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FOI Reference: **34444**

Dear Sir/Madam

Thank you for your email dated 17 February 2015, in which you made the following request in reference to the judgment of the Court of Justice of the European Union (CJEU) in the case of *McCarthy* (C-202/13):

“Please provide, as a request being made under the FOI Act:

- a) guidance issued to UKVI caseworkers and border staff in relation to this judgment
- b) timescales for when UK regulations will be amended to incorporate this court ruling”

The first section of your request (paragraph ‘a’) is being treated as a request for information under the Freedom of Information (FOI) Act 2000. I can confirm that the Home Office holds information which falls within the scope of your request. I am able to disclose the following information to you:

1. Interim briefing for Border Force Officers dated 23/12/2014, which is included at Annex A of this response
2. Interim briefing for Immigration Liaison Managers dated 23/12/2014, which is included at Annex B of this response.

Personal details of staff and internal contact details have been redacted from these documents in line with section 40(2) of the Act.

You have also requested guidance issued to UK Visas and Immigration (UKVI) caseworkers on the judgment. The case of *McCarthy* dealt with the right of non-EEA family members of EEA nationals to be admitted to the UK under EU law where they do not hold an EEA family permit, but do hold a valid, genuine residence card issued under Article 10 of the Directive. The judgment is therefore relevant for Border Force staff who are required to make decisions on a person’s right of admission at the UK Border. The judgment does not affect decisions made by caseworkers on applications for documentation under the EU law, and for that reason no specific guidance has been issued to UKVI caseworkers on the judgment.

The second part of your request (paragraph 'b') is not a specific request for information held by the Home Office but an enquiry about the Home Office's implementation of a CJEU judgment, and therefore does not fall within the scope of the FOI Act. This part of your request has been treated as a routine enquiry. A response to this enquiry is included at Annex C of this letter.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference[ ]. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team  
Home Office  
Ground Floor, Seacole Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [info.access@homeoffice.gsi.gov.uk](mailto:info.access@homeoffice.gsi.gov.uk)

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.  
Yours sincerely

**R Murphy**  
Immigration & Border Policy Directorate

## Annex A of FOI response 34444

### Acceptance of residence cards issued by other EEA Member States

#### Briefing for Border Force Officers

##### Background

1. The Court of Justice of the European Union (CJEU) case of McCarthy (C-202/13) considered whether the UK's policy of requiring non-EEA national family members of EEA nationals to obtain an EEA family permit before travelling to the UK, in cases where those family members held a valid residence card issued by another EEA Member State, was compatible with EU law.
2. In its judgment handed down on 18 December 2014, the CJEU found that the UK cannot compel family members of EEA nationals who hold a valid residence card issued under Article 10 of Directive 2004/38/EC (the 'free movement Directive') in another Member State to obtain an EEA family permit in order to travel to the UK.
3. The judgment applies **only** to residence cards issued under Article 10 of the Directive and does not apply to residence documents issued under domestic law. (So, for example, the judgment applies to a residence card issued by the Spanish authorities to the non-EEA national family member of a French worker in Spain, but **not** to a residence document issued under French domestic law to that family member whilst living in France).

##### Immediate impact for Border Force officers

4. The Immigration (EEA) Regulations 2006 (as amended) ("the EEA Regulations") currently require non-EEA family members who do not hold residence documentation issued by the UK, Germany or Estonia to hold an EEA family permit in order to travel to the UK. However, where a non-EEA national family member arrives at the Border and does not hold an EEA family permit, Border Officers are already required to give such persons the opportunity to prove "by other means" that they have a right of admission under the Regulations in line with regulation 11(4). Presentation of an EU Family Member residence card will be one form of the "other means" envisaged by regulation 11(4) for proving the holder's entitlement to be admitted to the UK. It will still be possible, and necessary, to conduct an examination of whether the individual presenting an EU Family Member residence card is accompanying or joining an EU national exercising Treaty rights in the UK: see regulation 19(2) of the EEA Regulations.
5. Border Force should accept, for the purposes of admission to the UK, valid EU Family Member residence cards. Where a non-EEA national presents a valid, genuine residence card issued under the Directive by another EEA Member State, Border Force officers should, as was previously the case, take this into account as evidence that the non-EEA national is the family member of an EEA national. As previously was the case Border Force officers cannot refuse admission on the basis a person does not hold a UK EEA family permit.
6. Examples of residence documentation issued by other EEA member states can be found here: <http://prado.consilium.europa.eu/en/searchbyissuingcountry.html>. (However, it should be noted that in many cases this web-site fails to identify whether a card has been issued in accordance with Article 10 of the free movement Directive.)

7. Where the non-EEA national is **not** accompanying their EEA national family member, Border Force officers should make further enquiries regarding whether the EEA national is in the UK, and if they are exercising Treaty rights in the UK where they have been here for more than three months.
8. If the officer is satisfied that the holder of a genuine, valid residence card issued by another Member State under Article 10 of the free movement Directive is accompanying or joining their EEA national family member in the UK (and, where relevant, that the EEA national is exercising Treaty rights in the UK), they must admit that person to the UK under the EEA Regulations (provided there are no reasons to exclude them on public policy, or fraud and abuse grounds).
9. If the officer is not satisfied that the EEA national is in the UK, or that they are not exercising Treaty rights in the UK where they are required to do so, they should refuse admission to a person presenting such a document.
10. It should be noted that this judgment does not affect the rights of family members of British citizens who have exercised Treaty rights in another EEA member state under the '*Surinder Singh*' judgment. Such persons should continue to be considered under regulation 9 of the EEA Regulations.
11. For guidance on queries from carriers on acceptance of residence documents issued under Article 10, please see the separate briefing for Immigration Liaison Officers.
12. If the Border Force officer has concerns that the document is not a genuine document, or is not a residence card issued under the Directive, they should seek further advice from **[INTERNAL CONTACT DETAILS REDACTED]**

**[NAME REDACTED]**

Policy Advisor

**Free Movement Operational Policy Team**

24 December 2014

## Annex B of FOI response 34444

### Acceptance of residence cards issued by other EEA Member States Briefing for Immigration Liaison Managers Background

1. The Court of Justice of the European Union (CJEU) case of McCarthy (C-202/13) considered the UK's policy of requiring non-EEA national family members of EEA nationals to obtain an EEA family permit before travelling to the UK, where those family members held a valid residence card issued by another EEA Member State.
2. In their judgment handed down on 18 December 2014, the CJEU found that the UK cannot compel family members of EEA nationals who hold a valid residence card issued under Article 10 of Directive 2004/38/EC (the 'free movement Directive') in another Member State to obtain an EEA family permit in order to be admitted to the UK.
3. The judgment applies **only** to residence cards issued under Article 10 of the Directive and does not apply to residence documents issued under domestic law. (So, for example, the judgment applies to a residence card issued by the Spanish authorities to the non-EEA national family member of a French worker in Spain, but **not** to a residence document issued under French domestic law to that family member whilst living in France).
4. The Home Office is currently considering the full implications of this judgment.

### Immediate impact for carriers

5. Following the judgment in McCarthy, carriers may receive requests to board non-EEA passengers who present residence cards issued by other Member States as evidence of their right to be admitted to the UK.
6. Where a non-EEA national passenger presents a document which they assert is a residence card issued by another EEA Member State, carriers should only accept such documents where they are absolutely confident that the document is a genuine, valid residence card issued under Article 10 of Directive 2004/38/EC.
7. It will be for carriers to determine whether or not to convey to the border passengers who are able to present a valid EU Family Member residence card issued under Article 10 but who do not hold a family permit. Should they seek confirmation from the Home Office that they will not be exposed to a carriers' liability penalty for carrying such a passenger, you should advise that that will depend on whether the document in question is fraudulent or invalid.
8. Examples of residence documentation issued by other EEA member states can be found here: <http://prado.consilium.europa.eu/en/searchbyissuingcountry.html>. (However, it should be noted that in many cases this web-site fails to identify whether a card has been issued in accordance with Article 10 of the free movement Directive.)
9. If the carrier requires further advice regarding documents presented by persons claiming to be family members of EEA nationals, they should contact the relevant Immigration Liaison Manager (ILM) for advice.
10. ILMs can contact **[INTERNAL CONTACT DETAILS REDACTED]**

11. If you require advice outside of office hours **[INTERNAL CONTACT DETAILS REDACTED]**

**[NAME REDACTED]**

Policy Advisor

**Free Movement Operational Policy Team**

24 December 2014

## **Annex C of FOI response 34444**

In your email of 17 February, you included the following enquiry:

Please provide, as a request being made under the FOI Act:[...]

b) timescales for when UK regulations will be amended to incorporate this court ruling

As set out in the response above, we do not consider that this part of your request falls within the scope of the Freedom of Information Act 2000 as it is a routine enquiry about the business of the Home Office, specifically regarding when the Home Office intends to make amendments to the Immigration (European Economic Area) Regulations 2006 (the EEA Regulations) in light of the judgment.

Amendments to the EEA Regulations in order to implement the judgment will come into force in April 2015.

I trust that this answers your query.

Yours sincerely,

Free Movement Team  
Home Office