



Home Office

# EU Settlement Scheme: derivative right to reside (Chen and Ibrahim / Teixeira cases)

Version 6.0

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# About this guidance

This guidance tells you how, from 12 April 2023, to consider whether an applicant to the EU Settlement Scheme is a ‘person with a derivative right to reside’ as defined in the Immigration Rules for the scheme contained in [Appendix EU to the Immigration Rules](#).

For convenience this guidance generally uses the present tense. However, it is important you apply the guidance to the relevant period relied upon.

## The best interests of the child

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

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

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

Further guidance can be found in paragraphs 2.34 to 2.36 of the [statutory guidance](#).

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

## Contacts

If you have any questions about this guidance and your line manager or senior caseworker cannot help you, or you think that the guidance has factual errors, then email the EEA Citizens’ Rights & Hong Kong Unit.

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

## Publication

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

- version **6.0**
- published for Home Office staff on **12 April 2023**

## Changes from last version of this guidance

Changes have been made to reflect the changes to Appendix EU made in Statement of Changes in Immigration Rules HC 1160, laid on 9 March 2023.

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

[Statement of Changes in Immigration Rules HC 1160](#)

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#)

[Every Child Matters – Change for Children](#)



# Introduction

A 'person with a derivative right to reside' can apply to the EU Settlement Scheme: also referred to in this guidance as 'the scheme'.

Such persons are often described as 'Chen' or 'Ibrahim and Teixeira' cases. A derivative right to reside in such cases was derived from wider EU law rather than the Free Movement Directive 2004/38/EC and was confirmed by the Court of Justice of the European Union (CJEU) judgments of those names: [Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#), [Ibrahim C-310/08](#) and [Teixeira C-480/08](#). In summary, Chen cases concern the primary carer of a self-sufficient European Economic Area (EEA) citizen child in the UK (and under-18 dependants of the primary carer) and Ibrahim and Teixeira cases concern a child in education in the UK of an EEA citizen former worker (or, in line with the citizens' rights agreements, self-employed person) in the UK and the child's primary carer (and under-18 dependants of the primary carer).

Derivative rights to reside in the UK ceased to exist at the end of the post-EU exit transition period at 11pm Greenwich Mean Time (GMT) on 31 December 2020. However, Chen and Ibrahim and Teixeira cases are covered by the Withdrawal Agreement with the EU and the citizens' rights agreements with the other EEA countries and Switzerland. Those agreements protect their previous right to reside under EU law, which did not include the right to acquire the right of permanent residence. Nevertheless, the UK decided as a matter of more generous domestic provision to provide those with such a right to reside in the UK by the end of the transition period with access to the EU Settlement Scheme, which includes the scope for them to obtain indefinite leave to enter or remain in the UK.

The scheme makes separate provision for those with a derivative right to reside based on the CJEU judgment in [Zambrano](#). From 1 May 2019, a 'person with a Zambrano right to reside' has been able to apply under the scheme. Separate guidance – EU Settlement Scheme: a person with a Zambrano right to reside – must be used to consider such applications.

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

- the application has been made using the required application process (which, in the case of a 'person with a derivative right to reside', is the required paper application form)
- the required proof of identity and nationality (or of entitlement to apply from outside the UK, where the application is made outside the UK) has been provided
- the required biometrics have been provided

Where you have established that the applicant has made a valid application and, using this guidance, is a 'person with a derivative right to reside', you must then use EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members to determine whether they have either:

- completed a continuous qualifying period of 5 years and so are to be considered for indefinite leave to enter or remain
- completed a continuous qualifying period of less than 5 years and so are to be considered for limited leave to enter or remain

Where this guidance refers to the 'specified date', this means the end of the transition period at 11pm GMT on 31 December 2020 (unless the applicant is a 'relevant EEA family permit case').

Where the applicant is a 'person with a derivative right to reside' who falls within the definition of a '[relevant EEA family permit case](#)' in [Annex 1 to Appendix EU](#), 'specified date' means, for the purposes specified in that definition, 1159pm GMT on the date they arrived in the UK.

Where this guidance refers to a 'supervening event', this means that, at the date of application, either:

- the person has been absent from the UK and Islands for a period of more than 5 consecutive years at any point since they last either:
  - completed a continuous qualifying period of 5 years
  - acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations
  - acquired the right of permanent residence in the Islands through the application there of section 7(1) of the Immigration Act 1988 (as it had effect before it was repealed) or under the Immigration (European Economic Area) Regulations of the Isle of Man
- any of the following events has occurred in respect of the person, unless it has been set aside or revoked:
  - any decision or order to exclude or remove them from the UK under regulation 23 or 32 of the EEA Regulations (or under equivalent provisions of the EEA Regulations of the Isle of Man)
  - a decision to which regulation 15(4) of the EEA Regulations otherwise refers in respect of their right to permanent residence in the UK, unless that decision arose from a previous decision under regulation 24(1) (or the equivalent decision, subject to the equivalent qualification, under the Immigration (European Economic Area) Regulations of the Isle of Man)
  - an exclusion decision
  - a deportation order, other than by virtue of the EEA Regulations
  - an Islands deportation order
  - an Islands exclusion decision

Where this guidance refers to the 'EEA Regulations', it means (as defined in [Annex 1 to Appendix EU](#)) either:

- (where relevant to something done before 11pm GMT on 31 December 2020) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before that date and time)
- (where relevant to something done after 11pm GMT on 31 December 2020 and before 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as, despite the revocation of those Regulations, they continued to have effect, with specified modifications, by virtue of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020)
- (where relevant to something done on or after 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before they were revoked and, where the context requires it, on the basis that those Regulations had not been revoked)

EEA and Swiss citizens (defined, together with certain others, such as certain dual British and EEA citizens, in [Annex 1 to Appendix EU](#), and referred to in this guidance, as an 'EEA citizen') resident in the UK by the specified date can rely on their own continuous qualifying period of residence in order to qualify for leave under the EU Settlement Scheme. As a result, an applicant who needs to rely on the derivative rights provisions is likely to be a non-EEA citizen.

Reference in this guidance to 'the Islands' means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man.

## Relevant EEA family permit case

A 'relevant EEA family permit case' in the context of this guidance is either:

- a person with a derivative right to reside who arrived in the UK after 11pm GMT on 31 December 2020 and by 30 June 2021 with a valid EEA family permit issued under the EEA Regulations on the basis of a valid application made under the EEA Regulations before 11pm GMT on 31 December 2020
- a person with a derivative right to reside who arrived in the UK after 11pm GMT on 31 December 2020 with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met the definition in Annex 1 to that Appendix of 'specified EEA family permit case'

## Applications to switch from pre-settled to settled status

Where a person with limited leave to enter or remain granted under Appendix EU (known as 'pre-settled status' under the EU Settlement Scheme) as a 'person with a derivative right to reside' makes a valid application under Appendix EU for indefinite leave to enter or remain (known as 'settled status' under the scheme) as such a person (or as a 'person who had a derivative or Zambrano right to reside'), you do not need to revisit the basis on which that limited leave was granted, but need only consider the eligibility and suitability requirements relevant to the period since then.

### Related content

[Contents](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members  
EU Settlement Scheme Family permit and Travel permit

**Related external links**

[Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#)

[Ibrahim C-310/08](#)

[Teixeira C-480/08](#)

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

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

[Appendix EU to the Immigration Rules](#)

# Section 1: Overview of eligibility requirements

## Who is a ‘person with a derivative right to reside’?

A ‘person with a derivative right to reside’ is a person who has satisfied the Secretary of State by evidence provided that they are (and for the relevant period have been), or (as the case may be) for the relevant period they were either:

- (a) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are the [primary carer](#) of an EEA citizen
  - the EEA citizen is under the age of 18 years and resides in the UK as a self-sufficient person
  - the EEA citizen would in practice be unable to remain in the UK if the person (or both primary carers, where the role of [primary carer](#) is shared with another person in accordance with the definition of ‘primary carer’ in [Annex 1 to Appendix EU](#)) in fact left the UK for an indefinite period
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect
- (b) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are in education in the UK
  - any of the person’s parents (“PP”) is an EEA citizen who resides or has resided in the UK
  - both the person and PP reside or have resided in the UK at the same time and during such a period of residence PP has been a worker or self-employed person in the UK
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect
- (c) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are the primary carer of a person who meets the requirements of subparagraph (b) above (“PPP”)
  - PPP would in practice be unable to continue to be educated in the UK if the person (or both primary carers, where the role of [primary carer](#) is shared with another person in accordance with the definition of ‘primary carer’ in [Annex 1 to Appendix EU](#)) in fact left the UK for an indefinite period
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect

- (d) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are under the age of 18 years (unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a ‘person with a derivative right to reside’ and were under 18 at the date of application for that leave); and
  - their primary carer meets the requirements of sub-paragraph (a) or (c) above
  - the primary carer would in practice be prevented from residing in the UK if the person in fact left the UK for an indefinite period
  - they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in [Annex 1 to that Appendix](#)
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect

In addition:

- [relevant period](#) means here the continuous qualifying period in which the person relies on meeting this definition
- unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#), the relevant period must have been continuing at 11pm GMT on 31 December 2020
- ‘EEA citizen’ means in accordance with sub-paragraph (a)(i) of that definition in [Annex 1 to Appendix EU](#) and, where they are also a British citizen, the EEA citizen falls within sub-paragraphs (c) and (d) of the definition there of ‘relevant naturalised British citizen’
- ‘self-sufficient person’ means a person with sufficient resources not to become a burden on the social assistance system of the UK, regardless of whether they hold comprehensive sickness insurance cover in the UK
- ‘education in the UK’ excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age

This definition covers so-called ‘Chen’ primary carers and their dependants under the age of 18 and ‘Ibrahim and Teixeira’ children, primary carers and those carers’ dependants under the age of 18. It excludes ‘Zambrano carers’ and their dependants under the age of 18, for whom separate provision is made in Appendix EU as a ‘person with a Zambrano right to reside’.

There are therefore 3 key elements which must be met where an applicant to the EU Settlement Scheme relies on being or having been a ‘person with a derivative right to reside’:



1. the applicant must meet the requirements of the definition **throughout the continuous qualifying period in the UK** in which they rely on being or having been a 'person with a derivative right to reside'
2. that continuous qualifying period in the UK as a 'person with a derivative right to reside' **must have begun before the specified date** (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK)
3. the applicant must also meet **one** of the following, either:
  - their **continuous qualifying period in the UK** as a 'person with a derivative right to reside' must have been continuing at 11pm GMT on 31 December 2020 (unless they are a [relevant EEA family permit case](#)) and must be continuing at the date of application to the scheme
  - their **continuous qualifying period in the UK** as a 'person with a derivative right to reside' must have been continuing at 11pm GMT on 31 December 2020 (unless they are a [relevant EEA family permit case](#)) and ended when the applicant completed a 5-year continuous qualifying period in the UK as such a person (and by the date of their application there has been no supervening event)
  - at the date of their application to the scheme, the applicant must be a '[person who had a derivative or Zambrano right to reside](#)', meaning that, before the specified date, they were a 'person with a derivative right to reside' immediately before they met (whether before or after the specified date) another qualifying category (such as the family member of a relevant EEA citizen) and have since remained in that or another qualifying category through to the date of their application to the scheme. In such cases, they can aggregate their continuous residence across these categories where eligibility for indefinite leave to enter or remain under Appendix EU is concerned

## Chen primary carer cases

In the case of Chen, the CJEU found that the primary carer of a self-sufficient EEA citizen child is entitled to a right to reside under EU law, if refusing such a right prevents the child from continuing to reside in the UK. Appendix EU does not require the EEA citizen child to hold, or have held, comprehensive sickness insurance. The conditions for this derivative right to reside are set out in sub-paragraph (a) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#).

Under sub-paragraph (a), the applicant will be a 'person with a derivative right to reside' where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a derivative right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an [exempt person](#)
- the applicant must be the [primary carer](#) of a child, by both:

- being their [direct relative](#) or [legal guardian](#)
- having primary responsibility for their care or sharing equally the responsibility for their care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility
- the child:
  - must be an EEA citizen under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a 'person with a derivative right to reside' and were under the age of 18 at the date of application for that leave
  - must be resident in the UK
  - must hold sufficient resources to prevent them becoming a burden on the UK's social assistance system during the period of residence, regardless of whether they meet (or, as the case may be, met) the requirement in regulation 4(1)(c)(ii) of the EEA Regulations for comprehensive sickness insurance cover in the UK
  - would in practice be [unable to remain in the UK if the primary carer \(or both primary carers, where the role of primary carer is shared with another person\) in fact left the UK for an indefinite period](#)
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

## Ibrahim and Teixeira children and primary carer cases

In the cases of Ibrahim and Teixeira, the CJEU ruled that the following persons have a right to reside under EU law:

- the child of a former EEA citizen worker (or, in line with the Withdrawal Agreement) self-employed person where the child is in education in the UK
- their primary carer where requiring them to leave the UK for an indefinite period would prevent the child from continuing their education in the UK

The conditions for the child are set out in sub-paragraph (b) of the definition of a 'person with derivative right to reside' in [Annex 1 to Appendix EU](#).

Under sub-paragraph (b), the applicant will be 'a person with a derivative right to reside' where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a derivative right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an [exempt person](#)
- the applicant is in education in the UK



- the applicant is the child of a former EEA citizen worker or self-employed person who resides or has resided in the UK
- the applicant lived in the UK while their EEA citizen parent worked or was self-employed in the UK
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

The conditions for the child's primary carer are set out in sub-paragraph (c) of the definition of 'person with derivative right to reside' in [Annex 1 to Appendix EU](#).

Under sub-paragraph (c), the applicant will be a 'person with a derivative right to reside' where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a derivative right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an [exempt person](#)
- the applicant is the [primary carer](#) of a child who meets the conditions of sub-paragraph (b) above, by both:
  - being their [direct relative](#) or [legal guardian](#)
  - having primary responsibility for their care or sharing equally the responsibility for their care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility
- the child would in practice be unable to continue to be educated in the UK if the primary carer in fact left the UK for an indefinite period
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

## Dependant of the primary carer cases

Sub-paragraph (d) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#) sets out the requirements for a dependant under the age of 18 of a primary carer who meets the definition of a 'person with a derivative right to reside'.

Under sub-paragraph (d), the applicant will be 'a person with a derivative right to reside' where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a derivative right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an exempt person
- the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as ‘a person with a derivative right to reside’ and were under the age of 18 at the date of application for that leave
- the applicant does not have leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix
- their primary carer meets the requirements of sub-paragraph (a) or (c) of the definition of ‘person with a derivative right to reside’ in Annex 1 to Appendix EU
- their primary carer would in practice be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

## Resident for a continuous qualifying period in the UK which began before the specified date and throughout which the relevant criteria are met

The applicant’s continuous qualifying period in the UK as a ‘person with a derivative right to reside’ must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [‘relevant EEA family permit case’](#), 1159pm GMT on the date they arrived in the UK).

The applicant must meet the requirements of the definition of a ‘person with a derivative right to reside’ throughout the continuous qualifying period in the UK in which they rely on being or having been such a person.

## Relevant period

‘Relevant period’ means the continuous qualifying period in which the applicant relies on meeting the definition of ‘person with a derivative right to reside’. For more information on continuous qualifying period, see EU Settlement Scheme EU, other EEA, Swiss citizens and family members.

The relevant period must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

As stated above, for convenience this guidance generally refers to the requirements in the present tense. However, it is important you apply the guidance to the relevant period relied upon.

## Who is a ‘person who had a derivative or Zambrano right to reside’?

Appendix EU allows an applicant to rely on past continuous residence in the UK as a ‘person with a derivative right to reside’ where, before the specified date, they were a person with a derivative right to reside immediately before they switched (whether before or after the specified date) into another qualifying category under the scheme.

Such a ‘[person who had a derivative or Zambrano right to reside](#)’ is defined in [Annex 1 to Appendix EU](#) (including as a qualifying category under condition 3 of rule EU11). In summary, they are a person who both:

- before the specified date was a person with a derivative right to reside immediately before they became (whether before or after the specified date) a relevant EEA citizen, a family member of a relevant EEA citizen, a person with a Zambrano right to reside or a family member of a qualifying British citizen
- has remained, or (as the case may be) remained, in any (or any combination) of those categories (including where they subsequently became a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen or with a qualifying British citizen)

Where an applicant relies on meeting this definition, the continuous qualifying period in which they rely on doing so must have been continuing at 11pm GMT on 31 December 2020. However, it does not matter whether at that point they were a ‘person with a derivative right to reside’ or were in one of the other categories referred to above.

Where such an applicant relies on having been a ‘person with a derivative right to reside’ as part of their continuous qualifying period, you must use this guidance to assess whether they satisfied the requirements throughout that [relevant period](#).

## Making an application: deadline

An application under Appendix EU must be made by the required date: see the section on ‘Making an application: deadline’ in the guidance on EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, including the scope for an application to be made after the relevant deadline where there are reasonable grounds for the person’s delay in making their application.

### Related content

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EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members  
EU Settlement Scheme: family member of a qualifying British citizen

### Related external links

[Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#)

[Ibrahim C-310/08](#)

[Teixeira C-480/08](#)

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

[Immigration \(European Economic Area\) Regulations 2016](#)  
[Appendix EU to the Immigration Rules](#)

## Section 2: All applications – initial eligibility requirements

You must first consider whether the applicant meets the initial eligibility requirements.

To be considered eligible under Appendix EU as a ‘person with a derivative right to reside’, the applicant for the [relevant period](#):

- must not be an [exempt person](#)
- must not be [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect

### Exempt person

To be considered eligible as a ‘person with a derivative right to reside’, the applicant must not for the relevant period be an ‘exempt person’.

An ‘exempt person’ (as defined in [Annex 1 to Appendix EU](#)) is a person who:

- had a right to reside in the UK under the EEA Regulations, other than under regulation 16, or example, as a person who exercised free movement rights as an EEA citizen or their family member: see [Immigration \(European Economic Area\) Regulations 2016](#) - in such a case, they will be an ‘exempt person’ and so will not be a ‘person with a derivative right to reside’, but you must then go on to consider whether they are eligible on other grounds for leave under Appendix EU
- has the right of abode in the UK under section 2 of the Immigration Act 1971 - for example, the person is a British citizen: see Right of abode - in such a case, you must treat the application as void, as a person with the right of abode cannot be granted leave under the scheme
- is exempt from immigration control in accordance with section 8(2), (3) or (4) of the Immigration Act 1971: see [persons exempt from control](#) - in such a case, they will be an ‘exempt person’ and so cannot be considered a ‘person with a derivative right to reside’, but you must then go on to consider whether they are eligible on other grounds for leave under Appendix EU
- has indefinite leave to enter or remain in the UK: you can ascertain this by checking Home Office records - if they do, they may be eligible for indefinite leave to enter or remain under the scheme under condition 2 of rule EU11 of Appendix EU

If the applicant is an ‘exempt person’ on the basis that the first, third or fourth of the bullet points above applies, then you must, based on the information available to you, consider their eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU, see: EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If they are such an 'exempt person' and they do not meet any other eligibility requirements for leave under the scheme, then you must refuse the application under rule EU6, without going on to consider the other eligibility requirements in this guidance.

## **Subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect**

A derivative right to reside is not available to a person subject to one of the following decisions made under the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect:

- under [regulation 23\(6\)\(b\)](#), to remove on grounds of public policy, public security or public health in accordance with regulation 27
- under [regulation 24\(1\)](#), to refuse to issue, to revoke or to refuse to renew residence documentation on grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with regulation 26(3)
- under [regulation 25\(1\)](#), to cancel a right of residence
- under [regulation 26\(3\)](#), on grounds of misuse of rights
- under [regulation 31\(1\)](#), to revoke admission

An applicant cannot therefore meet the definition of a 'person with a derivative right to reside' under [Annex 1 to Appendix EU](#) if they are subject to any of the above decisions during the [relevant period](#), unless that decision has been set aside or otherwise no longer has effect.

If the applicant does not meet this requirement, then you must, based on the information available to you, consider their eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU, see: EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If they do not meet any other eligibility requirements for leave under the scheme, then you must refuse the application under rule EU6, without going on to consider the other eligibility requirements in this guidance.

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## Section 3: Eligibility – Chen primary carer

Where the applicant relies on being a Chen primary carer and meets the initial eligibility requirements in section 2 of this guidance, you must then consider the following 4 additional stages:

- [stage 1: primary carer](#): assessing whether the applicant is the primary carer of the EEA citizen child
- [stage 2: EEA citizen child under 18](#): assessing whether the child is an EEA citizen and under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a 'person with a derivative right to reside' and were under the age of 18 at the date of application for that leave
- [stage 3: EEA citizen child resides in the UK as a self-sufficient person](#): assessing whether the EEA citizen child resides in the UK as a self-sufficient person
- [stage 4: EEA citizen child unable to remain in the UK](#): assessing whether, in practice, the EEA citizen child would be unable to remain in the UK if the applicant was in fact required to leave the UK for an indefinite period

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a 'person with a derivative right to reside' for them to be eligible for leave under the scheme as such a person.

In addition, that [relevant period](#) must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

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# Stage 1: Primary carer

The first additional stage is to assess whether the applicant is the primary carer of the relevant European Economic Area (EEA) citizen child.

## Primary carer

A primary carer is defined in [Annex 1 to Appendix EU](#) as a [direct relative](#) or [legal guardian](#) who either:

- has primary responsibility for the child's care
- shares equally the responsibility for the child's care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

A person is not to be regarded as having responsibility for another person's care on the sole basis of a financial contribution to that care.

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they were the primary carer of the relevant EEA citizen child, you must assess whether the applicant remains the primary carer of the relevant EEA citizen child throughout the continuous qualifying period relied upon which began before the specified date.

For guidance on assessing whether a person is a primary carer, see [primary carer](#).

## Assessing 'direct relative' or 'legal guardian'

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they are the direct relative of the relevant EEA citizen child, you can accept that this has already been confirmed.

Where the applicant has not been issued with such a document or has been issued with one based on legal guardianship, you must be satisfied from information or evidence provided by the applicant that either:

- they are the direct relative of the relevant EEA citizen child and were so before the specified date
- throughout the continuous qualifying period relied upon, which began before the specified date, they were the EEA citizen child's legal guardian

See [direct relative](#) or [legal guardian](#) for more guidance on determining who is a direct relative or legal guardian.



## Conclusion on stage 1

Where you are satisfied that the applicant is and for the relevant period has been (or, as the case may be, for the relevant period they were) the primary carer of the relevant EEA citizen child, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 2: EEA citizen child under 18

The second additional stage is to consider whether the relevant child is an European Economic Area (EEA) citizen and under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a 'person with a derivative right to reside' and were under the age of 18 at the date of application for that leave.

### EEA citizenship

For the purposes of this assessment, an 'EEA citizen' is a person who is either:

- a national of: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or Switzerland, and not also a British citizen
- a 'relevant naturalised British citizen' (as defined in [Annex 1 to Appendix EU](#)), that is a 'Lounes dual national'

A 'McCarthy dual national' and a 'relevant person of Northern Ireland' are not considered an 'EEA citizen' for the purpose of this assessment because a primary carer of such a person did not have a right to reside in the UK as a Chen primary carer.

To satisfy you of the EEA citizenship of the relevant child, the applicant can, for example, provide the valid passport or the valid national identity card of the child as an EEA citizen, or the EU Settlement Scheme application number of the child where they have applied for or been granted leave as an EEA citizen under the scheme.

### Age

To satisfy you that, before the specified date and at the date of application, the child is under the age of 18 – unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a 'person with a derivative right to reside' and were under the age of 18 at the date of application for that leave – the applicant can, for example, provide the valid passport or valid national identity card of the child; the child's in-date residence document issued under the EEA Regulations; the child's birth certificate; or the EU Settlement Scheme application number of the child where they have applied for or been granted leave under the scheme.

Where the applicant provides a child's in-date residence document issued under the EEA Regulations, it does not matter that the child concerned no longer has the right to enter or reside under the EEA Regulations on which basis the document was issued, by virtue of the revocation of those Regulations.

### Conclusion on stage 2

Where you are satisfied that the relevant child is (or was) an EEA citizen under the age of 18, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 3: EEA citizen child resides in the UK as a self-sufficient person

The third additional stage is to assess whether the European Economic Area (EEA) citizen child resides in the UK as a self-sufficient person, meaning that they have sufficient resources not to become a burden on the social assistance system of the UK.

### Resides in the UK

You must be satisfied that the EEA citizen child resides in the UK and you must work flexibly with the applicant to help them evidence this by the best means available to them. For further information see the section on 'Evidence of residence' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

### Income from the primary carer

The applicant can show that the EEA citizen child is self-sufficient by relying on the income of the applicant.

In addition, in light of the Court of Justice of the European Union (CJEU) judgment in *Bajratari*, the primary carer may rely on funds accrued from 'unlawful employment', such as employment without permission, provided that it did not involve engaging in a criminal activity.

### Income from other sources

If the applicant is not working in the UK, or does not earn enough income to demonstrate that the EEA citizen child and they are self-sufficient, you may accept other evidence which may include:

- bank statements showing income from other sources, for example rental income
- savings accounts showing funds which are accessible to the child

This is not an exhaustive list and there may be other evidence of funds which can be considered acceptable.

### Comprehensive sickness insurance

An individual applying as a 'person with a derivative right to reside' based on *Chen* does not need to show that the EEA citizen child holds comprehensive sickness insurance. You therefore must not seek evidence of this.

## An unreasonable burden on the UK's social assistance system?

You must consider whether the EEA citizen child is a beneficiary of the UK's social assistance system, directly or via the primary carer, and whether, in light of the CJEU judgment in Bajratari, that makes the child an unreasonable burden on that system during the period of residence.

Where funds of the primary carer are from the UK's social assistance system, irrespective of the fact that the child is not themselves the claimant, the child can, in principle, be considered an unreasonable burden on that system if the amount of funds claimed is of sufficient magnitude that it is unreasonable for the UK to shoulder.

For these purposes, Asylum Support paid by the Home Office for the benefit of the child is to be considered part of the UK's social assistance system.

To assess whether the EEA citizen child has sufficient resources to cover their essential needs – accommodation, food, clothing, school supplies, etc – for them not to become an unreasonable burden on the UK's social assistance system during the period of residence, you must consider:

1. Does the child have sufficient resources in their own right without having recourse to social assistance?
2. If not, and together with (1), does the child have sufficient resources provided by the primary carer, without either the child or the primary carer having recourse to social assistance?
3. If not, has the child had recourse to social assistance directly or via the primary carer?
4. In light of (2) and (3), will the child (or have they) become an unreasonable burden on the UK's social assistance system during the period of residence?

You must make an individualised assessment in each case, looking at (i) the amount of social assistance received by the child and / or the primary carer and over what period; (ii) whether the child is a primary beneficiary of those funds; and (iii) whether it would be reasonable and proportionate to refuse the application on that basis in light of all the circumstances.

In line with Bajratari, the decision must be necessary and proportionate in order to protect the public finances of the host state.

## Conclusion on stage 3

Where you are satisfied that the EEA citizen child is and for the relevant period has been (or, as the case may be, for the relevant period they were) resident in the UK as a self-sufficient person, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 4: EEA citizen child unable to remain in the UK

The fourth additional stage is to assess whether, in practice, the relevant European Economic Area (EEA) citizen child would be unable to remain in the UK if the applicant were in fact required to leave the UK for an indefinite period.

In line with the Court of Appeal judgment in *Velaj v SSHD* [2022] EWCA Civ 767, this assessment requires a fact-based enquiry looking at whether, in practice, the child would be unable to remain in the UK if the applicant was in fact required to leave the UK for an indefinite period.

### Could the relevant EEA citizen child remain in the UK?

For detailed guidance on how to assess this, see the [‘Velaj assessment’](#) section.

### Alternative care arrangements

To assess whether the applicant meets this stage, you must also consider whether there are alternative care arrangements which could be made for the child in those circumstances.

If there are alternative care arrangements, you must then consider whether such arrangements are appropriate, including, in particular, in light of the [best interests](#) of the relevant child (and of any other child of the applicant affected by the decision). For further guidance, see [alternative care arrangements](#).

If there are appropriate alternative care arrangements for the relevant EEA citizen child, the applicant will not be a ‘person with a derivative right to reside’.

### Conclusion on stage 4

Where you are satisfied that, in practice, the EEA citizen child would be and for the relevant period would have been (or, as the case may be, for the relevant period they would have been) unable to remain in the UK if the applicant were (or, as the case may be, had been) in fact required to leave the UK for an indefinite period, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant’s eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

## Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 4, you must next go on to [Section 8: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a derivative right to reside'.

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## Section 4: Eligibility – Ibrahim and Teixeira child

Where the applicant relies on being an Ibrahim and Teixeira child (who may have turned 18) and meets the initial eligibility requirements in section 2 of this guidance, you must then consider the following 3 additional stages:

- [stage 1: child in education in the UK](#): assessing whether the applicant is in education in the UK
- [stage 2: child of an EEA citizen](#): assessing whether the applicant is the child of an EEA citizen who resides or resided in the UK
- [stage 3: child in the UK when the EEA citizen parent was a worker or self-employed person in the UK](#): assessing whether the applicant lived in the UK while the EEA citizen parent was a worker or self-employed person in the UK

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a 'person with a derivative right to reside' for them to be eligible for leave under the scheme as such a person.

In addition, that [relevant period](#) must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

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# Stage 1: Child in education in the UK

The first additional stage is to assess whether the child (who may have turned 18) is in education in the UK.

## Education

Education excludes nursery education but includes education received before the compulsory school age where that education is equivalent to the education received from the compulsory school age. Attending a reception class is not considered nursery education and is therefore included.

To satisfy you that the child is in education in the UK, the applicant can, for example, provide a letter from the relevant education establishment or establishments that confirms the date that they started education at that establishment and, if relevant, the date they completed their education there.

## Conclusion on stage 1

Where you are satisfied that the child is and for the relevant period has been (or, as the case may be, for the relevant period they were) in education in the UK, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 2: Child of an EEA citizen

The second additional stage is to assess whether the applicant is the child (who may have turned 18) of an European Economic Area (EEA) citizen.

Where the applicant has been issued with a residence card or family permit under the EEA Regulations on the basis they are the child of the same EEA citizen, you can accept that this has already been confirmed and move to the next stage.

### EEA citizenship

For the purposes of this assessment, an 'EEA citizen' is a person who is either:

- a national of: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or Switzerland, and not also a British citizen
- a 'relevant naturalised British citizen' (as defined in [Annex 1 to Appendix EU](#)), that is a 'Lounes dual national'

A 'McCarthy dual national' and a 'relevant person of Northern Ireland' are not considered an 'EEA citizen' for the purpose of this assessment because a child of such a person did not have a right to reside in the UK as an Ibrahim and Teixeira child.

To satisfy you of the citizenship of the EEA citizen, the applicant can, for example, provide the valid passport or the valid national identity card of that person as an EEA citizen, or the EU Settlement Scheme application number of that person where they have applied for or been granted leave as an EEA citizen under the scheme.

### Adopted children and step-children

An adopted child (adopted in accordance with a 'relevant adoption decision' as defined in [Annex 1 to Appendix EU](#)) and a step-child of an EEA citizen are to be considered in the same way as if they were the biological child of the EEA citizen with regard to Ibrahim and Teixeira.

A 'relevant adoption decision' is defined in [Annex 1 to Appendix EU](#) as an adoption decision taken either:

- by the competent administrative authority or court in the UK or the Islands
- by the competent administrative authority or court in a country whose adoption orders are recognised by the UK or the Islands
- in a particular case in which that decision in another country has been recognised in the UK or the Islands as an adoption

## Relationship between child and EEA citizen

To satisfy you of the relationship between the child and the EEA citizen, the applicant can, for example, provide their birth certificate, their birth certificate and the marriage certificate for their parent and the EEA citizen (where applying as a step-child) or evidence of the adoption (where applying as an adopted child).

You must be satisfied as to the relationship between the child and the EEA citizen upon whom the child is basing their application.

## Conclusion on stage 2

Where you are satisfied that the applicant is and for the relevant period has been (or, as the case may be, for the relevant period they were) the child of an EEA citizen, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 3: Child in the UK when EEA citizen parent was a worker or self-employed person in the UK

The third additional stage is to assess whether the applicant lived in the UK while their European Economic Area (EEA) citizen parent was a worker or self-employed person in the UK.

It is not necessary for the parent to have been a worker or self-employed person in the UK while the applicant was in education in the UK.

### Worker

The EEA citizen parent will be considered a worker in the UK where there is evidence which satisfies you that they are a worker as defined in regulation 4(1) of the EEA Regulations.

There is no minimum period for how long the EEA citizen parent must have been a worker in the UK, as long as the applicant was in the UK at the same time. Work undertaken in line with the EU8 and EU2 worker schemes is acceptable. For more information see: Qualified persons guidance.

A worker does not include the following for these purposes:

- a jobseeker
- a person who is no longer working but who continues to be treated as a worker within the meaning of “qualified person” under regulation 6 of the EEA Regulations

### Self-employed person

The EEA citizen parent will be considered a self-employed person in the UK where there is evidence which satisfies you that they are a self-employed person as defined in regulation 4(1) of the EEA Regulations.

There is no minimum period for how long the EEA citizen parent must have been a self-employed person in the UK, as long as the applicant was in the UK at the same time. For more information see: Qualified persons guidance.

A self-employed person does not include for these purposes a person who is no longer in self-employment but who continues to be treated as a self-employed person within the meaning of “qualified person” under regulation 6 of the EEA Regulations.

## Child in the UK

You must be satisfied that the child was resident in the UK at the same time as their EEA citizen parent was a worker or self-employed person here, and you must work flexibly with the applicant to help them evidence this by the best means available to them. For further information see the section on 'Evidence of residence' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

## Conclusion on stage 3

Where you are satisfied that during the [relevant period](#) the applicant has lived in the UK while their EEA citizen parent was a worker or self-employed person in the UK, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

## Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 3, you must next go on to [Section 8: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a derivative right to reside'.

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# Section 5: Eligibility – Ibrahim and Teixeira primary carer

Where the applicant relies on being an Ibrahim and Teixeira primary carer and meets the initial eligibility requirements in section 2 of this guidance, you must then consider the following 3 additional stages:

- [stage 1: primary carer](#): assessing whether the applicant is the primary carer of the child
- [stage 2: Ibrahim and Teixeira child](#): assessing whether the relevant child (who may have turned 18) meets the requirements as an Ibrahim and Teixeira child
- [stage 3: child unable to continue to be educated in the UK](#): assessing whether, in practice, the child would be unable to continue to be educated in the UK if the applicant was in fact required to leave the UK for an indefinite period

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a 'person with a derivative right to reside' for them to be eligible for leave under the scheme as such a person.

In addition, that [relevant period](#) must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

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# Stage 1: Primary carer

The first additional stage is to assess whether the applicant is the primary carer of the child.

## Primary carer

A primary carer is defined in [Annex 1 to Appendix EU](#) as a [direct relative](#) or [legal guardian](#) who either:

- has primary responsibility for the child's care
- shares equally the responsibility for the child's care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the European Economic Area (EEA) Regulations or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

A person is not to be regarded as having responsibility for another person's care on the sole basis of a financial contribution to that care.

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they were the primary carer of the child, you must assess whether the applicant remains the primary carer of the child throughout the continuous qualifying period relied upon which began before the specified date.

For guidance on assessing whether a person is a primary carer, see [primary carer](#).

## Assessing 'direct relative' or 'legal guardian'

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they are the direct relative of the child, you can accept that this has already been confirmed.

Where the applicant has not been issued with such a document or has been issued with one based on legal guardianship, you must be satisfied from information or evidence provided by the applicant that either:

- they are the direct relative of the relevant child and were so before the specified date
- throughout the continuous qualifying period relied upon which began before the specified date, they were the child's legal guardian

See [direct relative](#) or [legal guardian](#) for more guidance on determining who is a direct relative or legal guardian.



## Conclusion on stage 1

Where you are satisfied that the applicant is the primary carer of the child, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 2: Ibrahim and Teixeira child

The second additional stage is to consider whether the relevant child meets the requirements as an Ibrahim and Teixeira child as set out in sub-paragraph (b) of the definition in [Annex 1 to Appendix EU](#) of a 'person with derivative right to reside'. See [Section 4: Eligibility – Ibrahim and Teixeira child](#).

The child, who may have turned 18, must meet those criteria throughout the continuous qualifying period in the UK in which the applicant relies on having been a 'person with a derivative right to reside'.

### Conclusion on stage 2

Where you are satisfied that the relevant child meets and for the relevant period has met (or, as the case may be, for the relevant period they met) the requirements as an Ibrahim and Teixeira child as set out in sub-paragraph (b) of the definition of a 'person with derivative right to reside' in [Annex 1 to Appendix EU](#), you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 3: Child unable to continue to be educated in the UK

The third additional stage is to assess whether, in practice, the relevant child would be unable to continue to be educated in the UK if the applicant were in fact required to leave the UK for an indefinite period.

In line with the Court of Appeal judgment in *Velaj v SSHD* [2022] EWCA Civ 767, this assessment requires a fact-based enquiry looking at whether, in practice, the child would be unable to continue to be educated in the UK if the applicant was in fact required to leave the UK for an indefinite period.

### Could the relevant child continue to be educated in the UK?

For detailed guidance on how to assess this, see the [‘Velaj assessment’](#) section.

### Alternative care arrangements

To assess this stage, you must also consider whether there are alternative care arrangements which could be made for the child in those circumstances.

If there are alternative care arrangements, you must then consider whether such arrangements are appropriate, including, in particular, in light of the [best interests](#) of the relevant child (and of any other child of the applicant affected by the decision). For further guidance, see [alternative care arrangements](#).

If there are appropriate alternative care arrangements for the relevant child, the applicant will not be a ‘person with a derivative right to reside’.

### Conclusion on stage 3

Where you are satisfied that, in practice, the relevant child would be and for the relevant period would have been (or, as the case may be, for the relevant period they would have been) unable to continue to be educated in the UK if the applicant were (or, as the case may be, had been) required to leave the UK for an indefinite period, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant’s eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

## Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 3, you must next go on to [Section 8: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a derivative right to reside'.

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## Section 6: Eligibility – dependant of the primary carer

Where the applicant relies on being a dependant of the primary carer and meets the initial eligibility requirements in section 2 of this guidance, you must then consider the following 3 additional stages:

- [stage 1: applicant under the age of 18](#): assessing whether the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain as ‘a person with a derivative right to reside’ and were under the age of 18 at the date of application for that leave
- [stage 2: applicant without leave to enter or remain](#): assessing whether the applicant already has leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix
- [stage 3: applicant’s primary carer a ‘person with a derivative right to reside’](#): assessing whether the relevant person is the applicant’s primary carer and whether that person meets the requirements of sub-paragraph (a) or (c) of the definition of a ‘person with a derivative right to reside’ in [Annex 1 to Appendix EU](#)
- [stage 4: primary carer prevented from residing in the UK](#): assessing whether, in practice, the applicant’s primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a ‘person with a derivative right to reside’ for them to be eligible for leave under the scheme as such a person.

In addition, that [relevant period](#) must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

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# Stage 1: Applicant under the age of 18

The first additional stage is to consider whether the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a derivative right to reside' and were under the age of 18 at the date of application for that leave.

## Age

To satisfy you that they are under the age of 18, the applicant can, for example, provide their valid passport, their valid national identity card, an in-date residence document issued under the European Economic Area (EEA) Regulations or their birth certificate.

Where the applicant provides an in-date residence document issued under the EEA Regulations, it does not matter that the person concerned no longer has the right to enter or reside under the EEA Regulations on which basis the document was issued, by virtue of the revocation of those Regulations.

## Conclusion on stage 1

Where you are satisfied that the applicant is (or, as the case may be, for the relevant period was) under the age of 18, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 2: Applicant without leave to enter to remain

The second additional stage is to consider whether the applicant has leave to enter or remain in the UK, unless it is of a permitted type.

### Consideration

To satisfy yourself that the applicant does not have leave to enter or remain in the UK (unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met subparagraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix), you must check Home Office records to ascertain whether they have previously been granted such leave and, if they have, whether there is evidence that it has lapsed or been curtailed, cancelled or revoked.

### Conclusion on stage 2

Where you are satisfied that the applicant does not have (or, as the case may be, for the relevant period did not have) leave to enter or remain in the UK, unless it is of a permitted type, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 3: Applicant's primary carer a 'person with a derivative right to reside'

The third additional stage is to consider whether the relevant person is the applicant's primary carer and whether that person meets the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#).

### Primary carer of the applicant

A primary carer is defined in [Annex 1 to Appendix EU](#) as a [direct relative](#) or [legal guardian](#) of another person who either:

- has primary responsibility for that person's care
- shares equally the responsibility for that person's care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

A person is not to be regarded as having responsibility for another person's care on the sole basis of a financial contribution to that care.

Where the relevant person has been issued with a residence card or a family permit under the EEA Regulations on the basis that they were the primary carer of the applicant, you must assess whether they remain the primary carer of the applicant throughout the continuous qualifying period relied upon which began before the specified date.

For guidance on assessing whether a person is a primary carer, see [primary carer](#).

### Chen or Ibrahim & Teixeira primary carer

To assess whether the relevant person meets the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#), you must first consider whether they meet the initial eligibility requirements in [section 2](#) of this guidance and, if they do, then consider whether the additional eligibility requirements in either [section 3](#) (Chen primary carer) or [section 5](#) (Ibrahim and Teixeira primary carer) of this guidance are met.

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a 'person with a derivative right to reside'.

To satisfy you of this, the applicant can, for example, provide the EU Settlement Scheme application number of the relevant person where they have been granted



leave under the scheme. However, there is no requirement for the relevant person to apply first under the scheme and, where they have not been granted leave under the scheme, the applicant will need to satisfy you that the relevant person meets the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#).

## Conclusion on stage 3

Where you are satisfied that the relevant person both:

- is and for the relevant period has been (or, as the case may be, for the relevant period they were) the applicant's primary carer
- meets and for the relevant period has met (or, as the case may be, for the relevant period they met) the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#)

you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 4: Primary carer prevented from residing in the UK

The fourth additional stage is to consider whether, in practice, the primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period.

In line with the Court of Appeal judgment in *Velaj v SSHD* [2022] EWCA Civ 767, this assessment requires a fact-based enquiry looking at whether, in practice, the primary carer would be prevented from residing in the UK if the applicant were in fact required to leave the UK for an indefinite period.

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted Appendix Private Life leave where the applicant is under the age of 18, has lived in the UK for at least 7 years and does not have a serious criminal history. Where this applies, it is likely that the applicant would not in fact leave the UK for an indefinite period. In such a case, if the applicant cannot satisfy you otherwise on the balance of probabilities, then the primary carer would not be prevented from residing in the UK. As a result, the applicant will not meet the requirements to be a 'person with a derivative right to reside'.

### Could the primary carer remain in the UK?

For detailed guidance on how to assess this, see the ['Velaj assessment'](#) section.

### Alternative care arrangements

To assess this stage, you must also consider whether there are alternative care arrangements which could be made for the applicant in the UK or in another country.

If there are alternative care arrangements, you must then consider whether such arrangements are appropriate, including, in particular, in light of the [best interests](#) of the applicant where they are under the age of 18. For further guidance, see [alternative care arrangements](#).

If there are appropriate alternative care arrangements for the applicant, they will not be a 'person with a derivative right to reside'.

### Conclusion on stage 4

Where you are satisfied that, in practice, the primary carer would be (or, as the case may be, for the relevant period would have been) prevented from residing in the UK if the applicant in fact left (or had left) the UK for an indefinite period, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

## Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 4, you must next go on to [Section 8: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a derivative right to reside'.

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# Section 7: Person who had a derivative or Zambrano right to reside

Where the applicant relies on being a ‘person who had a derivative or Zambrano right to reside’ and meets the initial eligibility requirements in section 2 of this guidance in respect of the relevant period in which they rely on having been a ‘person with a derivative right to reside’, you must then consider the following 2 additional stages:

- [stage 1: applicant met the definition of a ‘person with a derivative right to reside’](#): assessing whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a derivative right to reside’, the applicant met the additional requirements of that definition set out in section 3, 4, 5 or 6 of this guidance
- [stage 2: applicant then immediately switched to another qualifying category and remained in such a category](#): assessing whether, on ceasing to be a ‘person with a derivative right to reside’, before or after the specified date, the applicant immediately became a relevant EEA citizen, a family member of a relevant EEA citizen, a person with a Zambrano right to reside or a family member of a qualifying British citizen, and has since remained in any of those categories

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# Stage 1: Applicant met the definition of a ‘person with a derivative right to reside’

The first additional stage is to consider whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a derivative right to reside’, the applicant met the additional requirements of that definition set out in section 3, 4, 5 or 6 of this guidance.

## Consideration

To assess whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a derivative right to reside’, the applicant met the additional requirements of that definition, you must refer so far as relevant to:

- [Section 3: Eligibility - Chen primary carer](#)
- [Section 4: Eligibility - Ibrahim and Teixeira child](#)
- [Section 5: Eligibility - Ibrahim and Teixeira primary carer](#)
- [Section 6: Eligibility - dependant of the primary carer](#)

## Conclusion on stage 1

Where you are satisfied that, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a derivative right to reside’, the applicant met the additional requirements of that definition set out in section 3, 4, 5 or 6 of this guidance, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant’s eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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## Stage 2: Applicant then immediately switched to another qualifying category and remained in such a category

The second additional stage is to consider whether, on ceasing to be a ‘person with a derivative right to reside’, before or after the specified date, the applicant immediately satisfied the requirements of another qualifying category and has since remained in any of those categories.

### Consideration

To assess whether, on ceasing to be a ‘person with a derivative right to reside’, before or after the specified date, the applicant immediately satisfied the requirements of another qualifying category and has since remained in or (as the case may be) remained, in any (or any combination) of those categories. To complete this assessment, you must refer to the relevant guidance:

- a relevant EEA citizen: see [EU Settlement Scheme EU, other EEA, Swiss citizens and family members](#)
- a family member of a relevant EEA citizen: see [EU Settlement Scheme EU, other EEA, Swiss citizens and family members](#)
- a person with a Zambrano right to reside: see [EU Settlement Scheme: person with a Zambrano right to reside](#)
- a family member of a qualifying British citizen: see [EU Settlement Scheme family member of a qualifying British citizen](#)
- a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen or with a qualifying British citizen: see [EU Settlement Scheme EU, other EEA, Swiss citizens and family members](#)

In addition, the continuous qualifying period in which the applicant relies on meeting the definition of a ‘person who had a derivative or Zambrano right to reside’ **must** have been continuing at 11pm GMT on 31 December 2020. However, it does not matter whether at that point they were a ‘person with a derivative right to reside’ or were in one of the other categories referred to above.

### Conclusion on stage 2

Where you are satisfied that on ceasing to be a ‘person with a derivative right to reside’, before or after the specified date, the applicant immediately satisfied the requirements of another qualifying category and remained in such a category, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant’s eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

## Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 and 2, you must next go on to [section 8: All applications not yet concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person who had a derivative or Zambrano right to reside'.

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# Section 8: All Applications not so far concluded

## Continuous qualifying period

Where you are satisfied that the application meets the requirements of the relevant additional stages, you must then use EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members to establish whether the applicant has completed a continuous qualifying period of 5 years and so is to be considered for indefinite leave to enter or remain under rule EU11 (or, where relevant, EU12) of Appendix EU, or has completed a continuous qualifying period of less than 5 years and so is to be considered for limited leave to enter or remain under rule EU14 of Appendix EU.

## Indefinite leave to enter or remain as a ‘person with a derivative right to reside’ or a ‘person who had a derivative or Zambrano right to reside’

The applicant meets the eligibility requirements for indefinite leave to enter or remain as a ‘person with a derivative right to reside’ (or, as the case may be, as a ‘person who had a derivative or Zambrano right to reside’) if, at the date of application, they meet condition 3 of rule EU11 of Appendix EU.

You must be satisfied that the following requirements are met:

- the applicant is ‘a person with a derivative right to reside’ or a ‘person who had a derivative or Zambrano right to reside’: see [Section 3: Eligibility – Chen primary carer](#), [Section 4: Eligibility – Ibrahim and Teixeira child](#), [Section 5: Eligibility – Ibrahim and Teixeira primary carer](#), [Section 6: Eligibility – dependant of the primary carer](#) and [Section 7: Person who had a derivative or Zambrano right to reside](#)
- the applicant has completed a continuous qualifying period in the UK of 5 years as a ‘person with a derivative right to reside’ (or as a [‘person who had a derivative or Zambrano right to reside’](#)): see ‘continuous qualifying period’ in the section on ‘Qualifying residence’ in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members (and see the paragraph below about rule EU13 of Appendix EU)
- since completing the continuous qualifying period of 5 years, no supervening event has occurred in respect of the applicant

As described above, the applicant’s continuous qualifying period in the UK as a ‘person with a derivative right to reside’ must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK).



Rule EU13 of Appendix EU provides that the continuous qualifying period under condition 3 in rule EU11 can also include a period during which the applicant was a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen before becoming a 'person with a derivative right to reside'.

## Limited leave to enter or remain as a 'person with a derivative right to reside' or a 'person who had a derivative or Zambrano right to reside'

The applicant meets the eligibility requirements for limited leave to enter or remain as a 'person with a derivative right to reside' (or a 'person who had a derivative right to reside' before they moved into any – and have since remained in any or any combination – of the other categories to which the definition of a 'person who had a derivative or Zambrano right to reside' refers) if, at the date of application, they meet condition 1 in rule EU14 of Appendix EU.

You must be satisfied that the following requirements are met:

- the applicant is a 'person with a derivative right to reside' or a 'person who had a derivative or Zambrano right to reside': see [Section 3: Eligibility – Chen primary carer](#), [Section 4: Eligibility – Ibrahim and Teixeira child](#), [Section 5: Eligibility – Ibrahim and Teixeira primary carer](#), [Section 6: Eligibility – dependant of the primary carer](#) and [Section 7: Person who had a derivative or Zambrano right to reside](#)
- the applicant is not eligible for indefinite leave to enter or remain under Appendix EU solely because they have completed a continuous qualifying period of less than 5 years

As described above, the applicant's continuous qualifying period in the UK as a 'person with a derivative right to reside' must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK).

## Evidence

Where, in order to evidence that they meet the eligibility requirements of Appendix EU as a 'person with a derivative right to reside' or a 'person who had a derivative or Zambrano right to reside', the applicant submits a copy (and not the original) of a document, you can require the applicant to submit the original document where you have reasonable doubt as to the authenticity of the copy submitted.

## Decision

### Suitability requirements

Before you decide the application, you must consider the suitability requirements. See EU Settlement Scheme: suitability requirements.

## Indefinite leave to enter or remain (ILE) or (ILR)

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant meets the eligibility requirements for ILE or ILR in accordance with condition 3 of rule EU11 (or, where relevant, of rule EU12)
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

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

Where you are not satisfied that the applicant meets the eligibility requirements for ILE or ILR of rule EU11 (or, where relevant, EU12), you must consider whether the applicant meets the eligibility requirements for LTE or LTR under condition 1 (or, where relevant, condition 2) of rule EU14 of Appendix EU.

## Limited leave to enter or remain (LTE) or (LTR)

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant does not meet the eligibility requirements for ILE or ILR in accordance with rule EU11 (or EU12), but meets the eligibility requirements for LTE or LTR in accordance with condition 1 or 2 of rule EU14
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

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

## Refusal

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

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# Section 9: Detailed guidance for sections 2 to 6

## Direct relatives and legal guardians

### Direct relatives

For the purposes of assessing whether the applicant is a direct relative of the relevant person, the following relationships are accepted:

- a parent
- a grandparent
- a brother or sister
- a spouse or civil partner (for example, in the case of Ibrahim and Teixeira where the individual in education is aged 18)
- a child
- a grandchild

This is an exhaustive list and no other type of family relationship may be accepted.

You must be satisfied, for example by the provision by the applicant of the relevant birth certificate or evidence of adoption, of the claimed family relationship between the direct relative and the relevant person. See the section on 'Assessing family relationship' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

### Adoption orders

Where a recognised adoption has taken place, an adoption order is acceptable as evidence of a child's relationship to the adoptive parent.

Step-children are not considered to come within 'direct relative' for the purposes of the definition of 'primary carer' unless there is also an adoption order or a lawful guardianship order, as described below, in place.

### Legal guardian

You must be satisfied, for example by the provision by the applicant of the relevant special guardianship order or other relevant guardianship order (that is a formal court order which vests parental responsibility or similar for a child in a person other than a parent of the child), that the person is the legal guardian of the relevant child.

### Primary carer

## Primary responsibility for a child by a parent

Where an individual is applying as a 'person with a derivative right to reside' as the primary carer of a relevant child, in most cases it is likely that they will also be the parent of that child. Where this is claimed to be so, you must be satisfied, for example by the provision by the applicant of the child's birth certificate, that they are the parent of the child.

A parent who resides with the child on a permanent basis and does not share the caring responsibility for that child with another person can be accepted as having primary carer responsibility for that child.

However, you must make further enquiries where there is either:

- evidence the child resides permanently with another parent or carer
- evidence there is another parent in the UK who shares responsibility for the child
- no evidence as to where the child resides

It may be necessary to contact the other parent or carer before you decide who the child's primary carer is.

## Other direct relative or legal guardian with primary carer responsibility

Where the person claiming to be the primary carer of the child is not their parent, you must be satisfied that they are another direct relative of the child, or their legal guardian, with primary carer responsibility for the child, for example by the provision of a valid guardianship order or another valid court order which establishes their primary carer responsibility for the child.

An example of an alternative court order would be one transferring parental responsibility. Such court orders must be considered on a case by case basis to determine whether they establish that the person is the child's primary carer.

## Court orders

A court order establishing primary carer responsibility for the child is most likely to be made in the context of family proceedings. The most common court orders seen during family proceedings are:

- child arrangements orders or (before that) residence orders – used to decide where, and with which parent, a child will live
- child arrangements orders or (before that) contact orders – used to decide when a party to the court hearing can have contact with the child, for example, at weekends or school holidays

- specific issue order – used to look at specific questions about the child’s upbringing, for example, what school they go to or if they should have religious education
- prohibited steps order – prevents a party from removing a child from a specific location, most commonly the UK but can be narrowed to city limits

If a court order establishes shared residence or that there is another parent in the UK who has contact with the child, further enquiries must be made, unless there is alternative evidence as to why the other parent is unable to care for the child.

## Primary responsibility for adults

Where the applicant is claiming to be ‘a person with a derivative right to reside’ on the basis they are the primary carer of a person over the age of 18 years in education in the UK (Ibrahim and Teixeira cases), they may be the spouse or civil partner of that adult or another direct relative.

Primary responsibility for the relevant person in education in the UK will be established in cases involving adults where the applicant can show they are responsible for the majority of that adult’s care.

The level of evidence required to demonstrate primary responsibility for the relevant person’s care and dependency will be higher in cases involving adults than in those involving children. In such cases, only evidence that shows the relevant person’s dependency on the applicant is due to a severe physical or mental disability is likely to satisfy you that they require the care of the applicant.

For more information on physical or mental impairment see: [Physical or mental impairment](#).

## Sharing equal primary carer responsibility

Two people can be considered to share equally primary carer responsibility, in line with the definition of ‘primary carer’ in [Annex 1 to Appendix EU](#), where they both share equally the responsibility for the care and welfare of the relevant person, in the long-term and on a day-to-day basis.

In the case of a child, this includes things like deciding where the child lives, choosing what school they attend, deciding how and where the child spends time outside school, and authorising medical treatment or a school trip. In the case of an adult, this includes things like deciding where the person lives, and arranging and being involved in their medical care.

Two people who spend different amounts of time with a child (for example where the child lives with one parent during the week and the other at weekends) may still have equal primary carer responsibility for the child. Where a child lives with two parents, the parents will usually be considered to share equal primary carer responsibility for the child, even where one parent works and the other does not.

Two people who spend different amounts of time with the relevant person who is an adult (for example where the relevant person lives with one of them, but the other is also heavily involved in the relevant person's medical care) may also still have equal primary carer responsibility for the person.

Circumstances must be considered on a case by case basis.

## Evidence of shared primary carer responsibility

A person will generally be considered to share equal primary carer responsibility where either:

- both individuals are living together in the same household with the child
- the individuals share responsibility for the child – evidence of this may include (but is not limited to):
  - a custody agreement or court order
  - statement or statements from the individuals to this effect

Equal primary carer responsibility does not mean there has to be evidence of equal sharing of responsibilities, as this is not always practical. For example, a child may reside with their mother during the week and their father at weekends or they may reside with the mother full-time, but the father has regular contact with the child. Whilst the father may not provide most of the care for the child, in both examples, the father is actively involved in the child's life. In such cases, unless there is evidence to indicate the father is in practice unable to care for the child, it can be accepted that both parents share equal primary carer responsibility.

You must consider each case on its individual merits and consult your senior caseworker if you have any doubt whether primary carer responsibility for a child is equally shared.

## Financial support

As set out in the definition of 'primary carer' in [Annex 1 to Appendix EU](#), financial support alone will not bring a person within the definition of primary carer. For example, where a person only provides the child with financial support and has no day-to-day caring responsibilities, this is not sufficient to demonstrate that they are the child's primary carer.

## Two primary carers

If there are two primary carers of the same child, they can, subject to the rest of this section, both be considered a 'person with a derivative right to reside' for the purposes of Appendix EU, even if they apply under the scheme at different times.

In line with the definition of 'primary carer' in [Annex 1 to Appendix EU](#), a person will not be eligible where, before they assumed equal care responsibility, the person with whom care responsibility is shared had already acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations or relied on meeting the

definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix.

In addition, as held by the Court of Appeal in *Velaj v SSHD* [2022] EWCA Civ 767, where you are assessing an application based on there being two primary carers, you must undertake a fact-based enquiry, looking at whether, in practice, the child would be unable to remain in the UK if both primary carers were in fact required to leave the UK for an indefinite period.

Both primary carers can also rely upon any period in which they are the child's sole primary carer.

## The 'Velaj assessment'

In this section, the 'Velaj assessment' is shorthand for the assessment of whether, in practice, the relevant person can remain in the UK if the applicant were in fact required to leave the UK for an indefinite period.

In this section, references to 'relevant person' mean:

- in Chen primary carer cases – the relevant EEA citizen child
- in Ibrahim and Teixeira primary carer cases – the Ibrahim and Teixeira child
- in dependant of the primary carer cases – the primary carer

The test in Ibrahim and Teixeira primary carer cases is whether the relevant person can continue to be educated in the UK. However, an assessment of whether they can remain in the UK will generally be sufficient to establish whether they can continue to be educated in the UK. See [Additional considerations in Ibrahim and Teixeira primary carer cases](#) for further guidance.

As stated above, for convenience this guidance generally refers to the requirements in the present tense. However, it is important you apply the guidance to the relevant period relied upon.

The Court of Appeal confirmed in *Velaj v SSHD* [2022] EWCA Civ 767 that the assessment of whether or not a relevant person would be compelled to leave the UK must be based on what would happen (or would have happened) in practice. The assessment is not to be based on a hypothetical, assumed or counter-factual premise. Although *Velaj* was a Zambrano case, the Court of Appeal confirmed that the same assessment applies to Chen and Ibrahim and Teixeira cases.

The 'Velaj assessment' requires a two-stage consideration.

**First**, you must consider whether the applicant would be required to leave the UK for an indefinite period if their EU Settlement Scheme application as a 'person with a derivative right to reside' is refused.

This includes an assessment of whether the applicant either has or could obtain other lawful immigration status. If, as a result of the refusal of their EU Settlement



Scheme application, the applicant would not in fact leave the UK for an indefinite period, then the applicant will not meet the relevant criterion.

You must base your assessment on the applicant's individual circumstances: see [Could the applicant remain in the UK?](#)

If you conclude the applicant would not in fact be required to leave the UK for an indefinite period, then the relevant person would be able to remain in the UK. In these circumstances, you must not move on to the second stage. As above, you must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members. If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

**Second**, if you conclude the applicant would in fact be required to leave the UK for an indefinite period, you must consider whether this means the relevant person would in practice be unable to reside in the UK: see [Could the relevant person remain in the UK?](#)

Where you are not satisfied of this inability to reside in the UK, you must not move on to the next stage but, as above, you must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members. If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

## Could the applicant remain in the UK?

**This assessment must be undertaken on a case by case basis.**

If the applicant has leave to enter or remain in the UK, except under Appendix EU, in effect by virtue of section 3C of the Immigration Act 1971 or leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix, see [Leave to enter or remain in the UK](#).

Otherwise, see: [No leave to enter or remain in the UK](#).

## Leave to enter or remain in the UK

In *Velaj*, the Court of Appeal indicated that, in general, it would be difficult for an applicant with limited leave to enter or remain to show that they would in fact be required to leave the UK for an indefinite period. This means that if the applicant has leave to enter or remain in the UK, the application will generally fall for refusal.

However, the Court of Appeal also said:



‘It is possible to conceive of situations in which the conditions attached to a limited leave to remain are such as to make it impossible in practice for the primary carer to remain in the UK and look after the [relevant person].

‘I can also envisage [an applicant] whose limited leave to remain is due to expire making an application under Regulation 16(5)(c) and succeeding on the basis that they would have to leave the UK as soon as their limited leave expired and the [relevant person] would have to go with them. In such a case if the decision-maker asks "what will happen to the [relevant person] in the event that the [applicant] leaves the UK for an indefinite period?" they will not be positing a completely unrealistic scenario.’

Therefore, if the applicant claims that they would in fact be required to leave the UK for an indefinite period even though they have limited leave to enter or remain in the UK, you must consider those claims carefully, including any supporting information or evidence provided.

If the applicant claims that they would in fact be required to leave the UK for an indefinite period because their limited leave to enter or remain in the UK is about to expire, you must consider whether they would be eligible for further leave to remain and therefore would not in fact be required to leave the UK for an indefinite period. For further guidance see [No leave to enter or remain in the UK](#).

If the applicant claims that conditions attached to non-Appendix EU limited leave are such as to make it impossible in fact for them to remain in the UK and continue to care for the relevant person, you must consider, in light of any supporting information or evidence provided, what conditions are attached to the limited leave, what impact they have on the applicant and whether it is open to the applicant to apply for a change of conditions.

For example, Appendix FM leave permits the holder to take up employment or self-employment and is generally subject to a ‘no recourse to public funds’ condition but it is possible to apply for the condition to be lifted where the criteria for that are met. In these circumstances, an applicant will generally find it difficult to substantiate a claim that they are not able to remain in the UK with limited leave under Appendix FM but would be able to remain in the UK if granted limited leave under Appendix EU.

## **No leave to enter or remain in the UK**

You must base your assessment on the applicant’s individual circumstances. Some examples of how to consider an applicant’s circumstances are set out below. These are:

- [The applicant used to have Appendix FM leave](#)
- [The applicant has since been granted Appendix FM leave](#)
- [The applicant has never had Appendix FM leave](#)
- [Claims of financial barriers to alternative applications](#)

## **The applicant used to have Appendix FM leave**

If Home Office records show the applicant previously had leave to enter or remain under Appendix FM to the Immigration Rules, but it expired before the specified date, then you must ascertain the reason the leave was granted and consider whether, on the balance of probabilities, they are (or would have been) likely to qualify for further leave in the same route (for example, if they were granted as a parent and their child is still under the age of 18) or in a different route (for example, they have ceased to meet the requirements of the partner route but they are a parent of a qualifying child).

### **The applicant has since been granted Appendix FM leave**

If the applicant did not have non-Appendix EU leave during the continuous qualifying period on which they rely on being a 'person with a derivative right to reside', but they have since been granted leave under Appendix FM (regardless of which application was made first), you must consider whether, on the balance of probabilities, it is likely they would have been granted that Appendix FM leave earlier if they had applied for it earlier, before they applied to the EU Settlement Scheme and/or before the specified date.

You must consider whether:

- there is any credible reason why the applicant could not have applied under Appendix FM before they applied to the EU Settlement Scheme and / or before the specified date (see [Claims of financial barriers to alternative applications](#) for how to consider claims relating to the application fee and immigration health charge). You do not need to request this information if it is not provided with the application, but if it is provided, you must consider it
- on the balance of probabilities, an earlier Appendix FM application would have succeeded:
  - generally, absent a material change in circumstances (or in the requirements of Appendix FM), if the later application succeeded under the partner or parent route, it is reasonable to conclude that an earlier application would have done
  - where the Appendix FM application succeeded under the exceptional circumstances policy, it will not necessarily be reasonable to conclude that it would have succeeded earlier – if you have a case that may fall for refusal on this basis, you must email the EEA Citizens' Rights & Hong Kong Unit for advice
  - you do not need to request evidence of any material change in circumstances if it is not provided with the application, but if it is provided, you must consider it

### **The applicant has never had Appendix FM leave**

If the applicant has never had Appendix FM leave, it is unlikely they could have applied successfully for this (without a sponsor who was a British citizen, settled in the UK or in the UK as a refugee or with humanitarian protection, unless they were the parent of a qualifying child resident in the UK for at least 7 years) before 11pm on 31 December 2020. If you have a case that may fall for refusal because of the

scope for a successful application on that basis, you must email the EEA Citizens' Rights & Hong Kong Unit for advice.

From 11pm on 31 December 2020, Appendix FM was amended to permit sponsors who are EEA citizens with limited leave to enter or remain granted under paragraph EU3 of Appendix EU. If you have a case that may fall for refusal because of the scope for a successful application on that basis, you must email the EEA Citizens' Rights & Hong Kong Unit for advice.

## Claims of financial barriers to alternative applications

An applicant may claim they did not make an application under Appendix FM earlier because they could not afford the application fee or the immigration health surcharge and claim that they should not be refused as a 'person with a derivative right to reside' on this basis.

You must consider the credibility of such a claim on a case by case basis with reference to any relevant information or evidence provided. You must also consider whether the alternative route has a fee waiver policy (including what information was available on GOV.UK at the material time, using [National Archives](#) as appropriate) – Appendix FM, for example, has a fee waiver policy. If the applicant has successfully applied for a fee waiver in the past (for example, in connection with a historical Appendix FM application), then it is reasonable to conclude that the application fee and immigration health surcharge were not a barrier to an earlier application.

Alternatively, an applicant may claim they could afford the application fee and the immigration health surcharge but paying them would have a negative impact on the best interests of a child or children. The Appendix FM fee waiver policy takes into account any negative impact on children, as well as affordability.

You must also consider the credibility of such a claim with reference to the evidence provided and take into account that leave under Appendix FM is granted without an immigration condition prohibiting employment or self-employment. This means that a successful applicant could work in the UK, including to mitigate the impact of paying the fees on any children affected by the decision, to meet their needs and the needs of any dependants, and to afford the fees for any subsequent applications.

## Could the relevant person remain in the UK?

This consideration is only relevant if the applicant has established that they would in fact be required to leave the UK for an indefinite period if their application was refused. Where this consideration is relevant, **it must be undertaken on a case by case basis.**

If the applicant has applied as a primary carer, see [Alternative care arrangements](#) for guidance on how to consider whether the relevant person could remain in the UK if the applicant left the UK, because there are appropriate alternative care arrangements in the UK that could be made.

If the applicant has applied as a dependant of a primary carer, you will need to consider whether, if the application was refused, the primary carer would be compelled to leave the UK with the applicant, which would in turn compel the relevant Chen or Ibrahim and Teixeira child to leave the UK. The main consideration here is whether there are appropriate alternative care arrangements in the country to which the applicant would be returning, such as their other parent. This is a similar consideration to that set out under [Alternative care arrangements](#), except you will be thinking about the country of return rather than the UK.

## Additional considerations in Ibrahim and Teixeira primary carer cases

If an applicant establishes that they would in fact be required to leave the UK for an indefinite period if their application was refused, but that the Ibrahim and Teixeira child would in practice be able to continue living in the UK, this will usually be sufficient to establish that the child, who may have turned 18, could in practice continue to be educated in the UK. However, where the applicant claims that this would not be so, you must consider all the information and evidence provided and, if you then decide to refuse the application, you must address this issue in the refusal letter.

## Alternative care arrangements

### Alternative care arrangements – children

Where an applicant has demonstrated that they are a primary carer of the relevant child and that they would in fact be required to leave the UK for an indefinite period if their application was refused, you must consider whether there is another person living in the UK, for example a direct relative or legal guardian, who can care for the child.

Where there is another such person living in the UK, you must consider whether, if the applicant is required to leave the UK for an indefinite period, it is appropriate, including, in particular, in light of the child's best interests, for that person to care for the child instead of the applicant.

### Other parent

In all cases in which only one parent is applying to the scheme as a 'person with a derivative right to reside', you must establish the whereabouts and immigration status of the child's other parent (or, if the applicant is another direct relative or legal guardian, the whereabouts and immigration status of both parents for the relevant period). If this information is not held, you must ask the applicant to provide it.

Unless there is information that there is another direct relative or legal guardian in the UK who is caring for the child, or is able to do so, you can accept that there are no alternative care arrangements for the child where there is evidence that the other parent either:

- is not a British citizen and does not have another right to reside in the UK (unless under Appendix EU as a 'person with a derivative right to reside')
- is residing outside the UK

Where there is evidence to suggest that the applicant did not have permission to take the child out of another jurisdiction (for example, where a court in another country has ordered that the child live with the other parent or that neither parent may take the child abroad without the consent of each other or the court), you must contact the British Embassy or High Commission in that other country before deciding the application. The British Embassy or High Commission would then need to contact the relevant authorities to determine whether the child needs to return to the other country.

### Deceased parent

Unless there is information that there is another direct relative or legal guardian in the UK who is caring for the child, or is able to do so, you can accept that there are no alternative care arrangements for the child if the other parent has died. The applicant can satisfy you of this by, for example, providing the death certificate of that parent.

### Direct relatives and legal guardians

You can accept that there is another direct relative in the UK who could care for the child if that direct relative either:

- is currently caring for the child
- has stated that they are able to care for the child and has had contact with the child within 12 months

To be satisfied that the child has a legal guardian who could care for them in the UK if the primary carer in fact left the UK for an indefinite period, you need for example to see evidence that a court has granted that person legal guardianship of the child.

### Unsuitable care arrangements

There may be instances where there is another parent or direct relative who you would expect could care for the child but they are considered unsuitable. For example, where there are child protection issues which would prevent the child being placed with them. In such cases it would not be appropriate to expect the child to live with that person.

A lack of financial resources, a lack of willingness to assume caring responsibilities, or an assertion that a person would need to alter their working pattern would not, by itself, be a sufficient basis for a person to claim they are unable to care for the child. You must consult a senior caseworker in any such case before making your decision.

## Alternative care arrangements – adults

Where an Ibrahim and Teixeira child, or a dependant of a primary carer, has reached the age of 18 years, you can generally assume they are capable of meeting their own needs. In some cases, the person may need the presence and care of the primary carer to pursue and complete their education. This is likely to occur where the person has a physical or mental impairment that means they are in practice unable to care for themselves.

For further information on assessing a person's physical or mental impairments and how that impacts upon their ability to care for themselves, see [Physical or mental impairment](#).

### Alternative care

Where a person has demonstrated they are a primary carer, you must consider whether there are alternative care arrangements for the person in education. Alternative care may include, but is not limited to:

- direct relative or legal guardian
- local authority care provider
- private care provider

You must consider each case on its individual merits and refer it to a deputy chief caseworker before you make your decision.

### Conclusion

Unless there is information that there is and for the relevant period has been (or, as the case may be, for the relevant period there was) another parent, direct relative or legal guardian (or, in the case of an adult, a local authority or private care provider) in the UK (or, where relevant, outside the UK) caring for the relevant person, or such a person or body able to do so, you can accept that there are (or were) no alternative care arrangements for them.

This means that, in practice, the relevant person would not be able (or, as the case may be, for the relevant period would not have been able) to continue residing (or being educated) in the UK if the applicant in fact left (or had left) the UK for an indefinite period. Or, in the case of a dependant of a primary carer, the primary carer would, in practice, be prevented from residing in the UK if the applicant in fact left (or had left) the UK for an indefinite period.

If you reach this conclusion, you can accept that, in respect of this element, the applicant meets the definition of a 'person with a derivative right to reside' under Appendix EU.

## Assessing whether alternative care arrangements are appropriate

Where alternative care arrangements for a relevant child are available, you must consider what would happen to the child in practice if the applicant in fact left the UK for an indefinite period.

You must assess whether, on the balance of probabilities, it is more likely than not that the child would either:

- leave the UK
- remain in the UK with the other person who can care for them

## Dependency

A key consideration when assessing what would happen to the child is the level of dependency between the child and the applicant.

Specifically, you must consider whether, given the level of dependency, the removal of the applicant would also compel the child to leave the UK even though there is another person who, in principle, could care for the child in the UK.

When considering the level of dependency, you must consider the extent to which the child is emotionally attached to or otherwise dependent on the applicant and on the other person you have identified as able to care for them.

Relevant factors include:

- the child's age, the stage of their physical and emotional development and the level of care and support they require (or required)
- the level of emotional, physical and financial support the applicant and the other person provide to the child or have provided recently who makes the decisions that affect the child's life
- who the child lives with and who they have lived with previously
- how much time the child spends with the applicant and the other person who is able to care for them and how they spend their time together

## Living arrangements

Where the child lives in a household with the applicant and the other person who can care for them, you will normally accept that the child is equally dependent on them both. However, if the other person has only lived with the child for a short time, you must consider their relationship with the child before they started living together to establish the level of dependence.

Where the child does not live with the other person, factors relevant to the level of dependency include:



- whether they have lived together before – if so, how recently and for how long
- whether the child stays with the other person – for example, in cases of shared custody
- their level of contact – including the nature of contact (for example, face to face, telephone, correspondence), frequency and duration
- other contributions the other person makes to the child’s life – for example, making decisions affecting the child or providing financial support

## Level of dependency

Depending on the information and evidence available, you may conclude that the child is:

- entirely dependent on the applicant and not dependent on the other person at all, or vice versa
- much more dependent on the applicant and much less dependent on the other person, or vice versa
- slightly more dependent on the applicant and slightly less dependent on the other person, or vice versa
- equally dependent on the applicant and on the other person

## Dependants of a primary carer

Where alternative care arrangements for a dependant of a primary carer are available, you must consider what would happen in practice to the primary carer if the applicant in fact left the UK for an indefinite period.

You must assess whether, on the balance of probabilities, it is more likely than not that the primary carer would:

- remain in the UK
- leave the UK with the dependent child

Where the alternative carer lives outside the UK, you can only conclude that, subject to the best interests of the child, the primary carer might remain in the UK if the dependant in fact left the UK for an indefinite period if the dependant is more or equally dependent on that other person.

## The child’s best interests

Before deciding whether the alternative care arrangements for a child under the age of 18 are appropriate, you must first consider what are the best interests of the child. The child’s best interests are not on their own determinative of whether requiring the applicant to leave the UK for an indefinite period would mean that the child would be unable to continue living in the UK. They are a primary consideration and must be considered as such, together with all the other information and evidence before you. You must consider any evidence provided in support of the application, which may include the child’s own views.



When considering the child's best interests, you must consider the consequences on the child's everyday life if they are separated from the applicant, for example:

- would they be safe and well cared for and have access to any support they need to cope with change?
- would they be able to keep in contact with the applicant, for example through letters, telephone calls, instant messaging, and video messaging services such as Skype and FaceTime, email and / or visits?
- would they need to move home, and if so, how does the nature, quality and location of their current home compare with where they would live in future?
- would there be disruption to their education, for example could they keep attending the same school?
- would they be able to keep in contact with their friends and family?

You must seek further information or evidence if you do not have sufficient information to assess the child's best interests. However, you can generally assume that it is in the child's best interests to:

- remain in the UK, unless they have equal or stronger ties to another country
- live with both parents or, if the parents live apart, to have contact with both parents, unless there are any child welfare concerns
- minimise disruption to their everyday life, unless it is in their best interests to change the status quo

## Assessment

As set out above in respect of the relevant additional requirement, when you have considered the child's level of dependency on the applicant and on the other person, and considered the child's best interests, you must draw an overall conclusion about whether, in practice, the child would be (or would have been) unable to continue living in the UK if the applicant in fact left (or had left) the UK for an indefinite period – or, in the case of a dependant of a primary carer, whether, in practice, the primary carer would be (or would have been) prevented from living in the UK – if the dependant in fact left (or had left) the UK for an indefinite period.

Where the child (or primary carer) would be (or would have been) in practice unable to continue living in the UK if the applicant in fact left (or had left) the UK for an indefinite period, you can accept that, in respect of this element, the applicant meets the definition of a 'person with a derivative right to reside' under Appendix EU.

Where, in practice, the child (or primary carer) would be (or would have been) able to continue living in the UK if the applicant in fact left (or had left) the UK for an indefinite period, the applicant will not be a 'person with a derivative right to reside'.

## Physical or mental impairment

This section tells you how to consider applications on the basis that the applicant is the primary carer of a child of a former EEA citizen worker or self-employed person who is over the age of 18 in education in the UK (Ibrahim and Teixeira child).

In such cases the level of evidence required to demonstrate primary responsibility will be significantly higher. Only evidence that shows the adult child's dependency on the primary carer is due to a severe physical or mental disability is likely to satisfy you that they require the care of the applicant.

Such cases will need to be considered on an individual basis. You must refer cases involving a dependent adult to a deputy chief caseworker before you make your decision.

To satisfy you that they are the primary carer, the applicant can provide, for example, medical evidence from a registered consultant or specialist who is involved in the dependant's care outlining the medical condition, the level of care required, and who is providing the care for the dependent adult. This may be provided by the applicant, and any evidence of this nature must be:

- on letter-headed paper
- signed by the relevant consultant or specialist

You must also consider the level of support that the applicant is providing, including:

- when the applicant assumed caring responsibilities for the dependant
- what sort of care is being provided
- if appropriate, who cared for the dependant before this time and why that care cannot resume
- what other care is being provided by either another person, medical professionals, a local authority or a private care provider
- if no other care is being provided, what enquiries have been made with other direct relatives, medical professionals, the local authority or private care providers regarding the care for the dependant

If necessary, you must request additional information to establish the medical condition of the dependant.

### **Related content**

[Contents](#)

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

### **Related external links**

[Appendix EU to the Immigration Rules](#)

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