

From: Free Movement Operational Policy Team

Subject: New and Updated Modernised Guidance

Date: 24 February 2015

Issue number: 03/2015

Purpose of notice

1. This notice provides information on the new and updated EEA Modernised Guidance which has been published on [Horizon](#)¹ and externally on [Gov.uk](#).

Background

2. The Free Movement Operational Policy Team has undertaken a substantive review of all EEA guidance with the objective of making the guidance current, focused and more user-friendly.
3. This guidance takes into account any changes to the Regulations up to and including November 2014. Much of the information is from the current published European Casework Instructions (ECIs) and Immigration Directorate's Instructions (IDIs) but has been clarified or expanded upon where necessary.
4. Further amendments will be made to this guidance to coincide with the introduction of a requirement for non-EEA nationals applying for European documentation to provide biometric information as part of the application process. This is currently planned to be introduced in March 2015.
5. Any guidance or information superseded by this new or updated modernised guidance will be archived in the usual way.

Details of guidance published

6. The new modernised guidance provides up to date and detailed consideration for all decision-makers assessing rights of residence for EEA nationals and their family members. The guidance is arranged according to the route in which the person is applying (i.e. as a direct family member) as opposed to the document being issued (i.e. a residence card). This reflects recent changes made to the application forms (see EOPN 02/2015) and guides both the caseworker and customer more effectively through the consideration process. A list of the revised sections of the guidance is provided below:

¹ Note: links to the Home Office staff intranet ('Horizon') have been removed, since these are not accessible outside of the Home Office. You can view the public version of the same guidance via the following link: <https://www.gov.uk/government/collections/eea-swiss-nationals-and-ec-association-agreements-modernised-guidance>

- EEA and Swiss nationals: Free movement rights
 - EEA nationals qualified persons
 - Direct family members of EEA nationals
 - Extended family members of EEA nationals
 - Family members of EEA nationals who have retained the right of residence
 - Derivative rights of residence
 - EEA case law and appeals
 - Abuse of rights, fraud and verification of EEA rights of residence
 - Removals and revocations of EEA nationals
 - Processes and procedures for EEA documentation applications
7. Decision-makers should familiarise themselves with all sections of the guidance, but for ease of reference we have highlighted the following sections which are of particular importance:

[EEA nationals qualified persons](#)

- Pages 8-9 of this guidance provide further information to decision-makers on assessing rights of residence for jobseekers following changes which came into effect in July 2014.
- Page 49 sets out guidance on how time spent outside the UK should be considered when calculating the five year qualifying period towards a right of permanent residence in the UK. This guidance aligns the Home Office position more closely with that of other Government Departments, including DWP.
- Page 12 provides information on the most recent HMRC Primary Earnings Threshold (PET). This is the point at which employees must pay class 1 National Insurance contributions and can be used to assess whether any employment is genuine and effective.

[Derivative rights of residence](#)

This section provides more detailed guidance on assessing the rights of a primary carer to enter and reside in the UK in order to facilitate the rights of another Union citizen. This includes *Zambrano*, *Chen* and *Ibrahim/Teixeira* cases.

[EEA case law and appeals](#)

This chapter provides an overview of relevant judgments from the Court of Justice of the European Union (ECJ), including:

- Page 29 outlines the recent judgments in the cases of *MG* and *NO* which consider the impact of time in prison on a person's residence in the UK

and on calculating the ten year continuous residence threshold for imperative public security purposes.

- Page 13 sets out the ECJ judgment in *O and S* which considered further the scope of the rights of family members to enter and reside in the UK with their British citizen family member (*Surinder Singh*).

This chapter also sets out detail on a number of recent domestic cases in the UK Courts such as:

- Page 56 outlines the Court of Appeal judgment in *W and X (China)* which stated that the NHS cannot be relied upon in lieu of comprehensive medical insurance.
 - Page 39 provides information on the Upper Tier Tribunal case of *Shabani* which ruled that a jobseeker finding employment then becoming a 'second time' jobseeker can potentially fall within regulation 6(4). The judgment further ruled that the primary carer of a child in reception class may be entitled to a derivative right of residence.
8. Masterclass sessions on the modernised guidance will be available for all decision-makers who require it over the next few weeks. If specific training is required on any section in particular, please email the Free Movement Operational Policy Team mailbox at the following address in the first instance: EuropeanOperational@homeoffice.gsi.gov.uk

<Redacted – s. 40(2)>

Head of Free Movement Operational Policy Team
24 February 2015