Home Office

EU Settlement Scheme: family member of a qualifying British citizen

Version 3.0

Contents

About this guidance

This guidance tells you how, after 30 June 2021, to consider an application under the EU Settlement Scheme, contained in Appendix EU to the Immigration Rules, from a family member of a 'qualifying British citizen'.

The scheme is available to relevant family members of a British citizen who has exercised their free movement rights under EU law for more than 3 months in the European Union (EU), the European Economic Area (EEA) or Switzerland (they may have been employed, self-employed, self-sufficient or a student, or had a right of permanent residence) before the end of the transition period at 23:00 GMT on 31 December 2020 and immediately before returning to the UK with that family member.

The best interests of the child

The duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of a child under the age of 18 in the UK, together with Article 3 of the UN Convention on the Rights of the Child, means that consideration of the child's best interests is a primary consideration, but not the only consideration, in immigration cases. This guidance and the Immigration Rules it covers form part of the arrangements for ensuring that we give practical effect to these obligations.

Where a child or children in the UK will be affected by the decision, you must have regard to their best interests as a primary consideration in making the decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child or children.

Although the duty in section 55 only applies to children in the UK, the statutory guidance – Every Child Matters – Change for Children – provides guidance on the extent to which the spirit of the duty is to be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect that a child may need protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies to develop arrangements that protect children and reduce the risk of trafficking and exploitation.

Further guidance can be found in paragraphs 2.34 to 2.36 of the statutory guidance.

For further guidance on how to deal with applications from children see 'Applications in respect of children' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

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 the EEA Citizens' Rights & Hong Kong Unit.

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.

Publication

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

- version **3.0**
- published for Home Office staff on **23 March 2022**

Changes from last version of this guidance

- Changes made in light of the Upper Tribunal determination in ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan [2019] UKUT 00281 (IAC)
- Minor technical amendments to take into account the Immigration (European Economic Area) (Amendment) Regulations 2019
- Changes to Appendix EU made in Statement of Changes in Immigration Rules HC 120, laid on 12 March 2020
- Changes to Appendix EU made in Statement of Changes in Immigration Rules HC 813, laid on 22 October 2020
- Changes to Appendix EU made in Statement of Changes in Immigration Rules HC 1248, laid on 4 March 2021
- Reflecting the revocation of the Immigration (European Economic Area) Regulations 2016 at the end of the transition period (23:00 GMT on 31 December 2020) but where they continue to have effect, with specified modifications, by virtue of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

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Introduction

Until the end of the transition period at 23:00 GMT on 31 December 2020, a British citizen could exercise their free movement rights under EU law in an EU or EEA Member State or in Switzerland. In certain circumstances, where a British citizen has returned to the UK with a relevant family member who resided with them in the Member State or Switzerland, the family member can apply for settled status (indefinite leave to enter or remain in the UK) or pre-settled status (limited leave to enter or remain in the UK) under the EU Settlement Scheme. These are often described as 'Surinder Singh' cases after the Court of Justice of the European Union (CJEU) judgment of that name.

To return to the UK with the British citizen and apply in the UK to the EU Settlement Scheme, a relevant family member can apply for an EU Settlement Scheme family permit: EU Settlement Scheme: family and travel permits. An application to the EU Settlement Scheme as a family member of a qualifying British citizen can also be made from outside the UK, where the applicant has the required proof of entitlement to apply from outside the UK (see the next paragraph), but they will only be eligible for status under the scheme where they have previously returned to the UK with the British citizen and are currently outside the UK within the absence periods permitted under the scheme.

The EU Settlement Scheme is contained in Appendix EU to the Immigration Rules. This guidance is to be read in conjunction with EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, in particular as to the requirements for the making of a valid application: see the section on 'Making an application: validity'. These requirements are that:

- the application has been made using the required application process (which, in the case of a family member of a qualifying British citizen, is the required paper application form)
- the required proof of identity and nationality (or of entitlement to apply from outside the UK, where the application is made outside the UK) has been provided, by a relevant process for this set out in that form
- the required biometrics have been provided, by a relevant process for this set out in that form

If the application is valid, then you must use this guidance to consider whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under the EU Settlement Scheme as a family member of a qualifying British citizen or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen.

You must also use EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members for certain elements of the eligibility consideration, including assessing family relationship, family members who have retained the right of

residence, and continuous qualifying period of UK residence, and for the consideration of suitability.

EEA and Swiss citizens (defined in Annex 1 to Appendix EU, and referred to in this guidance, as an 'EEA citizen') can rely on their own continuous qualifying period of residence in the UK, which began by 23:00 GMT on 31 December 2020, in order to qualify for indefinite leave to enter or remain or limited leave to enter or remain under the EU Settlement Scheme.

Terms used in this guidance

In this guidance:

- 'the scheme' means the EU Settlement Scheme
- 'the Directive' means the Free Movement Directive 2004/38/EC
- 'the EEA Regulations' means either:
  - (where relevant to something done before the specified date – 23:00 GMT on 31 December 2020) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before that date)
  - (where relevant to something done after the specified date and before 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as, despite the revocation of those Regulations, they continued to have effect, with specified modifications, by virtue of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020)
  - (where relevant to something done on or after 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before they were revoked and, where the context requires it, on the basis that those Regulations had not been revoked)
- 'EEA host country' means a Member State of the EU or the EEA (other than the UK, while it was a Member State) or Switzerland, where an applicant lived with a British citizen before they both returned to the UK
- 'in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations' means the applicant is or was lawfully resident in the UK under regulation 13, 14 or 15 (by virtue of the requirements in regulation 9(1) to (6) being met) in accordance with the continuity of residence provisions in regulation 3 of the EEA Regulations
- 'the Islands' means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man, as per the definition in Annex 1 to Appendix EU
- 'the UK and Islands' means the UK and the Islands taken together, as per the definition in Annex 1 to Appendix EU
- 'relevant document' means a family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card issued by the UK under the EEA Regulations by virtue of regulation 9(1) to (6) on the basis of an application made under the EEA Regulations before (in the case of a family permit and where the applicant is not a dependent relative) 1 July 2021 and otherwise before 23:00 GMT on 31 December 2020, or a biometric residence card issued by virtue of having been granted limited leave to enter or remain under Appendix EU, or an entry clearance in the form of an

EU Settlement Scheme Family Permit granted under Appendix EU (Family Permit), which both:
    - was not subsequently revoked, or fell to be so, because the relationship or dependency had never existed or had ceased
    - has not expired or otherwise ceased to be effective or remained valid for the period of residence relied upon (except that the relevant document may have expired where the applicant is a durable partner or a dependent relative and (i) before it expired, the applicant applied for a further relevant document on the basis of the same family relationship as that on which that earlier relevant document was issued and (ii) the further relevant document was issued by the date of decision on the application under Appendix EU)
- 'durable partner' and 'dependent relative' are used when referring to the provisions of the scheme for those relationships, as per the definitions in Annex 1 to Appendix EU
- 'extended family member' is used when referring to the provisions of the EEA Regulations for either:
    - a dependent relative of a British citizen, that is a person who meets the conditions of regulation 8(1) and either 8(1A), (2), (3) or (4), as well as regulation 9
    - a durable partner of a British citizen, that is a person who meets the conditions of regulation 8(5) and regulation 9
- 'date and time of withdrawal' means 23:00 GMT on 31 January 2020
- 'transition period' means the period from the date and time of withdrawal until 23:00 GMT on 31 December 2020, during which EU free movement rights continued to apply in the UK and to British citizens and their family members in an EEA host country
- 'required date' means either 23:00 GMT on 29 March 2022 or 1 July 2021 (or in either case later where you are satisfied there are reasonable grounds for missing that deadline) depending on the circumstances.

23:00 GMT on 29 March 2022 applies to:

- spouses and civil partners of qualifying British citizens who returned to the UK before 23:00 GMT on 29 March 2022 (or later where you are satisfied there are reasonable grounds for missing that deadline) - however, the marriage must have been contracted or the civil partnership formed before 23:00 GMT on 31 January 2020 or, if they have married/formed a civil partnership since then, they must have been the durable partner of the qualifying British citizen, as defined in Annex 1 to Appendix EU, before 23:00 GMT on 31 January 2020 and the partnership remained durable at 23:00 GMT on 31 January 2020
- children of qualifying British citizens (or of their spouse or civil partner, as described in the previous bullet point) who returned to the UK before 23:00 GMT on 29 March 2022 (or later where you are satisfied there are reasonable grounds for missing that deadline) - this includes adopted children, and other children as defined in sub-paragraphs (a)(iii) to (a)(xi) of the definition of "child" in Annex 1 to Appendix EU
- dependent parents of qualifying British citizens (or of their spouse or civil partner, as referred to in the previous bullet point), who returned to the UK

before 23:00 GMT on 29 March 2022 (or later where you are satisfied there are reasonable grounds for missing that deadline) - however the family relationship and dependency must have existed before 23:00 GMT on 31 January 2020

- durable partners of qualifying British citizens who returned to the UK before 23:00 GMT on 29 March 2022 (or later where you are satisfied there are reasonable grounds for missing that deadline) - however the partnership must have been formed and been durable before 23:00 GMT on 31 January 2020 and remains durable at the date of application

The 1 July 2021 date applies to all other family members of qualifying British citizens.

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EU Settlement Scheme: family and travel permits

Eligibility requirements

This section tells you the requirements for eligibility as a family member of a qualifying British citizen for indefinite leave to enter (where the application is made outside the UK) or indefinite leave to remain, or for 5 years' limited leave to enter (where the application is made outside the UK) or 5 years' limited leave to remain, under the EU Settlement Scheme.

Indefinite leave to enter or remain

The applicant meets the eligibility requirements for indefinite leave to enter (ILE) or remain (ILR) as the family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, where you are satisfied, including by the required evidence of family relationship, that, at the date of application, one of the following conditions in rule EU12 of Appendix EU is met.

Documented right of permanent residence

Condition 1 of rule EU12 sets out the eligibility requirements for ILE or ILR as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a documented right of permanent residence.

You must be satisfied that the following requirements are met:

- the applicant is or was a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, see: Qualifying British citizen and Family member of a qualifying British citizen
- the applicant has a documented right of permanent residence: see 'Documented right of permanent residence' in the 'Family members' section of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
- no supervening event has occurred: see Supervening event

You do not need to reassess the applicant's family relationship to the qualifying British citizen or whether the British citizen is or was a qualifying British citizen, where the applicant has a documented right of permanent residence either:

- based on their relationship with a qualifying British citizen, and their scheme application is based on their current or previous family relationship with the same qualifying British citizen
- as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen

Existing indefinite leave to enter or remain

Condition 2 of rule EU12 sets out the eligibility requirements for ILE or ILR as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of existing ILE or ILR.

You must be satisfied that the following requirements are met:

- the applicant is a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen: see Qualifying British citizen and Family member of a qualifying British citizen
- there is valid evidence of their ILE or ILR: see 'Existing indefinite leave to enter or remain' in the 'Family members' section, and the 'Assessing family relationship' section, of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

Continuous qualifying period of 5 years

Condition 3 of rule EU12 sets out the eligibility requirements for ILE or ILR as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of 5 years.

You must be satisfied that the following requirements are met:

- the applicant is or was a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen: see Qualifying British citizen and Family member of a qualifying British citizen
- the applicant has completed a continuous qualifying period in the UK of 5 years in either (or any combination) of those categories: see Continuous qualifying period:
  - under rule EU13, the continuous qualifying period can include a period (or combination of periods) during which the applicant was a relevant EEA citizen, a family member of a relevant EEA citizen, a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen, a person with a derivative right to reside or a person with a Zambrano right to reside, before becoming the family member of a qualifying British citizen (or thereafter a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen)
- the applicant was, for any period in which they were present in the UK as a family member of a qualifying British citizen relied upon, lawfully resident by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a 'qualified person' under regulation 6 of the EEA Regulations): see Lawful residence in the UK

- since completing the continuous qualifying period of 5 years, no supervening event has occurred: see Supervening event

Child under the age of 21 of a qualifying British citizen's spouse or civil partner

Condition 4 of rule EU12 sets out the eligibility requirements for ILE or ILR as a family member of a qualifying British citizen where the applicant is a child under the age of 21 of a qualifying British citizen's spouse or civil partner who has been or is being granted ILE or ILR under the scheme.

You must be satisfied that the following requirements are met:

- the applicant is a child under the age of 21 years of the spouse or civil partner of a qualifying British citizen: see Qualifying British citizen and see the 'Assessing family relationship' section of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
- either:
  - the marriage was contracted or the civil partnership was formed before the date and time of the UK's withdrawal from the EU
  - the person who is now the qualifying British citizen's spouse or civil partner was their durable partner (as defined in Annex 1 to Appendix EU) before the date and time of withdrawal (that definition of 'durable partner' being met before then rather than at the date of application) and the partnership remained durable at the date and time of withdrawal

see the 'Assessing family relationship' section of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

- the applicant is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen is a qualified person under regulation 6 of the EEA Regulations): see Lawful residence in the UK
- the spouse or civil partner has been or is being granted ILE or ILR under Appendix EU

Alternatively, a child under the age of 21 of a qualifying British citizen's spouse or civil partner can also rely on conditions 1, 2 or 3 of rule EU12.

Limited leave to enter or remain

The applicant meets the eligibility requirements for limited leave to enter (LTE) or remain (LTR) as the family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, where you are satisfied, including by the required evidence of family relationship, that, at the date of application, condition 2 in rule EU14 of Appendix EU is met.

Continuous qualifying period of less than 5 years

Condition 2 of rule EU14 sets out the eligibility requirements for LTE or LTR as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of less than 5 years.

You must be satisfied that the following requirements are met:

- the applicant is a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen: see Qualifying British citizen and Family member of a qualifying British citizen
- the applicant was, for any period in which they were present in the UK as a family member of a qualifying British citizen relied upon for the purposes of a continuous qualifying period, lawfully resident by virtue of regulation 9(1) to (6) of the EEA Regulations (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6 of the EEA Regulations): see Lawful residence in the UK
- the applicant is not eligible for ILE or ILR under rule EU12 of Appendix EU solely because they have completed a continuous qualifying period in the UK of less than 5 years: see Continuous qualifying period

Having considered, using the following guidance, whether the applicant meets the eligibility requirements for ILE or ILR, or for LTE or LTR, under Appendix EU, you must go on to consider whether they meet the suitability requirements: see Suitability requirements.

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Free movement rights: family members of British citizens

Qualifying British citizen

This section explains how to consider whether a British citizen meets the definition of 'qualifying British citizen' in Annex 1 to Appendix EU.

Return to the UK

The following table sets out the date and time by which the British citizen must have returned to the UK with (or ahead of) the applicant in order to meet the definition of 'qualifying British citizen'. The relevant date and time depends on the family relationship between them.

Before 23:00 GMT on 31 December 2020 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)	**Before 23:00 GMT on 29 March 2022 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)**
Spouse or civil partner of a qualifying British citizen, where the marriage was contracted or the civil partnership was formed after 23:00 GMT on 31 January 2020 and before 23:00 GMT on 31 December 2020 (unless they were durable partners before 23:00 GMT on 31 January 2020 and the partnership remained durable at 23:00 GMT on 31 January 2020 – see (ii) in this row of the next column)	Spouse or civil partner of a qualifying British citizen, where either: (i) the marriage was contracted or the civil partnership was formed before 23:00 GMT on 31 January 2020 (ii) the applicant was the durable partner of the qualifying British citizen before 23:00 GMT on 31 January 2020 (the definition of 'durable partner' in Annex 1 to Appendix EU being met before then) and the partnership remained durable at 23:00 GMT on 31 January 2020
Durable partner of a qualifying British citizen, where the partnership was formed and was durable after 23:00 GMT on 31 January 2020 and before 23:00 GMT on 31 December 2020, and the partnership remains durable at the date of application	Durable partner of a qualifying British citizen, where the partnership was formed and was durable before 23:00 GMT on 31 January 2020, and the partnership remains durable at the date of application
Child or dependent parent of a qualifying British citizen's spouse or civil partner, as described in the first row in this column, and the family relationship of the child or dependent parent to the spouse or civil partner existed before	Child or dependent parent of a qualifying British citizen and the family relationship existed before 23:00 GMT on 31 January 2020 (unless after that date and time, in the case of a child, they were born, were adopted in

Before 23:00 GMT on 31 December 2020 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)	Before 23:00 GMT on 29 March 2022 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)
23:00 GMT on 31 January 2020 (unless after that date and time, in the case of a child, they were born, were adopted in accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition)	accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition)
Dependent relative of a qualifying British citizen, or (as the case may be) of their spouse or civil partner as described in the first row in this column, where the family relationship and the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) existed before the applicant returned to the UK with the qualifying British citizen or (where you are satisfied that there are reasonable grounds for the person's failure to meet the deadline of 23:00 GMT on 31 December 2020 for returning to the UK) before that deadline, and (in either case) the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) continues to exist at the date of application (or did so for the period of residence in the UK relied upon)	Child or dependent parent of a qualifying British citizen's spouse or civil partner, as described in the first row in this column, and all the family relationships existed before 23:00 GMT on 31 January 2020 (unless after that date and time, in the case of a child, they were born, were adopted in accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition)

Where the applicant does not rely on having a documented right of permanent residence, on having completed a continuous qualifying period in the UK of 5 years, or on being a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, the relevant family relationship must continue to exist at the date of application. Where a relevant family member (as set out in the second column of the table above) made a valid application for an EU Settlement Scheme family permit by 23:00 GMT on 29 March 2022, which was issued before that date (but the family could not reasonably make arrangements to

return to the UK by then) or was issued after that date (including following an allowed appeal), this may constitute reasonable grounds for a qualifying British citizen to return to the UK with (or ahead of) the family member after 23:00 GMT on 29 March 2022.

For further guidance on reasonable grounds for a qualifying British citizen to return to the UK with (or ahead of) the family member after 23:00 GMT on 29 March 2022, see Reasonable grounds for failing to meet the deadline for returning to the UK.

Where a British citizen returns to the UK after the relevant date set out in the table above and there are not reasonable grounds for their failure to meet that deadline, a family member seeking to return with or following them to the UK on the basis of that relationship will need to apply under the family Immigration Rules in Part 8 or Appendix FM.

Regulation 9(2), (3) and (4)(a) of the EEA Regulations

Part of the definition of 'qualifying British citizen' requires that the British citizen satisfied regulation 9(2), (3) and (4)(a) of the EEA Regulations in the EEA host country (as the British citizen (BC) to whom those provisions refer, with the applicant being treated as the family member (F), or as the extended family member (EFM), to whom those provisions refer) both:

- before the end of the transition period at 23:00 GMT on 31 December 2020
- immediately before returning to the UK with (or ahead of) the applicant

The exception is where the applicant is a child of the qualifying British citizen (or of their spouse or civil partner, as described in the table above) who, after the end of the transition period at 23:00 GMT on 31 December 2020, was born, was adopted in accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition. In such a case, the applicant had to meet the relevant requirements of regulation 9(2), (3) and (4)(a) of the EEA Regulations in the EEA host country immediately before returning to the UK with (or following) the qualifying British citizen, but not before the end of the transition period.

This guidance is intended to be an interim measure until Appendix EU to the Immigration Rules can be amended by a Statement of Changes in Immigration Rules to reflect the approach set out here.

The rest of this section explains how to consider whether, before the end of the transition period at 23:00 GMT on 31 December 2020 and immediately before returning to the UK with (or ahead of) the applicant, the British citizen satisfied regulation 9(2), (3) and (4)(a) of the EEA Regulations in the EEA host country. You do not need to repeat this consideration where the applicant is a person granted limited leave to enter or remain under Appendix EU as the family member of a qualifying British citizen who is now applying for indefinite leave to enter or remain under Appendix EU as the family member of that qualifying British citizen.

The applicant holds a relevant document issued or granted on or after 25 November 2016

You are not usually required to reassess whether, for the relevant period, the British citizen was a qualifying British citizen in the EEA host country, where the applicant holds a relevant document issued by the UK on or after 25 November 2016 under the EEA Regulations (which includes a relevant document issued under the Immigration (European Economic Area) Regulations 2006), or an EU Settlement Scheme Family Permit granted under Appendix EU (Family Permit), either:

- based on their relationship with a qualifying British citizen, and their scheme application is made as a family member of the same qualifying British citizen
- as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen

You must reassess these requirements where there is information available to you that indicates the relevant document may have been incorrectly issued.

Official – sensitive: start of section

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Official – sensitive: end of section

The applicant does not hold a relevant document issued or granted on or after 25 November 2016

Where either:

- the applicant does not hold a relevant document issued by the UK on or after 25 November 2016 under the EEA Regulations (which includes under the Immigration (European Economic Area) Regulations 2006), or an EU Settlement Scheme Family Permit granted under Appendix EU (Family Permit)
- the applicant holds such a document issued on or after 25 November 2016 based on their relationship with a qualifying British citizen and their scheme application is either:
  - made as a family member of the same qualifying British citizen but there is information available to you that indicates the document may have been incorrectly issued
  - made as a family member of a different qualifying British citizen

you need to be satisfied, including by the required evidence of family relationship, that, before the end of the transition period at 23:00 GMT on 31 December 2020 and immediately before returning to the UK with (or ahead of) the applicant, the British citizen of whom the applicant claims to be (or, for the relevant period, to have been) a family member was a qualifying British citizen in the EEA host country. The rest of this section provides you with guidance on how to assess this.

The qualifying British citizen's activity in the EEA host country

In accordance with regulation 9(2)(a) of the EEA Regulations, you must be satisfied that the qualifying British citizen either:

- lived and exercised free movement rights under EU law as a worker, self-employed person, self-sufficient person or student (a 'qualified person' under the EEA Regulations) in the EEA host country by 23:00 GMT on 31 December 2020 and immediately before returning to the UK
- acquired the right of permanent residence under EU law in the EEA host country by 23:00 GMT on 31 December 2020, generally after 5 years' continuous residence there as a qualified person, before returning to the UK

Qualified person in the EEA host country

Where the British citizen resided in the EEA host country for 3 months or less, they will not be a qualifying British citizen.

Where the British citizen resided in the EEA host country for more than 3 months, you do not need to see evidence that they were the equivalent of a 'qualified person' during their first 3 months of residence. This is because the initial 3-month right of residence is unconditional, save that the British citizen must not have been an unreasonable burden on the EEA host country's social assistance system.

After the initial 3-month right of residence, you must be satisfied that the British citizen exercised free movement rights as an employed, self-employed or self-sufficient person or as a student, and was the equivalent of a 'qualified person' under regulation 6 of the EEA Regulations, in the EEA host country.

The British citizen will not have been the equivalent of a ‘qualified person’ in the EEA host country for any period where they were a jobseeker unless this was during a period in which they had retained worker or self-employed status (see below).

Presenting a registration certificate issued by the EEA host country would not, without further evidence, be sufficient to demonstrate that the British citizen was the equivalent of a ‘qualified person’ there. This is to ensure the British citizen met the underlying requirements of the Directive, irrespective of whether the EEA host country issued residence documentation based on more favourable national provisions.

Instead, you must consider whether the evidence provided with the application shows that the British citizen exercised free movement rights as:

- an employed person – by, for example, production of an employment contract, wage slips, letter from employer(s)
- a self-employed person – by, for example, contracts, invoices, audited accounts with bank statements, or evidence of payment of tax and other deductible contributions
- a self-sufficient person – by, for example, bank statements (there must also be evidence of comprehensive sickness insurance for themselves and any family members)
- a student – by, for example, a letter from the school, college or university (there must also be evidence of sufficient resources by, for example, bank statements and of comprehensive sickness insurance for themselves and any family members)

For guidance on assessing whether the British citizen was the equivalent of a ‘qualified person’ in the EEA host country, see EEA nationals – qualified persons.

Service as a member of HM Forces (as defined in the Armed Forces Act 2006) in an EEA host country can satisfy the conditions of being a ‘worker’ for the purposes of the EEA Regulations in assessing whether the British citizen is a qualifying British citizen.

The Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus are not to be considered part of an EEA host country for the purposes of this guidance. Therefore, service as a member of HM Forces in a Sovereign Base Area cannot satisfy the conditions of being a ‘worker’ for the purposes of the EEA Regulations in assessing whether the British citizen is a qualifying British citizen.

Retained worker status in the EEA host country

A British citizen will continue to be treated as an employed or self-employed person during a period of temporary unemployment in the EEA host country in certain circumstances. See ‘Retaining worker or self-employed person status’ in EEA nationals – qualified persons for guidance.

Right of permanent residence in the EEA host country

Regulation 9(6) of the EEA Regulations provides that a British citizen is only to be treated as having acquired the right of permanent residence in the EEA host country if such residence would have met the requirements of regulation 15 of the EEA Regulations, had it taken place in the UK. See: the 'Rights of permanent residence for qualified persons' and 'Worker or self-employed person who has ceased activity' sections in EEA nationals – qualified persons.

If it is claimed that the British citizen had acquired the right of permanent residence in the EEA host country, you must be satisfied of this from the information and evidence available to you. A document issued to the British citizen by the EEA host country under Article 19 of the Directive (a document certifying permanent residence for EEA nationals who are not nationals of the EEA host country) would not usually, without the underlying evidence showing residence and the exercise of free movement rights covering the 5-year period, be sufficient to demonstrate that the British citizen had acquired a right of permanent residence in the EEA host country. This is to ensure the British citizen met the underlying requirements of the Directive, irrespective of whether the EEA host country issued residence documentation based on more favourable national provisions.

You must also be satisfied that the right of permanent residence had not lapsed due to excess absence from the EEA host country, or been restricted by the EEA host country (for example, due to deportation or exclusion measures), before the British citizen returned to the UK.

Joint residence in the EEA host country

In accordance with regulation 9(2)(b) of the EEA Regulations, you must be satisfied that the applicant resided in the EEA host country with the qualifying British citizen, by 23:00 GMT on 31 December 2020 and immediately before returning to the UK. This must have been while the qualifying British citizen exercised free movement rights in the EEA host country as the equivalent of a qualified person or held a right of permanent residence there under EU law.

Evidence which may satisfy you of this joint residence may include, for example:

- a mortgage or tenancy agreement in both their names
- correspondence or other material from official or otherwise credible sources, such as payslips, household bills or bank statements addressed to each of them at the same address

You must only accept that the applicant and the qualifying British citizen resided together in the EEA host country for as long as the evidence demonstrates. For example, if they claim to have lived together for 2 years, but the evidence only covers a 3-month period, then you can only accept that they lived together for 3 months.

Genuine residence in the EEA host country

In accordance with regulation 9(2)(c) of the EEA Regulations, you must be satisfied that both:

- the joint residence of the applicant and the qualifying British citizen in the EEA host country, by 23:00 GMT on 31 December 2020 and immediately before returning to the UK, was genuine
- following the initial 3-month right of residence in the EEA host country, the British citizen was a worker, self-employed person, self-sufficient person, student or person with the right of permanent residence there in accordance with the Directive

'Genuine residence' for these purposes means residence in the EEA host country by both the qualifying British citizen and the family member or extended family member which was both:

- real, substantive, or effective
- pursuant to and in conformity with the conditions set out in Article 7(1) and (2) and Article 16(1) and (2) of the Directive (see The qualifying British citizen's activity in the EEA host country), to enable the qualifying British citizen and their family member to create or strengthen family life in the EEA host country

'Real, substantive or effective residence' means a period of time in which the British citizen moved to the EEA host country and was resident there, with their family member or extended family member, in compliance with Article 7 or Article 16 of the Directive. For this to be satisfied, the British citizen must have moved past their initial (3-month) right of residence period and pursued an activity which, under EU law, gave them the right to reside in that EEA host country for longer than 3 months, or have acquired a right of permanent residence there.

If the evidence shows the British citizen was a qualified person or a person with a right of permanent residence in the EEA host country, you must consider whether this was a genuine, or an artificial, exercise of free movement rights. As the CJEU said in O and B [C 456/12], it is for the Secretary of State 'to determine whether [the British citizen] settled (more accurately, 'installed themselves' – not to be confused with 'settled' within the meaning of the Immigration Act 1971) and, therefore, genuinely resided in the host Member State and whether, on account of living as a family during that period of genuine residence, Mr O. and Mr B. enjoyed a derived right of residence in the host Member State pursuant to, and in conformity with, Article 7(2) or Article 16(2) of Directive 2004/38' (paragraph 57). As the Upper Tribunal put it in ZA (Reg 9. EEA Regs; abuse of rights) [2019] UKUT 281, 'there must [have been] substance to the residence' (paragraph 44).

When considering this, you cannot generally take into account the motives of the people who moved to the EEA host country, except in the limited sense of whether they intended to exercise their EU free movement rights in that EEA host country. In ZA, the Upper Tribunal said, 'Where the jurisprudence of the Court of Justice refers

to residence being “genuine”, it does not import with it a consideration of the motives behind that residence in the abuse of rights sense. Rather, it is a qualitative evaluation of the residence which needs to be undertaken. It is in that sense that the intentions are relevant in the sense of what it was that the individuals who moved to another member state intended to do? Did they intend properly to exercise Treaty rights or was it, for example, simply an extended holiday or was it a fixed-term employment of short duration where the person concerned retained an official address with her parents as in Knoch?’ (paragraph 47).

For example, if the British citizen intended to pursue an employment opportunity in an EEA host country, and moved to that country in order to do so, genuine residence will usually have been achieved if the British citizen engages with that employment opportunity (or another available opportunity, including any of the qualifying categories outlined within Article 7 of the Directive).

You must closely examine the facts of each individual case. For example, it is possible for a British citizen to have intended to remain in the EEA host country on a short-term basis, but then to have remained there for a longer period while pursuing another activity. If that other activity meant that they had a right of residence for longer than 3 months in accordance with Article 7, or a right of permanent residence in accordance with Article 16, of the Directive, notwithstanding the British citizen’s original intentions, their residence must be considered genuine and in accordance with EU law.

Equally, if the British citizen stated their original intention was to move to that EEA host country permanently, but they returned to live in the UK before they acquired a right of permanent residence in that host country, the simple fact they did not achieve their original intention does not necessarily detract from the genuineness of their residence. It must always be considered on a case-by-case basis.

Factors to consider

Regulation 9(3) of the EEA Regulations sets out a number of factors which may help you consider whether the residence and exercise of free movement rights in the EEA host country was genuine:

- the length of the joint residence of the applicant and the qualifying British citizen in the EEA host country
- the nature and quality of the accommodation of the applicant and the qualifying British citizen in the EEA host country, and whether it was the qualifying British citizen’s principal residence
- the degree of integration of the applicant and the qualifying British citizen in the EEA host country
- whether the applicant’s first lawful residence in the EEA or Switzerland with the qualifying British citizen was in the EEA host country

This is not an exhaustive list of factors. You must conduct a rounded assessment of all the relevant information and evidence available to you to decide whether the

residence and exercise of free movement rights in the EEA host country was genuine or artificial.

Length of joint residence in the EEA host country

When considering whether the residence in the EEA host country was genuine, you must consider (together with all other relevant information and evidence) the length of joint residence in the EEA host country.

Generally, the longer the period of joint residence in the EEA host country while the qualifying British citizen was in a position there equivalent to that of a qualified person or held a right of permanent residence, the more likely it is that the residence was genuine. For example, joint residence in the EEA host country for a period of 4 years while the British citizen was a worker is more likely to have been genuine than joint residence for 4 months while the British citizen was first on holiday and then briefly a student.

It is important to consider the length of joint residence in the EEA host country together with all other relevant factors to establish if the residence was genuine. An application must not be refused solely based on a short period of joint residence in the EEA host country if other evidence points to the residence being genuine.

Principal residence

When considering whether the residence in the EEA host country was genuine, you must consider (together with all other relevant information and evidence) the nature and quality of accommodation in the EEA host country and whether it was the qualifying British citizen's principal residence.

For example, a mortgaged home or long-term rented accommodation is more likely to indicate genuine residence than living at a hotel or a bed and breakfast or short stays with friends.

The principal residence is the place and country where the qualifying British citizen's life is primarily based. There is no requirement for the EEA host country to be the qualifying British citizen's sole place of residence, and there is no requirement for them to have severed ties with the UK.

It is important to consider the nature and quality of accommodation and principal residence together with all other relevant factors to establish if the residence in the EEA host country was genuine. An application must not be refused solely based on this factor if other evidence points to the residence being genuine.

Degree of integration in the EEA host country

When considering whether the residence in the EEA host country was genuine, you must consider (together with all other relevant information and evidence) the degree

of the applicant's and the qualifying British citizen's integration in the EEA host country.

The more evidence there is of integration in the EEA host country, the more likely it is that the residence there was genuine.

However, integration is not a requirement, and there is no requirement to have severed ties with the UK or for the British citizen's ties to the EEA host country to be stronger than those to the UK. This means that an application must not be refused on the basis of an absence of evidence of integration if other evidence points to the residence in the EEA host country being genuine.

When considering the degree of integration in the EEA host country of the applicant and the qualifying British citizen, the relevant questions you may consider include:

- if the family includes any children, whether they were born or lived in the EEA host country and, if so, did they attend school there and were they otherwise involved in the local community?
- were there any other family members resident in the EEA host country and were they working or studying there or otherwise involved in the local community?
- how did the applicant spend their time in the EEA host country – is there evidence that they worked, volunteered, studied or contributed to the community in any other ways?
- did the applicant and the qualifying British citizen immerse themselves in the life and culture of the EEA host country, for example:
  - did they buy property there?
  - did they speak the language?
  - were they involved with the local community?
  - did they own a vehicle that was taxed and insured there?
  - were they registered with the local health service, a general practitioner, a dentist?

This is not an exhaustive list and the applicant may provide alternative evidence of integration. However, the more of these factors present in a case, the more likely it is that the joint residence of the applicant and the qualifying British citizen in the EEA host country was genuine.

It is important to consider the degree of integration together with all other relevant factors to establish if the residence in the EEA host country was genuine. An application must not be refused solely on the basis of this factor if other evidence points to the residence in the EEA host country being genuine.

'Family member' or 'extended family member' status during joint residence in the EEA host country

In accordance with regulation 9(2)(d) of the EEA Regulations, you must be satisfied that the applicant had the status of 'family member' or 'extended family member'

during all or part of their joint residence with the qualifying British citizen in the EEA host country. The applicant must have been lawfully resident in the EEA host country for any period during which they were an 'extended family member'. For the purposes of this assessment, 'lawful residence' means any of the following:

- they were a national of the EEA host country (for example a French citizen resident in France)
- they were an EEA national exercising their free movement rights in the EEA host country (for example a German citizen who was a worker in Spain)
- they had a right of residence in the EEA host country as the Article 2(2) (of the Directive) family member of a British citizen that was not disputed or restricted by the authorities of the EEA host country
- they were issued with documentation under EU free movement law by the EEA host country as the British citizen's extended family member that has not been cancelled, revoked or otherwise invalidated
- they were granted leave to enter or remain (or an equivalent) under the domestic law of the EEA host country that has not been curtailed, revoked or otherwise invalidated

You must use Free movement rights: family members of British citizens to consider whether the applicant was a family member or an extended family member of the British citizen while they resided together in the EEA host country.

Genuine family life created or strengthened in the EEA host country

In accordance with regulation 9(2)(e) of the EEA Regulations, you must consider whether genuine family life was created or strengthened during the joint residence of the applicant and the qualifying British citizen in the EEA host country.

It is not necessary that genuine family life between the British citizen and their family member must have existed prior to the British citizen's exercise of free movement rights in the EEA host country; it is possible for this genuine family life to have been created after the British citizen had already moved there. In order for the family member to have a right of residence in the UK (if the route had not closed after 30 June 2021), you must be satisfied that genuine family life was created or strengthened (or both created and strengthened) during the time spent resident together in the EEA host country.

Factors which may indicate that genuine family life was created include:

- where a marriage was contracted or a civil partnership was formed, provided it was not a marriage or civil partnership of convenience
- where a partnership became durable (i.e. akin to a marriage or civil partnership – normally after two years' cohabitation: see the 'Assessing family relationship' section of Appendix EU: EU, other EEA and Swiss citizens and family members)

- by a child's birth or adoption which is recognised in UK law, which then established a family relationship, for example between parent and child

Factors which may indicate that genuine family life was strengthened include:

- the passage of time once genuine family life has been created
- other major life events, such as the birth or adoption of a child by two people who are married, in a civil partnership or in a durable partnership

Purpose of joint residence in the EEA host country

In accordance with regulation 9(4)(a) of the EEA Regulations, you must consider whether the purpose of the joint residence in the EEA host country was as a means of circumventing any UK immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject. For example, the requirements in Appendix FM to the UK's domestic Immigration Rules under which non-EEA national family members can apply to reside in the UK with a British citizen or otherwise settled person.

This stage only applies where the family member or extended family member is a non-EEA national. You must not consider this stage if the applicant is an EEA national. This stage is designed to tackle an abuse of the requirements of any Immigration Rules to which a non-EEA national would otherwise be subject.

If refusing on this basis, the burden of proof is on you to prove the abuse. It is not sufficient to conclude that the applicant has not shown that an abuse has not taken place.
You must only refuse an application based on this provision where you have concluded both that:

- the residence in the EEA host state was not genuine
- the motivation behind the joint, non-genuine residence in the EEA host country was solely for the purpose of bringing the applicant to the UK, circumventing any immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject

However, you must not refuse based on this provision if either:

- the residence in the EEA host country was genuine, regardless of the motivation for residing there
- circumventing the requirements of any immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject was only one of the reasons for residing in the EEA host country

Your assessment may include, but is not limited to:

- the applicant's immigration history – including previous applications for leave to enter or remain in the UK and whether they previously resided lawfully in the UK with the qualifying British citizen
- where this is so, the reason the applicant did not apply to join the qualifying British citizen in the UK before the qualifying British citizen moved to the EEA host country
- the timing and reason for the qualifying British citizen moving to the EEA host country
- the timing and reason for the applicant moving to the EEA host country
- the timing and reason for the family unit returning to the UK

Official – sensitive: start of section

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Official – sensitive: end of section

None of these factors is determinative, and you must not refuse an application solely on the basis that the family member has previously:

- not made an application for leave to enter or remain in the UK
- been refused leave to enter or remain in the UK
- remained in the UK beyond the expiry of a period of leave to enter or remain
- been removed or deported from the UK

You must consider their immigration history together with all other relevant factors to determine – in circumstances where the residence in the EEA host state was not genuine – whether the motivation behind the joint, non-genuine residence in the EEA host country was solely for the purpose of bringing the applicant to the UK, circumventing any immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject.

For example, a non-EEA national obtains a visa to live and work in Ireland and meets a British citizen at their place of employment. After 2 years, they begin living together and a further year later, they marry. In this example, family life was created and strengthened when the non-EEA national was already lawfully resident in the EU, independently of the British citizen's status. The British citizen's residence in Ireland was genuine, meeting their future spouse was incidental, and the non-EEA national could not have applied to join the British citizen in the UK before the British citizen moved to Ireland. The purpose of the residence in Ireland was not as a means for circumventing any immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject.

Contrast this with where a non-EEA national marries a British citizen while living in the UK unlawfully, and then makes an application for leave to remain as the spouse of a British citizen. This application is refused under Appendix FM to the Immigration Rules because the relevant requirements are not met. The couple then move to Italy together a month later. They live in 'bed and breakfast' accommodation, the British citizen finds work which you have concluded was neither genuine nor effective, but was marginal and ancillary, and they return to the UK after 4 months. In this scenario, the British citizen artificially created the conditions deriving from the Surinder Singh case law in order to circumvent the requirements of any immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject.

If, after consideration of all the information and evidence available, you are satisfied on the balance of probabilities that the motivation behind the joint residence in the EEA host country, which was not genuine, was solely for the purpose of circumventing the requirements of any immigration laws applying to non-EEA nationals to which the applicant would otherwise be subject, in order to bring the applicant to the UK, they will not meet this requirement of Appendix EU.

Otherwise, an intention to avoid the requirements of the Immigration Rules is not in itself sufficient to refuse the application.

Related content
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Related external links
Appendix EU: EU, other EEA and Swiss citizens and family members
EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
Immigration (European Economic Area) Regulations 2016
Free movement rights: family members of British citizens
ZA (Reg 9. EEA Regs; abuse of rights) Afghanistan [2019] UKUT 00281 (IAC)

Family member of a qualifying British citizen

Under Appendix EU, unless the applicant has a documented right of permanent residence, they must satisfy you, including by the required evidence of family relationship, that they are (or, as the case may be, for the relevant period were) either:

- a family member of a qualifying British citizen
- a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen

In addition, the applicant must, in accordance with the previous section, have satisfied in the EEA host country the conditions in regulation 9(2), (3) and (4)(a) of the EEA Regulations as the family member (F) to whom those provisions refer, or the conditions in regulation 9(1A)(b), (2), (3) and (4)(a) of the EEA Regulations as the extended family member (EFM) to whom those provisions refer, with, in either case, the qualifying British citizen being treated as the British citizen (BC) to whom those provisions refer. The conditions must be met both:

- before the end of the transition period at 23:00 GMT on 31 December 2020
- immediately before returning to the UK with (or following) the qualifying British citizen (save where the date of application is after the end of the transition period and those conditions concern matters relevant to the dependency of a child over the age of 21 or of a dependent parent, who, in either case, was dependent on the qualifying British citizen, or on their spouse or civil partner, before the end of the transition period)

The exception is where the applicant is a child of the qualifying British citizen (or of their spouse or civil partner, as described in the table in the section below on Return to the UK) who, after the end of the transition period at 23:00 GMT on 31 December 2020, was born, was adopted in accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition. In such a case, the applicant had to meet the relevant requirements of regulation 9(2), (3) and (4)(a) of the EEA Regulations in the EEA host country immediately before returning to the UK with (or following) the qualifying British citizen, but not before the end of the transition period.

This guidance is intended to be an interim measure until Appendix EU to the Immigration Rules can be amended by a Statement of Changes in Immigration Rules to reflect the approach set out here.

Assessing ‘family member’ relationship

See the ‘Assessing family relationship’ section of Appendix EU: EU, other EEA and Swiss citizens and family members.

Where the date of application is after the end of the transition period at 23:00 GMT on 31 December 2020, and the applicant is a child over the age of 21 or a dependent parent of the qualifying British citizen (or of their spouse or civil partner), they only need to have been dependent on the qualifying British citizen (or on their spouse or civil partner) by 23:00 GMT on 31 December 2020. They do not also need to have been dependent on that person immediately before returning to the UK with the qualifying British citizen. In addition, where such a dependent parent is concerned, that dependency by 23:00 GMT on 31 December 2020 will be assumed, unless the qualifying British citizen was under the age of 18 at the end of the transition period.

In some circumstances, applicants who apply under the EU Settlement Scheme as a durable partner or dependent relative of a qualifying British citizen must hold a relevant document for the period of residence relied upon: see ‘A relevant document’ in the ‘Who can apply’ section of Appendix EU: EU, other EEA and Swiss citizens and family members. The relevant document must have been issued on the basis that the applicant is an extended family member of the British citizen by virtue of regulation 9 of the EEA Regulations.

Extended family members of qualifying British citizens have only been within scope of regulation 9 of the EEA Regulations since 29 March 2019 so applicants who apply under the scheme as a durable partner or dependent relative can only have been issued with a relevant document on that basis since that date. If you receive an application from an applicant who was erroneously issued with a relevant document as the extended family member of a British citizen under regulation 9 before 29 March 2019, you must email the EEA Citizens’ Rights & Hong Kong Unit for advice.

Where the applicant applied for a relevant document under the EEA Regulations as the durable partner or dependent relative of the qualifying British citizen before 23:00 GMT on 31 December 2020 and their relevant document was issued on that basis after that date and time, they are deemed to have held the relevant document since immediately before that date and time.

A durable partner of a qualifying British citizen does not need to hold a relevant document where they apply to the EU Settlement Scheme after 23:00 GMT on 31 December 2020 and either:

- they were not resident in the UK and Islands as the durable partner of the qualifying British citizen before 23:00 GMT on 31 December 2020
- they were resident in the UK and Islands before 23:00 GMT on 31 December 2020, their continuous qualifying period was then broken by absence or the serving of a sentence of imprisonment, and after that they were not resident in the UK and Islands again before 23:00 GMT on 31 December 2020. For further guidance on the absences that will break a continuous qualifying period, see sub-paragraph (b)(i) of the definition of continuous qualifying period in Annex 1 to Appendix EU

- before 23:00 GMT on 31 December 2020 they had acquired a right of permanent residence in the UK (or the equivalent in the Islands) or had completed a 5 year continuous qualifying period in the UK and Islands, but since then they have been absent from the UK and Islands for more than 5 consecutive years and did not recommence residence in the UK and Islands again before 23:00 GMT on 31 December 2020

In addition, you must be satisfied by evidence provided by the applicant that the partnership was formed and was durable before, as the case may be, the date and time of withdrawal or 23:00 GMT on 31 December 2020.

A dependent relative of a qualifying British citizen does not need to hold a relevant document where you are satisfied that there are reasonable grounds for their failure to meet the deadline of 23:00 GMT on 31 December 2020 for returning to the UK from the EEA host country with (or following) the qualifying British citizen.

Family member who has retained the right of residence

Where the applicant was a family member of a qualifying British citizen and is now applying as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, see also: the 'Family member who has retained the right of residence' section of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

Required evidence of family relationship in respect of the qualifying British citizen

Where the applicant does not have a documented right of permanent residence, the required evidence of family relationship must also include proof of the qualifying British citizen's identity and nationality in the form of their valid passport. 'Valid' means that the document is genuine and has not expired or been cancelled or invalidated. Where the applicant provides a copy of the qualifying British citizen's valid passport, you can require the applicant to submit the original document where you have reasonable doubt as to the authenticity of the copy submitted.

You may agree to accept alternative evidence of the qualifying British citizen's identity and nationality where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons. See: the 'Alternative evidence of identity and nationality' section of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

Where the applicant does not have a documented right of permanent residence, the required evidence of family relationship must also include evidence which satisfies you that the British citizen is (or, as the case may be, for the relevant period was) a qualifying British citizen, and is (or, as the case may be, was) a qualifying British citizen throughout any continuous qualifying period on which the applicant relies as being a family member of a qualifying British citizen.

Return to the UK

The following table sets out the date and time by which the applicant must have returned to the UK with (or following) the qualifying British citizen in order to meet the definition of 'family member of a qualifying British citizen'. The relevant date and time depend on the family relationship between them.

Before 23:00 GMT on 31 December 2020 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)	**Before 23:00 GMT on 29 March 2022 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)**
Spouse or civil partner of a qualifying British citizen, where the marriage was contracted or the civil partnership was formed after 23:00 GMT on 31 January 2020 and before 23:00 GMT on 31 December 2020 (unless they were durable partners before 23:00 GMT on 31 January 2020 and the partnership remained durable at 23:00 GMT on 31 January 2020 – see (ii) in this row of the next column)	Spouse or civil partner of a qualifying British citizen, where either: (i) the marriage was contracted or the civil partnership was formed before 23:00 GMT on 31 January 2020 (ii) the applicant was the durable partner of the qualifying British citizen before 23:00 GMT on 31 January 2020 (the definition of 'durable partner' in Annex 1 to Appendix EU being met before then) and the partnership remained durable at 23:00 GMT on 31 January 2020
Durable partner of a qualifying British citizen, where the partnership was formed and was durable after 23:00 GMT on 31 January 2020 and before 23:00 GMT on 31 December 2020, and the partnership remains durable at the date of application	Durable partner of a qualifying British citizen, where the partnership was formed and was durable before 23:00 GMT on 31 January 2020, and the partnership remains durable at the date of application
Child or dependent parent of a qualifying British citizen's spouse or civil partner, as described in the first row in this column, and the family relationship of the child or dependent parent to the spouse or civil partner existed before 23:00 GMT on 31 January 2020 (unless after that date and time, in the case of a child, they were born, were adopted in accordance with a relevant adoption	Child or dependent parent of a qualifying British citizen and the family relationship existed before 23:00 GMT on 31 January 2020 (unless after that date and time, in the case of a child, they were born, were adopted in accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-

Before 23:00 GMT on 31 December 2020 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)	Before 23:00 GMT on 29 March 2022 (or later where you are satisfied that there are reasonable grounds for the person's failure to meet that deadline)
decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition)	paragraphs (a)(iii) to (a)(xi) of that definition)
Dependent relative of a qualifying British citizen, or (as the case may be) of their spouse or civil partner as described in the first row of this column of this table, where the family relationship and the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) existed before the applicant returned to the UK with the qualifying British citizen or (where you are satisfied that there are reasonable grounds for the person's failure to meet the deadline of 23:00 GMT on 31 December 2020 for returning to the UK) before that deadline, and (in either case) the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) continues to exist at the date of application (or did so for the period of residence in the UK relied upon)	Child or dependent parent of a qualifying British citizen's spouse or civil partner, as described in the first box in this column, and all the family relationships existed before 23:00 GMT on 31 January 2020 (unless after that date and time, in the case of a child, they were born, were adopted in accordance with a relevant adoption decision or became a child within the meaning of that definition in Annex 1 to Appendix EU on the basis of one of sub-paragraphs (a)(iii) to (a)(xi) of that definition)

Where the applicant does not rely on having a documented right of permanent residence, on having completed a continuous qualifying period in the UK of 5 years, or on being a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, the relevant family relationship must continue to exist at the date of application.

Reasonable grounds for failing to meet the deadline for returning to the UK

As set out in the table above, some eligible family members of a qualifying British citizen had until 23:00 GMT on 31 December 2020 to return to the UK from the EEA

host country with the qualifying British citizen. Others have until 23:00 GMT on 29 March 2022 to do so. In either case, they can have returned to the UK from the EEA host country with the qualifying British citizen after that deadline where you are satisfied there are reasonable grounds for their failure to meet that deadline.

In the case of a family member of a qualifying British citizen subject to the 29 March 2022 deadline to return to the UK from the EEA host country with the qualifying British citizen, where the family member was issued an EU Settlement Scheme (EUSS) family permit on the basis of a valid application under Appendix EU (Family Permit) made by 23:00 GMT on 29 March 2022, you may be satisfied there are reasonable grounds for their failure to meet the 29 March 2022 deadline. The applicant does not need to provide, and you do not need to consider, any further information as to why that deadline was not met.

In the case of such a family member of a qualifying British citizen, where the family member was issued an EUSS family permit on the basis of a valid application under Appendix EU (Family Permit) made after 23:00 GMT on 29 March 2022 (because the entry clearance officer was satisfied there were reasonable grounds for their failure to meet the 29 March 2022 deadline for returning to the UK), you may be satisfied there are reasonable grounds for their failure to meet that deadline. The applicant does not need to provide, and you do not need to consider, any further information as to why that deadline was not met.

Otherwise, where the applicant returned to the UK from the EEA host country with the qualifying British citizen after the deadline applicable to them, you will need to be satisfied on the information provided with the application there are reasonable grounds for the applicant's failure to meet that deadline.

Where you are satisfied there are reasonable grounds for the person's failure to meet the applicable deadline for returning to the UK from the EEA host country with the qualifying British citizen, you must then consider the application under the remaining eligibility requirements and the suitability requirements of Appendix EU and in line with this guidance.

Where the applicant returned to the UK from the EEA host country with the qualifying British citizen after the deadline applicable to them, and they are unable to show there are reasonable grounds for their failure to meet that deadline, they will need to apply under the family Immigration Rules in Part 8 or Appendix FM if they wish to remain in, or return to, the UK on the basis of that family relationship.

Examples of reasonable grounds for failing to meet the deadline for returning to the UK

This section describes some circumstances in which you may be satisfied that, where the applicant returned to the UK from the EEA host country with the qualifying British citizen after the deadline applicable to them, there are reasonable grounds for the applicant's failure to meet that deadline, but it is not exhaustive and every case must be considered in light of its particular circumstances.

Employment or study

Where the qualifying British citizen or a relevant family member had an employment contract or was enrolled in a formal course of study in the EEA host country which continued to run beyond the applicable deadline and which terminated within the period of 6 months following that deadline, that will constitute reasonable grounds for the applicant to have missed that deadline for returning to the UK from the EEA host country with the qualifying British citizen. Relevant evidence of this may include a letter from the relevant employer or college or a copy of the contract.

Where a child of the qualifying British citizen (or of their spouse or civil partner) would have had to have been taken out of school in the EEA host country in the middle of a school term for the family to be able to return to the UK by the applicable deadline, that will constitute reasonable grounds for the applicant to have missed that deadline for returning to the UK from the EEA host country with the qualifying British citizen. Relevant evidence of this may include a letter from the relevant school or education authority.

Serious medical condition or significant medical treatment

Where the qualifying British citizen or a relevant family member had a serious medical condition (or was undergoing significant medical treatment) ahead of the applicable deadline, that will normally constitute reasonable grounds for the applicant to have missed that deadline for returning to the UK from the EEA host country with the qualifying British citizen.

A serious medical condition could include for example an illness (including COVID-19) or accident which meant that the person was hospitalised, bedbound or otherwise unable to travel ahead of the applicable deadline.

Pregnancy or maternity may be a reason why the applicant was unable to meet the applicable deadline for returning to the UK from the EEA host country with the qualifying British citizen. This may be, for example, where a woman was unable to fly due to pregnancy or had a difficult childbirth or where a new-born child was in need of medical treatment.

Evidence that a person had a serious medical condition (or was undergoing significant medical treatment), or there were relevant issues relating to pregnancy or maternity, ahead of the applicable deadline may include a letter from a doctor or other health professional confirming the circumstances.

Other compelling practical or compassionate reasons

There may be other compelling practical or compassionate reasons as to why the applicant missed the applicable deadline for returning to the UK from the EEA host country with the qualifying British citizen. For example, the family may have been awaiting the outcome of a relevant adoption decision (as defined in Annex 1 to

Appendix EU) where the adoption proceedings were initiated by 29 March 2022, or the applicant may have been delayed by compelling practical or compassionate reasons – including in light of the COVID-19 pandemic or the war in Ukraine – in obtaining the evidence of identity and nationality required to apply for an EUSS family permit.

Required date

An application for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as the family member of a qualifying British citizen must be made by the required date.

Under the definition in Annex 1 to Appendix EU, where the applicant does not have indefinite leave to enter or remain or limited leave to enter or remain granted under Appendix EU, the required date is:

- **where the applicable deadline for returning to the UK was 23:00 GMT on 31 December 2020:** before 1 July 2021 (or after that, where you are satisfied by information provided with the application that, at the date of application, there are reasonable grounds for the person's failure to meet that deadline)
- **where the applicable deadline for returning to the UK was 23:00 GMT on 29 March 2022:** before 23:00 GMT on 29 March 2022 (or after that, where you are satisfied by information provided with the application that, at the date of application, there are reasonable grounds for the person's failure to meet that deadline)

In the case of an applicant subject to the 29 March 2022 deadline for returning to the UK, where they were issued an EUSS family permit applied for by 23:00 GMT on 29 March 2022, you may be satisfied there are reasonable grounds for their failure to meet the 29 March 2022 deadline for their EUSS application, provided they make that application as soon as they reasonably can (and generally within 3 months) following their arrival in the UK. The applicant does not need to provide, and you do not need to consider, any further information as to why the EUSS application deadline was not met.

In the case of an applicant subject to the 29 March 2022 deadline for returning to the UK, where they were issued an EUSS family permit applied for after 23:00 GMT on 29 March 2022 (because the entry clearance officer was satisfied there were reasonable grounds for their failure to meet the 29 March 2022 deadline for returning to the UK), you may be satisfied there are reasonable grounds for their failure to meet the 29 March 2022 deadline for their EUSS application, provided they make that application as soon as they reasonably can (and generally within 3 months) following their arrival in the UK. The applicant does not need to provide, and you do not need to consider, any further information as to why the EUSS application deadline was not met.

Otherwise, where the EUSS application is made after the deadline applicable to the applicant, you will need to be satisfied by information provided with the application there are reasonable grounds for the applicant's failure to meet that deadline.

Where you are satisfied there are reasonable grounds for the applicant's failure to meet the applicable EUSS application deadline, you must then consider the application under the remaining eligibility requirements and the suitability requirements of Appendix EU and in line with this guidance.

Where a person applies to the EUSS before the expiry of an EUSS family permit (i.e. before the expiry of the leave to enter granted by virtue of having arrived in the UK with a valid EUSS family permit), they will, by virtue of section 3C of the Immigration Act 1971, have continuing leave pending the outcome of their EUSS application (and of any appeal).

Examples of reasonable grounds for failing to meet the EUSS application deadline

This section describes some circumstances in which you may be satisfied that, where the date of application is after the deadline for applying to the EUSS applicable to the applicant, there are reasonable grounds for their failure to meet that deadline, but it is not exhaustive and every case must be considered in light of its particular circumstances.

Serious medical condition or significant medical treatment

Where, following their return to the UK, the applicant, the qualifying British citizen or another relevant family member had a serious medical condition (or was undergoing significant medical treatment) ahead of the applicable deadline, that will normally constitute reasonable grounds for the applicant to have missed the deadline for applying to the EUSS.

A serious medical condition could include for example:

- an illness (including COVID-19) or accident which meant that the person was hospitalised or bedbound ahead of the applicable deadline
- an illness (including COVID-19) or accident which otherwise meant that the person was unable to perform day-to-day tasks ahead of the applicable deadline

Pregnancy or maternity may be a reason why the applicant was unable to meet the applicable deadline for applying to the EUSS. This may be, for example, where a woman had a difficult childbirth or where a new-born child was in need of medical treatment.

Evidence that a person had a serious medical condition (or was undergoing significant medical treatment), or there were relevant issues relating to pregnancy or

maternity, ahead of the applicable deadline may include a letter from a doctor or other health professional confirming the circumstances.

Other compelling practical or compassionate reasons

There may be other compelling practical or compassionate reasons as to why the applicant missed the applicable deadline for applying to the EUSS. For example, they may have been delayed by compelling practical or compassionate reasons – including in light of the COVID-19 pandemic or the war in Ukraine – in obtaining the evidence required to make an EUSS application.

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Lawful residence in the UK

You must follow the guidance in this section where you are considering whether an applicant qualifies, including by evidence provided by the applicant as part of the 'required evidence of family relationship', for:

- ILE or ILR under condition 3 of rule EU12 as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of 5 years
- ILE or ILR under condition 4 of rule EU12 as a child under the age of 21 of a qualifying British citizen's spouse or civil partner who has been or is being granted ILE or ILR under the scheme
- LTE or LTR under condition 2 of rule EU14 as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of less than 5 years

Lawfully resident, or in the UK lawfully, by virtue of regulation 9(1) to (6)

For the purpose of considering an application under condition 3 of rule EU12 or condition 2 of rule EU14, you must be satisfied that, for any period in which they were present in the UK as the family member of a qualifying British citizen relied upon for a continuous qualifying period, the applicant was lawfully resident by virtue of regulation 9(1) to (6) of the EEA Regulations. This is regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6 of the EEA Regulations.

For the purpose of considering an application under condition 4 of rule EU12, you must be satisfied that the applicant is in the UK lawfully by virtue of regulation 9(1) to (6) of the EEA Regulations. This is regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6 of the EEA Regulations.

See Regulation 9(1) to (6) of the EEA Regulations for the text of regulation 9(1) to 9(6) as of 23:00 GMT on 31 December 2020.

Regulation 9(1)

Regulation 9(1) provides that, where the conditions in regulation 9(2) are satisfied, the EEA Regulations apply to a person who is the family member of a British citizen as though the British citizen were an EEA national.

Where you have considered Qualifying British citizen and Family member of a qualifying British citizen, you will already have considered the conditions at regulation

9(2) that need to be satisfied for regulation 9(1) to apply. You are not required to duplicate this consideration.

Regulation 9(1A)

Regulation 9(1A) provides that the EEA Regulations apply to a person who is the extended family member of a British citizen as though the British citizen were an EEA national where two conditions are met.

The first condition, at regulation 9(1A)(a), is that the conditions in regulation 9(2) are satisfied. Where you have considered Qualifying British citizen, you will already have considered regulation 9(2). You are not required to duplicate this consideration for the purposes of assessing regulation 9(1A)(a).

The second condition, at regulation 9(1A)(b), is that the extended family member was lawfully resident in the EEA host country. Where you have considered Family member of a qualifying British citizen, you will already have considered whether the applicant holds, or previously held, a relevant document where they were required to do so. As a caseworker or entry clearance officer needed to be satisfied that regulation 9(1A)(b) was met when the relevant document was issued, you are not required to duplicate this consideration, except where there is information available to you that indicates the document may have been incorrectly issued.

Regulation 9(2), (3) and (4)

Regulation 9(2) sets out the conditions to be met with regard to the applicant's and the qualifying British citizen's residence in the EEA host country. One of those conditions is whether or not residence in the EEA host country was genuine, and regulation 9(3) sets out factors relevant to that consideration.

Regulation 9(4)(a) provides that regulation 9 does not apply where the purpose of the residence in the EEA host country was as a means for circumventing any immigration laws applying to non-EEA nationals to which the family member or extended family member would otherwise be subject (such as any applicable requirement under the Immigration Act 1971 to have leave to enter or remain in the UK).

Where you have considered Qualifying British citizen, you will already have considered regulation 9(2), (3) and (4)(a). You are not required to duplicate these considerations.

Regulation 9(4)(b) has been deleted from the EEA Regulations and must not be considered.

Regulation 9(5)

Regulation 9(5) provides that where the EEA Regulations apply to a family member or extended family member of a British citizen, the British citizen is to be treated as

holding a valid passport issued by an EEA host country for the purposes of the application of the EEA Regulations to the family member or extended family member. You are not required to undertake a separate consideration of regulation 9(5).

Regulation 9(6)

Regulation 9(6) provides that where a family member or extended family member of a British citizen relies on the British citizen having acquired the right of permanent residence in the EEA host country, the UK will only treat the British citizen as having acquired that right if their residence in the EEA host country would have led to the acquisition of that right under regulation 15, had it taken place in the UK.

Where this applies, and you have considered Qualifying British citizen, you will already have considered regulation 9(6). You are not required to duplicate this consideration.

Duration of lawful residence

For the purpose of considering an application under condition 3 of rule EU12, if you are satisfied that, for any period in which they were present in the UK as the family member of a qualifying British citizen relied upon for a continuous qualifying period, the applicant was lawfully resident by virtue of regulation 9(1) to (6) (regardless of whether in the UK the qualifying British citizen was a qualified person under regulation 6 of the EEA Regulations), you must calculate the duration of that lawful residence, and separately of that continuous qualifying period, before moving on to Decision. See 'Calculating the duration of lawful residence' and 'Continuous qualifying period', below.

Calculating the duration of lawful residence

To calculate the period the applicant has been lawfully resident by virtue of regulation 9(1) to (6) for the purposes of condition 3 of rule EU12, you must first establish the period(s) in which they were present in the UK and on which they rely for the purposes of condition 3 of rule EU12.

Once you have done so, you must consider the qualifying British citizen's residence in the UK during any period(s) in which the applicant was present in the UK and on which they rely for the purposes of condition 3 of rule EU12. You must consider whether the qualifying British citizen would, if they were an EEA national , meet (or have met) the requirements of regulation 13, 14 or 15 of the EEA Regulations during that period(s). This includes not having broken the continuity of their residence under regulation 3 of the EEA Regulations.

This is because if the British citizen was not resident in the UK, or if they have (or had) broken the continuity of their residence, during the period(s) in which the applicant was present in the UK and on which they rely for the purposes of condition 3 of rule EU12, then the applicant cannot have been lawfully resident by virtue of regulation 9(1) to (6). However, you must not consider whether the British citizen was

the equivalent of a ‘qualified person’ under regulation 6 of the EEA Regulations whilst residing in the UK.

Qualifying British citizen’s UK residence

To calculate the duration of the qualifying British citizen’s residence in the UK since returning from the EEA host country, during any period(s) in which the applicant was present in the UK and on which they rely for the purposes of condition 3 of rule EU12, you must take into account any absences from the UK (which includes time spent in the Islands). See the ‘Assessing continuous residence’ section of EEA nationals – qualified persons for guidance on when continuity of residence is broken under the EEA Regulations. When applying the ‘Assessing continuous residence’ guidance, you must read ‘EEA national’ or ‘applicant’ as if it refers to the qualifying British citizen. If the qualifying British citizen has broken the continuity of their residence under regulation 3 during any period(s) in which the applicant was present in the UK and on which they rely for the purposes of condition 3 of rule EU12, then the applicant will have ceased to be lawfully resident by virtue of regulation 9(1) to (6).

Applicant’s UK residence

Once you have established the duration of the qualifying British citizen’s residence in the UK by virtue of regulation 9(1) to (6) of the EEA Regulations since returning from the EEA host country, you must calculate the duration of the applicant’s residence in the UK by virtue of regulation 9(1) to (6).

In doing so, you must take into account:

- that the applicant’s UK residence by virtue of regulation 9(1) to (6) can only start when, or after, the British citizen has started living in the UK on return from the EEA host country
- only the period(s) during which the applicant was both present in the UK and lawfully resident by virtue of regulation 9(1) to (6). The applicant cannot count any period(s) during which:
  - they were not present in the UK
  - they were present in the UK but not lawfully resident in the UK by virtue of regulation 9(1) to (6) (for example, if the British citizen had not yet returned to the UK or if the British citizen had broken their continuity of residence)

Extended family members of qualifying British citizens have only been within scope of regulation 9 of the EEA Regulations since 29 March 2019. This means that where an applicant applies under the EU Settlement Scheme as a durable partner or dependent relative of a qualifying British citizen, their lawful residence by virtue of regulation 9(1) to (6) can only commence from the date, which must be on or after 29 March 2019, that they were issued with a relevant document under the EEA Regulations (excluding a family permit, which facilitates a family member’s or an extended family member’s admission to, not residence in, the UK).

Evidence

In considering the UK residence of the qualifying British citizen and of the applicant, you must take into account:

- any documentary evidence (which may be in the form of photocopies, though you may request an original document if you have reasonable doubt as to the authenticity of the copy) relating to the applicant's and/or the qualifying British citizen's UK residence which the applicant has provided in support of their application: see the 'Assessing continuous residence' section of EEA nationals – qualified persons and 'Annex A: Evidence required to establish residence in the UK' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
- information derived from any checks run against HMRC and certain DWP records, where the applicant has provided their National Insurance number and/or that of the qualifying British citizen and such checks are necessary to decide the application

Scenario 1

The applicant and the qualifying British citizen lived together in France from January 2012 to April 2014 and on their return to the UK, all the requirements of regulation 9(1) to (6) of the EEA Regulations were met. The applicant applied to the scheme in April 2019.

The evidence shows that:

- the applicant and the qualifying British citizen returned to the UK together in April 2014
- and the qualifying British citizen has lived in the UK for 5 years until April 2019, without any absences from the UK for more than 6 months in any 12-month period
- and the applicant has lived in the UK for 5 years until March 2019, by virtue of regulation 9(1) to (6)

The decision-maker must accept that the applicant has been lawfully resident by virtue of regulation 9(1) to (6) for 5 years.

Scenario 2

The applicant and the qualifying British citizen lived together in Germany from January 2012 to April 2014 and on their return to the UK, all the requirements of regulation 9(1) to (6) of the EEA Regulations were met. The applicant applied to the scheme in April 2019.

The evidence shows that:

- the applicant and the qualifying British citizen returned to the UK together in April 2014
- and the qualifying British citizen:
  - lived in the UK for 3 years until April 2017
  - lived in Australia for an 18-month work posting until October 2018
  - returned to the UK in October 2018
- and the applicant has lived in the UK for 5 years until April 2019 without any absences from the UK for more than 6 months in any 12-month period

Here, the qualifying British citizen's 18-month work posting overseas meant the applicant ceased to be lawfully resident by virtue of regulation 9(1) to (6).

In addition, when the British citizen returned to the UK from Australia in October 2018, they were no longer a qualifying British citizen because they did not meet the requirements of regulation 9(2)(a), which requires that the British citizen was residing as the equivalent of a 'qualified person' in the EEA host country immediately before returning to the UK or that they have a right of permanent residence in the EEA host country.

Scenario 3

The applicant and the qualifying British citizen lived together in Poland from January 2012 to April 2014. The applicant applied to the scheme in April 2019.

The evidence shows that the applicant returned to the UK in April 2014 without the qualifying British citizen, which means they were not yet lawfully resident by virtue of regulation 9(1) to (6).

The qualifying British citizen joined the applicant in the UK in April 2016. The applicant was lawfully resident by virtue of regulation 9(1) to (6) from April 2016.

The evidence also shows that the applicant and the qualifying British citizen have lived in the UK from April 2016 until the scheme application was made in April 2019.

The decision-maker must accept that the applicant has been lawfully resident by virtue of regulation 9(1) to (6) for 3 years.

Continuous qualifying period

The following guidance applies, together with the 'Qualifying residence' section and 'Annex A: Evidence required to establish residence in the UK' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, where you are considering whether an applicant qualifies for:

- ILE or ILR under condition 3 of rule EU12 as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of 5 years

- LTE or LTR under condition 2 of rule EU14 as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of less than 5 years

Where the applicant is applying on one of these bases, you must be satisfied, including by evidence provided by the applicant as part of the 'required evidence of family relationship', that:

- the applicant is (or, for the relevant qualifying period, was) resident in the UK for a continuous qualifying period as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen
- the British citizen is (or, as the case may be, for the relevant period was) a qualifying British citizen, and is (or, as the case may be, was) a qualifying British citizen throughout any continuous qualifying period on which the applicant relies as being a family member of a qualifying British citizen

Where the applicant is applying as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, you need to establish the applicant's continuous qualifying period:

- before they became a family member who retained the right of residence (and during which, as above, you need to be satisfied that the British citizen was a qualifying British citizen)
- since they became a family member who retained the right of residence (you do not need to consider whether the British citizen continued to be a qualifying British citizen during this period)

In most cases, the continuous qualifying period is likely to be the same as the duration of the applicant's lawful residence in the UK by virtue of regulation 9(1) to (6).

The continuous qualifying period may be longer than the applicant's lawful residence in the UK by virtue of regulation 9(1) to (6) where the applicant has a period or combination of periods during which they were a relevant EEA national, a family member of a relevant EEA national, a family member who has retained the right of residence by virtue of a relationship with a relevant EEA national, a person with a derivative right to reside or a person with a Zambrano right to reside, before becoming the family member of a qualifying British citizen (as permitted by rule EU13).

Supervening event

You must consider whether any supervening event has occurred where you are considering whether an applicant qualifies for ILE or ILR under either:

- condition 1 of rule EU12 as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a documented right of permanent residence
- condition 3 of rule EU12 as a family member of a qualifying British citizen, or as a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen, on the basis of a continuous qualifying period of 5 years

See ‘Supervening event’ in the ‘Consideration of applications: indefinite leave to enter (ILE) or indefinite leave to remain (ILR)’ section of EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

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Decision

Suitability requirements

After you have considered the validity and eligibility requirements, and before you decide the application, you must consider the suitability requirements. See EU Settlement Scheme: suitability requirements.

Indefinite leave to enter or remain

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant meets the eligibility requirements for ILE or ILR in accordance with condition 1, 2, 3 or 4 of rule EU12
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

you must grant the applicant ILE (where the application is made outside the UK) or ILR (where the application is made within the UK) under rule EU2 of Appendix EU.

Where you are not satisfied that the applicant meets the eligibility requirements for ILE or ILR of rule EU12, you must consider whether the applicant meets the eligibility requirements for LTE or LTR under condition 2 of rule EU14 of Appendix EU.

Limited leave to enter or remain

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant does not meet the eligibility requirements for ILE or ILR in accordance with rule EU11 or EU12, but meets the eligibility requirements for LTE or LTR in accordance with condition 2 of rule EU14
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

you must grant the applicant 5 years' LTE (where the application is made outside the UK) or 5 years' LTR (where the application is made within the UK) under rule EU3 of Appendix EU.

Refusal

Where a valid application does not meet the requirements for ILE or ILR, or for LTE or LTR, you must refuse the application under rule EU6 of Appendix EU.

Consideration of cancellation, curtailment or revocation of leave to enter or remain granted under Appendix EU

Annex 3 to Appendix EU sets out the limited circumstances in which a person's indefinite leave to enter or remain (ILE or ILR) or limited leave to enter or remain (LTE or LTR) granted under Appendix EU to the Immigration Rules may be cancelled, curtailed or revoked. Guidance is available in EU Settlement Scheme: suitability requirements and in Revocation of indefinite leave.

Administrative review and appeals

For guidance about administrative review and statutory appeals, see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

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EU Settlement Scheme: suitability requirements

Regulation 9(1) to (6) of the EEA Regulations

As of 23:00 GMT on 31 December 2020, the EEA Regulations were revoked, save for limited savings and modifications specified in the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020). However, the references to regulation 9(1) to (6) of those regulations, as saved, continue to be relevant for the purposes of the EU Settlement Scheme. Where they are referred to in the EU Settlement Scheme, the text of the regulations is as follows:

Family members and extended family members of British citizens

(1) If the conditions in paragraph (2) are satisfied, these Regulations apply to a person who is the family member ("F") of a British citizen ("BC") as though the BC were an EEA national and BC is to be treated as satisfying any requirement to be a qualified person.

(1A) These Regulations apply to a person who is the extended family member ("EFM") of a BC as though the BC were an EEA national if –

(a) the conditions in paragraph (2) are satisfied; and

(b) the EFM was lawfully resident in the EEA State referred to in paragraph (2)(a)(i).

(2) The conditions are that –

(a) BC –

(i) is residing in an EEA State as a worker, self-employed person, self-sufficient person or a student, or so resided immediately before returning to the United Kingdom; or

(ii) has acquired the right of permanent residence in an EEA State;

(b) F or EFM and BC resided together in the EEA State;

(c) F or EFM and BC's residence in the EEA State was genuine;

(d) either—
(i) F was a family member of BC during all or part of their joint residence in the EEA State;
(ii) F was an EFM of BC during all or part of their joint residence in the EEA State, during which time F was lawfully resident in the EEA State; or

(iii) EFM was an EFM of BC during all or part of their joint residence in the EEA State, during which time EFM was lawfully resident in the EEA State; and

(e) genuine family life was created or strengthened during F or EFM and BC's joint residence in the EEA State; and

(f) the conditions in sub-paragraphs (a), (b) and (c) have been met concurrently.

(3) Factors relevant to whether residence in the EEA State is or was genuine include –

(b) the length of F or EFM and BC's joint residence in the EEA State;

(c) the nature and quality of the F or EFM and BC's accommodation in the EEA State, and whether it is or was BC's principal residence;

(d) the degree of F or EFM and BC's integration in the EEA State;

(e) whether F's or EFM's first lawful residence in the EU with BC was in the EEA State.

(4) This regulation does not apply –

(a) where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which F or EFM would otherwise be subject (such as any applicable requirement under the 1971 Act to have leave to enter or remain in the United Kingdom).

(5) Where these Regulations apply to F or EFM, BC is to be treated as holding a valid passport issued by an EEA State for the purposes of the application of these Regulations to F or EFM.

(6) In paragraph (2)(a)(ii), BC is only to be treated as having acquired the right of permanent residence in the EEA State if such residence would have led to the acquisition of that right under regulation 15, had it taken place in the United Kingdom.

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