



Home Office

European Economic Area nationals: qualified persons

Version 9.0

This guidance applies and interprets the Immigration (European Economic Area) Regulations 2016. Although the Regulations have now been revoked following the end of the transition period, they have been saved for certain purposes and thus remain relevant in these areas.

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About this guidance

This guidance tells Home Office staff how to consider, from 1 January 2021, the existence of an extended right of residence in the UK for a European Economic Area (EEA) national as a qualified person under regulations 6 and 14 of the Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations'). This includes where an application for EEA residence documentation was made by an EEA national by the end of the transition period at 11pm on 31 December 2020.

This guidance applies solely to those EEA nationals who were resident in the UK before the end of the transition period. The guidance does **not** apply to those EEA nationals who are newly arrived in the UK from 1 January 2021, as they cannot benefit from saved free movement rights and cannot benefit from a right of residence under the EEA Regulations.

Throughout this guidance, any reference to the EEA Regulations includes the Immigration (European Economic Area) Regulations 2016 and all subsequent amendments up to and including those made as a result of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020.

Eligibility requirements

To benefit from free movement rights and a right of residence in the UK for longer than 3 months, an EEA national must have shown both of the following:

- evidence of identity and nationality of an EEA member state
- evidence they were exercising a free movement right in the UK

Application forms

It is no longer possible to apply for EEA residence documentation.

Residence documents

The right of residence for an EEA national and their direct family members did not depend on them holding a document issued under the EEA Regulations. Such a document only confirmed a right of residence as a qualified person or their direct family member at the time the document was issued. These documents ceased to be valid after 30 June 2021.

Validity of documents

Registration certificates and documents certifying permanent residence issued to EEA nationals under the EEA Regulations were valid until the end of the grace period on 30 June 2021. By this date, holders were required to have made an application to the EU Settlement Scheme (EUSS) or have alternative leave to remain in the UK.

Family members

Under the EEA Regulations, EEA nationals could be joined in or accompanied to the UK by their direct family members if the conditions of regulation 7 were met, or by their extended family members if the conditions of regulation 8 were met.

During the grace period – from the end of the transition period to the end of 30 June 2021 (or to the outcome of an EUSS application made by then, including any administrative review or appeal) – only those direct or extended family members who held valid EEA residence documentation (or who had applied for this by 11pm on 31 December 2020 and were subsequently granted it), and those direct family members who were lawfully resident in the UK by virtue of the EEA Regulations (and those direct and extended family members who had a right of permanent residence in the UK under regulation 15 of the EEA Regulations) immediately before the end of the transition period, continued to have rights of residence under saved provisions of the EEA Regulations.

For the purpose of this guidance, reference to residence in the UK includes maintaining continuous residence as defined in regulation 3 of the EEA Regulations. For further guidance on this, see: [European Economic Area \(EEA\) and Swiss nationals: free movement rights](#).

Switching

EEA nationals could change the basis of their stay as long as they continued to exercise their free movement rights in the UK. For example, a student could switch to become a worker and count both periods of residence towards acquiring a right of permanent residence, providing the relevant conditions were met.

EU free movement rights under Directive 2004/38/EC ceased to have effect in the UK from the end of the transition period, but a right of permanent residence could still be acquired under the EEA Regulations from then until the end of the grace period by those [continuing to have a right under the EEA Regulations](#).

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, email the EEA Citizens' Rights and 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, you can email the Guidance Rules and Forms Team.

Publication

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

- version **9.0**

- published for Home Office staff on **31 October 2022**

Changes from last version of this guidance

Changes made to reflect the revocation of the EEA Regulations (subject to certain savings and modifications) from the end of the transition period at 11pm on 31 December 2020 by the Immigration and Social Security Coordination (EU Withdrawal) Act 2020. Changes have also been made following the Court of Justice of the European Union judgment in the case of [VI v HM Revenue and Customs C-247/20](#), handed down on 10 March 2022.

Related content

[Contents](#)

Related external links

[Immigration \(European Economic Area\) Regulations 2016](#)

[Immigration \(European Economic Area \(Amendment\) Regulations 2019](#)

[The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#)

European Economic Area (EEA) and Swiss nationals: free movement rights

Ending EU free movement rights

From the end of the transition period at 11pm on 31 December 2020, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 revoked the European Economic Area (EEA) Regulations.

This means that, subject to the exceptions outlined within this chapter of guidance, EU free movement rights under Directive 2004/38/EC ceased to have effect in the UK from that date and time.

Unless an EEA national or their family member falls within scope of the exceptions outlined within this chapter, they are unable to rely on a right of residence under the EEA Regulations and must instead have an alternative legal basis to remain in the UK.

Throughout this chapter:

- the EU Settlement Scheme will be referred to as the 'EUSS'
- the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 will be referred to as 'the 2020 Act'
- the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 will be referred to as 'the Grace Period SI'
- the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 will be referred to as 'the Consequential SI'
- Directive 2004/38/EC will be referred to as 'the Free Movement Directive'
- EU, EEA and Swiss citizens will be collectively referred to as 'EEA nationals', with all elements of this guidance applying equally to EU, EEA and Swiss citizens unless otherwise stated

Saved provisions

While the 2020 Act ended EU free movement in the UK at the end of the transition period, Schedule 3 to the Consequential SI and Part 3 of the Grace Period SI saved and modified some provisions of the EEA Regulations for specific purposes. These saved provisions allowed for:

- consideration of applications for EEA family permits (where the next bullet point does not apply) and for documentation confirming a right of residence under the EEA Regulations where those applications were validly made by 11pm on 31 December 2020
- consideration of applications for EEA family permits under the EEA Regulations where those applications were validly made by 30 June 2021 by direct family members or by extended family members who are a durable partner or the child under the age of 18 of a durable partner
- rights of appeal for certain decisions under the EEA Regulations, with necessary modifications according to the specific situation, and continuing rights until any appeal has been finally determined

All documentation issued under the saved and modified provisions of the EEA Regulations from the end of the transition period to the end of 30 June 2021 only confirmed a right to enter or reside (as appropriate) under EU free movement law until the end of 30 June 2021, after which those rights ceased to exist in the UK.

The only exception to this is where a person who had a right to reside under the EEA Regulations at the end of the transition period had made an application to the EUSS by 30 June 2021 and that application remained outstanding after that date – in this case, that person continues to benefit from a saved right to enter or reside until their application (and any appeal) is concluded.

Applications for documentation made under the EEA Regulations

Schedule 3 to the Consequential SI allows for the consideration of applications for documentation under regulation 12 or Part 3 of the EEA Regulations.

These documents are:

- EEA family permits
- Registration certificates
- Residence cards
- Documents certifying permanent residence
- Permanent residence cards
- Derivative residence cards

Applications for EEA residence documentation can only be considered where they were validly made before 11pm on 31 December 2020. Applications for EEA family permits can only be considered where they were validly made before the end of 30 June 2021 (unless the applicant is an extended family member other than a durable partner or the child under the age of 18 of a durable partner, in which case the deadline was 11pm on 31 December 2020).

For the purposes of this guidance, an application is ‘validly made’ if it was submitted, in accordance with regulation 21 of the EEA Regulations, to UK Visas and Immigration by the relevant deadline. The timing of the application will be taken from the post mark on the envelope if you are considering a paper application form, or from the date and time the application is received into Access UK if you are considering an online application. An applicant does not need to have enrolled biometrics by the relevant deadline for it to be considered ‘validly made’ for the purposes of the Consequential SI.

An application must still meet the minimum evidential requirements under regulation 21 for it to be accepted as a valid application under the EEA Regulations.

Applications which do not meet the validity requirements of regulation 21 or which are received after the relevant deadline **must** be rejected as invalid.

Where an application for one of the above documents was validly made by the relevant deadline, you must consider that application in accordance with the EEA Regulations.

Where the application does not meet the requirements set out in the EEA Regulations, the application must be refused. The applicant must be notified of the reasons for refusing the application and whether there is a right to appeal to the First-tier Tribunal.

Continuing to have a right under the EEA Regulations

Part 3 of the Grace Period SI saves and modifies the rights of admission and residence for those reliant on those rights before 11pm on 31 December 2020, where the holder continues to satisfy the qualifying criteria for those rights.

Once such an EEA national (or their family member) has been granted pre-settled or settled status under the EUSS, their saved rights under the EEA Regulations will cease to exist.

Until the EEA national (or their family member) has been granted status under the EUSS, and in order to continue to rely on residence rights under the EEA Regulations, they will still need to satisfy the conditions of those Regulations as outlined within this guidance and other related chapters.

For example:

Mr A is a Canadian national married to a French national who was working as a doctor in the UK and was doing so immediately before 31 December 2020. He has been resident in the UK for 3 years and had not yet made an application for pre-settled status under the EUSS. As a family member of a worker in the UK in genuine and effective employment, Mr. A. had a right of residence in the UK as he satisfied regulation 7 of the EEA Regulations. Provided that his spouse continued working in genuine and effective employment in the UK, the Grace Period SI allowed Mr. A. to keep his right of residence under the saved provisions of the EEA Regulations until 30 June 2021 or until the final outcome of an EUSS application made by then. His saved rights would cease to exist earlier than this if he was granted EUSS status before 30 June 2021.

Miss B is the 6-year-old daughter of Mr. A. from the above example and had been resident in the UK with him for those 3 years. The Grace Period SI allowed the children of an EEA national, or of their spouse or civil partner, such as Miss B., to keep their rights of residence if their sponsor had them before 11pm on 31 December 2020. Therefore, as the child of the spouse of an EEA national who was a qualified person immediately before the end of the transition period, Miss B. would meet the definition of regulation 7 of the EEA Regulations and would keep her right of residence under the saved and modified provisions of the EEA Regulations until 30 June 2021 or until the final outcome of an EUSS application made by then. Her saved rights ceased to exist earlier than this if she was granted EUSS status before 30 June 2021.

The saved and modified provisions of the EEA Regulations did not apply to EEA nationals newly arrived in the UK from 1 January 2021 unless they were a 'relevant family member' (as set out in regulation 3 of the Grace Period SI) and were accompanying or joining another EEA national who, immediately before 11pm on 31 December 2020, was lawfully resident in the UK under the EEA Regulations (or had the right of permanent residence).

Where an EEA national newly arrived in the UK from 1 January 2021 was not such a person, they and their family members would need to apply under another route of the UK immigration system.

For example:

Mrs C is an Iraqi national with an Austrian national spouse resident in Italy. Mrs. C. intended to travel to the UK for the first time on 7 January 2021, having never been resident here. Mrs. C. intended to travel alone and had no family members resident in the UK who she was accompanying or joining. As she did not have an EEA national family member who was lawfully resident in the UK by 11pm on 31 December 2020, she could not rely on the saved provisions of the EEA Regulations to provide a right of entry or residence upon her arrival and must seek an alternative basis to enter and stay under the Immigration Rules.

Mr D is a German national and Mrs. E. is his Cameroonian national spouse. They were both resident in the UK for 6 months before 11pm on 31 December 2020 and intended to continue residing here indefinitely. Mr. D. had been unemployed since his arrival and was not actively seeking work. Neither Mr. D. nor Mrs. E. had made applications to the EUSS and had no alternative basis to remain in the UK. As Mr. D. was not exercising Treaty rights and did not meet the requirements of the EEA Regulations at the end of the transition period, neither he nor Mrs. E. qualified for a right of residence under the saved provisions of the EEA Regulations. However, they could nevertheless apply to the EUSS for leave. The deadline for such an application was 30 June 2021, unless there are reasonable grounds for their delay in making their application.

EUSS application made by the end of the grace period

Under regulation 3 of the Grace Period SI, the grace period ended on 30 June 2021, which was the deadline for an application to the EUSS by EEA nationals and their family members resident in the UK by the end of the transition period. However, regulation 4 of the Grace Period SI saved and modified the admission and residence rights of EEA nationals and their family members without EUSS status who immediately before 11pm on 31 December 2020 were lawfully resident in the UK by virtue of the EEA Regulations (or had a right of permanent residence in the UK under regulation 15 of the EEA Regulations), pending the outcome of an EUSS application made by them by 30 June 2021 (including any administrative review or appeal against the decision on that application).

For example:

Ms E is a French national who worked for Royal Mail in the UK immediately before 31 December 2020. She has been resident in the UK for 2 years and submitted an application to the EUSS on 4 June 2021. As Ms E was a worker in genuine and effective employment immediately before 31 December 2020 and continued in such employment, she satisfied the requirements of the saved and modified provisions of the EEA Regulations. Her application to the EUSS was submitted before the deadline of 30 June 2021 but was not considered until 1 August 2021, when she was granted pre-settled status. The Grace Period SI allowed Ms E to keep her right of residence under the EEA Regulations until her EUSS application was decided.

Rights of appeal

The Consequential SI and the Grace Period SI saved and modified the rights of appeal provided in the EEA Regulations against adverse EEA decisions.

For further guidance on rights of appeal see the current rights of appeal guidance.

Related content

[Contents](#)

Related external links

[Free Movement of Persons Directive \(2004/38/EC\)](#)

[Immigration \(European Economic Area\) Regulations 2006](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#)

[The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members guidance

Rights of appeal guidance

Qualified person

This page tells you which European Economic Area (EEA) nationals are defined as a qualified person under the EEA Regulations.

As a matter of convenience, the guidance below uses the past tense (as this will be applicable in the majority of cases, now that free movement to the UK has ended). However, where you are assessing whether an individual currently has saved rights under the Grace Period SI, the same guidance will apply.

EEA nationals who were resident in the UK for more than 3 months were required to have been exercising free movement rights. In doing so, they were classed as a qualified person.

A qualified person is defined in regulation 6 of the EEA Regulations as an EEA national who was living in the UK as a:

- job seeker – regulation 6(1)(a)
- worker – regulation 6(1)(b)
- self-employed person – regulation 6(1)(c)
- self-sufficient person – regulation 6(1)(d)
- student – regulation 6(1)(e)

An EEA national could change the basis of their stay in the UK. For example, if they entered the UK as a jobseeker, they could then take up employment and become a worker. In such cases, where there was no interval between them, the EEA national could count both periods towards the 5-year qualifying period for permanent residence.

Qualified persons did not need to apply for a document confirming a right of residence in the UK. If they wished to do so, they could apply for a registration certificate. Applications for EEA residence documents were no longer accepted after the end of the transition period at 11pm on 31 December 2020.

For more information on applications for a registration certificate, see guidance on Processes and procedures: applications for a registration certificate.

For more information on permanent residence, see [Rights of permanent residence for qualified persons](#).

Related content

[Contents](#)

Related external links

[Immigration \(European Economic Area\) Regulations 2016](#)

[Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#)

Jobseeker

This page tells you how to assess if a European Economic Area (EEA) national was a qualified person in the jobseeker category under the EEA Regulations.

A jobseeker is defined in regulation 6(5) and 6(6) of the EEA Regulations as an EEA national who either:

- entered the UK in order to seek employment
- was present in the UK seeking employment, immediately after enjoying a right to reside as a:
 - worker
 - self-employed person
 - self-sufficient person
 - student

In addition, they needed to be able to provide evidence they were seeking employment and had a genuine chance of being employed.

Seeking employment

Evidence of seeking employment may have included:

- job application forms
- letters of invitation to interviews
- rejection letters from employers
- Jobcentre Plus registration documents including the claimant commitment which outlines what job seeking actions the claimant must carry out while receiving benefits (this alone was not sufficient)
- letters and emails written by the applicant to employers or employment agencies seeking work

Semi-skilled or unskilled people

Evidence for semi-skilled or unskilled people may have included activities such as:

- regularly visiting their local Jobcentre Plus office
- reading and applying for jobs advertised in the 'situations vacant' pages of local newspapers

Highly skilled or qualified people

Evidence for highly skilled or qualified people may have included activities such as:

- consulting job advertisements in professional magazines
- registering with a specialist employment agency

Simply registering as a jobseeker with Jobcentre Plus or another employment office was not in itself sufficient to meet the requirement to be seeking employment and having a genuine chance of being employed.

Genuine chance of being employed

The prospect of the EEA national gaining employment would depend on their skills, qualifications and types of jobs for which they were applying and the local labour market conditions.

In all cases you should look to see if the EEA national's academic or professional qualifications and experience compared to the type of employment for which they were applying. Language skills may also have been relevant. You may wish to consider:

- what field and location the person was looking for work
- whether they had relevant skills, training or qualifications
- whether they had successfully worked in that capacity in an EEA member state
- any relevant language skills they held (may be relevant depending on the field)
- how they were looking for work
- whether they had demonstrated that they were familiar with where jobs in their chosen field were usually advertised
- what they had done already to look for work in the UK including whether they had:
 - contacted any employers from outside the UK
 - set up any interviews

For example, an EEA national applying for jobs caring for small children who had no prior experience of working in this field in any EEA member state, had no relevant qualifications in childcare or child learning and development and had very limited knowledge of English would be unlikely to have had a genuine chance of finding work in that field.

Seeking work for longer than the relevant period

An EEA national could not have been a jobseeker for longer than the relevant period unless they could provide compelling evidence that they were continuing to seek employment and had a genuine chance of being engaged.

Relevant period

For jobseekers, the relevant period was 91 days (3 months) minus the total of any days during which the person concerned previously enjoyed a right to reside as a jobseeker, unless that previous period was before a continuous absence from the UK of at least 12 months.

An EEA national who entered the UK to look for work would therefore have had the initial 3 months' unconditional period of residence, conferred by regulation 13, and then the period of 91 days as a jobseeker, provided they were actively seeking work

and had a genuine chance of being engaged. In other words, an EEA national who entered the UK to look for work had an initial 3 months' right of residence, followed by 91 days (3 months) as a jobseeker, provided the criteria were met.

Beyond the 91-day period as a jobseeker the person was required to provide compelling evidence that they were actively seeking work and had a genuine chance of being engaged. If the person could not satisfy this requirement, they ceased to have a right of residence as a jobseeker and consequently ceased to have access to benefits.

An EEA national who did not enter the UK as a jobseeker but who was already resident in the UK and subsequently became a jobseeker immediately after enjoying a right to reside in another capacity (for example a student who ended their course of study and looked for work) would have had a right of residence as a jobseeker for 91 days (3 months). This was providing they were actively seeking work and had a genuine chance of being engaged.

If an EEA national previously had a right of residence in the UK as a jobseeker, that previous period of residence should be deducted from the relevant period, unless it was before a continuous absence from the UK of at least 12 months.

Repeat periods of residence as a jobseeker

An EEA national who had previously completed a period of 91 days' residence as a jobseeker, but who ceased to have a right of residence in that capacity, would only be able to have a further period of residence as a jobseeker under certain conditions. These are that they had since then been continuously absent from the UK for at least 12 months and could immediately demonstrate that they could provide compelling evidence that they were seeking work and had a genuine chance of being engaged.

Compelling evidence

Since the determination of the [Upper Tribunal in Secretary of State for Work and Pensions v MB & others \(JSA\) \[2016\] UKUT 372 \(AAC\)](#), the "compelling evidence" test no longer represents a higher threshold than the requirement to prove that a person was actively seeking work and had a genuine chance of finding work. Anyone to whom the "compelling evidence" test applied under the EEA Regulations would instead be required to demonstrate they had a "genuine chance of being engaged", as outlined above.

Related content

[Contents](#)

Worker

This page tells you how to assess if a European Economic Area (EEA) national was a qualified person in the worker category under the EEA Regulations.

A worker is an EEA national who was exercising their free movement rights in the UK by working in paid employment on a full-time or part-time basis.

Evidence of this may have included:

- payslips
- a letter from the employer which confirmed employment
- a contract of employment

Assessing whether the EEA national was a worker

While there is no minimum number of hours for which an EEA national must have been employed in order to qualify as a worker, the employment must have been genuine and effective and not marginal or supplementary.

Effective work may have had no formal contract but should have had:

- something that was recognisably a labour contract
- an employer
- agreement between employer and employee that the worker would perform certain tasks
- confirmation the employer would pay or offer services (such as free accommodation) or goods for the tasks performed

Marginal means the work involved so little time and money that it was unrelated to the lifestyle of the worker. It was supplementary because the worker was clearly spending most of their time on something else, not work.

For example, a student who worked behind the student union bar for 2 hours a week was actually a student; their work was marginal and supplementary to their actual role as a student.

You must carefully assess each case on its own merits to see whether the EEA national's claimed employment was genuine and effective.

Relevant considerations include:

- whether there was a genuine employer-employee relationship
- whether there was an employment contract
- whether the work was regular or intermittent
- how long the EEA national had been employed for
- number of hours worked
- level of earnings

Case example 1

Mr A is a Spanish national and had worked on a construction site for 20 hours each week earning £250 each week. He provided evidence of a contract of employment and bank statements showing funds regularly entered his account. He had registered with HMRC for tax purposes. In this scenario, it is more likely than not that Mr A was a genuine worker.

Case example 2

Mr B is a Dutch national and had worked washing cars for a relative. He worked cash in hand and had no employment contract. He claimed to earn £100 each week and tried to supplement this with odd jobs elsewhere when possible. He had no bank account and could not show any evidence of tax or National Insurance payments. In this scenario, it is more likely than not, that Mr B's work was marginal and ancillary and so he was not a worker.

Worker or self-employed person who had ceased activity

If a worker or self-employed person had ceased activity, the EEA Regulations allowed them to benefit from a right of permanent residence in the UK if they met the relevant criteria.

Regulation 15(1)(c) states that a worker or self-employed person shall acquire permanent residence if they have ceased activity.

Retirement

Under regulation 5(2), for an EEA national to have met these criteria, they must have reached the age of entitlement to a state pension on terminating that activity or, in the case of a worker below state pension age, have ceased working to take early retirement.

They must also have pursued activity as a worker or self-employed person in the UK for at least 12 months prior to the termination and have resided in the UK continuously for more than three years prior to the termination.

Applicants must have produced evidence of either receiving a state or private pension.

For state pensions, the 'default retirement age' (a mandatory retirement age of 65) no longer exists and the current retirement age for state pension purposes is determined by the gender and date of birth of a person. See [pension age](#) for more information.

For private pensions, an applicant must have been able to demonstrate that their income from their private pension, or other sources, was enough to cover their living expenses without needing to claim benefits in the UK.

Other income sources may have included, but were not limited to:

- investments
- savings
- inheritance

Applicants also needed to provide evidence that they pursued activity as a worker or self-employed person in the UK for at least 12 months prior to the termination of their relevant activity and that they resided in the UK continuously for more than 3 years prior to this date.

Please see the [worker](#) and [self-employed person](#) sections for more information on evidence to be provided to demonstrate activity. Evidence to demonstrate 3 years' residence in the UK could include, but was not limited to:

- tenancy or mortgage agreements
- utility bills
- bank statements

Case example 1

Mrs C is a Belgian national who had been working in the UK for a period of 4 continuous years as a croupier. She reached state pension age and decided to leave her employment and live off her state pension. In this scenario, Mrs C would acquire permanent residence status.

Case example 2

Miss D is a Swedish national who had been a self-employed person in the UK for 3 years, operating as an archaeologist. At age 47, following the death of a family member, she received a large inheritance and decided that she no longer wished to work. Miss D decided to take early retirement and live off the inheritance that she had received. In this scenario, Miss D would acquire permanent residence status.

Case example 3

Mr M is a 69-year-old Spanish national who had been living and working in the UK for 2 years prior to retiring from work as a clockmaker. Although he had reached state pension age and had worked in the UK for 12 months prior to ceasing activity, he had not been resident in the UK for 3 years prior to termination of his activity and the application for permanent residence should be refused.

Permanent incapacity

To have met the criteria of regulation 5(3) an EEA national must have terminated activity in the UK as a worker or self-employed person as a result of a permanent incapacity to work.

Evidence of permanent incapacity to work could include, but was not limited to:

- medical certificates
- letters from a doctor or other health professional outlining the reasons for their inability to work on a permanent basis

Please see the [worker](#) and [self-employed person](#) sections for more information on evidence to be provided to demonstrate activity as a worker or self-employed person.

Applicants also needed to provide evidence that they resided continuously in the UK for at least 2 years immediately prior to the termination of their relevant activity or evidence that the incapacity was the result of an accident at work or an occupational disease that entitled the person to a pension payable in full or in part by an institution in the UK.

“Immediately” in this context means that there was no break in continuous residence between the termination of the relevant activity and the date of application, and that the person who ceased activity had not become a qualified person in any other capacity since that termination.

Evidence to demonstrate 2 years’ residence in the UK could include, but was not limited to:

- tenancy or mortgage agreements
- utility bills
- bank statements

Evidence of an accident at work or an occupational disease that entitled the person to a pension payable in full or in part by an institution in the UK could include, but was not limited to:

- a letter from their former employer confirming the EEA national’s unemployment was due to an accident at work or occupational disease
- evidence of receiving a pension, such as a letter from the relevant institution or pension statements

Case example 1

Mr N is a Cypriot national who had been living and working in the UK as a tower crane operator for a period of 3 continuous years. At age 35 he injured himself in an accident outside of work, resulting in him becoming permanently incapacitated. He was no longer able to work, and was forced to cease his activity as a worker. In this scenario, Mr N would acquire permanent residence status.

Case example 2

Mrs L is a 25-year-old Slovenian national who had been employed in the UK for one year as a landscape gardener. As a result of an accident at work, she injured herself

which resulted in her permanent incapacity. Mrs L's UK-based employer provided her with a private pension. In this scenario Mrs L would acquire permanent residence status.

Case example 3

Mrs T is a Maltese national who had been living and working in the UK for one year as an aromatherapist. Due to an accident outside of work she became permanently incapacitated. In this scenario, although she had become permanently incapacitated which resulted in her ceasing activity as a worker, she had not been resident in the UK for 2 years immediately prior to termination of activity and the application should be refused.

Case example 4

Miss J is an Italian national who had been living and working in the UK for 3 years as a shop assistant, having entered the UK in January 2015. Miss J left the UK for an extended holiday of 5 months in August 2017 to visit relatives in Italy and returned to the UK in January 2018. She applied for a document confirming permanent residence in the UK.

Due to an accident on holiday, she became permanently incapacitated and provided a letter from her consultant to confirm this. Miss J also provided a letter from her former employer to confirm that she was still employed by them at the date of the accident as well as evidence of her continuous residence in the UK in the form of utility bills.

Although Miss J had been out of the UK for 5 months prior to terminating her contract, her continuity of residence had not been broken, and therefore she would be issued with a document certifying permanent residence.

Retaining a place of residence in the UK

To have met the criteria of regulation 5(4), an EEA national must have resided in the UK for a continuous period of at least 3 years as a worker or self-employed person, immediately before becoming a worker or self-employed person in another EEA country, while retaining a place of residence in the UK to which they return, as a rule, at least once a week.

The applicant would need to have provided the following:

- evidence of residence in the UK for a continuous period of at least 3 years in the UK, for example, tenancy or mortgage agreements, council tax letters, utility bills etc.
- evidence of having been a worker or self-employed person in the UK for that period of at least 3 years, for example, letter from employer, pay slips, relevant information from HMRC

- evidence of having become a worker or self-employed person in an EEA country immediately after leaving the UK, for example, letter from employer or pay slips
- evidence of having retained a place of residence in the UK, for example, utility bills, mortgage statements
- evidence that the applicant returned to this place of residence, as a rule, at least one a week, for example, travel tickets

Please see the [worker](#) and [self-employed person](#) sections for more information on evidence to be provided to demonstrate activity as a worker or self-employed person.

“Immediately” in this context means that the applicant must have become employed or self-employed by the end of the initial 3 month right of residence period in the relevant EEA country or, in some cases, that they had returned to their state of nationality to become employed or self-employed, and therefore would not have been exercising Treaty rights but would be relying on their right to reside as a national of that country.

Case example 1

Mr L is a French national who lived in the UK from 2013 to 2017. During this period, he worked in finance in the UK. In 2017, Mr L took employment as an investment banker in Italy, while remaining resident in the UK and returning to his home here every weekend. He applied for a document confirming permanent residence in the UK.

In support of his application, Mr L provided evidence that he was resident in the UK as a worker for at least 3 years in the form of a letter from his employer and utility bills.

He also provided payslips and bank statements to evidence his employment in Italy. The dates confirmed he took up employment 5 weeks after ceasing activity in the UK, which satisfied the ‘immediately’ condition of regulation 5(4)(b). Mr L also provided utility bills for his address in the UK from 2013 to the date of application, as well as his travel history showing that, as a rule, he returned to the UK every weekend.

Mr L would therefore be issued with a document certifying permanent residence.

Case example 2

Miss P is a Spanish national who has lived in the UK since 2012 and worked in Portugal whilst returning to her house in the UK every weekend. She applied for a document confirming permanent residence in the UK.

In support of her application Miss P provided evidence that she was resident in the UK as a worker for at least 3 years in the form of payslips and utility bills. She also provided payslips and bank statements to evidence her employment in Portugal.

Miss P also provided utility bills for her address in the UK from 2012 to the date of application, as well as her travel history showing that, as a rule, she returned to the UK every weekend.

Although Miss P provided the necessary information, the dates on her payslips showed that she did not take up work for 7 months after ceasing activity in the UK. As this is not 'immediate', she did not meet the criteria of regulation 5(4)(b). Her application for a document certifying permanent residence must be refused for this reason.

Level of Earnings: HM Revenue and Customs (HMRC) threshold

HMRC has a primary earnings threshold (PET), which is the point at which employees must pay class 1 national insurance contributions. If an EEA national was earning below the PET, you must make further enquiries into whether the activity relied upon was genuine and effective.

The PET is updated each financial year and you must check the [HMRC website](#) for the current rate.

Tax and National Insurance (NI)

Compliance with the requirement to pay tax and NI is a domestic matter for the UK authorities and failure to comply does not automatically stop an EEA national from qualifying as a worker. However, non-compliance is a strong indicator that the EEA national was in marginal and ancillary employment. This should not be the sole basis on which you determine that the EEA national was not exercising Treaty rights as a worker but is a relevant factor which can be taken into consideration when making this assessment.

If an EEA national appears to have been doing an employment activity which was genuine and effective, but was not paying tax and NI, then you must report the employer to HMRC for non-compliance with the UK tax and NI requirements.

Charity work

An EEA national doing unpaid charitable work does not qualify as a worker but may be considered to have been self-sufficient where the relevant criteria were met. Further information can be found in the [self-sufficient person's guidance](#).

They may be considered to have been a worker if they were doing charity work that involved taking part in the commercial activities of the charity for which they received payment in the form of having their living expenses and accommodation provided. For more information, refer to EEA case law – [Steymann judgment](#).

Retaining worker status

There are some circumstances when an EEA national who was no longer working did not stop being treated as a worker for the purposes of the EEA Regulations. Further information can be found in the section on [retaining worker or self-employed status](#).

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Self-employed person

This page tells you how to assess if a European Economic Area (EEA) national qualified as a self-employed person under the EEA Regulations.

Case law of the Court of Justice of the European Union has determined the definition of a self-employed person is a community concept, not subject to national definitions.

This means assessing an application from someone on the basis of being self-employed must be non-discriminatory and ensure EEA nationals are not under greater restrictions than those placed upon UK citizens.

Definition of self-employment

A self-employed person is an EEA national who was exercising their free movement rights in the UK by working for themselves and generating an income in a self-employed capacity.

You must consider a number of factors, although not all the factors will be relevant to every application. You must decide each application after analysing all the relevant circumstances. Applicants could provide evidence to show they met the factors listed below in support of their application:

- economic activity
- responsibility and personal freedom
- genuine and effective self-employment

In addition, depending on the type of self-employment the 2 factors below would apply:

- permanence and stability
- membership of a professional body

Reasonable evidence of self-employment may have included:

- proof of registration for tax and National Insurance (NI) purposes with HMRC for example:
 - letter of self-employed status
 - letter confirming payment of tax and NI contributions
- invoices for work done
- a copy of their business accounts
- an accountant's letter
- leases on business premises (if applicable)
- advertisements for their business
- business bank statements

Assessing whether the self-employed activity was genuine and effective

While there is no minimum number of hours an EEA national must engage in self-employed activity to qualify as a self-employed person, the self-employed activity must have been genuine and effective and not marginal or ancillary.

You can take marginal or ancillary to mean that the self-employed activity involved so little time and money as to be largely irrelevant to the lifestyle of the EEA national.

You must carefully assess if the EEA national's claimed self-employment was genuine and effective. You must assess each case on its own merits, taking into account all of the circumstances of the case.

The [retaining worker status section](#) provides information on the HMRC threshold.

Retaining self-employed person status

There are some circumstances when an EEA national who was no longer in self-employment did not stop being treated as a self-employed person for the purposes of the EEA Regulations. Further information can be found in the section on [retaining worker or self-employed person status](#).

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Related external links

[Immigration \(EEA\) Regulations 2016](#)

Retaining worker or self-employed person status

This page tells you how a European Economic Area (EEA) national worker in the UK, who temporarily stopped working or being self-employed, could continue to be considered a worker or self-employed person for the purposes of the EEA Regulations.

Following the Court of Justice of the European Union judgment in [Florea Gusa v Minister for Social Protection, Attorney General, Ireland C-442/16](#), a self-employed person was able to retain their status as a self-employed person in a similar way to a person retaining status after a period of employment.

For the purposes of this chapter, references to 'work', 'working' or 'worker' means employment or self-employment, or someone undertaking those activities.

Someone who temporarily stopped working could still be considered a worker under regulations 6(2) or 6(4) of the EEA Regulations if they provide proof that they:

- were temporarily unable to work because of illness or an accident
- were in duly recorded involuntary unemployment
- were involuntarily unemployed and had embarked on vocational training
- voluntarily stopped working to start vocational training related to their previous work

Temporarily unable to work due to illness or accident

In these cases the applicant must have provided medical certificates and a letter from their doctor outlining the reasons for their inability to work and why this was temporary.

The Upper Tribunal stated in the case of [FMB Uganda \[2010\] UKUT 447 \(IAC\)](#) that there was no time limit on the definition of temporary in relation to applications under the EEA Regulations.

They ruled that anything not permanent is considered temporary even if it lasts for a long time. Therefore, if the evidence from the doctor stated the incapacity was temporary, you must accept this even if the applicant had been unable to work for some time.

Whilst a temporary inability to work for an extended period is acceptable, if a person gave up work owing to illness but did not take further work once they had sufficiently recovered, this would not be sufficient.

Duly recorded involuntary unemployment

An EEA national may still have qualified as a worker if they were involuntarily unemployed after having been employed in the UK and they provided proof that they:

- registered as a jobseeker with Jobcentre Plus or a recruitment agency
- entered the UK to seek work
- were in the UK seeking employment immediately after enjoying a right to reside as a worker, student, self-employed person or self-sufficient person

The applicant must have provided evidence that they were involuntarily unemployed and seeking work.

This could be provided in the form of:

- a letter from their former employer confirming:
 - the dates they were employed
 - their unemployment was involuntary
- information to explain why their self-employment was involuntarily terminated, which can include a:
 - letter from a doctor to confirm the applicant was unable to work for a sustained period due to illness or accident
 - evidence that the company had fallen into liquidation and was no longer operational
- a letter from Jobcentre Plus or a recruitment agency confirming they had registered with them
- proof they were seeking work

If the EEA national was working in the UK for less than one year before becoming involuntarily unemployed, then they could not retain worker status for longer than 6 months.

If they had been working for more than one year they could keep worker status if they were able to provide compelling evidence to show they were continuing to seek employment.

If they were working for less than 6 months and then ceased working and registered with Jobcentre Plus, but after a further 6 months had still not got any further work, they would not be able to keep their worker status any longer. Instead, they would have needed to become a qualified person in another capacity (for example as a student or self-sufficient person, but not a jobseeker).

Genuine chance of being employed

The determination of the Upper Tribunal in [KH v Bury Metropolitan Borough Council and Secretary of State for Work and Pensions \(HB\) \[2020\] UKUT 50 \(AAC\)](#) means that a person no longer needed to demonstrate they had a genuine prospect of being

employed when seeking to retain their worker status. This requirement was removed from the EEA Regulations by regulation 5(e) of the Grace Period SI.

Involuntary unemployment and vocational training

EEA nationals who were involuntarily unemployed and had started vocational training must have provided evidence that the unemployment was involuntary. This could have been in the form of:

- a notice of their involuntary unemployment from their former employer
- information to explain why their self-employment was involuntarily terminated, which can include:
 - a letter from a doctor to confirm the applicant was unable to work for a sustained period due to illness or accident
 - evidence that the company had fallen into liquidation and was no longer operational
- a letter from their training provider confirming:
 - what type of vocational training they had enrolled on
 - they were attending the training

This list is not exhaustive and any information provided by an applicant should be fully considered.

Voluntary unemployment and vocational training

As well as the evidence listed under the section involuntary employment and vocational training, if a person had voluntarily stopped working but had started vocational training, they must show that their vocational training was related to their previous employment.

Retaining worker status following pregnancy

In the case of [Jessy Saint-Prix vs Secretary of State for Work and Pensions C-507/12](#), the Court of Justice of the European Union clarified that an EEA national who became temporarily unable to remain in employment in the late stages of pregnancy, could retain their worker status and their right of residence in the UK. This only applied to people in employment. The Saint-Prix judgment does not apply to self-employed people.

This is provided the EEA national returned to their previous employment or found another job within a reasonable period. Seeking work in this context is seeking work as a retained worker, rather than as a jobseeker.

Reasonable period

The court did not determine what was considered a reasonable period but gave guidance to the effect that it should take account of all the specific circumstances of the case and the applicable national rules on the duration of maternity leave.

Regulation 6(2) does not cover the interim reasonable period before the woman goes back to work. The judgment confers a conditional right to reside on a retrospective basis, provided certain conditions were met. It does not govern the status of the person during the reasonable period. During the reasonable period our policy is that there was a substantive right to reside.

Under domestic legislation, pregnant women in employment are entitled to 26 weeks maternity leave. Where they are not entitled to statutory maternity pay or maternity allowance, they may be able to claim Income Support for a period aligned with the 26 weeks' maternity leave period (up to 11 weeks before the expected week of confinement and 15 weeks after childbirth). As a guideline, the 15 weeks' period should be used as a gauge for considering whether an EEA national who gave up employment for reasons of pregnancy, returned to work within a reasonable period.

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Self-sufficient person

This page tells you how to assess if a European Economic Area (EEA) national qualified as a self-sufficient person under the EEA Regulations.

They must be able to provide proof that they had both:

- enough money to cover their own and any family member's living expenses without becoming a burden on the social assistance system in the UK
- comprehensive sickness insurance (CSI) in the UK for themselves and any family members

An NHS debt as a result of treatment, funded by the NHS until the debt is repaid, will count as social assistance for the purpose of deciding whether or not an EEA national was self-sufficient.

For more information on assessing if the EEA national had sufficient resources so that they did not become a burden on the social assistance system of the UK, see [Assessing sufficient resources](#).

For further information on CSI, see [Comprehensive sickness insurance](#).

They could also qualify as self-sufficient based on the income of their family member if this money was available to them. For example, their non-EEA national spouse may have had permission to work in the UK under the Immigration Rules and have provided financial support to the EEA national from their income alone.

This would be considered acceptable for the purposes of the EEA Regulations, as long as the EEA national also had CSI cover for themselves and any family members.

Charity workers

An EEA national may have qualified as a self-sufficient person if they could show they had enough funds to support themselves, or the charity was meeting their living costs. For example, a minister of religion might qualify as self-sufficient if their living costs were being met by the religious institution they were employed by. They must also have had CSI cover for themselves and any family members.

They may be considered to have been a worker if they were doing charity work that involved taking part in the commercial activities of the charity for which they received payment in the form of having had their living expenses and accommodation provided. For more information, refer to EEA case law: [Steymann judgment](#).

Retired people

An EEA national may have qualified as self-sufficient if they were able to show they received a state or private pension or had enough income from other sources, such

as investments, to cover their living expenses without needing to claim benefits in the UK. They must also have had CSI cover for themselves and any family members.

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Student

This page tells you how to assess if a European Economic Area (EEA) national qualified as a student under the EEA Regulations.

They must show that they:

- were enrolled for the main purpose of following a course of study (including vocational training) at a public or private establishment which was:
 - financed from public funds
 - recognised by the Secretary of State as an establishment accredited to provide such courses or training within the law or administrative practice of the part of UK in which it is located
- had enough money to meet their living expenses and so would not become a burden on the social assistance system of the UK during their residence - suitable evidence of this includes:
 - bank statements
 - other evidence of the award of a grant or sponsorship
 - written confirmation by the student that they have enough money
- had comprehensive sickness insurance (CSI) cover in the UK for themselves and any family members

For more information on assessing if the student had sufficient resources so that they did not become a burden on the social assistance system of the UK, see [Assessing sufficient resources](#).

For further information on CSI, see [Comprehensive sickness insurance](#).

For further information on assessing educational establishments, see [Assessing educational establishments](#)

EEA nationals in the UK as students were expected to support themselves without relying on public funds. For more information, see Public funds.

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Assessing educational establishments

This page tells you how to check if an educational establishment could be relied upon by a European Economic Area (EEA) national to qualify as a student for the purposes of the EEA Regulations.

There were 2 stages for considering if an educational establishment was acceptable for the purposes of the regulations:

- [stage 1: Register of Student sponsors](#)
- [stage 2: independent evidence](#)

First, whether the establishment was listed on the [Register of Student sponsors](#) and thereby acceptable for the purposes of regulation 4 of the EEA Regulations.

If not, second, whether the EEA national was able to produce independent evidence that the educational establishment was either:

- publicly funded
- otherwise accredited

This evidence could be provided following the guidance in the following sections:

- [publicly funded](#)
- [otherwise accredited](#)

Where this evidence was not provided by the applicant, it had to be requested from them before a decision was made.

Publicly funded

An establishment will be publicly funded if it was:

- an establishment or further education provider maintained by a local education authority
- an establishment in the higher education sector which received financial support by a higher education funding council (pursuant to the Further and Higher Education Act 1992)
- any establishment receiving grants, loans or other payments from the Higher Education Funding Council for England

If evidence was submitted which demonstrates the establishment in question was publicly funded as described above, this was acceptable for the purposes of the EEA Regulations.

Otherwise accredited

A private establishment not included on the Register of Student sponsors could still be accepted as accredited if evidence was provided showing that the institution held a valid and satisfactory full institutional inspection, review or audit by a body with a formal role in the statutory regulation of education in the UK.

The relevant bodies are:

- Quality Assurance Agency for Higher Education
- Ofsted
- Education Scotland
- Estyn
- Education and Training Inspectorate
- Independent Schools Inspectorate
- Bridge Schools Inspectorate
- School Inspection Service

No evidence submitted to demonstrate that the establishment was publicly funded or otherwise accredited

If no evidence was received after writing out to the applicant to request it, the application could be refused on the basis that the applicant had not demonstrated they were enrolled at a private or public educational establishment.

Before refusing the application, consideration had to be given to whether the applicant met the requirements under regulation 4(1)(c) and could be considered as exercising Treaty rights as a self-sufficient person rather than as a student.

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Exceeding the maximum level of resources to qualify for social assistance

This page tells you how to consider whether a European Economic Area (EEA) national claiming a right of residence as a self-sufficient person or student had resources which exceeded the maximum level of resources to qualify for social assistance.

The EEA Regulations state that an EEA national self-sufficient person or student and their family members must have had sufficient resources available, so they did not become a burden on the social assistance system of the UK.

When deciding if an EEA national and their family members had sufficient resources, you must first check if they exceeded the maximum level of resources which a British citizen and their family members can have before they no longer qualify for social assistance under the [UK benefits system](#).

If they did exceed the maximum level, then you must accept that they had sufficient resources.

You must take into account the personal situation of the applicant and their family members.

In most cases it will be clear if an applicant exceeded the maximum level of resources which a British citizen and their family members are allowed to have before they no longer qualify for social assistance under the [UK benefits system](#).

The applicant will exceed this level if they provide documents showing they had enough resources to cover their essential outgoings. For example, the applicant can provide evidence of resources by providing one or more of the following:

- bank statements showing savings
- evidence of pension payments
- receipt of educational grants from overseas
- income of a partner, spouse or other family member to which they had regular access, for example:
 - parental funding
 - a spouse's salary earned through lawful working in the UK

This is not a complete list of all the types of evidence. Applicants can provide any other evidence showing that they and their family members had enough resources available to them, to take them above the level of resources which a British citizen and their family members may possess before they are no longer eligible for social assistance under the UK benefits system. You must assess each case on a case-by-case basis.

Taking into account the personal situation of the applicant and any family members

If an EEA national and their family member's resources did not exceed the maximum levels of resources a British citizen and their family members could have before they no longer qualified for social assistance, you must take into account their personal situation to see if their resources are nonetheless sufficient on the facts of the case.

This means assessing their:

- financial commitments, such as:
 - rent
 - mortgage
 - utilities
 - loans
 - credit cards
 - other personal debt
- additional costs, such as:
 - travel
 - food costs

This is not a complete list, you must assess each case on a case-by-case basis. If you are unsure whether or not to accept evidence, you must speak to your senior caseworker.

The applicant can also show they had enough resources if their circumstances were to change, such as if they were about to:

- receive an inheritance, for example a solicitor's letter confirming when this was to be received
- enter potential employment, for example a letter confirming an offer of a job
- retire or receive pension payments, for example a letter from the pension company confirming when it was to be paid

This is not a complete list of all the types of evidence an applicant can provide. You must assess each case on a case-by-case basis and make sure that where the applicant had dependent family members the resources were enough for the whole family.

If, having taken into account the personal situation of the EEA national and examined the evidence, you are satisfied that their resources and that of their family members exceeded or would have shortly exceeded what was required to meet their financial commitments and living costs, those resources should be regarded as sufficient.

In all cases where the applicant did not exceed the maximum level they can have while qualifying for social assistance, you must speak to your senior caseworker.

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Declarations made by students

This page tells you how to assess whether a European Economic Area (EEA) national student has shown they had sufficient resources not to become a burden on the social assistance system. This is in line with regulation 4(1)(d)(iii) of the EEA Regulations.

The EEA Regulations allowed students to assure the Secretary of State they had sufficient resources not to become a burden on the social assistance system by making a declaration.

This means that when dealing with applications from students you might receive either:

- evidence in the form of documentation
- a declaration

You must not insist that documentary evidence of available income or resources is provided.

Where the applicant chooses to make a declaration, they must confirm that they met the requirements relating to having sufficient resources.

If the declaration is not clear or detailed enough to confirm these requirements were met, you must either:

- request further information
- refuse the application

In cases where a declaration is made and the declaration is not clear enough, you must speak to your senior caseworker for approval before refusing the application.

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Comprehensive sickness insurance

This page defines the requirement under the European Economic Area (EEA) Regulations to have held comprehensive sickness insurance (CSI), including in light of the Court of Justice of the European Union (CJEU) judgment in the case of [VI v HM Revenue and Customs C-247/20](#) (10 March 2022).

The EEA Regulations require that the following categories must have held CSI to have been a qualified person:

- self-sufficient person
- student
- family member of a self-sufficient person or student

Affiliated to the NHS

In the case of [VI v HM Revenue and Customs C-247/20](#), the CJEU held that once an individual was “affiliated” to the NHS, they had CSI under the Free Movement Directive.

“Affiliated” to the NHS was not defined by the CJEU, but is considered to mean entitled to comprehensive and free NHS treatment. Under domestic law, an individual has such an entitlement when they are “ordinarily resident” in the UK.

As a result, if an individual was ordinarily resident in the UK, they will be considered to have held CSI.

“Ordinarily resident” means that an individual’s residence in the UK is voluntary, lawful and for a settled purpose. To assess whether an individual was ordinarily resident in the UK, you must apply the following approach:

- **EEA nationals** – until 31 December 2020 EEA nationals living in the UK did not need to be exercising Treaty rights or have the right to reside under the Free Movement Directive in order to be considered ordinarily resident for the purpose of accessing the NHS free of charge - therefore, an EEA national could be regarded as ordinarily resident, and thus to have held CSI, even if they were not a qualified person
- **non-EEA nationals** – they must demonstrate that their EEA national family member was exercising Treaty rights, had a right to reside under the Free Movement Directive or had a right of permanent residence in order for the non-EEA national family member to be considered ordinarily resident - therefore, if a non-EEA national cannot demonstrate that their EEA national family member was so resident, they will not be regarded as having held CSI on the basis of being “affiliated” to the NHS (because they would not have been entitled to comprehensive and free NHS treatment)

Alternative means to evidence CSI

An EEA national or their family member could also provide the following documents to show they held CSI:

- a comprehensive private medical insurance policy document
- a valid European Health Insurance Card (EHIC) issued by an EEA country other than the UK when it was a member (or its predecessor form E111)
- form S1 (or its predecessor forms E109 or E121)
- form S2 (or its predecessor form E112)
- form S3

EHIC provided

If the applicant provided a valid EHIC as evidence of CSI, it must have been issued by an EEA country other than the UK (when it was a member), because the EEA country that issued the card will cover the cost of treatment.

The valid EHIC could only be accepted as CSI if the applicant was living in the UK on a temporary basis.

If it is clear from other information provided that they were in the UK temporarily, you do not need to request further information. For example, a student may have been undertaking a year-long course and have had a provisional job offer in their home country.

If it is not clear and they have not provided specific evidence, a statement of intent must have been requested showing that they were in the UK on a temporary basis. The statement must have been signed and dated by the applicant and assessed on its individual merits.

For example, the statement could:

- include a declaration that they have property or business interests in their home country to which they intended to return
- provide details of their family ties in their home country and evidence of visits home

Forms S1, E109 and E121

From 1 May 2010, the S1 form replaced the E109 and E121 forms. The S1 form is a certificate of entitlement to health care in another EEA country for a limited duration and can only be used by certain people. For example:

- state pensioners
- dependants of an insured person working in another EEA country

Forms S2 and E112

From 1 May 2010, the S2 form replaced the E112 form. The S2 covers the actual cost of treatment. For example, insured people referred for specific treatment in another EEA country will have the cost of their treatment covered.

Form S3

Until 31 December 2020, the S3 form could cover the cost of treatment. For example, retired frontier workers continuing treatment in the EEA country they previously worked in would have the cost of their treatment covered.

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Comprehensive sickness insurance: transitional arrangements for students

This page tells you about the transitional arrangements which applied to European Economic Area (EEA) national students where they were required to hold CSI in the UK.

Transitional arrangements

An application for permanent residence from an EEA national who was exercising free movement rights in the UK as a student was not to be refused solely on the grounds that there was no evidence of CSI on the date of decision where:

- the Home Office issued a registration certificate to the EEA national on the basis of their residence in the UK as a student before 20 June 2011

When considering a permanent residence application in these cases, it was accepted that time spent in the UK before the grant of the registration certificate was time spent in line with the CSI requirement.

Examples of when the transitional arrangements did not apply

EEA nationals who had already been issued with a registration certificate on another basis (such as a worker), who then became a student (but who did not reapply for a document confirming this before 20 June 2011) will not be treated as in scope of these transitional arrangements. Such applicants must show evidence of CSI for any time spent in the UK as a student.

Where an application for permanent residence was received on the basis that the EEA national was a student, but they had never been granted a registration certificate, they had to show evidence that they had CSI for the duration of their time spent as student.

EEA nationals residing in the UK as a self-sufficient person had always been required to provide evidence of CSI.

If an applicant did not fall within the transitional arrangements outlined above and they did not provide evidence that they held CSI, then the application was to be refused.

Related content

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Comprehensive sickness insurance: arrangements for family members of students

This page tells you how to assess family members of European Economic Area (EEA) national students where they were required to hold CSI in the UK.

Changes to the EEA Regulations

From 6 April 2015, changes were made to the EEA Regulations to require the family members of EEA nationals exercising free movement rights as a student to hold CSI in the UK. This was in line with the requirements for family members of self-sufficient persons to hold CSI.

Whilst changes to the EEA Regulations were made on 6 April 2015, for operational reasons, the requirement for family members of students to hold CSI was only applied in practice from 22 June 2015.

Registration certificates and residence cards: applications received on or after 22 June 2015

Applications for registration certificates or residence cards received on or after 22 June 2015 were to be decided in line with the amended EEA Regulations. This meant that evidence of CSI had to be provided to cover the EEA national and any family member also residing in the UK with them. Where there was no evidence of CSI for the EEA national and their family members, the application was to be refused.

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Rights of permanent residence for qualified persons

This page tells you how to consider the right of permanent residence for European Economic Area (EEA) nationals who had exercised their free movement rights in the UK as a qualified person under regulation 15 of the EEA Regulations.

EEA nationals could apply, by 31 December 2020, for a document certifying a right of permanent residence in the UK under regulation 19, if they had lived here for 5 continuous years in line with the EU law relating to free movement rights in force during the 5-year period.

If an EEA national had a right of permanent residence in the UK, they would only have lost this right if they were absent from the UK for more than 2 consecutive years. There were no other conditions they must have satisfied in order to continue to have this right.

For information on the meaning of continuous residence please see [assessing continuous residence](#).

All documents submitted as evidence to show the applicant had been a qualified person for a continuous period of 5 years had to be originals. Photocopies were not accepted unless there was a valid reason why the applicant could not provide the original document.

In such circumstances, a copy certified by the body or authority which issued the original document or by a legal representative could be accepted. All documents not in English had to be accompanied by an official English translation.

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Assessing continuous residence

This page tells you how continuous residence was to be assessed in applications for a document certifying a right of permanent residence, made by 31 December 2020, under regulation 19 of the European Economic Area (EEA) Regulations.

In order for an EEA national to be issued with a document certifying a right of permanent residence, they had to provide evidence to show that they had resided in the UK in accordance with the EEA Regulations for a continuous period of 5 years.

Evidence of a continuous 5-year period of residence in the UK could include:

- tenancy agreements
- utility bills
- bank statements
- school or nursery letters or immunisation records in support of applications for children

This is not a complete list of evidence that could be accepted.

Definition of continuity of residence

Regulation 3 of the EEA Regulations sets out how the 5-year period of continuous residence was calculated. The following absences did not count as a break in continuity of residence:

- time spent outside the UK of 6 months or less in total in any 12-month period
- time spent outside the UK on compulsory military service
- a single period of time spent outside the UK of 12 months or less that was for an important reason, including:
 - pregnancy
 - childbirth
 - serious illness
 - study
 - vocational training
 - an overseas posting

Broken continuity of residence

Under regulation 3 of the EEA Regulations, continuity of residence was broken where:

- absence from the UK exceeded that set out above
- the person served a sentence of imprisonment
- a deportation or exclusion order was made in relation to the person
- the person was removed from the UK under the EEA Regulations

Regulation 3(3)(a) applied to a person who had resided in the UK for at least 10 years for the purposes of regulation 27(4) (decisions taken on grounds of public policy, public security and public health), where the effect of the sentence of imprisonment was such as to break any previously forged integrating links.

See [Periods of imprisonment](#) for further guidance.

Absences from the UK

Absence(s) from the UK of 6 months or less (in total) in any 12-month period, or a single absence of up to 12 months for an important reason, did not break continuity of residence for the purposes of acquiring a right of permanent residence. Therefore, the 5-year period did not restart when that person re-entered the UK.

If the person was removed from the UK at any time during the 5-year period, the continuity of residence was broken.

In calculating if a person had spent more than 6 months outside the UK in any 12-month period, this was based on the period they claimed to have resided in the UK in line with the EEA Regulations.

For example, an EEA national claimed they had resided in the UK from October 2005 to October 2010. If they lived and worked in the UK from October 2005 until February 2008, resigned from their job to work in another EEA state for 10 months before returning to live and work in the UK in December 2008, their continuity of residence was broken. This was because they were absent from the UK for more than 6 months in a 12-month period, and it was not for an important reason.

Periods of imprisonment

In the case of [Onuekwere \(C-378/12\)](#), the Court of Justice of the European Union (CJEU) found that periods of imprisonment by family members of EEA nationals cannot be taken into consideration for the purposes of gaining a right of permanent residence. In addition, the court found that periods of residence both before and after prison cannot be aggregated and counted towards the 5-year qualifying period for permanent residence.

The CJEU case of [MG \(C-400/12\)](#) confirmed the principle that continuity of residence can be broken by periods of imprisonment in the context of the acquisition of enhanced protections from expulsion (Article 28 of the Directive). MG also established the position that for individuals who are imprisoned, when calculating continuous residence for the purposes of Article 28 enhanced protections, this must be counted backwards from the expulsion date.

Time spent in prison by EEA nationals or their family members broke the integration link with the host state, and therefore broke continuity of residence, for the purpose of acquiring a right of permanent residence.

For example, a person who resided in the UK for 3 years, spent one year in prison and then a further 2 years following their release from prison, could not aggregate the periods before and after prison to count towards the 5 year qualifying period for permanent residence. Any qualifying period would, therefore, have re-started at the point they were released from prison and started residing in accordance with the EEA Regulations.

The initial 3 month period did not come into play following release from prison and therefore the person had to evidence that they began exercising Treaty rights immediately after being released for their period of continuous residence to restart from that point.

Calculating periods of continuous residence

Calculation of length of continuous residence was one of the most important parts of the consideration process, especially when it came to considering whether to remove an individual on grounds of public policy under regulations 24 and 27.

When calculating periods of continuous residence where the person had served a sentence of imprisonment, the caseworker had to:

- count backwards from the date of any expulsion decision as in the CJEU decision of MG
- not aggregate periods before and after time spent in prison
- be aware that the qualifying period would start again following release from prison
- see evidence that the person was residing in accordance with the EEA Regulations following release from prison

For further information on the CJEU cases of Onuekwere and MG, see [the European Economic Area \(EEA\) case law and appeals guidance](#).

No valid proof of continuous residence provided

An application for a document certifying a right of permanent residence was refused if the applicant did not prove that they had been continuously resident in the UK as a qualified person for 5 years. Regulation 36 of the EEA Regulations provided a right of appeal against a refusal on this basis.

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Permanent residence for EU8 nationals

This page tells you how the acquisition of a right of permanent residence from EU8 national workers and their family members was to be assessed when they were relying on residence during the accession period.

The Accession (Immigration and Worker Registration) Regulations 2004 introduced the workers registration scheme (WRS) covering the countries that joined the European Union on 1 May 2004. The scheme lasted until 30 April 2011, when transitional arrangements for EU8 nationals ended.

The period from 1 May 2004 to 30 April 2009 is known, in relation to EU8 countries, as the accession period.

Nationals of the following countries (known as EU8 nationals) were covered by the WRS:

- Czech Republic
- Estonia
- Hungary
- Latvia
- Lithuania
- Poland
- Slovakia
- Slovenia

Exemption from worker registration

Not all EU8 nationals needed to register their employment. The guidance in use when accession state restrictions were in force, which contained a list of exemptions, can be found at European casework instructions chapter 7 - accession state nationals (archived).

Checks to be made

If a EU8 national was relying on a period of work in the period from 1 May 2004 to 30 April 2009, the caseworker had to check that the EU8 national either:

- registered their employment
- was exempt from the need to register

The applicant had to provide evidence of registration or exemption. If the applicant was issued with a European Economic Area (EEA) registration certificate (or residence permit under the 2000 Regulations) after they became exempt from the scheme, they had to provide this document. As long as the caseworking system

confirmed the registration certificate or residence permit was issued on the basis of exemption, the caseworker did not need to see further evidence of exemption.

If the applicant was not issued with an EEA registration certificate or residence permit during the accession period, they had to provide proof to show they were registered on the scheme or exempt, such as:

- their worker registration card and all worker registration certificates held
- letters from employers or contracts of employment confirming the dates they worked
- proof they were exempt from the scheme for other reasons such as:
 - proof they were the family member of an EEA national who was not an accession state national and was exercising Treaty rights in the UK

If an applicant claimed to have lost their WRS card or certificate, the caseworker had to check whether they were registered as claimed.

Related content

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EU8 nationals background information

This page provides background information on the EU8 accession category.

Overview

During the accession period, an EU8 national needed to register their employment under the workers registration scheme (WRS) within one month (30 days) of starting a new job if:

- they were not exempt from worker registration
- the employment was expected to last more than one month

Employment was treated as being authorised for the first month. This means that an EU8 national did not have to register if their period of employment was for one month or less.

If the employment lasted for more than one month, and the EU8 national applied to register within the first 30 days but the application was not decided by the end of that month, they were treated as though they were legally working while the application was pending.

If they did not apply within one month, the employment would be unauthorised after the first month, unless or until they registered.

EU8 nationals who changed employers before completing 12 months of uninterrupted employment in the UK needed to re-register with their new employer under the scheme.

If an EU8 national complied with WRS for the required period of 12 months, they became exempt from the scheme at the end of those 12 months. They could then choose to apply for a registration certificate as a worker under the European Economic Area (EEA) Regulations. Persons who completed 12 months registered employment did not have to register any further employment with the scheme.

EU8 nationals were to be treated as having worked in the UK without interruption for a period of 12 months if they were legally working in the UK at the beginning and end of that period and any intervening periods in which they were not legally working in the UK did not, in total, exceed 30 days.

An EU8 national who worked in the UK, and who had to register under the WRS during the accession period but did not do so, would not have been exercising free movement rights in the UK for any time spent in the UK as a worker before 30 April 2009.

During the accession period, EU8 nationals who were under worker registration:

- could not establish a right of residence as a jobseeker

- only had a right of residence as a worker while they were working in line with the WRS; if they stopped working for any reason before completing 12 months, they would not be treated as a worker in accordance with regulation 6(2) of the EEA Regulations

The Supreme Court judgment of 19 June 2019 in the case of [Secretary of State for Work and Pensions v Gubeladze \[2019\] UKSC 31](#) found that the final two-year extension of the WRS from 2009 to 2011 applied to non-exempt EU8 citizens was a disproportionate measure which was unlawful under EU law. As a result of the judgment, EU8 nationals are deemed to have worked lawfully (and to have exercised Treaty rights) if they had not registered under the WRS before starting any new employment between 1 May 2009 and 30 April 2011. Consequently, such periods should count towards any 5-year period needed to acquire a right of permanent residence under the EEA Regulations when they were in force.

Documents issued to EU8 nationals during the accession period

When an EU8 national registered for the first time on the WRS, they were issued with:

- a worker registration card containing a photograph of the applicant and valid for the duration of the scheme
- a worker registration certificate, giving the name of the employer named on their application and which was valid for as long as they were working for that employer

If the EU8 national changed employer before becoming exempt from the scheme, they needed to register the change of employment. They would then be issued with a new worker registration certificate, giving the name of the new employer. They would not receive a new worker registration card.

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Permanent residence for EU2 nationals

This page tells you how the acquisition of a right of permanent residence by EU2 (Bulgarian and Romanian) national workers and their family members was assessed when they were relying on residence during the transition period from 1 January 2007 until 31 December 2013.

Applications involving EU2 nationals or family members of EU2 nationals

If the applicant was either:

- an EU2 national relying on a period of residence in the UK as a worker
- a person (of any nationality) relying on a period of residence in the UK as the family member of an EU2 worker

the caseworker had to be satisfied that the relevant EU2 national either:

- was working in line with an accession worker authorisation document if needed
- was exempt from holding an accession worker authorisation document

For example, an EU2 national would acquire a right of permanent residence if they completed a continuous 5-year period as a worker, which started with an uninterrupted 12-month period of work in line with an accession worker authorisation document.

If the EU2 national worked without authorisation while they were subject to that requirement, this would not count as legal residence for the purposes of acquiring a right of permanent residence, nor would any subsequent period of unauthorised work undertaken during the transitional period.

Checking the relevant EU2 national was authorised to work or was exempt

If the applicant was relying on a period of residence as a worker, the caseworker had to be satisfied that they were authorised to work or were exempt during the initial 12-month period as a worker.

Applicants who worked during the transitional period needed to provide the following evidence:

- any accession worker authorisation documents they held
- a letter from any relevant employers confirming the dates they worked for them
- evidence they were exempt from worker authorisation, such as:

- a blue registration certificate confirming they had no restrictions on their right to work
- other evidence, such as proof they were married to or in a civil partnership with a British citizen

There may have been circumstances when workers will not be able to provide their worker authorisation document. For example, they had:

- lost it
- since got a blue registration certificate and had to give up their worker authorisation document as part of that application

In such cases, the caseworker had to check the caseworking system to confirm if a worker authorisation document was issued. The caseworker could accept this, alongside the letter from their employer, to show the person had worked for an interrupted period of 12 months.

EU2 nationals who were self-employed, self-sufficient or students

The Accession Treaty did not allow member states to interfere with the right of EU2 nationals to exercise free movement rights as self-employed or self-sufficient persons, or as students.

The caseworker had to consider periods of residence in these categories, or as the family member of such a person, in the same way as for European Economic Area (EEA) nationals who were not subject to transitional arrangements.

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EU2 nationals exempt from worker authorisation

This page tells you about EU2 nationals who were exempt from worker authorisation. If an EU2 national worked for an uninterrupted period of 12 months in line with an accession worker authorisation document, they became exempt from worker authorisation at the end of the 12 months.

This meant they had no restrictions on their right to work and could reside in the UK as workers or jobseekers in the same way as other European Economic Area (EEA) nationals.

Not all EU2 nationals needed to complete 12 months' authorised employment to become exempt. There were a number of exemptions contained in regulation 2 of [the Accession \(Immigration and Worker Authorisation\) Regulations 2006](#) (as amended). Examples included, but were not limited to, where the EU2 national:

- was the spouse or civil partner of a British citizen
- was the family member of an EEA national (other than a Bulgarian or Romanian national) who had a right to reside in the UK
- held a blue registration certificate as a highly skilled person

If an EU2 national was exempt from worker authorisation, they were able to apply for a blue registration certificate. This was not compulsory, except for highly skilled EU2 nationals, who had to get a blue registration certificate to show they were exempt.

The guidance in use when accession state restrictions were in force, containing further information on blue registration certificates, can be found at: Bulgarian and Romanian casework – blue registration certificates (archived).

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EU2 national students and worker authorisation

This page tells you about EU2 national students and worker authorisation. During the transitional period (from 1 January 2007 to 31 December 2013), EU2 nationals were allowed to reside in the UK as students in the same way as other European Economic Area (EEA) nationals.

They could apply for a yellow registration certificate to confirm their right of residence but, unless they also wished to work, were not required to do so.

If an EU2 national student wished to work along with, or as part of, their studies, and they were not otherwise exempt from worker authorisation, they first had to get a yellow registration certificate. This allowed the student to work:

- for up to 20 hours each week during term-time (in work not related to their course)
- full-time while undertaking a work placement which forms part of a vocational training course
- full-time during vacation periods
- full-time for the 4 months following the end of their course (provided they actually complete the course)

The guidance in use when accession state restrictions were in force, containing further information on yellow registration certificates, can be found at: [Bulgarian and Romanian casework – yellow registration certificates \(archive\)](#).

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Documents for EU2 accession nationals

This page tells you about the types of document accession workers could apply for.

Meaning of accession worker authorisation document

Regulation 9(2) of the [Accession \(Immigration and Worker Authorisation\) Regulations 2006](#) (as amended) defined an accession worker authorisation document as:

- an accession worker card (AWC) (also known as a purple card)
- a seasonal agricultural workers scheme (SAWS) card
- a passport or travel document endorsed before 1 January 2007 showing:
 - the holder was granted leave to enter or remain in the UK
 - a condition restricting their employment to a particular employer or category of employment (for example, leave as a work permit holder or au pair)

A SAWS card only permitted legal employment for a maximum of 6 months in any 12-month period, and provided it was in line with the SAWS card.

The last document listed above could be used as an accession worker authorisation document from 1 January 2007 onwards for as long as the leave remained valid and the person was working in line with that leave.

EU2 nationals working in line with one of these documents were called authorised workers.

Other documents issued to EU2 nationals and their family members during the transitional period

Other documents issued to EU2 nationals and their family members during the transitional period could include:

- a yellow registration certificate, issued to EU2 nationals under worker authorisation but who were exercising free movement rights as a self-employed person, student or self-sufficient person
- a blue registration certificate, issued to EU2 nationals exempt from worker authorisation, confirming the holder had unconditional access to the UK labour market. There were 2 types of blue registration certificate:
 - half blue: issued to EU2 nationals who were exempt because they were a family member of another EU2 national who had a right of residence as a self-employed person, student, self-sufficient person, or authorised worker
 - full blue: issued to all other categories of exempt EU2 nationals
- family member residence stamps - issued to non-European Economic Area (EEA) national family members of EU2 nationals who were authorised workers

- residence cards - issued to family members and extended family members of EU2 nationals (except if the EU2 national was an authorised worker); they looked the same as residence cards issued to other non-EEA national family members

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EU2 nationals background information

This page provides background information on EU2 nationals and their accession to the EU.

Bulgaria and Romania (also known as the EU2 or EU2 countries) joined the EU on 1 January 2007. During the transitional period, which ended on 31 December 2013, EU2 nationals who wished to work in the UK needed to get an accession worker authorisation document from the Home Office before they started working, unless they qualified under an exemption.

The requirements which applied to EU2 nationals were set out in [the Accession \(Immigration and Worker Authorisation\) Regulations 2006](#) (as amended).

These restrictions did not apply to EU2 nationals who resided on a self-employed or self-sufficient basis, or as a student in the UK.

Before 1 January 2014, an EU2 national not exempt from worker authorisation:

- could not establish a right of residence as a jobseeker
- only had a right of residence as a worker when working in line with an accession worker authorisation document meaning:
 - they could not keep the status of worker under regulation 6(2) of the European Economic Area (EEA) Regulations if they become unemployed

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Permanent residence for Croatian nationals

This page tells you how acquisition of a right of permanent residence by Croatian nationals was assessed when they were relying on residence during the accession period.

Before 1 July 2018, Croatian nationals could exercise free movement rights in the UK, in the same way as other European Economic Area (EEA) nationals, if they were:

- self-employed persons
- self-sufficient persons
- students

Croatian nationals could only exercise free movement rights as a worker if they obtained permission to do so in line with the [Accession of Croatia \(Immigration and Worker Authorisation\) Regulations 2013](#). However, from 1 July 2018, worker restrictions no longer applied and Croatian nationals were free to work in the UK without authorisation in the same way as other EEA nationals.

Although Croatian nationals were only able to exercise free movement rights in the UK from 1 July 2013, the Court of Justice of the European Union judgment in the case of [Lassal \(C-162/09\)](#) established that time spent in a host member state by nationals of an accession state could count towards the qualifying period for a right of permanent residence provided the residence:

- was in line with domestic (UK) law
- satisfied the conditions of the relevant European law

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The Swiss agreement and posted workers

This page tells you about the Swiss agreement and arrangements for posted workers until 31 December 2020.

The 2002 Swiss Free Movement of Persons Agreement included a provision to allow a self-employed Swiss national or a company based in Switzerland that conducted business in the UK to send their European Economic Area (EEA) or non-EEA national employees to provide services on their behalf in the UK for up to 90 days without needing permission to work.

People who came to the UK in this way were known as posted workers.

For a company to qualify, it must have shown that it complied with the law of Switzerland and had its registered office, central administration or principal place of business in Switzerland.

The posted worker must also have been previously legally resident and employed in Switzerland or an EEA country.

Family members were not allowed to accompany posted workers to the UK.

As part of the UK-Swiss Citizens' Rights Agreement, transitional arrangements were made for service provision contracts which were signed, and had work commenced, by 31 December 2020. This commitment is implemented by [Appendix Service Providers from Switzerland in the Immigration Rules](#).

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