



Guidance on dealing with applications from children born in UK to European Union nationals it includes the member states and the type of documents acceptable to prove nationality.

Introduction

This guidance provides advice to examiners on how to deal with all applications from children born in the UK to European Economic Area (EEA) nationals. It replaces all previous guidance.

European Union

1.2 Members of the European Union (EU) and their dates of accession:

Austria	1 January 1995
Belgium	1 January 1973
Bulgaria	1 January 2007
Croatia	1 July 2013
Cyprus	1 May 2004
Czech Republic	1 May 2004
Denmark	1 January 1973
Estonia	1 May 2004
Finland	1 January 1995
France	1 January 1973
Germany	1 January 1973
Greece	1 January 1981
Hungary	1 May 2004
Ireland	1 January 1973
Italy	1 January 1973
Latvia	1 May 2004
Lithuania	1 May 2004
Luxembourg	1 January 1973
Malta	1 May 2004
Netherlands	1 January 1973
Poland	1 May 2004
Portugal	1 January 1992
Romania	1 January 2007
Slovakia	1 May 2004
Slovenia	1 May 2004
Spain	1 January 1992
Sweden	1 January 1995
United Kingdom	1 January 1973

1.3 EU nationals have rights under the various Treaties which set up the European Union. One of these is the right to live and work in any of the other Member States of the union. Consequently, EU nationals are not given individual leave to enter the United Kingdom. This is because they have a right of entry and residence under European Union law as long as they are coming here in the exercise of a Treaty right. This includes the right to take or seek employment or to set up business. Student and self-sufficient persons (e.g. retired persons) also have right to entry and residence in a non-economic capacity.

European Economic Area

1.4 Members of the European Economic Area (EEA): This is made up of all 27 members of the EU listed in paragraph 1 plus:

Iceland	with effect from 1 January 1994
Norway	with effect from 1 January 1994
Liechtenstein	with effect from 1 January 1995

1.5 Nationals of these countries, like their EU counterparts, have the right to live and work in any Member State of the Union. EEA nationals who are either working (employed or in self-employment) or who are non-economically active but able to support themselves without recourse to public funds, including students, have the same right as EU nationals to reside in the United Kingdom under European Law.

1.6 It is important to note that there are differences in terms of membership between the EU and EEA, but for immigration and nationality purposes, nationals of both organisations should be treated in the same way.

Switzerland

1.7 Swiss nationals Under the Switzerland-EU agreement, which came into force on 1 June 2002, Swiss nationals and their family members have the same free movement rights as EEA nationals. Therefore, for immigration and nationality purposes, Swiss nationals are considered in the same manner as EEA nationals.

1.8 In the remainder of this policy guidance, any reference to EEA nationals includes citizens of Switzerland. Please note however that this applies to children born to a Swiss national on/after 1 June 2002 and that posted workers (workers posted by Swiss registered companies to work at their subsidiaries in the UK) are exempt from these provisions. Swiss-registered companies are mostly large banks like Credit Suisse and the Union Bank of Switzerland (UBS). Where there are doubts as to whether or not a person is in the UK as a posted worker, examiners should refer this to the Policy Team through line manager and PNG officer.

Family Members

1.9 Family members also have a right to reside in the United Kingdom so long as the EEA national remains in UK in the exercise of Treaty rights (until such time as the family members gain a right of residence in their own right). These include spouses, children under 21 years, other dependent children, 21 years and over, dependent parents and grandparents of the EEA national or his/her spouse.

In certain circumstances extended family members, for example unmarried partners or where the person is dependent on the EEA national or his/her spouse, or was living as part of the EEA national household before they came to the UK may also qualify for a right to residence in the UK on the basis of their relationship to an EEA national where they have been issued with a document confirming this right; see paragraph 9 below for more information on how to deal with applications from family members of EEA nationals.

Process

2.1 The question of Treaty rights is important in applications from children whose claims to British Citizenship under section 1(1)(b) of the British Nationality Act 1981 depend on parents who are EEA nationals or family members of EEA national having been settled in the UK. The following paragraphs set out the evidence required in each of the categories under which the parent may be exercising Treaty rights.

2.2 If there are any cases of doubt or have difficulties interpreting evidence, refer to the Policy Team for advice via your local PNG officers.

Worker

3.1 A worker is a person in either full-time or part-time employment. The evidence required for those in employment to prove that they have been exercising Treaty rights depends on the date of birth of the child.

3.2 Children born before 02 October 2000

Request evidence that the parent(s) were exercising Treaty rights at the time of the child's birth. The documentary evidence required to show that the parent(s) were exercising Treaty rights at the time of the child's birth should be the following:

- passport showing a residence permit, Indefinite Leave to Remain or Enter (ILR/ILE) or No Time Limit (NTL) stamp dated before the child's birth; or
- a Residence Permit or Residence Card granted before the child's birth; or
- a letter from the United Kingdom Visas & Immigration, (UKV&I), confirming exercise of Treaty rights at the time of the child's birth or;
- a statement from the HM Revenue and Customs (HMRC) showing yearly totals of credited National Insurance at the time of the child's birth; or
- a statement from HMRC confirming tax returns at the time of the child's birth; or
- a letter from an employer and some other documents showing evidence of employment at the time of the child's birth see paragraphs 3.3 & 3.4 below for details of other documents.

3.3 Where the evidence submitted of exercising Treaty Rights is only a letter from an employer or an employment contract, additional evidence should be requested in the form of payslips, P60, or bank statements to confirm that the parent is employed by the company. For Swiss nationals, make sure that the employer's letter is not from a Swiss registered company which are exempt from the provisions of this treaty.

3.4 Children born between 02 October 2000 and 29 April 2006

Request evidence to show that the parent(s) had Indefinite Leave to Remain/Enter (ILR/ILE) or a NTL or Document Certifying Permanent Residence or Permanent Residence Card in the UK at the time of the child's birth.

- the documentary evidence should be either in the form of a letter from the United Kingdom Visas & Immigration, (UKV&I), or a passport with an endorsed ILR/ILE or NTL stamp or Document Certifying Permanent Residence or Permanent Residence Card.

3.5 Children born on or after 30 April 2006

Where a child is born in the UK on or after 30 April 2006 to an EEA national parent, the child will only have a claim to British citizenship under section 1(1)(b) BNA81 if the parent(s) provide evidence to show that they had ILR/ILE or NTL or that they have been permanently resident in the UK exercising treaty rights for a minimum period of 5 years prior to the birth of the child.

3.6 The documentary evidence required to show this should be one or more of the following:

- passport with an endorsed ILR/ILE, NTL, Document Certifying Permanent Residence stamp or Permanent Residence Card issued before the child's birth or
- letter from UKV&I showing that the parent(s) had ILR/ILE or NTL in the UK before the child's birth or
- passport/document showing a Residence Card or Registration Certificate issued five years before the child's birth and a letter confirming that the parent(s) were not receiving benefits or
- statement from HMRC showing yearly totals of credited National Insurance between the relevant dates or
- statement from HMRC confirming tax returns between the relevant dates or
- letter from an employer and some other documents showing evidence of employment between the relevant dates see paragraphs 3.3 & 3.4 above for details of other documents and validating employers' letters respectively.

3.7 You should note that the relevant parents 5 years of continuous residence will be broken if the person is out of the United Kingdom for a period of 6 months or more in any single year. However, it is difficult to establish this given the fact that EEA national can travel in and out of the UK without their passports being stamped or endorsed. The way to handle this is to assume that the person has not been absent, **unless there is evidence to the contrary**, from the United Kingdom for a period of six months or more in any single year.

3.8 You should also note that longer absences for compulsory military service will not affect the five years continuous residence. Additionally a single absence of a maximum of twelve months for important reasons such as pregnancy/childbirth, serious illness, study or vocational training or posting overseas will not affect it either. Please request further evidence if parents claim to have been absent for more than six months due to one of the above reasons.

3.9 Those in vocational employment / voluntary work including a minister of religion may qualify if they can provide evidence to show that they can support themselves (see paragraph 6.1 on self-sufficient person), or if the charity/religious organisation for which they work is meeting their living costs.

3.10 A person in low-paid or part-time work would not be considered as exercising Treaty rights if he/she was engaged in only a few hours per week and reliant almost totally on public funds see section 16 for public funds.

Job seeker

4.1 A job seeker is a person in search of work for the first time or those between jobs or in training. An EEA national must be able to provide evidence that he/she is actively seeking employment (invitations to interviews, rejection letters from employers). However, where the EEA national provide evidence of receiving Job Seekers Allowance, they would have had to show that they were actively seeking work and have a genuine chance of being engaged, and so additional evidence (invitations to interviews, rejection letters from employers) of seeking work would not be required. A job seeker is expected to be able to get employment within 6 months of the beginning of a search. The evidence required for those seeking employment will also depend on the date of the birth of the child.

4.2 Children born before 02 October 2000

Request evidence that the parent(s) were exercising Treaty rights at the time of the child's birth. The documentary evidence should include:

- invitation to interview
- rejection letters from employers and job centre letters
- letter confirming that they were not receiving benefits plus any of the evidence under paragraph 3.2 that may be relevant.

Where the person claims to have been temporarily unemployed or between jobs, he/she must provide evidence that they have been a job seeker for six month or less for the child to have a claim. If the person has been on jobseekers for more than six months, this will not necessarily count against a claim but it would be more difficult to establish one in these circumstances.

4.3 Children born between 02 October 2000 and 29 April 2006

Request evidence to show that the parent(s) had ILR/ILE or NTL or Document Certifying Permanent Residence or Permanent Residence Card at the time of the child's birth.

- the documentary evidence should be either in the form of a letter from the United Kingdom Visas & Immigration, (UKV&I), or a passport with an endorsed ILR/ILE or NTL stamp or Document Certifying Permanent Residence or Permanent Residence Card.

4.4 Children born on or after 30 April 2006

Request evidence to show that the parent(s) had ILR, ILE, NTL or any equivalent or have been exercising Treaty rights in the UK for a continuous period of five years or more before the child's birth. The documentary evidence should include: invitation to interview letters, rejection letters from employers and job centre letters, letter confirming that they were not receiving benefits plus any relevant evidence list in paragraph 3.6 above.

4.5 Where the parent(s) claims to have been temporarily unemployed or between jobs during the five years period, they must provide evidence (letter from the DWP) that they were not on the benefit system. If they have been on the benefit system, this must be for a period of six months or less for the child to have a claim. If the person has been on jobseekers for more than six months, this will not necessarily count against a claim but it would be more difficult to establish one in these circumstances.

Self-employed person

5.1 A business/self-employed person is a person who has established himself for the purpose of pursuing an activity as a self-employed person. An EEA national claiming to be self-employed must provide evidence to show their business activities. Like the other categories above, the evidence required from business or self-employed person depends on the date of birth of the child.

5.2 Children born before 02 October 2000

Request evidence that the parent(s) were exercising Treaty rights at the time of the child's birth. The documentary evidence should include:

- registration of the business
- a lease on a business premises, invoices, evidence of national insurance contribution being paid, self assessment tax forms or any other evidence of self-employment activities plus any relevant evidence listed in paragraph 3.2 above

5.3 Children born between 02 October 2000 and 29 April 2006

Request evidence to show that the parent(s) had ILR/ILE or NTL or Document Certifying Permanent Residence or Permanent Residence Card at the time of the child's birth.

- the documentary evidence should be either in the form of a letter from the United Kingdom Visas & Immigration, (UKV&I), or a passport with an endorsed ILR/ILE or NTL stamp or Document Certifying Permanent Residence or Permanent Residence Card.

5.4 Children born on or after 30 April 2006

Request evidence to show that the parent(s) had ILR, ILE, NTL or an equivalent or have been exercising Treaty rights in the UK for a continuous period of five years or more before the child's birth. This documentary evidence should include:

- registration of the business or evidence of self-employment activities for the whole five years period,
- evidence that they (or their family members) has not become a burden on the benefit system plus any relevant evidence listed in paragraph 3.6 above.

Self-sufficient person

6.1 This category applies only to children born after 30 June 1992. A self-sufficient person is a person who does not work, but has sufficient resources to prevent him or herself (or family members) from becoming a burden on the benefit system and is covered by Comprehensive Sickness Insurance (CSI) for themselves and their family members. We cannot apply a set amount of money that is required by an EEA national in order to be considered self-sufficient. Applications should be assessed on a case-by-case basis and should take into account such factors as income against expenditure. For example, a retired person may qualify as self-sufficient if they can show that they are in receipt of pension or income from an investment not to become burden on the benefit system.

6.2 Note that Pension Credit on its own is not acceptable as proof of a pension as this is a public fund. Contribution based State Pension is an acceptable form of pension see paragraph 15 on public funds.

6.3 Children born before 02 October 2000

Request evidence that the parent(s) were exercising Treaty rights at the time of the child's birth. This documentary evidence should include:

- bank statement showing sufficient funds
- letter from DWP showing that they (or any family member) have not been receiving benefits
- comprehensive sickness insurance for themselves and their family members plus any relevant evidence listed in paragraph 3.2 above.

6.4 Children born between 02 October 2000 and 29 April 2006

Request evidence to show that the parent(s) had ILR/ILE or NTL or Document Certifying Permanent Residence or Permanent Residence Card at the time of the child's birth.

- the documentary evidence should be either in the form of a letter from the United Kingdom Visas & immigration (UKV&I) or a passport with an endorsed ILR/ILE or NTL stamp or Document Certifying Permanent Residence or Permanent Residence Card.

6.5 Children born on or after 30 April 2006

Request evidence to show that the parent(s) had ILR, ILE, NTL or equivalent or were exercising Treaty rights in the UK for a continuous period of five years or more. This documentary evidence should include:

- bank statement showing sufficient funds
- letter from DWP showing that they (or any family member) have not been receiving benefits and is covered by Comprehensive Sickness Insurance for themselves and their family members plus any relevant evidence listed in paragraph 3.6 above.

Comprehensive Sickness Insurance (CSI)

6.6 The following documents are acceptable as evidence of CSI:

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

6.7 The following forms of evidence are **not** acceptable as evidence of comprehensive sickness insurance:

- cash back health schemes such as dental/optical/prescription charges.
- travel insurance
- reliance on the UK's National Health Service (NHS) does not constitute comprehensive sickness insurance for the purposes of the Regulations, including for students.

6.8 Where there are concerns about the validity of a CSI, request evidence of continued payment of policy premiums in order to make sure that the insurance has not lapsed.

6.9 Note that EEA nationals who were issued with a registration certification before **20 June 2011** on the basis that they were a student would not have been required to submit evidence that they held CSI, and therefore must not be required to provide evidence of CSI for any period spent as a student after their certificate was issued.

6.10 This provision applies only to students who were issued with a registration certificate in that capacity before **20 June 2011**. Self-sufficient persons, students who were issued with a registration certificate on or after 20 June 2011 and students who were never issued a registration certificate must demonstrate that they held comprehensive sickness insurance at the relevant time.

Students

7.1 This category applies only to children born after 30 June 1992. A student is a person who is enrolled at a public or private establishment for the purpose of following a course of study, including vocational training. If the parent claims to be a student, they should provide evidence of enrolment; this could be in a form of a letter from the college. They should also provide evidence of funds- either proof of funds, for example, bank statements or a declaration or equivalent which gives evidence that they (or any family member) have sufficient resources not to become a burden on the benefit system in the UK.

7.2 If the applicant claims to be supporting themselves through employment, then the application should be considered under the category of a Worker see paragraph 3 above. The student must also show evidence that they have comprehensive sickness insurance for themselves and their family members see paragraphs 6.6 – 6.10 for more details on comprehensive sickness insurance. The evidence required here also depends on the date of birth of the child.

7.3 Children born before 02 October 2000

Request evidence that the parent(s) were exercising Treaty rights at the time of the child's birth. The evidence should be:

- documents to show that they were a student exercising Treaty rights at the time of the child's birth
- bank statement showing sufficient funds or a regular income from relatives or sponsoring body
- letter from DWP showing that they were not been on benefit at the time of the child's birth
- evidence of comprehensive sickness insurance.

7.4 Children born between 02 October 2000 and 29 April 2006

Request evidence to show that the parent(s) had ILR/ILE or NTL or Document Certifying Permanent Residence or Permanent Residence Card at the time of the child's birth.

- the documentary evidence should be either in the form of a letter from the United Kingdom Visas & Immigration, (UKV&I), or a passport with an endorsed ILR/ILE or NTL stamp or Document Certifying Permanent Residence or Permanent Residence Card.

7.5 Children born on or after 30 April 2006

Request evidence to show that the parent(s) had ILR, ILE, NTL or equivalent or were exercising Treaty rights in the UK for a continuous period of five years or more before the child's birth. The evidence should be:

- documents showing that they have been a student exercising Treaty rights for five years or more
- bank statement showing sufficient funds or regular income from a relative or sponsoring body

- letter from DWP showing that they have not been on the benefit system during the five year period and
- evidence that they have comprehensive sickness insurance.

Family members (or Dependents)

8.1 This is a person who is a family member of any of the above categories. The person must provide evidence to establish his/her relationship to the EEA national before their application should be considered. For example, if an Indian national claims to be a spouse of an EEA national, then she must provide a marriage certificate to confirm that relationship before the application would be considered.

8.2 If the family member claims to be the unmarried partner of the EEA national then we need to see evidence of co-habitation. Examples of this evidence could be joint tenancy agreements, joint utility bills, joint bank statements or other documentation which supports the fact that the couple have been living together during the qualifying period.

8.3 Where the family member claims to be a child of the EEA national or an extended family member, we need evidence not only from the family member but also from the EEA national to show that they are still in the UK exercising Treaty rights, or has acquired a right of permanent residence. The evidence required for this could be in the form of bank statements, payslips or letter from an employer which meets the criteria set in paragraphs 3.3 & 3.4. This will not apply, however, where the family member has been issued with a Permanent Residence Card see paragraph 14.2.

8.4 Like the other categories above, the date of birth of the child will determine the policy under the application will be considered.

8.5 Children born before 02 October 2000

Request evidence to show that the parent was exercising Treaty rights at the time of the child's birth. The evidence should be:

- a document confirming the family member's relationship to the EEA national plus any relevant evidence listed in paragraph 3.2 above.

8.6 Children born between 02 October 2000 and 29 April 2006

Request evidence to show that the parent(s) had ILR/ILE or NTL or Document Certifying Permanent Residence or Permanent Residence Card at the time of the child's birth.

- the documentary evidence should be either in the form of a letter from the United Kingdom Visas & Immigration, (UKV&I), or a passport with an endorsed ILR/ILE or NTL stamp or Document Certifying Permanent Residence or Permanent Residence Card.

8.7 Children born on or after 30 April 2006

Request evidence to show that the parent(s) had ILR, ILE, NTL or equivalent or were exercising Treaty rights in the UK for a continuous period of five years or more. The evidence should include:

- a document confirming the family member's link to the EEA national plus any relevant evidence listed in paragraph 3.6 above.

EU8 Countries

9.1 The member states of Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia have been members of the EU since 1 May 2004. EU8 nationals can apply for permanent residence under the Immigration (European Economic Area) Regulations 2006 where they have been residing in accordance with the relevant EU law. This means that children born to nationals of these countries would be eligible for British citizenship if their parents have been exercising Treaty Rights for five years or more in the UK.

9.2 In addition to the normal evidence required for children born to EEA nationals on or after 30 April 2006, EU8 countries are required to have met the Worker Registration Scheme (WRS) to be deemed to live in the UK in line with the EEA Regulation for a continuous period of 5 years.

Worker Registration Scheme

9.3 The scheme was introduced in 2004 when the EU8 countries joined the European Union as part of the transitional arrangement which required them to register if they wish to work for an employer in the UK.

9.4 Under the scheme, EU8 nationals were required to apply to register within one month of starting a job and if they did not apply within this period, the employment would be regarded as unlawful as it would not be in line with the transitional controls. If they changed employer during the 12 months period, they were required to re-register under the new employer.

9.5 Once they had been working in the UK legally for 12 months without a break in employment (not being out of work for more than 30 days in the 12 month period), they would no longer have to register on the scheme. They could then obtain a registration certificate confirming their right to live and work in the United Kingdom, although this aspect was not compulsory.

9.6 The employment did not have to be with the same employers as long as the EU8 national re-registered whenever they changed employer within the 12 months and was continuous, meaning that there was no break exceeding more than 30 days within this period.

Exemptions

9.7 The scheme applied **only to Workers** and not to the other categories under Treaty Rights. The following categories were not required to register:

- the self-employed
- retired/self-sufficient persons
- students
- those working legally in the United Kingdom for 12 months without a break in employment
- those providing services in the United Kingdom on behalf of an employer who is not established in this country
- those with dual citizenship of the United Kingdom, another country within the European Economic Area (EEA) that is not listed above, or Switzerland
- those who were the family member of a Swiss or EEA citizen (except the countries listed above) and that person was working in the United Kingdom or
- those who were the family member of a Swiss or EEA citizen who is living in the United Kingdom as a student, or a retired or self-sufficient person

9.8 Note that where the EU8 national was “legally working” in the UK on 30 April 2004, they were permitted to continue working for the same employer without the need to register that employment on the worker registration scheme (WRS). Technically, they were not exempt from WRS but, in such cases, registration was already deemed to be in place.

9.9 “Legally working” would include where they had leave to enter or remain under the Immigration Rules which allowed them to work, and they were working in accordance with the conditions of that leave. Examples would include a work permit holder working in line with his or her work permit; or a student working in line with the conditions of his or her student leave (i.e. 20 hours per week during term time, full time outside of term time or while on a course-related work placement).

9.10 Provided they were actually working in accordance with the relevant conditions on 30th April 2004, no further authorisation was required after that date for as long as they were working for the same employer. If they completed 12 months’ uninterrupted lawful employment ending on or after 30 April 2004, they would become entirely exempt from the scheme. If, however, they decided to change employer before they had completed 12 months, they would then be required to register their new employment on WRS until such a time as they had completed 12 months continuous lawful employment.

9.11 It’s important to emphasise that they must have been legally working on 30 April 2004. Merely having leave that allowed them to work would not, in itself, be sufficient if they were not actually working. If, for example, an EU8 national had leave as a student on 30 April 2004 but they were not actually in employment, they would then be required to register any employment that they started on or after 1 May 2004 and would need to complete 12 months’ continuous employment in accordance with WRS in order to become exempt from that scheme.

9.12 Where the EU8 was exempt from the scheme because they were self-employed, they would be required to register on to scheme if they decide to up employment. This would apply irrespective of time when they took up the employment; that is, whether or not the employment was taken up within or after the 12 months window.

Evidence

9.13 The scheme was in place until the transitional arrangements were lifted on **30 April 2011**. Therefore, where a EU8 national is relying on a period of work between **1 May 2004 and 30 April 2011**, they should provide evidence of their:

- Registration certificates
- Residence permit

9.14 Where the EU8 national has been issued with an EEA registration certificate or residence permit either under the 2000 or 2006 Regulations after they became exempt from the scheme, the WRS card may not be required.

9.15 This would depend on whether or not the date on the registration certificate covers the proscribed 5 years qualifying period. Where the registration certificate does not show sufficient qualifying period, the WRS card would be required to show the qualifying period. For example, an application for a child born December 2010 and a registration certificate issued December 2009. Although a registration certificate has been issued to the EU8 national showing that they have met the WRS requirement, they have only been exercising treaty rights for 2 years on the basis of the registration certificate. In this case, the WRS card/certificate and relevant evidence would be required to show evidence of the remaining qualifying period.

9.16 Where the EU8 national cannot provide a registration certificate or residence permit to show that they have met the WRS requirement, they should provide:

- WRS card or
- Exemption (provide evidence to show that they were exempt from the requirement – see paragraph 9.7 above).

9.17 Where a WRS card has been provided as evidence, it is important to match this with the other evidence (P60s, P45 or payslips etc) received to make sure that EU8 national did not change employer within the first 12 months without re-registering on to the scheme.

Note also that for UKV&I to have issued a registration certificate or resident permit, the parent may have had to give up their WRS card.

Calculating the qualifying period

9.19 When counting the 5 years qualifying period, this should be taken from the date on which the employment started (rather than the date the card was issued) if the EU8 national applied to register within the 30 days window even if the card was issued later. If the EU8 national applied outside of the 30 days window, the qualifying period starts from the date on which the WRS card was issued.

Note that any period of unauthorised work before the EU8 (formally A8) national registered on the scheme has no effect as to whether or not they have met the WRS requirement.

Family members

9.20 Direct family members (spouse/civil partner, children under 21 and dependent relatives) from a EU8 country were not required to register separately under the scheme. This means that they can be issued registration certificates without having to register on the scheme. The same applies to direct family members from non-EEA countries who would have been issued residence document.

9.21 Therefore, where there is application for a child born to a family member of an EEA national, they would not necessarily have a WRS card as they were not required to register on to the scheme. They would, however, have to provide evidence in the form of a registration certificate to show that they EU8 national on whom they are dependent had met the WRS requirement.

9.22 Note that family members of EU8 nationals would be required to provide the 5 years evidence of exercising Treaty Rights even though they are not required to register separately under the scheme.

Agency worker

9.23 Where the EU8 national has registered with an Agency and then acquired a permanent position with the company with which they were placed to work, they may be required to re-register depending on the nature of the relationship with the agency/organisation.

9.24 If the agency simply recruited the EU8 national to work for the organisation (e.g. like a recruitment rather than employment agency) and the organisation had always paid them directly, this would not constitute a change of employer and re-registration would not be required.

9.25 If, on the other hand, the EU national was employed by the agency (e.g. the agency paid him rather than the organisation he were sent to work for), he would technically be employed by the agency and therefore would need to re-register if he was subsequently employed directly by that organisation within the 12 month period.

EU8 National employed by more than one company

9.26 Where the EU8 national is working for more than one employer during the first 12 months of taking up employment, this would not have the effect of making their primary employment unlawful. That is, provided the EU8 national worked for their primary employer (i.e. the employer in respect of which they obtained their WRS card) for a continuous period of 12 months, then they would become exempt from the WRS at the end of that 12 months, irrespective of the fact that they had undertaken some unregistered or unauthorised employment during the 12 months window.

EU2 Countries

10.1 Nationals of Bulgaria and Romania who joined the union on 1 January 2007 qualify as of **1 January 2012** and could acquire a right of permanent residence under the 2006 regulation. However, in addition to the normal evidence of Treaty Rights, nationals of Bulgaria and Romania who claim to have exercised treaty rights as worker need to provide evidence to show that they had permission to work in the UK. This evidence should be in the form of a Work Card issued by UKV&I.

10.2 Where a national of Bulgaria or Romania claims to be self-employed, the permission to work (Work Card) is not requirement but they will have to show evidence of business activities. This should be in the form of a registration of a business, a lease on a business premises, invoices, evidence of national insurance contribution being paid, self assessment tax forms or any other evidence of self-employment activities.

Malta & Cyprus

11.1 Nationals of Cyprus and Malta who joined the European Union at the same time as the EU8 countries have the same rights as nationals of the Member States which were members of the European Union prior to 1 May 2004. They are able to take up work in the UK without registering and are eligible for registration certificates.

11.2 Family members of nationals from Cyprus and Malta are entitled to the same rights as family members of nationals of the pre-enlargement Member States and can apply for residence cards/family permits.

11.3 Therefore, where there is an application for a child born to a parent from one of these countries (or a family member), they should be treated as if they are nationals of one of the old (15) member states.

Croatia

12.1 Croatia joined the European Union on 1 July 2013 and applicants from this new Member State will not to be deemed to be settled for nationality purpose until 30 June 2018 at the earliest if they are applying solely on the basis of the period of their residence under the Regulations. Therefore, any application from a Croatian national on the basis of their residence should be refused.

12.2 Croatia like other new member states in the past is subject to transitional arrangements within the European Union. This means that nationals of Croatia require permission to work in the UK.

12.3 Note that the Ziolkowski ruling would also apply to Croatians. As such, some might be able to acquire permanent residence earlier. However, if they are applying for permanent residence based solely on periods of residence under the Regulation, the earliest they could acquire it would be 30 June 2018.

12.4 Note also that Croatians who need permission to work do not have a right of residence as job seekers.

Ziolkowski Ruling

13.1 Under this ruling, period of residence completed by nationals of the new Member States should be taken into account in calculating the five-year qualifying period under the 2006 Regulations where:

- residence was authorised under the domestic legislation of that state, and would have been compliant with article 7 of the Directive 2004/38/EC, (the Free Movement Directive), had the Directive at that time applied to the person in question.

13.2 This means that a national of a new member state who was in the UK prior to the date on which their country joined the EU, and who was residing in a capacity which complies with Article 7 of the Directive during that period of leave would meet the conditions above, as their residence was authorised under domestic legislation. This would apply to an accession state national who had leave to remain as a worker and was working in the UK, or a student who had leave to remain in that capacity and also held sufficient funds and comprehensive sickness insurance.

13.3 For example, nationals of A8 countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia) joined the EU on 1st May 2004. So where a person from one of these states had resided in the UK continuously as a worker or a student under domestic legislation from June 2000 June 2005, then they will have acquired permanent residence on 30 April 2006 when the Regulation came into force. However, there would be no claim for a child born before this date as the parents did not have permanent residence at the time of the child's birth.

13.4 The 30 April 2006 date is relevant for A8 nationals, because although the date of accession was in 2004 for A8 countries, the ability to acquire permanent residence did not exist before the 2006 Regulations came into force.

13.5 Equally nationals of A2 countries (Bulgaria and Romania) who joined to the EU on 1 January 2007 could only acquire permanent residence on or after 1 January 2007 where their five year qualifying period had wholly been acquired prior to this date. However, there would be no claim for a child born before this date as the parents did not have permanent residence at the time of the child's birth.

13.6 They can also rely on a period of both pre- and post-accession residence where the continuous 5 year period spans the date of accession for A2 nationals, or the date at which the 2006 Regulations came into effect if the applicant is an A8 national.

13.7 The Ziolkowski Ruling like the rest of the Treaty Rights policy Note is subject to the conditions set in paragraph 13.1, meaning that EEA nationals can only acquire permanent residence if they had not been outside of the UK for a period of over 2 years, or ceased to exercise free movement rights for a period of over two years, since the end of the 5 year period.

13.8 Note that where that persons pre-accession residence was as a student or self-sufficient person (person of independent means) under domestic legislation, in order to be article 7 compliant they would still need to demonstrate that they held sufficient resources and comprehensive sickness insurance for the relevant period.

13.9 The documentary evidence should be either in the form of a letter from the United Kingdom Visas and Immigration (UKV&I) or a passport with an endorsed of Leave to Remain or Residence Card.

Channel Islands and Isle of Man (CI&IOM)

EEA Nationals settled in CI&IOM

14.1 The GAL ruling and the introduction of the Immigration Regulation (EEA) 2000 changed the interpretation of settlement with regard to EEA nationals. Before this, all EEA nationals exercising Treaty rights in the UK were deemed to be settled.

14.2 The Immigration Appeals Tribunal, in the case of GAL ruled that the provisions of EU law regulating free movement are "immigration laws" for the purposes of IA 71 and BNA 81, and further, that persons having a **conditional** right of residence under EU law (eg a worker or student) were in practice subject to a temporal restriction on their stay here.

14.3 Whilst the GAL ruling and Immigration Regulation (EEA) 2000 came into force in the UK on 2 October 2000, it did not take effect until 1 October 2004 in Guernsey, 9 February 2004 in Jersey and on 31 March 2004 on the Isle of Man.

14.4 Therefore, any EEA national (including new member states who joined the EU on 1 May 2004 and before the ruling was implemented on the Channel Islands) who was working in Guernsey before 1 October 2004 would be regarded as settled for nationality purposes.

Islander Observation

14.5 The Treaty of Accession stated that a person deriving their British citizenship through a connection with the Channel Islands or the Isle of Man would not benefit from EU provisions relating to employment or establishment unless they and a parent or grandparent who was born, adopted, naturalised or registered in the UK, or the person themselves had been **ordinarily resident** in the UK for a continuous period of 5 years.

Please note that ordinarily resident in the UK does not mean exercising Treaty rights; it simply means living in the UK. Evidence of this could be in the form of any official document (for example, a letter from the local authority or employer, council tax or other tax returns) confirming that the applicant has been resident for 5 years or more in the UK.

14.6 Therefore a child born in the Channel Islands or Isle of Man should have the islander observation in their passport unless they have the UK connection as above. It may be the case that they also have a claim to another EU nationality which would give them full rights in the EU but their British passport can only show the rights afforded to them by their British citizenship.

Public funds

15.1 EEA nationals exercising treaty rights as workers have rights to claim public funds (benefits) in the UK for longer than six months without necessarily affecting their claims. This depends on how they are exercising their treaty rights and their particular circumstances; for example, EEA nationals who are working legally are entitled to top up funds such as working tax credits.

15.2 However, this right is restricted when it comes to establishing whether or not an EEA national is permanently resident in the UK. If it is shown that the EEA national is over reliant on public funds and for long periods, this would adversely affect whether that individual has acquire 'settled' or 'permanent' residence as defined by European law.

15.3 For the purpose of this policy, public funds mean:

- Income support and income-based jobseeker's allowance.
- Housing and homeless assistance.
- Housing and council tax benefit.
- Working family's tax credit and other forms of tax credits (see exception in paragraph 16.4).
- Child benefit (see exception in paragraph 16.4).

15.4 Applications should be refused where there is overwhelming evidence that the parent(s) is dependent on public funds. For example, a person would not be considered as exercising Treaty rights if they were working only a few hours per week and reliant almost totally on public funds. However, public funds received for six months or less, before the child's birth, cannot count against a claim.

15.5 Where a person is in full-time employment and claiming child benefit or a working family/child tax credit or other forms of tax credits (pension/disability), this would not count against a claim.

15.6 Where there are doubts about the level of reliance of an EEA national on public funds, request evidence (letter from DWP and/or tax returns and National Insurance contributions) to show that they have not been on the benefit system.

15.7 Where an EEA national has worked in the United Kingdom but temporarily ceases to work due to illness, accident/injury, maternity leave or redundancy/short term contract, the following should be considered:

- if the person claims to be temporarily unemployed as a result of an accident or injury, he/she must provide medical evidence to support his/her case.
- if a person claims to be involuntarily unemployed (redundancy/short term contract), he/she must provide evidence in the form of interview or job centre letters that he/she is genuinely seeking work. If the person has been out of work for over six months and appears to have made little or no attempts (no job interviews or contacts with the Job Centre) of returning to work, the application should be refused.

15.8 As a general guide, it would not be expected for an EEA national to remain temporarily unemployed or claiming top up funds for more than six months. This is, however, just a guide and does not mean that being on benefits for longer than six months would count against a claim. EEA nationals claiming benefits for more than this period can still be regarded as settled if they were working (exercising treaty rights) throughout the qualifying period and not overwhelming dependent on public funds.

15.9 The important point to bear in mind when considering whether or not someone is overwhelmingly dependent on the benefit is to look at the balance between the incomes that individual gets from work and that from benefits. If the vast majority of income is from benefits, then it is unlikely that they will have acquired permanent residence under EU law by relying on that period of residence to meet the 5 year qualifying period.

15.10 Another point to take into consideration when assessing whether or not someone is overwhelmingly dependent on the benefit systems is whether their employment is “genuine and effective” rather than “on such a small scale as to be purely marginal or ancillary”. It’s difficult to give firm guidelines on what is “genuine and effective” but you would take into account the frequency of the work, how much they are paid (in comparison with the level of benefits received), and the nature of the employment relationship.

15.11 If an EEA national is exercising their free movement rights as a worker or self-employed person, then they are entitled to claim benefits on the same footing as a British citizen in the same position. So if an EEA national is working but on a low income, they may be eligible for tax credits, housing benefit and council tax benefit (if they meet the relevant criteria for those benefits) without their right of residence being affected.

15.12 Someone who works, say, one day a month via a temping agency and who lives off benefits the rest of the time is unlikely to be in genuine and effective employment. Similarly, someone who helps out a friend who runs a shop once a while in exchange for a few pounds probably won’t qualify. On the other hand, someone who regularly works for 16 hours a week and receives national minimum wage will most likely satisfy the test.

15.13 Where it is difficult to establish from the evidence submitted whether or not the parent(s) have been overwhelmingly dependent on public funds, refer applicant to UKV&I to obtain a status letter.

15.14 It is important to note that where an EEA national is on income support or job seekers allowance, it is likely that they were also on other (housing & council tax) benefits. However, this would not necessarily count against a claim if the EEA national can provide evidence to show that they were either working or actively seeking work throughout the qualifying period.

Other criteria

16.1 It is worth noting that the rights confirmed by NTL, ILR/ILE, Document Certifying Permanent Residence or Permanent Residence Card can be lost if the person is absent from the United Kingdom for a period of more than two years consecutively.

16.2 You should note that only original copies of evidence will be accepted.

16.3 You should also note that for children born before 1 July 2006, a marriage certificate will be required if the claim is through the father.

16.4 Request all evidence at the beginning of the application process to avoid asking repeatedly for further evidence.