



Home Office

Free movement rights: derivative rights of residence

Version 5.0

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About this guidance

This guidance tells you about derivative rights of residence under the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

A person who does not qualify for a right of residence under the Free Movement Directive 2004/38/EC (the Free Movement Directive) may qualify for another right of residence under European Union (EU) law. These are known as 'derivative rights' as they come from (are 'derived' from) other instruments of EU law, and not from the Free Movement Directive.

This guidance tells you what to consider when assessing an application for a document to confirm a derivative 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 European Migration 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.

Clearance and publication

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

- version **5.0**
- published for Home Office staff on **02 May 2019**

Changes from last version of this guidance

Changes to reflect the Court of Appeal judgement in Patel. Further clarity is also provided on how to consider, in Zambrano cases, whether a British citizen would be forced to leave the UK, and the EEA, if the applicant is denied a derivative right of residence.

Related content

[Contents](#)

Related external links

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

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

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

Rights of residence

This section tells you about the circumstances in which a derivative residence card can be issued for people claiming to have a derivative right of residence in the UK.

Whether a person has a derivative right of residence is a matter of fact. This means that a person is not required to hold a document confirming this right in order to have that right. However, people with a derivative right of residence may choose to apply for a derivative residence card in order to prove, for example:

- their right to reside in the UK
- their right to enter or re-enter the UK
- their entitlement to take up employment in the UK
- their right to rent in the UK

A derivative residence card shows that the holder has a derivative right at the time the card was issued, but only confirms a right to work and reside in the UK for as long as the holder continues to enjoy the underlying right to reside.

Certificate of application

Where a person has applied for a derivative residence card, they will be issued a certificate of application (COA). See Processes and procedures for EEA documentation applications.

Validity of derivative residence cards

The maximum validity period of a derivative residence card is 5 years. You may issue a card for a shorter period in order to reflect the circumstances of an individual case.

For example, a primary carer has a derivative right of residence on the basis that their child is in education (an Ibrahim and Teixeira right). The child is 16 and intends to leave the UK when they finish their full-time education at the age of 18. In this situation, it would be appropriate to issue the primary carer of the child a derivative residence card for 2 years.

Permanent residence

A person with a derivative right of residence cannot acquire permanent residence under the 2016 regulations. This is in line with regulation 15(2).

The Court of Justice of the European Union (CJEU) also considered in the case of [Alarape \(C-529/11\)](#) whether the child and the primary carer could acquire a right of permanent residence on the basis of Article 12 of the Regulation on Free Movement of Workers (1612/68/EEC), which concerns rights in relation to Ibrahim and Teixeira.

The CJEU concluded that periods of residence completed on the sole basis of Article 12 of the Regulation cannot be taken into account for the purpose of acquiring the right of permanent residence under the Free Movement Directive (2004/38/EC).

EEA national self-sufficient child

An EEA national child who is residing in the UK as a self-sufficient person under the Free Movement Directive can acquire permanent residence after 5 years' continuous residence.

However, a person who has a derivative right of residence on the basis that they are the primary carer of such a child cannot acquire permanent residence.

Related content

[Contents](#)

Related external links

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

Types of derivative rights

This section explains what a derivative right of residence is and who can claim a right of residence in the UK on this basis.

Derivative rights of residence

'Derivative rights' are rights which come from (or are 'derived' from) other instruments of EU law rather than from the Free Movement Directive 2004/38/EC (the Free Movement Directive). A person who is not an 'exempt person' may qualify for a derivative right of residence. The requirements are set out in regulation 16 of the Immigration (European Economic Area) Regulations 2016 (the 2016 regulations).

An 'exempt person' is defined in regulation 16(7)(c) of the 2016 regulations as a person:

- who has a right to reside in the UK as a result of any other provision of the 2016 regulations, for example, a person who is already exercising free movement rights as a European Economic Area (EEA) national
- who has a right of abode in the UK by virtue of section 2 of the Immigration Act 1971 (the 1971 act), for example, the person is a British citizen
- to whom section 8 of the 1971 act, or any order made under subsection (2) of that provision applies
- who has indefinite leave to enter or remain in the UK

As confirmation of a derivative right of residence, a person can apply for a derivative residence card which has the same appearance as a residence card. For more information on derivative residence cards, see [Rights of residence](#) guidance.

Types of derivative rights of residence

A person may qualify for a derivative right of residence in one of the following categories:

- [Zambrano cases](#)
- [Chen cases](#)
- [Ibrahim and Teixeira cases](#)
- [dependent child aged under 18 of a primary carer in one of the categories set out above](#)

Zambrano cases

The primary carer of a British citizen child or dependent adult, where requiring the primary carer to leave the UK would force that British citizen to leave the European Economic Area (EEA).

Chen cases

The primary carer of an EEA national child who is exercising free movement rights in the UK as a self-sufficient person, where requiring the primary carer to leave the UK would prevent the EEA national child exercising those free movement rights.

Ibrahim and Teixeira cases

The child of an EEA national worker or former worker where that child is in education in the UK.

The primary carer of a child of an EEA national worker or former worker where that child is in education in the UK, and where requiring the primary carer to leave the UK would prevent the child from continuing their education in the UK.

Dependent child aged under 18 of a primary carer in one of the categories set out above

The dependent child of a primary carer where requiring that child to leave the UK would force the primary carer to leave the UK with them.

A person who is claiming a derivative right of residence in a category above must meet the relevant conditions set out in the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) to qualify for this right.

In line with the [Immigration \(Provision of Physical Data\) Regulations 2006 \(as amended\)](#), from 6 April 2015 a non-EEA national applying for a derivative residence card will have to enrol their biometrics in order to be issued a document confirming their right to reside in the UK under EU law.

Any references to a derivative residence card in this document should be taken to also mean a document issued in a biometric format.

For further guidance on the process for enrolling biometrics, please see the biometric information (introduction) guidance.

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 children who are in the UK means that consideration of the child's best interests is a primary consideration in immigration cases.

You must carefully consider all of the information and evidence provided concerning the best interests of a child in the UK when assessing whether a relevant child would be unable to remain, or to continue to be educated, in the UK, if the applicant left the UK for an indefinite period.

The decision notice or letter must demonstrate that a consideration has taken place of all the information and evidence provided concerning the best interests of a child in the UK. You must carefully assess the quality of any evidence provided. Original, documentary evidence from official or independent sources will be given more weight in the decision-making process than unsubstantiated assertions from the applicant about a child's best interests.

For further guidance see [Alternative care arrangements: children](#).

Related content

[Contents](#)

Related external links

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

[Ibrahim C-310/08](#)

[Teixeira C-480/08](#)

[Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-3409](#)

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

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

Chen cases

This section tells you about the Court of Justice of the European Union (CJEU) judgment in the case of [Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#) and how a person can derive a right of residence on this basis.

In line with the [Free Movement Directive 2004/38/EC](#) (the Free Movement Directive) a European Economic Area (EEA) national self-sufficient child has a right of residence in a member state where that child:

- is an EEA national
- holds sufficient resources to prevent them becoming a burden on the social assistance system of the host member state
- holds comprehensive sickness insurance (CSI)

Regulation 4(3) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) requires the Chen child to have sufficient resources and CSI to cover all of their dependent family members (although these resources and CSI could be held by the family members themselves). For further guidance on CSI see the comprehensive sickness insurance part of the [Qualified persons](#) guidance.

If a child meets these requirements, they can apply for a registration certificate as confirmation of this right, although this is not mandatory.

Chen judgment

In the CJEU case of Chen, the court found that a self-sufficient EEA national child is entitled to be accompanied by their primary carer who will have a right of residence in the host member state until the child's eighteenth birthday, if refusing such a right prevents the child from continuing to reside in the UK.

The Chen judgment came into effect on 16 July 2012 and the conditions are set out in regulation 16(2) making it possible for the primary carer of an EEA self-sufficient child to apply for a derivative residence card.

Paragraph 257C of the [Immigration Rules](#) (for parents of a self-sufficient child) was deleted on 6 April 2013 and all applications for recognition of a Chen right must be made under the 2016 regulations.

Considering Chen cases

There are 5 stages you must consider when assessing whether a person has a derivative right of residence on the basis of Chen:

- [stage 1: EEA national child](#): assessing whether the child is an EEA national under the age of 18
- [stage 2: self sufficiency](#): assessing whether the child is self-sufficient

- [stage 3: direct relative or legal guardian](#): assessing whether the person claiming to have a derivative right is a direct relative or legal guardian of the child
- [stage 4: primary carer](#): assessing whether the direct relative or legal guardian is the primary carer of the child
- [stage 5: EEA child unable to remain in the UK](#): assessing whether the EEA national child would be unable to remain in the UK if the primary carer was required to leave the UK
- [stage 6: public policy, public security and public health](#): assessing that there are no grounds of public policy, public security or public health that should prevent the issue of a derivative residence card

You must refuse an application if the conditions are not met. For example, if the applicant provides the passport of their EEA national child which is either forged or counterfeit you can refuse the application on that basis without going to the next stage of the consideration process. However, where you are satisfied a person has met the requirements of stage one, a full consideration of all the stages should be undertaken. This will ensure a more robust decision, which has considered all the facts of the case, has been undertaken. Cases where this is not considered appropriate must be referred to a senior caseworker.

If you need more information to establish a person's derivative right of residence, you may:

- ask the applicant for the information
- invite the applicant for interview

This is in line with regulation 22 of the 2016 regulations.

Related content

[Contents](#)

Related external links

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

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

[Immigration Rules](#)

Stage 1: EEA national child

This section tells you about stage one of the process for considering if a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in Chen.

The first stage of the process is to assess whether the child is a European Economic Area (EEA) national under the age of 18 years.

If a person has already been issued an EEA family permit on the basis of Chen, you can accept that it has already been confirmed that the child is an EEA national under the age of 18 years.

EEA nationality

An EEA national is defined in regulation 2 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) as a national of an EEA state who is either:

- not also a British citizen
- also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 14 or 15

A person is not considered an EEA national if the member state of which they are a national joined the EEA after that person acquired British citizenship.

In order to demonstrate EEA nationality, a person must present either a valid EEA national passport or a valid EEA identity card.

Where a person cannot provide the above documents as evidence of identity or nationality due to circumstances beyond their control, you can consider accepting alternative forms of evidence under regulation 42 of the 2016 regulations.

If the EEA national is also a British citizen, you must refer to the guidance on Family members of British citizens.

Age of child

Evidence to demonstrate the child is under the age of 18 years must be provided in the form of either:

- a valid EEA national passport
- a valid EEA identity card
- an original birth certificate

Refusal

If you are not satisfied the relevant child is an EEA national who is under the age of 18 years, you must refuse the application in line with regulation 16(2)(b)(i) of the 2016 regulations.

Appeal rights

If you refuse an application on the grounds in this section, it will not attract a right of appeal in line with regulation 36(5)(b)(i) because the EEA national has not been shown to be under 18. But if the applicant has already been issued with an EEA family permit, they will have a right of appeal under regulation 36(5)(a) provided they provide a valid identity card issued by an EEA member state or a valid passport.

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

Stage 2: self-sufficiency

This section tells you about the second stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in Chen.

You must consider [stage 1](#) of the process before moving on to stage 2.

The second stage of the process is to assess whether the European Economic Area (EEA) national child is self-sufficient.

Assessing self-sufficiency

You must first consider whether the EEA national child is either:

- exercising free movement rights in the UK as a self-sufficient person
- they would be exercising free movement rights in the UK (if you are considering an application for an EEA family permit or to admit the person to the UK at the primary control point (PCP))

The EEA national child must have the following for themselves and their dependent family members:

- comprehensive sickness insurance
- sufficient resources not to become a burden on the social assistance system of the UK during their period of residence

Income from the primary carer

A child may show that they are self-sufficient by relying upon the income of their primary carer. However, any work undertaken in the UK will only be considered acceptable where this is lawful employment. For example, if the primary carer currently has leave to remain under another part of the Immigration Rules which entitles them to work, they can use any income from those earnings to show they are self-sufficient.

Before 16 July 2012, when Chen was given effect under the [Immigration \(European Economic Area\) Regulations 2006](#) (the 2006 regulations), paragraph 257C of the [Immigration Rules](#) did not grant primary carers of EEA self-sufficient children the right to work.

Since 16 July 2012, the 2006 regulations (as amended) and now the 2016 regulations, enable the primary carer with a derived right of residence to work lawfully in the UK regardless of whether a document has been issued to them in that capacity. This means there may be cases where the primary carer seeks to rely on this work to meet the self-sufficiency requirement when applying for a document. You must, therefore, consider whether the EEA national child was self-sufficient before the primary carer started employment in a Chen capacity. This is because the

EEA national child must be self-sufficient first in order for the primary carer to derive a right of residence, and so be able to work lawfully in the UK.

In cases where self-sufficiency has already been established (for example, the applicant has already been issued a document under the 2006 regulations or the 2016 regulations on the basis of Chen) and the primary carer has begun working in exercise of their Chen right, then funds from that employment can be relied upon to support a further application on the basis of Chen.

Income from other sources

If the primary carer is not lawfully working in the UK, or does not earn enough income to demonstrate that the child and themselves are self-sufficient, you can accept other evidence which may include:

- bank statements showing income from other sources, for example family or friends
- savings accounts showing funds which are accessible to the primary carer and child

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

Comprehensive sickness insurance (CSI)

In order for the child to be considered self-sufficient for Chen purposes, the applicant must show that there is comprehensive sickness insurance in the UK in place for themselves, the child and any other family members who are not British citizens. For further guidance on CSI see the comprehensive sickness insurance part of the Qualified persons guidance.

Refusal

If you are not satisfied the relevant child and their primary carer are self-sufficient, you must refuse the application in line with regulation 16(2)(b)(ii) of the regulations.

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal under regulation 36(5)(b)(i) where the requirements in stage one have been satisfied.

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Related external links

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

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

Stage 3: direct relative or legal guardian

This section tells you about the third stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in Chen.

You must consider [stage 1](#) and [stage 2](#) of the process before moving on to stage 3.

The third stage of the process is to assess whether the person asserting a derivative right of residence is the direct relative or legal guardian of the European Economic Area (EEA) national self-sufficient child. If a person has already been issued an EEA family permit on the basis of Chen, you can accept that this has already been confirmed.

Assessing ‘direct relative’ or ‘legal guardian’

Whilst the person asserting a derivative right of residence may be the parent or a legal guardian of the child, they cannot be considered as a ‘direct family member’ under regulation 7 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations). This is because under European Union (EU) law, the family member (in this case the primary carer) has to be dependent upon the EEA national sponsor (in this case the child). If a family’s income comes from the parents, an EEA national child would be dependent upon their parents and not the other way round.

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

Refusal

If you are not satisfied the person asserting a derivative right of residence on the basis of Chen is the direct relative or legal guardian of the child, you must refuse the application in line with regulation 16(8)(a) of the 2016 regulations without proceeding to [stage 4](#).

Appeal rights

If you refuse an application on the grounds set out in this section it will not attract a right of appeal in line with regulation 36(5)(b)(i) because the applicant has not provided proof that they are a direct relative or legal guardian of an EEA national. But if the applicant has already been issued with an EEA family permit, they may have a right of appeal under regulation 36(5)(a).

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Stage 4: primary carer

This section tells you about the fourth stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in Chen.

You must consider [stage 1](#), [stage 2](#) and [stage 3](#) of the process before moving on to stage 4.

The fourth stage of the process is to assess whether the direct relative or legal guardian is the primary carer of the European Economic Area (EEA) national self-sufficient child.

Assessing ‘primary carer’

In the Chen judgment the CJEU stated that the primary carer of an EEA national child must be able to live in the host member state in order to allow their child to exercise their free movement rights.

For information on assessing whether a person is a primary carer, see [Primary and shared responsibility](#).

Refusal

If you are not satisfied the person is the primary carer of the EEA national child, you must refuse the application in line with regulation 16(2)(a) of the 2016 regulations.

Appeal rights

If you refuse an application on the grounds set out in this section, it will attract a right of appeal under regulation 36(5)(b)(i) provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Related external links

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

Stage 5: EEA child unable to remain in UK

This section tells you about the fifth stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in Chen.

You must consider [stage 1](#), [stage 2](#), [stage 3](#) and [stage 4](#) of the process before moving on to stage 5.

Assessing whether the child is unable to remain in the UK

The fifth stage of the consideration process is to assess whether the European Economic Area (EEA) national child would be unable to remain in the UK if the primary carer were required to leave the UK for an indefinite period. For further guidance see [Alternative care arrangements: children](#).

Refusal

If you are not satisfied the EEA national child would be unable to remain in the UK, you must refuse the application in line with regulation 16(2)(iii) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section, it will attract a right of appeal under regulation 36(5)(b)(i) provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 6: public policy, public security and public health

This section tells you about the sixth and final stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in *Chen*.

You must consider [stage 1](#), [stage 2](#), [stage 3](#), [stage 4](#) and [stage 5](#) of the process before moving on to stage 6.

Public policy, public security and public health

Before issuing a derivative residence card, you must be certain there are no reasons to refuse on the grounds of public policy, public security or public health. For further information see: [EEA decisions on grounds of public policy and public security](#).

Refusal

You must refuse an application for a derivative residence card if refusal is justified on public policy, public security or public health grounds, in line with regulation 27 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section, it will attract a right of appeal under regulation 36(5)(b)(i) provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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

Ibrahim and Teixeira cases

This section tells you about the Court of Justice of the European Union (CJEU) judgment in the cases of [Ibrahim C-310/08](#) and [Teixeira C-480/08](#) and how a person can derive a right of residence on this basis.

In the cases of Ibrahim and Teixeira, the CJEU ruled that, by virtue of Article 10 of Regulation 492/2011 (formerly Article 12 of Regulation No 1612/68) the following persons can claim a right of residence:

- children who are in education in a host member state where the European Union (EU) citizen works or has worked
- the primary carer of children who are in education in a host member state where the EU citizen works or has worked

Provision was made to recognise a right of residence in the [Immigration \(European Economic Area\) Regulations 2006](#) (the 2006 regulations) under regulation 15A(3) and 15A(4) on 16 July 2012.

Regulation 16(3) of the 2016 regulations provides for a derivative right of residence to the child of a European Economic Area (EEA) national where that child:

- lived in the UK at a time when the EEA national parent was a worker
- is in education in the UK

Regulation 16(4) provides for a derivative right of residence for the primary carer of a child who comes under regulation 16(3).

Considering Ibrahim and Teixeira cases

There are 7 stages to consider when assessing whether a person has a derivative right of residence on the basis of Ibrahim and Teixeira:

- [stage 1: child of an EEA national](#): assessing whether the child is the child of an EEA national
- [stage 2: child in UK when EEA national was a worker](#): assessing whether the child lived in the UK at a time when the EEA national was a worker
- [stage 3: child in education](#): assessing whether the child is in education
- [stage 4: direct relative or legal guardian](#): (if the applicant is applying as a primary carer) assessing whether the person is a direct relative or legal guardian
- [stage 5: primary carer](#): (if the applicant is applying as a primary carer) assessing whether the direct relative or legal guardian is the primary carer
- [stage 6: child unable to continue education](#): (if the applicant is applying as a primary carer) assessing whether the child would be unable to continue to remain in education were the primary carer required to leave the UK for an indefinite period

- [stage 7: public policy, public security and public health](#): (all cases) assessing that there are no grounds of public policy, public security or public health that should prevent the issue of a derivative residence card

You must refuse an application if the conditions are not met. For example, if the applicant has provided the passport of the European Economic Area (EEA) national parent and that passport is either forged or counterfeit, you can refuse the application on that basis without proceeding to the next stage of the consideration process. However, where you are satisfied a person has met the requirements of stage one, a full consideration of all the stages should be undertaken. This will ensure a more robust decision, which has considered all the facts of the case, has been undertaken. Cases where this is not considered appropriate must be referred to a senior caseworker.

If you need more information to check whether a person is eligible to apply for derivative rights documentation (for example, to check the applicant is a direct relative or legal guardian, or primary carer), you may:

- ask the applicant for the information
- invite the applicant for interview

This is in line with regulation 22 of the 2016 regulations.

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

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

Stage 1: child of an EEA national

This section tells you about the first stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C-310/08](#) and [Teixeira C-480/08](#) under regulations 16(3) and (4) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

The first stage of the process is to assess whether the child is the child of a European Economic Area (EEA) national. This is in line with regulation 16(3)(a) of the 2016 regulations.

If a person has already been issued an EEA family permit on the basis of Ibrahim and Teixeira, you can accept that it has already been confirmed that the child is the child of an EEA national.

Adopted children and step-children

For the purposes of assessing whether a child (and so also their primary carer) has a derivative right of residence on the basis of the Ibrahim and Teixeira CJEU judgments, an adopted child and a step-child are considered the same as if they were the biological child.

In the case of step-children, where the EEA parent has since divorced from the child's biological parent, the primary carer and child can still be considered for a derivative residence card as long as they can demonstrate the child was the step-child of the EEA national parent for the purposes of assessing regulation 16(3).

Evidence of relationship between child and EEA parent

To demonstrate that the child is the child of an EEA national, the applicant must present one of the following, an:

- original birth certificate
- original birth certificate and marriage certificate for their parent and EEA national (where applying as a step-child)
- adoption order (where applying as an adopted child)

The birth certificate must give details of the child and the EEA national parent upon whom the child (and primary carer) is deriving a right of residence.

Evidence of nationality and identity for EEA parent

A person can demonstrate evidence of EEA nationality and identity by producing either a valid EEA national passport or valid EEA identity card.

Evidence of identity for applicant

A person can prove their identity by producing either a valid passport or EEA identity card (if they themselves are also an EEA national).

Where a person cannot provide the above documents as evidence of identity or nationality due to circumstances beyond their control, you can consider accepting alternative forms of evidence under regulation 42.

Refusal

If you are not satisfied the relevant person is the child of an EEA national, you must refuse the application in line with regulation 16(3)(a) of the 2016 regulations.

Appeal rights

If you refuse an application on the grounds set out in this section it will not attract a right of appeal in line with regulation 36(5)(b)(ii) unless an EEA family permit has already been issued on this basis.

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

Stage 2: child in UK when EEA national was a worker

This section tells you about the second stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C-310/08](#) and [Teixeira C-480/08](#) under regulations 16(3) and (4) of the 2016 regulations.

You must consider [stage 1](#) of the process before moving on to stage 2.

The second stage of the consideration process is to assess whether the child lived in the UK at a time when the European Economic Area (EEA) national was a worker in the UK.

It is not necessary for the EEA national parent to have been a worker at a time when the child was in education. The child must only have been living in the UK at a time when the EEA national was a worker.

Education

In line with the Upper Tribunal case of [Shabani \[2013\] UKUT 00315 \(IAC\)](#) for the purposes of regulation 16 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations), 'education' 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. Consequently, attending a reception class is not considered nursery education.

EEA worker

An EEA national is considered a worker for the purposes of regulation 16(3)(b) where they are a worker as defined under EU law. In order to be considered a worker for the purpose of assessing a derivative right of residence under Ibrahim and Teixeira a person needs to be considered a worker under regulation 4(1) of the 2016 regulations. This means they must be employed only and not self-employed.

There is no minimum requirement for how long the EEA national parent must have worked in the UK as long as the child was in the UK at the same time.

Work undertaken in line with the EU8 and EU2 worker schemes is also acceptable for the purposes of regulation 16(3)(b).

Persons not classed as a worker

A worker does not include the following for the purposes of regulation 16(3)(b), a:

- jobseeker

- person who falls in line with regulation 6(2), which outlines who can continue to be considered a worker where they have stopped working
- person who is self-employed

Child in UK

To assess whether the child was in the UK at the same time as the EEA national was working, you may accept one of the following as evidence:

- a letter from the child's school (be aware that the child is not required to have been in education at the same time the EEA national parent was working)
- a letter from the child's GP
- the child's passport which shows entry or exit stamps to the UK

This is not a complete list and there may be other documents you can accept as evidence the child was in the UK at the relevant time.

Refusal

If you are not satisfied the child was in the UK at the same time the EEA national was a worker, you must refuse the application in line with regulation 16(3)(b) of the 2016 regulations.

Appeal rights

If you refuse an application on the grounds in this section it will attract a right of appeal under regulation 36(5)(b)(ii) provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 3: child in education

This section tells you about the third stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C-310/08](#) and [Teixeira C-480/08](#) under regulations 16(3) and (4) of the 2016 regulations.

You must consider [stage 1](#) and [stage 2](#) of the process before moving on to stage 3.

The third stage of the consideration process is to assess whether the child is currently in education.

Assessing whether the child is in education

Evidence must be provided from the child's current educational establishment that confirms they are in education at the date of decision. For children under the age of 18 years, this is likely to be provided by a state-funded or privately-funded school. For those over the age of 18 years old, this may be provided in the form of a letter from a further or higher education authority.

The letter from the educational establishment must outline the dates the child:

- started in education at that establishment
- completed their education there (unless they are currently in education there)

Issuing a child with a derivative residence card

If you are satisfied that the child meets the requirements of regulation 16(3) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations), which are set out in stages one to 3 of the consideration process, and the child is applying for a document confirming this right, you must issue them with a derivative residence card unless a refusal can be justified on:

- imperative grounds of public security
- grounds of public policy, public security or public health and is in the child's best interests

Before you issue a derivative residence card, you must check whether the child is an exempt person in line with regulation 16(7)(c) of the 2016 regulations. If they are an exempt person, then they will not qualify for a derivative residence card. For example, if the European Economic Area (EEA) parent is in the UK and exercising free movement rights, then the child is the direct family member of an EEA national under regulation 7. If they are, you must refuse a derivative residence card and issue a residence card (or registration certificate if they are an EEA national) if appropriate.

Refusal

If you are not satisfied the child is currently in education, you must refuse the application in line with regulation 16(3)(c) of the 2016 regulations.

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 4: direct relative or legal guardian

This section tells you about the fourth stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C310/08](#) and [Teixeira C-480/08](#) under regulation 16(4) of the 2016 regulations.

You must consider [stage 1](#), [stage 2](#) and [stage 3](#) of the process before moving on to stage 4.

The fourth stage of the consideration process is to assess whether the person claiming to be the primary carer of the child is the direct relative or legal guardian of that child.

Assessing ‘direct relative’ or ‘legal guardian’

If a person has already been issued a European Economic Area (EEA) family permit on the basis of Ibrahim and Teixeira, you can accept that it has already been confirmed they are the direct relative or legal guardian of the child.

For more information on determining who is a direct relative or legal guardian see [Direct relative or legal guardians](#).

Refusal

If you are not satisfied that the person claiming to be the primary carer of a child of an EEA national is the direct relative or legal guardian of that child, you must refuse the application in line with regulation 16(8)(a) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 5: primary carer

This section tells you about the fifth stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C310/08](#) and [Teixeira C-480/08](#).

You must consider [stage 1](#), [stage 2](#), [stage 3](#) and [stage 4](#) of the process before moving on to stage 5.

The fifth stage of the consideration process is to assess whether the person is the primary carer of a child of a European Economic Area (EEA) national.

Assessing ‘primary carer’

Where the child is in education and they are under 18 years of age, it is considered that any such child would normally require the presence and care of a primary carer in order to continue to be educated in the UK.

Where the child is over the age of 18, and so has reached the age of majority, it would be reasonable to expect a higher threshold of care to be evidenced which if it were unavailable, would mean the child would be forced to abandon their education. An example of this may be where the primary carer is providing daily care for a child with a severe physical or mental disability. Each case must be considered on its individual merits with reference to a senior caseworker.

For information on assessing whether a person is a primary carer, see [Primary and shared responsibility](#).

Refusal

If you are not satisfied the person is the primary carer of the child of an EEA national, you must refuse the application in line with regulation 16(4)(a) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 6: child unable to continue in education

This section tells you about the sixth stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C310/08](#) and [Teixeira C-480/08](#) under regulation 16(4) of the 2016 regulations.

You must consider [stage 1](#), [stage 2](#), [stage 3](#), [stage 4](#) and [stage 5](#) of the process before moving on to stage 6.

The sixth stage of the consideration process is to assess whether the child would be unable to continue in education were the primary carer required to leave the UK.

Assessing ‘unable to continue in education’

You must assess whether the child would be unable to continue in education if the primary carer was required to leave the UK for an indefinite period.

For further guidance see [Alternative care arrangements: children](#).

Refusal

If you are not satisfied the child would be unable to remain in education in the UK were the primary carer required to leave the UK for an indefinite period, you must refuse the application in line with regulation 16(4)(b) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 7: public policy, public security and public health

This section tells you about the seventh and final stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgments in [Ibrahim C310/08](#) and [Teixeira C-480/08](#) under regulations 16(3) and (4) of the 2016 regulations.

You must consider [stage 1](#), [stage 2](#), [stage 3](#), [stage 4](#), [stage 5](#) and [stage 6](#) of the process before moving on to stage 7.

Public policy, public security and public health

Before issuing a derivative residence card, you must be certain there are no reasons to refuse on the grounds of public policy, public security or public health. For further guidance see: [public policy, public security and public health decisions](#).

Refusal

You must refuse an application for a derivative residence card if refusal is justified on public policy, public security or public health grounds, in line with regulation 27 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal.

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Zambrano cases

This section tells you about the Court of Justice of the European Union (CJEU) judgment in the case of [Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-34/09](#).

The Zambrano judgment established that European Union (EU) member states cannot refuse a person the right to reside and work in a host member state, where to do so would deprive their EU citizen children of the substance of their EU citizenship rights by forcing them to leave the European Economic Area (EEA).

The primary carer of a British citizen will have a derivative right to reside in the UK if the British citizen:

- is also residing in the UK
- would be forced to leave the UK, and the EEA, should the primary carer be denied such a right

Provision is made to recognise a person's derivative right of residence on the basis of the Zambrano judgment in the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) under regulation 16(5). The right was previously recognised in regulation 15A(4A) of the [Immigration \(European Economic Area\) Regulations 2006](#) (the 2006 regulations) on 8 November 2012.

Dependent children of Zambrano carers have a right of residence in the same way as those of Chen, Ibrahim and Teixeira carers.

Considering Zambrano cases

There are 5 stages to consider when assessing whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in Ruiz Zambrano (C34/09).

- [stage 1: assessing British citizenship](#): assessing whether the relevant person is a British citizen
- [stage 2: direct relatives or legal guardians](#): assessing whether the person claiming a derivative right is the direct relative or legal guardian of the British citizen
- [stage 3: primary carers](#): assessing whether the direct relative or legal guardian is the primary carer of the British citizen
- [stage 4: British citizen forced to leave the UK and EEA](#): assessing whether the British citizen would be forced to leave the EEA
- [stage 5: public policy, public security and public health](#): assessing that there are no grounds of public policy, public security or public health that should prevent the issue of a derivative residence card

You must refuse an application if the conditions are not met. For example, if the applicant has provided the passport of the British citizen and that passport is either

forged or counterfeit, you can refuse the application on that basis without proceeding to the next stage of the consideration process. However, where you are satisfied a person has met the requirements of stage one, a full consideration of all the stages should be undertaken. This will ensure a more robust decision, which has considered all the facts of the case, has been undertaken. Cases where this is not considered appropriate must be referred to a senior caseworker.

If you need more information to check whether a person is eligible to apply for derivative rights documentation (for example, to confirm that the British citizen would be forced to leave the EEA), you may either:

- ask the applicant for the information
- invite the applicant for interview

This is in line with regulation 22 of the 2016 regulations.

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

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

Stage 1: assessing British citizenship

This section tells you about the first stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in [Ruiz Zambrano](#).

The first stage of the consideration process is to assess whether the child or adult from whom the primary carer is deriving a right of residence, is a British citizen. If a person has already been issued with a European Economic Area (EEA) family permit on the basis of Zambrano, you can accept it has already been confirmed that the dependent child or adult is a British citizen.

Only British citizens can be considered for the purposes of regulation 16(5) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Assessing British citizenship

Whether a person has British citizenship is a matter that can only be determined conclusively by the courts. However, any one of the following documents will normally be enough to determine whether a person is a British citizen:

- current British citizen passport
- certificate of registration or naturalisation as a British citizen
- UK birth certificate showing birth in the UK before 1 January 1983
- UK birth certificate showing birth in the UK on or after 1 January 1983 and evidence that either parent was either a British citizen or settled in the UK at the time of the birth
- a certificate of entitlement showing the right giving confirmation of British nationality status

The definition of 'parent' will depend on whether the child was born before or after 1 July 2006.

Persons not considered British citizens

Persons with the following forms of status are not considered British citizens and will not come within scope of regulation 16(5)(a) of the regulations:

- British Overseas Territories Citizens (BOTC)
- British Overseas Citizens (BOC)
- British Nationals (Overseas) (BNO)
- British Subjects (BS)
- British Protected Persons (BPP)

For more guidance on assessing British citizenship, see Nationality instructions.

You must only move onto [stage 2](#) of the test if you are satisfied the relevant person is a British citizen.

Refusal

If you are not satisfied the relevant person is a British citizen, you must refuse the application in line with regulation 16(5)(a) of the 2016 regulations.

Appeal rights

If you refuse an application on the grounds set out in this section it will not attract a right of appeal in line with regulation 36(5)(b)(iv). However, if an EEA family permit has already been issued, the applicant will have a right of appeal under regulation 36(5)(a) provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 2: direct relatives or legal guardians

This section tells you about the second stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in [Ruiz Zambrano](#).

You must consider [stage 1](#) of the process before moving on to stage 2.

The second stage of the process is to assess whether the person claiming a derivative right of residence is the direct relative or legal guardian of the British citizen.

Assessing ‘direct relative’ or ‘legal guardian’

If a person has already been issued a European Economic Area (EEA) family permit on the basis of Zambrano, you can accept it has already been confirmed that they are the direct relative or legal guardian of the child.

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

Refusal

If you are not satisfied the applicant is the direct relative or legal guardian of the British citizen, you must refuse the application in line with regulation 16(8)(a) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will not attract a right of appeal in line with regulation 36(5)(b)(iv) of the 2016 regulations. However, if an EEA family permit has already been issued, the applicant will have a right of appeal under regulation 36(5)(a) provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 3: primary carers

This section tells you about the third stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in [Ruiz Zambrano](#).

You must consider [stage 1](#) and [stage 2](#) of the process before moving on to stage 3.

The third stage of the process is to assess whether the direct relative or legal guardian asserting a derivative right is the primary carer of the British citizen.

As a primary carer, a person will either have primary responsibility for the British citizen or share equal responsibility with another person.

For information on assessing whether a person is a primary carer, see [Primary and shared responsibility](#)

Refusal

If you are not satisfied the applicant is the primary carer of the British citizen, you must refuse the application in line with regulation 16(8) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by a European Economic Area (EEA) member state or a passport.

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Stage 4: British citizen forced to leave the UK and EEA

This section tells you about the fourth stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in [Ruiz Zambrano](#).

You must consider [stage 1](#), [stage 2](#) and [stage 3](#) of the process before moving on to stage 4.

The fourth stage of the process is to assess whether the British citizen would be forced to leave the UK and the European Economic Area (EEA) if the primary carer were removed from the UK for an indefinite period.

Assessing whether a British citizen would be forced to leave the UK and the EEA

A person is only able to derive a right of residence under Zambrano where the British citizen would be forced to leave the UK and the EEA if their primary carer was removed from the UK for an indefinite period.

Before you can decide whether the British citizen would be forced to leave the UK, and the EEA, you must consider all of the following questions:

- [does the primary carer have leave in the UK?](#)
- [can the British citizen live in another EEA member state?](#)
- [would the British citizen stay in the UK, or the EEA, if the applicant is refused a derivative residence card?](#)

Does the primary carer have leave in the UK?

You must consider whether the applicant either already has leave to enter or remain in the UK, or if they could make an alternative application for leave to remain in the UK

If alternative leave to enter or remain is held, or other avenues for leave are available, the British citizen would not be forced to leave the UK, and the EEA. The application for a derivative residence card must therefore be refused

For further guidance see [Is the applicant required to leave the UK?](#)

Can the British citizen live in another EEA member state?

You must consider whether the British citizen could go to live in another EEA member state.

If the applicant is an EEA national, the British citizen would not be forced to leave the EEA and the application for a derivative residence card must therefore be refused.

You must not refuse an application for a derivative residence card on the basis that the British citizen has a right of free movement within the EEA unless the applicant is an EEA national.

Would the British citizen stay in the UK, or the EEA, if the applicant is refused a derivative residence card?

You must consider whether the British citizen would be forced to leave the UK, and the EEA, with the applicant if the applicant is refused a derivative residence card

If there is someone else in the UK who can assume responsibility for their care, the British citizen would not be forced to leave the UK, and the EEA, and the application for a derivative residence card must be refused

For further guidance see [Alternative care arrangements](#).

Refusal

If you are not satisfied the British citizen would be forced to leave the UK or the EEA, you must refuse the application in line with regulation 16(5)(c) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by an EEA member state or a passport.

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Stage 5: public policy, public security and public health

This section tells you about the fifth and final stage of the process for considering whether a person has a derivative right of residence on the basis of the Court of Justice of the European Union (CJEU) judgment in [Ruiz Zambrano](#).

You must consider [stage 1](#), [stage 2](#), [stage 3](#) and [stage 4](#) of the process before moving on to stage 5.

Public policy, public security and public health

Before issuing a derivative residence card, you must be certain there are no reasons to refuse on the grounds of public policy, public security or public health. For further guidance see: public policy, public security and public health decisions.

Refusal

You must refuse an application for a derivative residence card if refusal is justified on public policy, public security or public health grounds, in line with regulation 27 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Appeal rights

If you refuse an application on the grounds set out in this section it will attract a right of appeal, provided the applicant provides a valid identity card issued by a European Economic Area (EEA) member state or a passport.

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Direct relatives and legal guardians

This section tells you how to assess whether a person who is asserting a derivative right of residence is the direct relative or legal guardian of the relevant person in line with regulation 16(8)(a) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

This section applies to all of the following case types:

- [Chen](#) - regulation 16(2)
- [Ibrahim and Teixeira](#) – (primary carer) regulation 16(4)
- [Zambrano](#) - regulation 16(5)

Direct relatives

There is no definition of ‘direct relative’ within the regulations. However, for the purposes of assessing a direct relative for derivative rights, this includes the following:

- parents
- grandparents
- spouse or civil partner (for example, in the case of adult British citizens)
- children
- grandchildren
- siblings

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

The applicant must provide evidence to confirm such a relationship. For example, a wife who is the primary carer of her British citizen husband who is applying in line with the Zambrano judgment must submit a valid marriage certificate as evidence of the relationship. A parent applying as the primary carer of a European Economic Area (EEA) self-sufficient child in line with the Chen judgment must submit a birth certificate showing them as the parent of the EEA national child.

Adoption orders

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

Step-children are not considered to come within the definition of ‘direct relative’ for the purposes of assessing whether the relevant person is a primary carer with a derivative right unless there is also an adoption order or legal guardianship order in place.

Legal guardians

To demonstrate a person is a legal guardian, a legal guardianship order or special guardianship order must be submitted which names the applicant and child.

A guardianship order is a court appointment which authorises a person to take action or make decisions on behalf of an adult with incapacity.

A special guardianship is a formal court order which allows parental control over a child by individuals other than the parent.

You should also accept that an applicant comes within scope of being a primary carer where they submit, with their application, a court order granting them parental responsibility. Similar orders from the court must be considered on a case by case basis.

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Primary and shared responsibility

This section tells you how to assess whether a person who is asserting a derivative right of residence has primary or shared responsibility in line with regulation 16(8) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

This section applies to all of the following case types:

- [Chen](#) – regulation 16(2)
- [Ibrahim and Teixeira](#) (child) – regulation 16(3)
- [Ibrahim and Teixeira](#) (primary carer) – regulation 16(4)
- [Zambrano](#) – regulation 16(5)

Primary responsibility

This section tells you how to assess whether a person who is asserting a derivative right of residence has primary responsibility in line with regulation 16(8)(b)(i) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

The 2016 regulations restrict the scope of derivative rights on the basis of children to those who are direct relatives or legal guardians of and have primary responsibility for the child.

Primary responsibility for a child by a parent

Where the applicant is claiming a derivative right of residence on the basis of a child under the age of 18 years, in most cases it is likely that they will also be the parent of that child.

The applicant must provide the original birth certificate of the child to prove they are the parent.

Evidence

In most cases, a parent who resides with the child on a permanent basis and does not share equal responsibility for that child's care with another person can normally be accepted as having primary responsibility.

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

- evidence the child resides permanently with another parent or carer in the UK
- evidence there is another parent in the UK or EEA 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.

Direct relatives or legal guardians with primary responsibility

Where the person claiming to be the primary carer of the child is not the parent, they must provide a valid legal guardianship order or another valid court order which establishes primary responsibility for the child.

An example of an alternative court order would be one transferring parental responsibility to a grandparent. Similar orders from the court must be considered on a case by case basis.

Court orders

A court order is a legally binding order that imposes a mandatory requirement on one or more parties to:

- a hearing
- a trial
- an appeal
- other court proceedings

Orders are made by a judge and can be made as either an interim relief measure or as a final remedy resulting from a decision on a case.

A court order establishing primary 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:

- residence orders – a residence order is used to decide where, and with which parent, a child will live
- contact orders – a contact order is used to decide when a party to the court hearing can have access to the child, for example, at weekends or school holidays
- specific issue order – a specific issue order is 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 – a 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

Anyone with parental responsibility for the child, for example, a parent or legal guardian, can apply for any of the above orders.

You must only accept court orders that show the applicant has parental responsibility for the child.

In cases where a court order establishes shared custody or that there is another parent in the UK with visitation rights, further enquiries must be made as this may

indicate the parents share equal responsibility for the child 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 a derivative right of residence on the basis of an adult over the age of 18 (for Ibrahim and Teixeira and Zambrano cases), they may be the spouse or civil partner of that adult or another direct relative.

Evidence

They must provide appropriate evidence of relationship. For example, a marriage certificate if the primary carer is the spouse of the adult.

For more information on direct relatives and legal guardians, see section on [direct relatives and legal guardians](#).

Primary responsibility will generally be established in cases involving adults where the person asserting a derivative right of residence can show they are responsible for the majority of that adult's care.

The level of evidence required to demonstrate primary responsibility and dependency will be significantly higher in cases involving adults, than in those involving children. In such cases, only evidence that shows the relevant person's dependence on another person is due to a severe physical or mental disability is likely to bring a person within scope of the 2016 regulations.

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

Shared responsibility

This section tells you how to assess whether a person who is asserting a derivative right of residence has shared responsibility in line with regulation 16(8)(b)(ii) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

The definition of primary carer includes a person who shares equal responsibility for a person's care with one other person. Following the Court of Justice of the European Union (CJEU) judgment in [Chavez-Vilchez C-133/15](#), on 10 May 2017, you do not need to consider whether the other person is an 'exempt person' as defined in regulation 16(7)(c) of the 2016 regulations.

Sharing equal responsibility

Two people should be considered to share equally the responsibility for a child when they both have responsibility for the care and welfare of the child, both long-term and on a day-to-day basis. This includes things like deciding where the child lives, choosing what school the child attends and providing for their education, deciding how and where the child spends time outside of school, looking after the child's

property, disciplining the child, and authorising medical treatment or a school trip. 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, or where one parent works and the other does not) may still have equal responsibility for the child.

Where a child lives with two parents, the parents will usually be considered to share equal responsibility for the child, even where one parent works and the other does not, unless one of the parents does not have responsibility for the child at all (for example due to a mental or physical impairment). Where a child's parents live apart, the parents will usually be considered to share equal responsibility for the child if the other parent has legal parental responsibility and has regular contact with the child. For information about when a parent has legal parental responsibility, see [Parental rights and responsibilities](#).

Circumstances must be considered on a case-by-case basis.

Evidence of shared responsibility

A person will, generally, be considered to share equal responsibility in the following circumstances, where both parents are:

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

Equal 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 the majority of care for the child, in both of these examples, the father is actively involved in the child's life and continues to have parental responsibility for the child. In such cases, unless there is evidence to indicate the father is unable to care for the child, it can be accepted that both parents share equal responsibility.

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

Financial support

Regulation 16(11) of the 2016 regulations confirms that financial support alone will not bring a person within the definition of primary carer for the purposes of the regulations.

For example, where a person claims to have a derivative right of residence as the primary carer of a child but only provides the child with financial support and has no

day-to-day caring responsibilities, this alone is not sufficient to demonstrate that they are the primary carer.

Joint applicants

If two primary carers are in the UK otherwise unlawfully, they can both assert a claim to a derivative right in line with regulation 16(9) of the 2016 regulations. Such an application must be considered on the basis that both people would be required to leave the UK for an indefinite period.

For example, two third country national parents who share equal responsibility for a child, and do not have any other right to reside under the 2016 regulations or the Immigration Act 1971 (for example, indefinite leave to enter or remain), must be assessed according to the impact on the child if both parents were removed from the UK for an indefinite period at the same time. In such cases, it is likely that both parents would have a derivative right of residence.

However, where one person has already acquired a derivative right of residence as a primary carer, a second person cannot have a derivative right if they assumed shared responsibility after the first person acquired their derivative right, as set out in regulation 16(10).

Where this is the case, the second primary carer cannot acquire a derivative right unless the first primary carer has lost theirs (for example, because a court has ordered that the person requiring care must live full-time with the second primary carer). This is because the person requiring care would still be able to reside (or, in Ibrahim and Teixeira cases, be able to continue to be educated) in the UK if the second primary carer left the UK for an indefinite period – they could remain here with the first primary carer.

You should note that the first person may have acquired a derivative right to reside as a primary carer before they were issued with a derivative residence card, or they may never have applied for or been issued with a derivative residence card.

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[Immigration \(European Economic Area\) Regulations 2016](#)
[Chavez-Vilchez C-133/15](#)

Dependants of primary carer

This section tells you about the circumstances in which a dependant of a primary carer can be issued a derivative residence card under the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

This section applies to the following case types:

- [Chen](#) – regulation 16(2)
- [Ibrahim and Teixeira](#) (primary carer) – regulation 16(4)
- [Zambrano](#) – regulation 16(5)

A person who qualifies for a derivative right of residence does not acquire qualified person status under the 2016 regulations and as such cannot sponsor family members to enter or reside in the UK under the 2016 regulations. However, dependent children under the age of 18 can acquire a derivative right of residence where they meet the requirements of regulation 16(6).

Regulation 16(6) of the 2016 regulations enables a dependant of the primary carer to acquire a derivative right of residence where that dependant meets all of the following requirements:

- they are under 18 years of age
- their primary carer is entitled to a derivative right of residence
- they do not have leave to enter or remain in the UK
- their removal from the UK would prevent their primary carer from residing in the UK

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

Is the applicant required to leave the UK?

This section tells you how to assess whether a Zambrano applicant (regulation 16(5)) is required to leave the UK, or the EEA, if they are refused a derivative right to reside.

Leave to enter or remain

If the applicant has either:

- limited leave to enter or remain in the UK
- not made any attempt to apply for limited leave to enter or remain in the UK

you must refuse the application as refusal will not force the British citizen to leave the UK or the EEA. This is because the applicant either has leave or has an alternative route available for leave to remain in the UK.

Alternative means to remain in the UK

A derivative right to reside is only available to an applicant who has no other means to remain lawfully in the UK as the primary carer of a dependent British citizen, or a dependent of that primary carer.

As a Zambrano case centres on a person seeking to remain in the UK with a British citizen, there is significant overlap with the right to respect for private and family life which is protected by Article 8 of the European Convention on Human Rights (ECHR).

Where a person wishes to remain in the UK on the basis of family life with a British citizen, they should first make an application for leave to remain under Appendix FM to the Immigration Rules, not for a derivative residence card on the basis of Zambrano.

In the case of [Patel v SSHD \[2017\] EWCA Civ 2028 \(13 December 2017\)](#), the Court of Appeal ruled that someone holding leave to remain under domestic law would not benefit from a derivative right to reside. The Court also ruled that Zambrano is not a back-door route to residence for those who have a British citizen child without having or acquiring leave to remain.

This means that a Zambrano application must be refused if the applicant:

- has never made an application under Appendix FM to the Immigration Rules or any other Article 8 ECHR claim, where that avenue is available
- has been refused under Appendix FM or Article 8 ECHR but their circumstances have changed since the decision was made – for example, the

applicant applied on the basis of their relationship with a British spouse, but the couple now have a British child

Applicants being refused because it is open to them to apply under Appendix FM to the Immigration Rules should be directed to the information available at www.gov.uk/uk-family-visa.

If an applicant has made an application under Appendix FM to the Immigration Rules or any other Article 8 ECHR claim, and they were refused and exhausted their appeal rights recently, you must consider whether a derivative right of residence exists following the caseworking steps outlined in this guidance.

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

Alternative care arrangements

This section tells you how to assess whether there are alternative care arrangements in the UK for the dependent child or adult.

This section applies to all of the following case types:

- children under:
 - [Chen](#) – regulation 16(2) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations)
 - [Ibrahim and Teixeira](#) – regulation 16(3)
 - [Zambrano](#) – regulation 16(5)
 - dependants of a primary carer – regulation 16(6)
- adults under:
 - [Ibrahim and Teixeira](#) (child over the age of 18 and in education) – regulation 16(3)
 - [Zambrano](#) – regulation 16(5)

Alternative care arrangements: children

This section tells you how to consider whether there are alternative care arrangements in the UK for children under the age of 18 years. This first stage requires identifying whether there are any alternative care arrangements that could be made. If there are, then the second stage of consideration requires assessing whether they are appropriate.

Identifying alternative care arrangements

Where a person has demonstrated that they are a primary carer, you must consider whether there is another person in the UK, for example a [direct relative or legal guardian](#), who can care for the relevant person if the primary carer is required to leave the UK for an indefinite period. In this case, the 'relevant person' is the child under the age of 18 years.

Other parents

In all cases where only one parent is applying for a derivative residence card, 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). If this information is not held on file, you must ask the applicant to complete a questionnaire or write out for further information.

If the applicant fails to respond or fails to provide the information required without good reason, you may draw factual inferences that the person does not have a right of residence. This is in line with regulation 22(2)(a) and (4) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations). It is also open to you to make further independent enquiries.

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

- not a British citizen, and does not have any other right to reside under the 2016 regulations or the Immigration Act 1971 (for example, indefinite leave to enter or remain)
- residing outside the UK

However, where there is evidence to suggest that the primary carer claiming a derivative right 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 would need to contact the British Embassy or High Commission in that other country before deciding the derivative residence card application. The British Embassy or High Commission would 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 currently caring for the child, or is able to do so, you can accept that there are no alternative arrangements for the child if the other parent has died. The applicant must provide the original death certificate as evidence.

Direct relatives and legal guardians

To accept the child has a legal guardian who could care for them in the UK if the primary carer left the UK for an indefinite period, you need to see proof that a court has granted legal guardianship.

You can generally automatically accept that there is another direct relative in the UK who could, in principle, care for the child if the 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 the last 12 months

Unsuitable care arrangements

There may be some instances where there is another parent or direct relative who you would normally expect would be able to 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. This could include where the person is on the sex offender register or, for example, where they have a severe physical or mental disability. In such cases it would not be appropriate to expect the child to live with that person alone.

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 relevant person. You must refer any such cases to a senior caseworker before making your decision.

Conclusion

Unless there is information that there is another parent, direct relative or legal guardian in the UK who is currently caring for the child, or is able to do so, you can accept that there are no alternative arrangements for the child. Subject to considering whether there are any public policy, public security or public health reasons that a derivative residence card should not be issued, you can also accept that the child would not be able to continue to reside in the UK or be educated in the UK if the person applying for a derivative residence card left the UK for an indefinite period.

Assessing whether alternative care arrangements are appropriate

Where alternative care arrangements are available, you must consider whether requiring the applicant to leave the UK for an indefinite period would mean that the child would be unable to:

- continue to be educated in the UK (Ibrahim and Teixeira)
- reside in the UK (Chen)
- reside in the UK or another EEA Member State (Zambrano)

If requiring the applicant to leave would have the effects set out above, this would be a breach of the child's rights under European Union (EU) law (except where there are public policy, public security or public health grounds for removal).

Therefore, you need to consider what would happen to the child in practice if the primary carer left the UK for an indefinite period. Applying the balance of probabilities, you must assess whether it is more likely that the child would:

- leave the UK (Ibrahim and Teixeira or Chen) or leave the UK and the EEA (Zambrano)
- remain in the UK with the other person who is able to care for the child

Dependency

The key consideration when assessing what would happen to the child is the level of dependency between the child and the applicant. Specifically, you should consider whether in light of the level of dependency, the removal of the applicant would compel the child to leave the UK or EEA (depending on the type of case you are

considering) even though there is another person who, in principle, could care for the child in the UK if the applicant departed.

When considering the level of dependency, you must consider:

- to what extent the child is emotionally attached to and dependent on the applicant
- to what extent (if at all) the child is emotionally attached to or dependent on the other person you have identified as able to care for them

Factors to help you consider the extent of dependence on the applicant and on the other person include:

- the child's age, the stage of their physical and emotional development and the level of care and support they require
- the level of emotional, physical and financial support the applicant and the other person currently provide to the child, or have provided recently
- who makes the decisions that affect the child's life
- who the child currently 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 is able to care for them, you would normally accept that the child is equally dependent on them both, even if one spends more time with the child than the other. However, if the other person has only lived with the child for a very short time, you would need to consider their relationship before they started living together to establish the level of dependence.

Where the child does not live with the other person you should consider factors relevant to the level of dependence including:

- 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 that affect the child or providing financial support

Dependency – conclusion

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

- equally dependent on the applicant and on the other person
- slightly more dependent on the applicant and slightly less dependent on the other person, or vice versa

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

Where the child is entirely dependent on the applicant, and not dependent on the other person at all, you can accept that the applicant has a derivative right of residence. Where the child is entirely dependent on the other person, and not dependent on the applicant at all, you can refuse to issue a derivative residence card.

In other cases, where the child is more dependent on the applicant than the other person, you should not automatically assume that the child would be forced to leave the UK or EEA. Instead, you must go on to consider the child's best interests. You must also go on to consider the child's best interests where the child is more dependent on the other person than on the applicant.

In a case where a child has some degree of dependence on at least two people, 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 force the child to leave the territory of the UK and/or the EEA. They are a primary consideration and must be considered together with all the other evidence and information held. You must take into account 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 take into account the consequences on the child's everyday life if they are separated from the applicant, for example:

- would they be safe, 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 primary carer, 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 any other family members?

You should write out for further information if you do not have enough information to know what is in 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

Where a child lives in a family unit with the applicant and a British citizen parent, the applicant may only benefit from a derivative right to reside where the British citizen parent would not be capable of caring for the child if the applicant were to leave the UK.

If the British citizen parent is capable of caring for the child, the application for a derivative residence card must be refused.

The following factors do not themselves give rise to a derivative right of residence:

- loss of earnings
- changes to working patterns
- loss of two parents living with the child
- other economic loss or inconvenience

This is not an exhaustive list, and each application should be considered on a case by case basis.

If they wish to maintain their family life in the UK, it is open to the applicant to apply under Appendix FM to the Immigration Rules.

When you have considered the child's level of dependence on the applicant and on the other person, and taken into account the child's best interests, you must draw an overall conclusion about whether the child would be forced to leave the UK (Ibrahim and Teixeira or Chen) or leave the UK and the EEA (Zambrano).

If the child would be forced to leave with the primary carer, you can accept that the primary carer has a derivative right to reside, subject to considering whether there are any public policy, public security or public health reasons that a derivative residence card should not be issued.

If you decide that the child can remain in the UK with the other person, then the primary carer will not have a derivative right to reside.

Alternative care arrangements: adults

This section tells you how to assess whether there are alternative care arrangements in place for people over the age of 18.

This section does not apply to applications made under regulation 16(2) because this only enables the primary carer of an EEA national child to remain in the UK until the child reaches 18 years of age. After that age, any derivative right of residence for the primary carer will end.

Zambrano

The regulations do not impose an age limit on the relevant British citizen who is dependent upon their primary carer. In circumstances where the relevant British citizen is over the age of 18 years, you must assess whether the British citizen needs such care. Any such care is likely to only be required where the British citizen has a severe physical or mental impairment that means they are unable to care for themselves.

Ibrahim and Teixeira

After a child has reached the age of 18, the primary carer's right of residence will only continue if the child needs their presence and care in order to pursue and complete their education. This is likely to be where the child has a physical or mental impairment that means they are unable to care for themselves.

The child's right of residence will continue as long as they remain in education.

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

Alternative care

Where a person has demonstrated they are a primary carer, you must consider whether refusing or removing that primary carer would result in a breach of the relevant person's rights under EU law.

If there is alternative care in the UK for the relevant person, you must refuse the application for a derivative residence card.

This is because the relevant person could continue to exercise their rights under EU law if the primary carer was required to leave the UK for an indefinite period.

For adults, alternative care may include, but is not limited to:

- local authority care provisions
- private care provisions
- other direct relatives

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

The burden of proof is on the applicant to provide details of the current care arrangements, including:

- why care is required for that person

- what care provisions are currently in place
- what enquiries have been made as to alternative care arrangements and why these are not suitable

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

Physical or mental impairment

This section tells you how to consider applications for a derivative residence card on the basis that the person is the primary carer of a dependent adult.

This section applies to the following case types:

- [Ibrahim and Teixeira](#) (child) – regulation 16(3)
- [Ibrahim and Teixeira](#) (primary carer) – regulation 16(4)
- [Zambrano](#) – regulation 16(5)

This does not apply to applications made on the basis of [Chen](#) (regulation 16(2)). This is because the Chen right only enables the primary carer of an EEA self-sufficient child to remain in the UK until the child reaches the age of 18. After that age, any derivative right of residence for the primary carer will end.

Where a person is claiming a derivative right of residence on the basis they are the primary carer of another person who is over the age of 18, the level of evidence required to demonstrate primary responsibility will be significantly higher.

In such instances, only evidence that shows the adult's dependence on the primary carer is due to a severe physical or mental disability is likely to bring that primary carer within scope of regulation 16(4) or 16(5).

Examples of where this might be engaged were given in *Patel* and include:

- the applicant and the British citizen share a rare blood group, and the British citizen may need a blood transfusion or bone marrow transplant from the applicant
- a British citizen with severe autism is dependent for all their care on a non-EEA national relative and it would be intolerable for someone else to assume primary care
- the British adult citizen has significant psychological dependence on a non-EEA national relative derived from a recognised and evidenced psychological condition and it would be intolerable for someone else to assume primary care

Where an applicant claims that it would be intolerable for someone else to assume primary care for the British citizen you must consider whether it is a matter of the British citizen's or applicant's preference. The Court of Appeal ruled that preference is not sufficient to create a derivative right to reside.

Other circumstances must be assessed on a case by case basis.

You must refer cases involving a dependent adult to a senior caseworker before you make your decision.

Physical or mental impairment

Where a person claims they are the primary carer of an adult who has a physical or mental impairment, the applicant must provide evidence from a registered medical consultant or specialist who is involved in the dependent adult's care.

This must outline the level of care required and how long is it expected to continue.

Any evidence provided must be:

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

Level of care being provided

Details must also be provided on who is currently providing care for the dependent adult, and must include:

- when the applicant assumed caring responsibilities for the dependent adult
- the nature of care being provided
- if appropriate, who cared for the dependent adult before this time and why that care not continue
- what other care, if any is being provided by another person, medical professionals, a local authority or others.
- if no other care is being provided, what enquiries have been made with other direct relatives, medical professionals, the local authority or others in terms of care for the adult

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