



# European Economic Area nationals: misuse of rights and verification of EEA rights of residence

**Version 3.0**

This guidance applies and interprets the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations). These regulations make sure the UK complies with its duties under the Free Movement of Persons Directive 2004/38/EC.

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# About this guidance

This guidance tells you how to assess whether a person has misused a European Economic Area (EEA) right of residence in the UK and how to verify an EEA right of residence.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Free Movement Policy team.

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

## Publication

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

- version **3.0**
- published for Home Office staff on **14 December 2017**

## Changes from last version of this guidance

Removal of references to rough sleeping.

### Related content

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### Related external links

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

[Free Movement of Persons Directive](#)

# Rights of residence: overview

This page gives you an overview of the rights of residence for European Economic Area (EEA) nationals and their family members.

## Initial rights of residence

Regulation 13 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations) states that EEA nationals and their family members can live in the UK for up to 3 months following their initial entry providing they hold either a valid:

- national identity card
- passport issued by an EEA state

Whilst the EEA national will cease to have a right to reside if they become an unreasonable burden on the social assistance of the state during the initial right of residence, there are no other conditions or restrictions placed upon them during this period.

## Extended rights of residence

If an EEA national is residing in the UK for more than 3 months, they must show they are exercising free movement rights. An EEA national who is exercising free movement rights is known as a qualified person. Regulation 6 defines a qualified person as a:

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

Direct family members can also reside with the EEA national for this period if they can provide a valid passport and evidence of their relationship to the EEA national.

## Permanent rights of residence

Under regulation 15, an EEA national and their family members automatically acquire permanent residence in the UK following 5 years continuous residence in line with the regulations.

Further information on initial, extended and permanent rights of residence can be found in the free movement rights guidance.

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# Misuse of a right to reside

This page sets out the powers given by the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations) to take action to address a misuse of a right to reside by European Economic Area (EEA) nationals and their family members.

## The EEA Regulations

Regulation 26 of the regulations came into effect on 1 February 2017. This allows the Secretary of State to make an EEA decision where there are reasonable grounds to suspect the misuse of a right to reside and it is proportionate to do so given all the circumstances of the case.

Regulation 26 sets out that a misuse of a right to reside includes:

- observation of the requirements of these regulations in circumstances which do not achieve the purpose of these regulations
- intention to obtain an advantage from these regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these regulations

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# Engaging in conduct to circumvent regulation 14

This page tells you when a decision can be taken against a European Economic Area (EEA) national who may be engaging in conduct intended to circumvent the requirement to be a qualified person under regulation 14 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations).

Regulation 26 states that you can make an EEA decision against EEA nationals who observe the requirements of the regulations in circumstances which do not achieve the purpose of the regulations. Or where they intend to obtain an advantage from these regulations by engaging in conduct which artificially creates the conditions required to satisfy the criteria set out in these regulations.

There must be reasonable grounds to suspect the misuse of a right to reside and the decision must be proportionate. See link for further information on what is [reasonable and proportionate](#).

There are instances where EEA nationals may seek to misuse their initial right of residence by leaving the UK shortly before the 3 month period expires, and then re-entering the UK and benefitting from another 3 month's initial right of residence.

When repeated, this behaviour means the EEA national can reside in the UK indefinitely, without ever exercising free movement rights. Such actions are against the principles of the [Free Movement of Persons Directive 2004/38/EC](#) (the Directive) and are considered a misuse of a right to reside.

Persons who are removed under regulation 23(6)(c) who seek to re-enter the UK within 12 months of that removal, must demonstrate they will be a qualified person upon re-entry to the UK. For further information see guidance on [re-entering the UK following administrative removal](#).

European Economic Area administrative removal: consideration and decision contains further information on the process for removing a person under regulation 23(6).

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# Re-entering the UK following an administrative removal

This page tells you when it is appropriate to make a decision under regulation 26(2) of the [Immigration \(European Economic Area \(EEA\)\) Regulations 2016](#) (the regulations).

Regulation 26(2) sets out that a misuse of a right to reside includes attempting to enter the UK within 12 months of being administratively removed under the regulations where the person attempting to do so is unable to provide evidence that immediately upon re-entry they will be a qualified person.

Regulation 26(4) sets out that a person who has been administratively removed from the UK may re-enter during that 12 month period if there has been a material change in the circumstances which justified their removal.

For example, an EEA national was removed under regulation 23(6)(a) for not exercising Treaty rights on 1 February 2017. That EEA national then seeks to be readmitted to the UK on 1 September 2017 but cannot show they would be a qualified person immediately upon re-admission. In this instance, you can refuse them admission and any accompanying family members in line with regulation 23(3).

There must be reasonable grounds to suspect the misuse of a right to reside and the decision must be proportionate. See link for further information on what is [reasonable and proportionate](#).

If that same EEA national can show they would be a qualified person, for example because they are entering the UK to take up an offer of employment and can supply evidence of an employment contract to support this, admission must be granted.

Anyone seeking to re-enter the UK within 12 months of administrative removal under the regulations is likely to be first encountered by Border Force staff. For further guidance to Border Force staff on taking a decision on this basis, see the Border Force manual.

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# Reasonableness and proportionality

This page tells you how to assess if there are reasonable grounds to suspect a person has misused their right to reside in line with regulation 26 of the [Immigration \(European Economic Area \(EEA\)\) Regulations 2016](#) (the regulations) and if that decision is proportionate.

In line with regulation 26(3), the Secretary of State may take an EEA decision on the grounds of a misuse of a right to reside if there are reasonable grounds to suspect the misuse of a right to reside and it is proportionate to do so.

Whether there are reasonable grounds will depend on the nature of the misuse of a right to reside. See link for further information on assessing whether there are [reasonable grounds](#) to suspect a misuse of a right to reside.

Further information on proportionality see link: [proportionality](#).

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# Reasonable grounds of suspicion

This page tells you how to assess if there are reasonable grounds to suspect a person has misused a right to reside in line with regulation 26 of the [Immigration \(European Economic Area \(EEA\)\) Regulations 2016](#) (the regulations).

## Engaging in conduct

For example, an EEA national repeatedly leaves the UK shortly before their 3 month period expires, only to re-enter in order to benefit from a further 3 month's period of residence, therefore being able to reside indefinitely without exercising Treaty rights. If it is evident that the person has only left the UK for a short period of time in order to deliberately secure a further 3 month initial right of residence and they have done it on a number of occasions. It is reasonable to suspect the EEA national is misusing their initial right of residence to repeatedly avoid becoming a qualified person within the meaning of regulation 6. As long as it is proportionate to do so, you can refuse entry or take action to administratively remove the EEA national in line with regulation 23(6)(c).

## Attempting to enter UK within 12 months of being removed

There would be reasonable grounds to suspect a misuse of a right to reside if an EEA national is seeking to enter the UK following administrative removal and cannot show at the border that they would be a qualified person immediately upon entry.

If anyone has avoided border controls and is encountered in the UK, the enforcement officer must find out if they are now exercising free movement rights. If they are not, they will be liable to the administrative removal process again, even if it is less than 3 months since they re-entered the country.

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# Proportionality

This page tells you how to assess if a decision taken in line with regulation 26 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations) on misuse of rights for European Economic Area (EEA) cases is proportionate.

In line with regulation 26(3), any decision taken on the grounds of a misuse of a right to reside must be proportionate.

## Grounds to take into account when considering proportionality

When considering if a decision will be proportionate it is important to consider the:

- level of misuse of a right to reside, including:
  - the severity of the misuse of rights
  - the degree the person benefitted from the misuse of rights
  - the degree of involvement or knowledge the person had in the misuse of rights
- personal circumstances of the person

In all cases the impact of the individual's misuse of rights must be balanced against the impact on the individual.

## Personal circumstances

Personal circumstances must be taken into account when considering whether a decision is proportionate. This includes considering the person's:

- age
- state of health
- family ties to the UK
- length of residence in the UK
- social and cultural integration

## Example - refusal of documentation

An EEA national applies for a registration certificate and has provided evidence that they have been working for the last 12 months. However 2 years ago they entered the UK on three occasions for a period of 3 months or less and were not working at the time. The EEA national is currently a qualified person and whilst they had previously misused their right to reside it is unlikely to be proportionate to refuse the document on this occasion.

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# Verifying a right of residence

This page tells you when you can request information or invite a person to an interview to verify their European Economic Area (EEA) right of residence in the UK and what you must do if they don't respond to the request.

Regulation 22 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the regulations) include provision for the Secretary of State to draw a factual conclusion and refuse or revoke documentation, or remove a person, if they have failed to meet this regulation.

## Verifying eligibility

Regulation 22(1) applies where you:

- have reasonable doubt a person has a right to reside under regulation 14(1) or 14(2)
- want to check the eligibility of a person to apply for documentation under the regulations

## Invitation to verify a right of residence

If regulation 22(1) applies, you can invite a person to:

- provide evidence to support the existence of a right to reside
- provide evidence to support an application for documentation
- attend an interview

## Failure to check a right of residence

If without good reason a person fails to provide the additional information asked for or fails to attend an interview on 2 occasions, you may draw a factual conclusion about that person's entitlement to reside in the UK.

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# Verifying eligibility

This page tells you when you can verify a right of residence under regulation 22 of the [Immigration \(European Economic Area \(EEA\)\) Regulations 2016](#) (the regulations).

Regulation 22(1) applies if you:

- have reasonable doubt a person has a right to reside under regulation 14(1) or 14(2) of the regulations
- want to verify the eligibility of a person to apply for documentation

## Reasonable doubt about a person's right to reside

This power may be engaged at any point, even if there is no application for documentation, providing there are reasonable grounds to doubt a person's right to reside under the regulations.

For example, during the course of an investigation into illegal working, enforcement officers encounter a non-EEA national who claims to be the spouse of a Dutch national exercising free movement rights in the UK. The non-EEA national does not have a residence card.

They provide the name and address of an EEA national but claim they are currently out of the country on holiday. They cannot provide further details, such as where the EEA national has travelled to and when they will return to the UK. On this basis, you have reasonable doubts that the non-EEA national has a right to reside.

## Verifying eligibility for documentation

In contrast, this power is only engaged if an application for documentation is made. Although there should be some basis to ask for additional information, there is no requirement for you to have reasonable doubt.

For example, a non-EEA national has applied as the daughter of an EEA national student. Evidence of relationship has been provided and details of the course and enrolment which are several months old. In this instance, there are no reasonable doubts, however, you require an up to date copy of enrolment for the EEA national to make sure free movement rights are currently being exercised.

If you have reasonable doubts or you are verifying the eligibility of a person to apply for documentation, you can request further evidence to support that right or invite them for interview.

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# Invitation to verify a right of residence

This page tells you when you can ask a person to send further information or attend an interview to verify a right of residence under regulation 22 of the [Immigration \(European Economic Area \(EEA\)\) Regulations 2016](#) (the regulations).

Regulation 22(2) states you can ask the applicant to:

- provide evidence to support the existence of a right to reside
- provide evidence to support an application for documentation
- attend an interview

An applicant claims to have a right to reside on the basis of their relationship to another person. For example a non- EEA national's claim to have a right to reside is on the basis of their relationship with an EEA national, regulation 22(3) means you can ask that other person to:

- provide information about their relationship to the applicant
- attend an interview

Whether you ask the person to provide more evidence or to attend an interview will depend on the individual circumstances of the case.

For example, it may be more useful when assessing if a person is in a genuine marriage with an EEA national, to ask both parties to attend an interview where they can be questioned in more detail. However, where you need information from an EEA national on a missing payslip, it would be more appropriate to request this information by post.

Further information on conducting interviews can be found in the direct family members guidance.

Further information on what to do when a person fails to provide the required information or attend an interview is set out in the section on [failure to verify a right of residence](#).

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# Failure to verify a right of residence

This page tells you what to do if a person applying for European Economic Area (EEA) rights of residence has been invited to provide further information or attend an interview on 2 occasions, and fails to do so.

Under regulation 22(4), you can draw any factual conclusions about a person's entitlement to a right to reside if, without good reason, that person fails to:

- provide the extra information they were asked for
- attend an interview on at least 2 occasions, if they are asked to do so

You may only draw the conclusion that, on the balance of probabilities, the person does not have, or has ceased to have, a right to reside in these situations if there is other evidence to suggest the person does not have a right to reside.

You must not decide that a person does not have, or ceased to have, a right to reside just because they didn't provide the information or failed to attend an interview on at least 2 occasions.

There must be other grounds to suggest there is no right to reside. In practice these will usually be the grounds which prompted the request for additional information or an interview.

For example, a person has applied on the basis of their marriage to an EEA national. However, there is evidence to show the marriage may not be genuine as the parties to the marriage have never met, do not speak a common language and got married by proxy. The applicant is asked to come to an interview to address these concerns, but fails to attend on 2 occasions. In this situation you may conclude that the person does not have a right to reside, taking into consideration the failure to attend the interview and the other evidence.

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