



Home Office

EEA nationals and their family members

Version 4.0

This guidance explains how passengers qualify for free movement rights, as a result of their relationship with a European Economic Area (EEA) national.

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About this guidance

This guidance tells Border Force officers about who qualifies as a family member under the European Economic Area (EEA) Regulations 2016 and how they should be processed at the border.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

European Community (EC) 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 2016** (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 of the directive or after a member state itself raises a question about the implementation of the legislation. The resulting case-law from ECJ judgements is binding on all member states.

People coming to the UK who are entitled to exercise rights of 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 Immigration Rules.

If an EEA national arrives without a passport or ID card, regulation 11(4) of the EEA Regulations state that an EEA national should be given 'every reasonable opportunity' to prove by other means that they are an EEA national or 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.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email Border Force national immigration and customs enquiries <email address redacted>.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team <email address redacted>.

Clearance

Below is information on when this version of the guidance was cleared:

- version **4.0**
- published for Home Office staff on **14 March 2017**

Changes from last version of this guidance

EEA regulations 2006 replaced with EEA Regulations 2016 and some regulations have been re-numbered. These changes have been reflected in this guidance

Related content

[Contents](#)

EEA nationals: definition

This page tells Border Force officers who are European Economic Area (EEA) nationals.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Countries in the European Union (EU)

The EU consists of the following countries with the year they joined the EU:

- Austria (1995)
- Belgium (1958)
- Bulgaria (2007)
- Cyprus (2004)
- Croatia (2013)
- Czech Republic (2004)
- Denmark (1973)
- Estonia (2004)
- Finland (1995)
- France (1958)
- Germany (1958)
- Greece (1981)
- Hungary (2004)
- Ireland (1973)
- Italy (1958)
- Latvia (2004)
- Lithuania (2004)
- Luxembourg (1958)
- Malta (2004)
- Netherlands (1958)
- Poland (2004)
- Portugal (1986)
- Romania (2007)
- Slovakia (2004)
- Slovenia (2004)
- Spain (1986)
- Sweden (1995)
- United Kingdom (1973)

Countries in the EEA

The EEA consists of the countries in the EU as well as the following countries:

- Iceland
- Liechtenstein
- Norway

Romania and Bulgaria

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, work, live and study in any other member state. The Accession Treaty which allowed member states to restrict the freedom to work for a transitional period, expired on 31 December 2013. From 1 January 2014 Romanian and Bulgarian nationals have been able to exercise their full treaty rights as:

- a student
- a self employed person
- a self-sufficient person
- a jobseeker
- a worker

Croatia

Nationals of Croatia, which joined the EU on 1 July 2013, 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 Croatian nationals' freedom to work for a transitional period of up to 7 years. The UK currently applies such transitional restrictions, which are implemented by the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. These regulations currently apply employment restrictions until 30 June 2018.

The effect of the regulations is Croatian nationals will, unless they benefit from one of the exemptions in the regulations, require worker authorisation before they may engage in employment in the UK. Worker authorisation will only be granted for authorised categories of employment, and in most cases will require the worker to be in employment which meets the requirements of Tier 2 or Tier 5 of the Points-based system. Specifically the worker will need to be sponsored by a UK Visas and Immigration (UKVI) licensed sponsor.

Croatian nationals subject to the worker authorisation requirement do not have a right to reside as a jobseeker. A Croatian national will become exempt from the worker authorisation requirement if they work legally and continuously in the UK for a period of 12 months, and may apply to be exempted from the worker authorisation requirement on the basis that they are highly skilled within the meaning of the regulations. Croatian national family members of British citizens, Croatian nationals with permission to work and other EEA nationals are also exempted from the worker authorisation requirement.

Croatian nationals have an unrestricted right to reside as:

- a student
- a self employed person
- a self-sufficient person and not as a worker

Those exercising a right to reside as a student are required to apply for a registration certificate confirming this if they wish to engage in part-time or vacation employment.

Other territories

This page provides Border Force officers with further information about other territories

Switzerland

Switzerland is not part of the EU or EEA. However, by virtue of a separate agreement Swiss nationals and their family members enjoy free movement rights. Swiss nationals and their family members are covered by the EEA Regulations.

Isle of Man and the Channel Islands

The Crown Dependencies of the Isle of Man and the Channel Islands are not part of the EEA. Section 7(2) 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 if they were if seeking entry to the UK under EEA Regulations.

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.

It should also be noted that EEA family permits and EEA permanent residence wet ink endorsements issued in the Islands are only valid in the issuing state. They are therefore not acceptable in the UK as evidence of free movement rights.

Andorra, Monaco and San Marino

These countries are not part of the EU or the EEA. Nationals of these states require leave to enter and should be examined under the relevant category of the Immigration Rules.

Gibraltar

Gibraltar is a British overseas territory and part of the EU. Gibraltarians hold a UK passport with Gibraltar added underneath the UK title on the cover and inside it describes the holder as a British citizen.

The Faroe Islands

The Faroe Islands remain a province of Denmark but are **not** part of the EU. 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.

Related content

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British nationals and EU law

This page tells Border Force officers about Surinder Singh and McCarthy cases.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Regulation 2 of the European Economic Area (EEA) Regulations precludes British citizens from being considered EEA nationals under the regulations. This is regardless as to whether they also hold the nationality of another EEA member state. This follows the European Court of Justice (ECJ) judgment in the case of McCarthy (ECJ C-434/09). A British citizen, and his third country national family members, can, however benefit from free movement rights in the limited set of circumstances as outlined in the ECJ case of Surinder Singh (ECJ C-370/90) where that British citizen was a worker or self-employed person in another EEA member state. This has been given effect by regulation 9 of the EEA Regulations.

Surinder Singh cases

On 25 November 2016, the conditions for when a British citizen's family member can be treated as an EEA national's family member, were broadened. The conditions are set out in [regulation 9](#). The changes implement the decision made by the ECJ following the case of [O and B \(C-456/12\)](#) which tightened the centre of life requirements. This ensures that a British citizen engages in genuine and effective use of their rights under European Union (EU) free movement law before their non-EEA family member receives the right to reside in the UK.

Regulation 9

To be considered as an EEA national rather than a British citizen, the conditions in regulation 9(2) require the British citizen to demonstrate that they were residing in another EEA state as a worker, self-employed person, student or self-sufficient person immediately before returning to the UK; or had acquired the right of permanent residence in an EEA state before returning to the UK.

In addition, the British citizen must show that they resided together with their family member in the EEA state and that such residence was genuine.

Regulation 9(3) specifies the factors to be considered when deciding whether the residence in the EEA state was genuine. These factors include:

- whether the centre of the British citizen's life transferred to the EEA state
- the length of the family member's and British citizen's joint residence in the EEA state
- the nature and quality of the family member's and British citizen's accommodation in the EEA state, and whether it is, or was, the British citizen's principal residence
- the degree of the family member's and British citizen's integration in the EEA state
- whether the family member's first lawful residence in the EU with the British citizen was in the EEA state

For further information on how to assess these conditions and for any transitional arrangements, see link: [Free Movement: Family members of British citizens](#).

Following their return to the UK, when treating a British citizen as an EEA national, they must show, after an initial three month period in the UK, that they would be a qualified person as a jobseeker, worker, self-employed person, self-sufficient person or student to continue being treated as an EEA national.

Accompanying or joining a British citizen sponsor to the UK

Where a person applies at the border for entry to the UK as a family member of an EEA national but they are:

- accompanying a British citizen sponsor to the UK
- joining a British citizen sponsor in the UK

You must be satisfied that the British citizen can be treated as an EEA national because they meet the conditions in regulation 9, before determining whether to admit the family member to the UK.

Where the British citizen is already in the UK (and has been for longer than 3 months), the family member who is applying to join them, must show evidence that the British citizen can be treated as an EEA national in the UK because they meet the conditions in the regulations as a qualified person, subject to some amendments.

For further information on assessing whether the British citizen is a qualified person, see: [Free movement rights: family members of British citizens](#) and [EEA nationals qualified persons](#).

Regulation 9 does not apply where the purpose of the residence in the EEA state was as a means for circumventing any immigration rules applying to non-EEA nationals to which the family member would otherwise be subject. For example, the British citizen and their spouse took up residence in another EEA state as a means of their spouse avoiding entry to the UK under the Immigration Rules because they could not meet the necessary requirements (such as income or English language requirements). This may be evident where previous applications made under the Immigration Rules have been refused for these reasons.

For further information on assessing the purpose of the residence in the EEA host country, including the ability to conduct credibility interviews, see link: [Free movement rights: family members of British citizens](#).

Regulation 9 also does not apply to extended family members, even where they have been issued documentation as an extended family member under regulation 7(3).

Dual British and EU nationals

Following the ECJ judgment in McCarthy (ECJ C-434/09) regulation 2 was amended on 16 July 2012 to preclude British citizens from benefitting from the terms of the free movement directive. This is regardless of whether or not they hold dual nationality with another EEA member state. This means that family members are also unable to derive a right of residence under the free movement directive on the basis of their relationship to such a national. For example, a dual British and French citizen cannot rely on their French nationality in the UK to benefit from the directive.

The judgment in the case of McCarthy does not affect the right for family members of dual British and EEA citizens to enter and reside in the UK under the terms of the Surinder Singh judgment.

Related content

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Examining EEA nationals

This page tells Border Force officers about when they can examine European Economic Area (EEA) nationals.

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Schedule 2 (1971 Act) powers in the EEA Regulations

In certain circumstances you may examine EEA nationals under the 1971 Immigration Act. Under regulation 29, if there are doubts about an individual's claim to EEA nationality and therefore claim to free movement rights, or if there are grounds to believe an individual may be denied admission under regulation 23 on the grounds of public policy, public security, or public health or the misuse of rights provisions, the powers in certain paragraphs of schedule 2 to the 1971 Act may be invoked. These include 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, arrest and grant temporary admission.

The power to remove an EEA national who has been examined under the 1971 Act is in regulation 30.

Where a person has passed through the primary checkpoint, the responsibility of any further action passes to other enforcement agencies such as the police.

European Union (EU) asylum applications

Changes to the Immigration Rules now allow for asylum claims from EU nationals to be treated as inadmissible. The changes relate to EU applications only for asylum under the [Immigration Rules part 11: asylum](#). Asylum inadmissibility of EU asylum applications is under paragraphs 326E and 326F.

This allows claims from EU nationals to be treated as inadmissible whilst providing a mechanism to consider claims where exceptional circumstances are raised. When a claim is treated as inadmissible, in accordance with the Immigration Rules, it will not be considered at all.

This process applies to EU nationals only. Liechtenstein, Norway and Iceland are part of the EEA but not part of the EU. Claims from those nationals, or Swiss nationals, cannot be declared inadmissible but must be admitted to the full asylum process and considered on the basis that they are clearly unfounded, if the claim is not withdrawn.

<redacted>

Exceptional circumstances raised

Paragraph 326F of the Immigration Rules, sets out when exceptional circumstances will apply. These cases are expected to be very rare as EU countries are deemed to be safe countries. Any exceptional circumstance claim must be presented in writing.

<redacted>

The appropriate team member will review the written evidence provided and decide whether to treat the asylum claim as inadmissible. <redacted>

Process to Follow

Where an EU national submits written evidence to substantiate their asylum claim to you at a port, this will need to be assessed prior to it being declared inadmissible.

<redacted>

Out of Hours service

<redacted>

Granting admission into the UK

All EU nationals benefit from the right of free movement into the UK. This being the case an EU national cannot be detained or refused admission into the UK due to the failed asylum claim.

<redacted>

Duty of care for EEA children

Your duty to safeguard the welfare of children under section 55 of the Borders, Citizenship and Immigration Act 2009, applies as equally to EEA children as those of any other nationality. Where there are concerns over the safety and protection of any child presenting a valid EEA ID card or passport, it is appropriate for you to establish that the child is travelling with or going to join a legitimate guardian. There is further guidance regarding dealing with arriving children <internal link redacted>

Rights of residence for EEA nationals

Under regulation 13 an EEA national has an initial right of residence in a member state for 3 months from the date of first entry and does not need to be a qualified person during this period. This also applies to their non-EEA family members. An EEA national therefore cannot be refused and removed on the basis that they are not a qualified person within the first 3 months of their entry to the UK. After this initial 3 month period a person may remain in the UK provided they are a qualified person. A qualified person is defined under regulation 6 as:

- a jobseeker
- a worker
- a self-employed person
- a self-sufficient person
- a student

Continuity of residence

Continuity of residence under the EEA Regulations is not affected by the EEA national being absent from the UK for periods which are under 6 months in any year, periods of absence on compulsory 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. From 1 February 2017, continuity of residence is broken where a:

- person serves a period of imprisonment
- deportation or exclusion order is made in relation to the person
- person is removed from the UK under the regulations

Permanent right of residence

EEA Regulations confer a permanent right of residence on EEA nationals and their family members after 5 years of continuous residence in the UK (regulation 15). This is not dependent on their relationship with the EEA national but permanent residence is lost **if the person is absent from the UK for more than 2 years.**

Permanent residency can also be cancelled under the grounds of public policy, public security or public health.

EEA nationals in prison

An EEA national in prison is **not** a qualified person; this is on the grounds that they cannot exercise a treaty right whilst in prison. Non-EEA family members of an EEA national who is in prison, are not entitled to admission under EU law on the basis that they are the family member of a qualified person. Any third-country nationals seeking entry in such circumstances should be examined under the Immigration Act 1971 to determine their eligibility for entry to the UK.

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EEA Family members

This page tells Border Force officers about who qualifies as a European Economic Area (EEA) family member and how they should be processed at the border.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Family members

Regulation 7 of the EEA Regulations defines a 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 dependants
- dependant direct relatives in the ascending line of the EEA national or of their spouse or civil partner

Step adopted and foster children

Step-children are included in the definition of direct descendants of the spouse, and are therefore entitled to the same rights of free movement as the biological children of both parents.

Children who are legally adopted by one or other parent are also included in the definition of family members. However foster children have no such legal status and must therefore be examined under the Immigration Rules.

Extended family members

Regulation 8 defines extended family members as a:

- a relative of an EEA national who is dependent on the EEA national
- a member of their household and is accompanying the EEA national to the UK or wishes to join them, or has joined them in the UK and continues to be dependent on them or to be a member of their household
- a relative of an EEA national who strictly requires the personal care of the EEA national due to serious health grounds
- a relative of an EEA national who would meet the requirements of the Immigration Rules for indefinite leave to remain (other than those relating to entry clearance) as a dependent relative of an EEA national as if the EEA national was a person present and settled in the UK
- the partner of an EEA national who can prove they are in a durable relationship with the EEA national

When assessing whether a relationship is durable you should consider the requirements for leave to enter of an unmarried partner as set out in [part 8 of the Immigration Rules](#) (other than entry clearance).

There are certain conditions that should be met, such as the fact that they should have lived together in a relationship akin to marriage which has subsisted for 2 years

or more. Each case must be considered on its merits. There may be circumstances where the couple can still be considered to be in a durable relationship even where they have been together for less than 2 years (for example if they have a child together).

From 1 February 2017, the regulations were amended to remove the right of appeal for extended family members who are refused either:

- an EEA family permit
- a registration certificate
- a residence card

EEA family permits

EEA family permits are issued under regulation 12 to third-country national family members of EEA citizens. Although issued on a UK vignette they do not confer leave to enter and are not subject to any domestic legislation governing entry clearance. Passengers should be examined in the normal way to establish if they are the rightful holder of the document and that they are still the family member of an EEA national.

Revoking EEA family permits

Regulation 24 provides the power to revoke family permits on the grounds of public policy, public security or public health. It also provides the power to revoke if the:

- person is no longer the family member of an EEA national
- family member is refused admission because he is not accompanying or joining an EEA national

Such persons are entitled to an **in country right of appeal** under regulation 36

Family members with UK issued residence cards

Residence cards are issued by the UK government under regulation 18 to family members who have a right of residence in the UK because their EEA national family member is a qualified person. Like EEA family permits they do not confer leave to enter; nor are they subject to any domestic legislation governing returning residents. Passengers may be examined to establish on what grounds the card was issued, for example:

- they are 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 they are still the family member of the EEA national who is a qualified person
- because they are a person who has a [retained rights of residence](#) - in this case there is **no** requirement for the EEA national to be in the UK

Family members of EEA nationals can remain in the UK without holding a residence card as long as the EEA national continues to reside in the UK in compliance with the EEA Regulations. However, a family member of an EEA national will need to prove their right of admission by other means when re-entering the UK.

Revoking UK issued residence cards

A UK issued residence card can be revoked under regulation 24 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, public health or public security you **cannot** revoke the residence card. This is unless the family member is additionally no longer the family member of a qualified person or an EEA national with a right of permanent residence or has not retained the right of residence or acquired permanent residence.

Such persons are entitled to an **in country right of appeal** under regulation 36.

UK issued permanent residence card holders

A family member acquires a permanent right of residence if they have been resident in the UK in accordance with the EEA Regulations for 5 years. 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 they have 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, **you should not refuse automatically**. You should revoke their permanent residence card but should assess their re-admissibility under the EEA Regulations. If they still qualify for admission as a family member you should admit them using the EEA dependant stamp for 6 months and advise them to apply for a new residence card from the Home Office.

Family members with Article 10 residence cards issued by other EEA member states

Following the judgment of the Court of Justice of the European Union (ECJ) in the case of McCarthy (C-202/13), the UK will now accept valid, genuine residence cards issued by other EEA member states under article 10 of the Free Movement Directive (2004/38/EC). This is as evidence that the holder is exempt from the requirement to hold an EEA family permit. Permanent residence cards issued under article 20 of the directive are also acceptable for this purpose.

You must note that an exemption from the EEA family permit requirement does not mean that the passenger necessarily has a right of admission under the EEA Regulations. You should give thorough examination of the claim to a right of admission as set out in [right of admission for a person with an article 10 residence card](#).

Acceptable documents

Residence cards are issued to non-EEA family members of EEA nationals where the EEA national is residing in a member state other than that of which they are a national and where they are exercising treaty rights (or have acquired a right of permanent residence under EU law). For example, a residence card would be issued under EU law by the Spanish authorities to the non-EEA spouse of a French national who is living and working in Spain.

Such a document will only be acceptable where it:

- is valid
- is genuine
- features the wording 'Residence Card of a Family Member of a Union Citizen' or 'Permanent Residence Card of a Family Member of a Union Citizen', which is clearly distinguishable and can be understood
- is presented alongside a valid national passport

See [examples of residence documentation issued by other EEA member states](#) for more information. It should be noted that in many cases this website fails to identify whether a card has been issued in accordance with article 10 of the Free Movement Directive.

You can find information on specimen and forged documents for different countries on the Country Information and Guidance page <internal link redacted> on Horizon.

You can also access information about authentic and false documents on the EU iFADO website <link redacted>, which can be accessed over secure connections including the gsi network.

Where a non-EEA national presents a valid, genuine residence card or permanent residence card issued under the free movement directive by another EEA member state, you should take this into account as evidence that the non-EEA national is the family member of an EEA national.

Where you are not satisfied that the document presented is a residence card of a family member of a Union citizen issued under article 10 of the directive (or a permanent residence card issued under article 20 of the directive), you must refuse to accept the document as evidence that the holder is exempt from the EEA family permit requirement.

You should give the passenger the opportunity to evidence their right of admission under European Union (EU) law by other means, in line with regulation 11(4). This is the same consideration as for any non-EEA family member of an EEA national who arrives at the UK border and who does not hold one of the documents specified in regulation 11(2). Where the passenger is unable to satisfactorily demonstrate their right of admission, you must refuse admission under the EEA Regulations.

Where you are not satisfied that the document presented is a genuine document, you must refuse to accept the document as evidence that the holder is exempt from

the EEA family permit requirement, refuse admission and follow the normal process for dealing with fraudulent documentation.

Residence cards and residence permits

The McCarthy judgment only applies to residence cards issued under free movement law to family members of EEA nationals who are exercising free movement rights in another EEA member state, specifically not their member state of nationality.

Examples of where McCarthy would not apply.

The Indian spouse of a German national living in Germany would usually hold a residence permit in the common biometric format (as with the biometric residence permits (BRPs) we issue here).

An Indian national settled in Germany (with no EU relatives) may well hold a residence permit in the common biometric format.

An Indian spouse of a German national living in France has been issued with a residence permit in the common biometric format in their own right in France under French domestic law. The Indian spouse has autonomous rights in France which are not dependent on the EU national.

Example of where McCarthy would apply.

The Indian spouse of a German national (exercising free movement rights) living and working in France would hold a residence card issued under EU law.

Residence cards and permanent residence cards issued under the free movement directive should contain the wording 'family member of a Union citizen'.

<redacted>

It should be noted that Switzerland does not issue residence cards under articles 10 or 20 of the directive. Therefore, any document issued by the Swiss authorities will not be within the scope of the McCarthy judgment.

Right of admission for persons with an article 10 residence card

The presentation of a document which meets the criteria set out [the acceptable documents section](#) **does not** on its own give the holder a right of admission, it simply exempts the holder from the requirement to hold an EEA family permit. A person who presents such a document must also demonstrate that:

- they are the family member of the EEA national as claimed
- they are accompanying the EEA national to the UK
- they are joining the EEA national in the UK
- the EEA national is residing in the UK in accordance with the Immigration (European Economic Area) Regulations 2016 or will have a right of residence on entering the UK (where they are travelling with the non-EEA family member)

A family member of an EEA national who presents with a qualifying residence card issued by another EEA member state, but who is **not accompanying or joining** the EEA national in the UK, is **not entitled** to be admitted to the UK under the EEA Regulations.

For example, the non-EEA spouse of a German national who is working in Italy, but who is travelling to the UK for a holiday without their German national spouse, would be subject to the normal visa requirements even where they hold a residence card. This is because their right of admission to the UK is dependent on them joining or accompanying the EEA national. It does not give a free-standing right of admission. It **only** acts as an exemption from the EEA family permit requirement if they are travelling with or joining the EEA national.

Where the non-EEA national is not travelling with their EEA national family member, but claims that the EEA national is in the UK, you should seek to verify this.

<redacted> **The onus is on the passenger to demonstrate to you that they have a right of admission under the regulations.** If you cannot reach the EEA national or are not satisfied that the EU national is in the UK and where appropriate (if the EU national has been here for more than 3 months) that the EU national is exercising treaty rights, you should refuse admission under the EEA Regulations.

Establishing the authenticity of the relationship to the EEA national

Where you are satisfied that the document presented is a genuine, valid residence card of a family member of a Union citizen issued under the directive, you should then consider whether the holder is the genuine family member of an EEA national as claimed.

For example, a person claiming to be the spouse or civil partner of an EEA national may provide evidence such as an original marriage or civil partnership certificate, photographs of them with the EEA national, evidence of a joint bank account. A person claiming to be the child of an EEA national could provide their original birth certificate.

If you are satisfied that the relationship is genuine, you should go on to consider whether the passenger is accompanying or joining the EEA national.

If you are not satisfied that the passenger is related as claimed to the EEA national, you can make further enquiries to establish the authenticity of the relationship.

<redacted> See guidance on marriage interviewing in the Direct family members guidance <internal link redacted> for more information.

If you are satisfied that the relationship is genuine, you must go on to consider whether the EEA national has a right of residence in the UK. If you are not satisfied that the relationship is genuine following these further enquiries, you must refuse admission under the EEA Regulations.

Extended family members with article 10 residence cards

It should be noted that the exemption from the requirement to obtain an EEA family permit prior to travelling to the UK applies only to direct family members of EEA nationals as defined under regulation 7 of the EEA Regulations. Extended family members as defined under regulation 8 remain subject to the requirement to hold an EEA family permit before travelling to the UK.

Direct family members of an EEA national are:

- spouse or civil partner
- direct descendents of the EEA national, or their spouse or civil partner, who are:
 - under 21 years of age
 - 21 or over and dependents of the EEA national or their spouse or civil partner
- dependent direct relatives in the ascending line of the EEA national or their spouse or civil partner

Relatives of EEA nationals who are not direct family members **only** have a right of residence in the UK where they have been issued with a valid EEA family permit, registration certificate or residence card by the UK Home Office. In these circumstances, a residence card issued by another EEA member state does not exempt the holder from the requirement to hold an EEA family permit. Under EU law, extended family members do not have an automatic right to be admitted, and member states have the right to decide whether to admit persons in this category, having regard to all the circumstances.

Non-EEA extended family members who present at the UK border without an EEA family permit or UK issued residence card are not entitled to be admitted to the UK (regulation 11(4)). A non-EEA national who does not hold an EEA family permit and presents at the UK border with an article 10 or article 20 permanent residence card issued by another member state as the extended family member of an EEA national should be refused admission and directed to make an EEA family permit application if they wish to accompany or join the EEA national in the UK.

Family member of British citizens with article 10 residence cards

The judgment in McCarthy also applies to residence cards issued to family members of British citizens who have exercised treaty rights as a worker or self-employed person in another EEA member state.

Where a non-EEA family member of a British citizen is claiming a right of admission on the basis that they have resided with that British citizen while they exercised treaty rights as a worker, self-employed person, self-sufficient person or student in another EEA member state (Surinder Singh cases), they would need to demonstrate to you that the requirements set out in regulation 9 were met, and that they are accompanying or joining the British citizen in the UK.

Carriers' liability and residence cards issued under article 10 and article 20 of the Free Movement Directive

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 (or permanent residence card issued under article 20) of the Free Movement Directive (2004/38/EC) and if the non-EEA national is travelling with or joining the EEA national in the UK.

If a carrier boards a non-EEA passenger on the basis of a document which, upon examination, transpires to be either a fraudulent or invalid document, or a document which was issued on a basis other than articles 10 or 20 of Directive 2004/38/EC (for example, biometric residence permits issued under the national law of another member state are not acceptable and do not exempt the holder from the requirement to obtain an EEA family permit) and that passenger is subsequently refused admission to the UK under the EEA Regulations, the carrier will remain liable for charges under section 40 of the Immigration and Asylum Act 1999 (as amended).

See [examples of residence documentation issued by other EEA member states](#) for more information. It should be noted that in many cases this website fails to clearly identify whether a card has been issued in accordance with articles 10 or 20 of the free movement directive. For example, Garda National Immigration Bureau (GNIB) cards endorsed '4EUfam', do not indicate that they are residence cards issued under Article 10 of the Free Movement Directive (2004/38/EC), but they are.

<redacted>

Other refusal of admission for holders of article 10 residence cards

Non-EEA nationals who hold valid residence cards issued by another member state and who satisfy the criteria for admission can still be refused admission under regulations 23 (public policy, public security, public health and misuse of free movement rights) in the usual way. You can find information on considering the refusal of admission to a family member of an EEA national in the refusal of EEA nationals' <internal link redacted> guidance.

Right of appeal

Where the bearer of a valid residence card claiming to be the family member of an EEA national is refused admission to the UK under the EEA Regulations, they will have a right of appeal against that decision under regulation 36(4). Where they produce a passport and one of the following:

- an EEA family permit
- a qualifying EEA state residence card
- proof that they are the family member or relative of an EEA national
- in the case of a person claiming to be a family member who has retained the right of residence, proof that they were a family member of the relevant person

In line with regulation 37(1)(a), an appeal against a decision to refuse to admit a person to the UK under the EEA Regulations is an out of country appeal right. This is unless the individual is **already resident** in the UK and holds one of the following:

- an EEA family permit
- a registration certificate
- a residence card
- a qualifying EEA member state residence card
- a document certifying permanent residence
- a permanent residence card
- a derivative residence card

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EEA family members arriving at the border

This page tells Border Force officers about how to process European Economic Area (EEA) family members at the border.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Landing cards

You should request that the holder of an EEA family permit complete a landing card on their first arrival **only** and should explain, if asked, that this is for statistical purposes. <redacted>

Using the European Union (EU) channel

An EEA family member travelling with the EEA national may use the EU queue. However there will be cases where local operational requirements mean that the EEA family member may be asked to join the non-EEA queue. Decisions are for local operational managers to take, but this does not infringe an individual's right to free movement.

If the family member is joining the EEA national the **onus is on the passenger** to prove that the EEA national is in the UK <redacted>.

Endorsing documents

<redacted>

Under regulation 11(3) a stamp **may not** be placed in the passport of a person who holds a UK issued residence card when he is admitted to the UK, even if they do not hold an EEA family permit. Regulation 11(3) expressly prohibits an officer from endorsing the passport of a person who holds a valid residence card, derivative residence card, permanent residence card or a residence card issued by another EEA member state. Where this was issued in accordance with Articles 10 or 20 of the Free Movement Directive. In addition these passengers **are not** required to fill in a landing card and you should not ask them to do so.

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 is 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 you 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.

No EEA family permit or residence card is held

Third-country national family members who do not hold an EEA family permit, a residence card issued by the UK, or by another EEA member state in accordance

with article 10 of the Free Movement Directive (2004/38/EC), should **not** be denied admission for lack of such a document alone. You should assess whether or not a person qualifies for admission under the EEA Regulations, taking note of the guidance on those who seek admission under the extended family member provisions.

If you are satisfied that the non EEA national qualifies under the EEA Regulations, you should endorse the passport <redacted> for 6 months. If they do not qualify or if there is some doubt the case should be referred to a senior officer.

If a passenger is landed with this stamp a landing card should be completed with full details of how the passenger qualifies for admission. <redacted>

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 UK issued residence card or a permanent residence card.

If a carrier contacts you to ask about the admissibility of a visa national EEA family member, they should be advised that the passenger must hold an EEA family permit, UK issued residence card, permanent residence card, or a residence card issued by another EEA member state. This is in accordance with articles 10 or 20 of the free movement directive, and is in order to avoid a carriers' liability penalty.

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Marriages and other partnerships

This page tells Border Force officers about acceptable marriages and partnerships.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Marriages where the couple do not live together (Diatta judgement)

In the European Court of Justice (ECJ) case of Diatta (ECJ 267/83) the ECJ 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 was not for immigration authorities to decide whether or not a couple should be co-habiting or in the case of separation whether reconciliation is possible.

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

Marriages and civil partnerships of convenience

Regulation 2 defines a spouse as not including someone who is party to a marriage or civil partnership of convenience. In other words the marriage or civil partnership is entered into solely for the purpose of gaining entry to the UK under European Union (EU) law as the spouse of a European Economic Area (EEA) national. Any application for admission where there are grounds to believe the claimed relationship is one of convenience, should be refused.

Polygamous relationships

EU law does not provide for polygamous relationships. A spouse and civil partner therefore does not include someone who already has a spouse, civil partner or durable partner present in the UK and where that other relationship is subsisting.

EEA family permits may however be issued to a durable partner of someone who is still married or in a civil partnership provided the other relationship is no longer subsisting.

Proxy marriages

In countries where a marriage by proxy is legal we have to accept it as a legal marriage. However, as with all marriages, you should be satisfied it is not a marriage entered into solely for the purpose of gaining entry to the UK under EU law as the spouse of an EEA national. You should refuse any application for admission where there are grounds to believe the claimed relationship is one of convenience.

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Rights of residence

This page tells Border Force officers about retained rights of residence under the European Economic Area (EEA) Regulations.

All the content of this guidance is classified as official – sensitive and must not be disclosed outside of the Home Office.

Retained rights of residence

Certain third-country nationals may retain a right of residence despite no longer being the family member of an EEA national. Under regulation 10, family members have a retained right of residence where:

- the EEA national with a right of permanent residence or who is a 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
- the EEA national with a right of permanent residence or who is a qualified person has died or was a qualified person when they left the UK and their child (or the child of the spouse/civil partner of the EEA national) 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
- following termination of a marriage or civil partnership the family member was living in the UK at the time and either:
 - the marriage or 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
 - the family member has custody of a child of an EEA national
 - the family member has a right of access to a child of an EEA national where access in the UK has been court ordered
 - continuity of residence is warranted by difficult circumstances such as domestic violence

Derived rights of residence

Regulation 16 of the EEA Regulations sets out the criteria to qualify for derived rights of residence. It is not a right under the free movement directive, but derived by other means, usually case law from the European Court of Justice (ECJ). Derived rights of residence do not confer the same status and are not equal to statutory rights under the directive.

A person with derived rights of residence cannot sponsor family members under the regulations. Following the Court of Justice of the European Union judgment in CS (C-304/14), persons with a derivative right are now afforded the same public policy protection as family members of EEA nationals. They cannot, however, benefit from the higher protection of serious grounds of public policy as they cannot acquire permanent residence under the EEA Regulations.

Ibrahim and Teixeira cases

Regulation 16(3) and (4) confers a derived right to reside on persons claiming a right to reside on the basis of the Court of Justice of the European Union (ECJ) judgments in the linked cases of Ibrahim and Teixeira where the relevant criteria are met.

In the cases of Ibrahim (ECJ C-310/08) and Teixeira (ECJ C-480/08), the ECJ ruled by virtue of Article 10 of Regulation 492/2011 that the following can claim a right of residence in that state:

- the children of an EU citizen who works or has worked in the host member state (who are in education in that state)
- the primary carer of those children

It has also been decided that dependant children of such primary carers should also qualify for a right of residence where failure to give such a right would have the effect of preventing that primary carer from residing in the UK.

For example, a third country national child at school in the UK with an EEA national parent who works or has worked in the UK can claim a right of residence.

Other third country national dependants can also derive rights of residence if to do otherwise, means the primary carer cannot reside in the UK. So if depriving a second child of a right of residence meant the carer had to go back home and could not stay in the UK that would be unlawful.

Chen cases

Regulation 16(2) includes provision within the regulations for Chen cases (ECJ C-200/02), making paragraph 257C of the Immigration Rules obsolete. Paragraph 257C has been repealed.

By virtue of the terms of the free movement directive a child will have a right of residence in a member state where that child:

- is an EEA national
- holds sufficient resources to prevent them (and their primary carer) becoming a burden on the social assistance system of the host member state
- holds comprehensive sickness insurance

The court found that such a child is entitled to be accompanied by his or her primary carer, and therefore that the primary carer of such a child will have a derived right of residence in the host member state. That is until the child's eighteenth birthday where to refuse such a right would prevent the child from continuing to reside in the UK.

Dependants of primary carers who have a derived right of residence on this basis also derive a right of residence in the UK where requiring those dependants to leave the UK would have the effect of preventing the primary carer from residing in the UK.

For example, where there is an EEA national child at school in the UK, the third country national parent, can claim residence, as well as other dependants of that third country national parent.

Zambrano cases

The Court of Justice of the European Union (ECJ) established in the case of Ruiz Zambrano (C34/09) that member states cannot refuse a person the right to reside and work in the host member state, where:

- that person is the primary carer of a Union citizen who is residing in their member state of nationality
- refusal of a right of residence to that primary carer would deprive the Union citizen of the substance of their European citizenship rights by forcing them to leave the EEA

In practice this means that the primary carer of a British citizen who is residing in the UK has a right to reside under EU law if their removal from the UK would require the British citizen to leave the EEA.

Regulation 16(5) makes provisions for a primary carer of a British citizen to qualify for a derivative right of residence where they satisfy the following conditions:

- the applicant is the primary carer of a British citizen (the relevant British citizen)
- the relevant British citizen is residing in the UK
- the relevant British citizen would be unable to reside in the UK or in another EEA state if their primary carer were required to leave the UK

A person who has a right of residence under regulation 16 will have a right of admission under regulation 11. Such a person can demonstrate this right of admission by presenting a valid passport and either:

- an EEA family permit
- a valid derivative residence card issued by the Home Office

A person who has not obtained an EEA family permit or a derivative residence card may still qualify for admission under regulation 11(4) where they can demonstrate by other means that they satisfy the conditions for a derivative right of admission under regulation 11(5). This follows the same process as for direct family members of EEA nationals who can evidence at port that they have a right of admission to the UK.

Where a person does not present an EEA permit or a derivative residence card, and does not produce evidence to demonstrate that they satisfy the conditions in regulation 11(5), you should refuse them admission to the UK.

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