

CHAPTER 12 - PUBLIC FUNDS

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1. Introduction

Regulation 1612/68 Article 7, Council Directive 2004/38 and Regulation 6 of the EEA Regulations 2006 are the principal references.

1.1 Key points

- Under EC law a person from another Member State who is exercising Treaty rights in the United Kingdom enjoys the same social and tax advantages as a British citizen.
- Under Directive 2004/38, an EEA national and his/her non-EEA family members may reside legally in the UK if the EEA national is working or self-employed or has a right of permanent residence. This is also subject to them not becoming a burden on public funds.
- In some circumstances EEA nationals may claim public funds and retain their right of residence under EC law (eg 'top-up' benefits for low-paid or part-time workers, persons who are involuntarily unemployed etc).
- It is important to remember that the Home office does not decide whether an EEA national qualifies for benefits or for local authority housing. **We can only advise whether an EEA national has a right of residence.**

1.2 What is a public fund?

For the purpose of these instructions public funds means:

- Income Support and income based Job Seekers Allowance (JSA)(IB);
- housing and homelessness assistance;
- Housing and Council Tax Benefit;
- Working families' Tax Credit;
- A social fund payment;
- Child benefit; or
- Any disability allowance.

These are all income-related benefits. Being in receipt of one of these benefits may affect a person's right of residence. Contributory benefits are not considered as public funds and for the purpose of these instructions Social Housing is not to be regarded as a public fund.

NB Social care support should not be confused with social fund payment. Receipt of Social care does not affect an EEA national's right of residence.

1.3 The effect of public funds on an EEA national's right of residence and their eligibility to obtain a registration certificate

EEA nationals who are residing in the UK should generally be able to support themselves without help from public funds. EEA nationals who are exercising Treaty rights in the UK as workers, self employed persons or work seekers are able to claim public funds without their right

of residence being affected. Caseworkers should note that a worker or self employed person would include someone whom had temporally ceased their economic activity in the UK due to involuntary redundancy or illness.

Section 1.1 of Chapter 4 provides further guidance on the definitions of workers, self-employed persons and work seekers.

EEA nationals who are in the UK as self-sufficient persons and students should be able to support themselves without public funds. Such persons are only able to claim public funds without losing their right of residence if they are able to demonstrate that they are not an unreasonable burden on the state. To establish whether an EEA national is an unreasonable burden on the state each case would need to be assessed on an individual basis. If the EEA national is claiming public funds after having been in the UK for some time, the fact that s/he had been self sufficient would be a factor in determining whether the burden is reasonable, as would the length of time that s/he is likely to be in receipt of public funds. Although an EEA national in this situation would be regarded as having a right of residence even though s/he was in receipt of public funds, it would not be appropriate to issue him/her with a registration certificate.