Failure to comply may entitle the applicant to compensation and/or trigger infraction proceedings by the ECJ which can be time consuming and costly;
- Ports cannot grant residence cards (valid for 5 years), and can only grant admission for 6 months, this could lead to challenges from the applicant who has not got what he applied for;
- If port decided to handle a case any compensation claims, JR challenges or other legal challenges have to be dealt with by the port;
- If a decision is made within 3 months then any appeal will be from abroad, after this time a full in country right of appeal can be brought;
- If a residence card application has been made along with a registration certificate application by the EEA national, it can **only** be considered by European Casework.

5.5.4 Carriers liability

For the purposes of satisfying a requirement to produce a visa under Section 40(1)(b) of the 1999 Act (charges in respect of passenger without proper documents), “a visa of the required kind” includes an EEA family permit, a residence card or a permanent residence card required for admission as a visa national under Regulation 11(2).

5.6 Marriages

5.6.1 Marriages where the couple do not live together (Case of Diatta)

ECJ judgement determined that the right to free movement should be based on a requirement to be married and should not be subject to a requirement to live together.

The court determined that attitudes to marriage varied and that it's not down to immigration authorities to decide whether or not reconciliation is possible.

The court further determined that a marital relationship cannot be regarded as dissolved until terminated by a competent authority (**divorce by absolute decree**). This is the only grounds to justify refusing admission on the basis that a person is no longer legally a family member.

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5.6.2 Marriages and civil partnerships of convenience – Regulation 2

A “spouse” and “civil partner” does not include someone who is party to a marriage (civil partnership) of convenience. The criteria for proving a marriage (civil partnership) of convenience are set out in the European Casework Instructions (ECIs) at **Annex A, paragraph 3** (see Residence Cards link below). Most cases at port involve family members who already hold an EEA family permit or residence card and initial consideration has already taken place, these cases at port will be very low.

It must be noted that the only grounds on which a family member can be refused admission other than if divorce/termination by absolute decree has occurred, is if the criteria for proving a marriage or civil partnership of convenience are met.

5.7 Family member

Regulation 7 of the EEA Regulations defines “family member” as:

- the EEA national’s spouse or civil partner;
- direct descendants of the EEA national or of his spouse or civil partner who are under the age of 21 **OR** are their dependents;
- Dependent direct relatives in the ascending line of the EEA national or of his spouse or civil partner.

5.7.1 Extended family members including durable relationships

Regulation 8 defines extended family members. In accordance with Regulation 7(3). They are only to be treated as family members for the purposes of the EEA Regulations if they have been issued with an EEA family permit or a registration certificate or residence card. The EEA Regulations allow for an “extensive examination of the personal circumstances” of such a person. Extended family members include:

- a relative of EEA national or his spouse/civil partner who is residing in an EEA state in which the EEA national also resides and is dependent on the EEA national **AND** is either accompanying or joining the EEA national **OR** has joined the EEA national and continues to be dependent or a member of the EEA nationals household.
- A relative of an EEA national or his spouse/civil partner who requires personal care from the EEA national or his spouse/civil partner on serious health grounds.
- A relative of an EEA national or his spouse/civil partner who would meet the requirements in part 8 of the Rules (other than entry clearance) for indefinite leave to enter/remain in the UK as a dependent relative were the EEA national or his spouse/civil partner a person present and settled in the UK.
- A person who is the partner of an EEA national (other than civil partner) who can show that he is in a “durable relationship” with the EEA national. When assessing whether a relationship is durable officers should satisfy themselves fully that the person meets the requirements for leave to enter of an unmarried partner as set

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out in [Part 8 of the Rules](#) (other than entry clearance). There are certain conditions that must be met, such as the fact that they should have "lived together in a relationship akin to marriage which has subsisted for two years or more".

5.7.2 Retained right of residence

This relates to non-EEA family members who have already obtained a right of residence. To retain this right of residence, the family member must, as though he were an EEA national, fall within the definition of worker, self-employed person or self-sufficient person or be the family member of a person who falls within one of the definitions. Regulation 10 defines the circumstances in which a person can retain the right of residence:

- EEA national qualified person has died but the family member has lived in the UK in accordance with the EEA Regulations for at-least a year prior to the death.
- EEA national qualified person has died or left the UK but his spouse/civil partner was attending an educational course immediately prior to the death or departure and continues to attend such a course **OR** is a parent who has actual custody over a child who meets these requirements.
- If termination of the marriage or civil partnership has occurred but the family member was living in the UK at the time AND either:
 - marriage/partnership lasted for at-least 3 years prior to the initiation of termination proceedings and the parties have lived in the UK for at-least one year during that time or
 - the family member has custody of a child of an EEA national or
 - the family member has a right of access to a child of an EEA national where access in the UK has been court ordered or
 - Continuity of residence is warranted by difficult circumstances such as domestic violence.

5.7.3 Family members of an EEA national minor

Following an ECJ judgement in the case of Chen, family members (father, mother and siblings under 18) of an EEA national **child** can apply for leave to enter on the basis that the EEA national minor is exercising Treaty right(s) in the UK. The relatives of an EEA minor will not derive a right of residence as they do not fall within the definitions of "family member", however it was decided that the EEA nationals rights of free movement would be hindered if their non-EEA family members were not allowed to remain. In such cases persons should be granted leave under Paragraph [257C of HC 395](#) and not the EEA Regulations, this is an **EC mandatory category**.

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5.8 Step, adopted and foster children

Decisions on accepting children seeking admission under the EEA Regulations as family members who are stepchildren, adopted children or foster children should be no more favourable than under the relevant parts of the Immigration Rules. In practice this means that all stepchildren are acceptable but adopted and foster children need to meet the requirements of the relevant paragraphs of the Rules (other than those relating to entry clearance). See [here](#) for guidance regarding 'Adopted Children' (to be added).

5.9 Status of family members of British nationals

As stated in paragraph 1.3, British nationals can in certain circumstances exercise their free movement rights along with their family members. This is set out in the ECJ judgement of Surinder Singh. This states that where nationals of a Member State who live in another Member State and are exercising a Treaty right in an economic capacity (i.e. as a worker or self-employed person) will, on return to their home state, be entitled to bring their non-EEA family members to join them under EC law. This has been incorporated into the EEA Regulations as Regulation 9.

6. Rights of residence and residence documentation

6.1 Initial right of residence

For the first three months of any time spent in the UK an EEA national is considered to be resident by virtue of his nationality and does not need to be a qualified person. His non-EEA family members also have an automatic right of residence during this period. This "initial right of residence" shall cease if the EEA national or family member become an unreasonable burden on the social assistance system.

6.2 Registration certificates

Registration certificates are issued by the European Casework Group and will be issued on request by an EEA national who can prove that he is a qualified person (exercising a Treaty right). However, EEA nationals can remain in the UK for as long as they wish without a registration certificate provided that they are exercising a Treaty right. Registration certificates are not time limited.

6.3 Residence cards for non-EEA family members

Residence cards are also issued by the European Casework Group and will be issued on request to family members who can prove that they have a right to reside as the family member of a qualified person or an EEA national with a right of permanent residence or that they have retained the right of residence. Family members of EEA nationals can remain in the UK without holding a residence card as

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long as the EEA national continues to reside in the UK. However, a family member of an EEA national will need to prove his right of admission by other means when re-entering the UK.

6.4 The family member residence stamp

Accession state nationals (A8 countries) who are required to register under the Worker Registration Scheme are not eligible for Registration Certificates unless they can prove that they have been working legally for the same company (in the UK) for 12 months. Their non-EEA family members are also not eligible for Residence Cards for the same period. Non-EEA family members of Accession State nationals who have registered under the Worker Registration Scheme can obtain a Family Member Residence Stamp confirming that they have a right of residence in the UK. This is issued in accordance with the Accession (Immigration and Worker Registration) Regulations 2004.

6.5 Continuity of residence

Continuity of residence under the EEA Regulations for the family member of a qualified person is not affected by the EEA national being absent from the UK for periods which are under six months in any year, periods of absence on military service or any one absence not exceeding 12 months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

6.6 Permanent right of residence

EEA Regulations confer a permanent right of residence on EEA nationals and their family members which are generally acquired after 5 years of continuous residence in the UK (Regulation 15). Permanent residence is lost **if the person is absent from the UK for more than 2 years**. See also [paragraph 5.3](#) (above).

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