

International Issues

Chapter C1: Universal Credit

Contents

Introduction	C1001
Overview of the rules	C1002
Definitions	
Meaning of EEA national.....	C1003
Meaning of EEA state.....	C1004
EU – Member States	C1005
Persons Subject to Immigration Control	C1040
Meaning of PSIC	C1041
Meaning of “maintenance undertaking”	C1042
Exemptions.....	C1060
The European Convention on Social and Medical Assistance	C1061
The Council of Europe – Social Charter	C1062
Asylum seekers	C1063
Claimant unable to provide documentary evidence of nationality.....	C1066
The Presence Condition	C1120
Meaning of “in Great Britain”	C1121
Meaning of Great Britain	C1123
Persons who do not have to satisfy the condition that they be “in GB”	
Crown servants and members of the armed forces posted overseas	C1166
Meaning of “Crown servant”	C1169
Meaning of Member of Her Majesty’s Forces	C1170
Habitual Residence	C1225
Persons with specific rights to reside	C1279
Workers	C1360
Genuine and effective work	C1362
Retaining worker status	
Temporary illness or accident	C1391
Involuntary unemployment - Employed in the UK for one year or more.....	C1392
Involuntary unemployment - Employed in the UK for less than one year	C1393

Vocational training.....	C1395
Involuntary unemployment.....	C1396
Meaning of “involuntary unemployment”.....	C1397
Undue delay	C1398
The Genuine Prospect of Work Test	
Introduction	C1403
Jobseekers.....	C1405
Retaining worker status.....	C1406
Employed in the UK for less than one year.....	C1407
Employed in the UK for one year or more.....	C1408
The Genuine Prospect of Work Test.....	C1409
The Relevant Period	C1410
GPoW assessment interview date	C1411
Standard of proof	C1412
Genuine chance of being engaged.....	C1413
Work search requirement.....	C1414
Compelling evidence of continuing to comply with the work search requirement and having a genuine chance of being engaged.....	C1415
Other relevant considerations	C1417
JSA(Cont).....	C1420
Further claim to UC made after GPoW assessment.....	C1425
Genuine and effective work	C1426
Part-time work	C1431
What happens if claimant fails GPoW test?	
Joint claims	C1433
Family members.....	C1434
Alternative right to reside	C1435
Self-employed persons.....	C1451
Retaining the status of being a self-employed person	C1475
Minimum Earnings Threshold	
Meaning of ‘worker’ – two tier approach	C1484
Tier 1 – Minimum Earnings Threshold.....	C1487
Tier 2 – Minimum Earnings Threshold criteria not met	C1489
Deciding if a person is/was a ‘worker’ – factors to take into account	C1491
Is the person exercising their rights as a worker.....	C1495
Genuine and effective work	C1498
Part-time work	C1501
Self-employment	C1505

Introduction	C1510
Facts of the case	C1512
CJEU ruling	C1513
Reasonable period	C1514
Returning to work or jobseeking	C1517
Nature of the <i>Saint Prix</i> right to reside – prospective or retrospective assessment	C1518
DM action	C1521
Complex cases.....	C1526
Entitlement to SMP or MA.....	C1527
Self-employment	C1528
A2 nationals (Nationals of Romania and Bulgaria)	C1536
Derogation for A2 nationals.....	C1537
A2 nationals exempt from the Habitual Residence Test.....	C1541
Exempt from Worker Authorisation	C1542
Uninterrupted work.....	C1545
Self-employed	C1546
Bulgarians and Romanians – ending of restrictions	
Transitional rules	
A2 national who was subject to worker authorisation	C1569
Retaining worker status.....	C1570
Permanent right to reside.....	C1571
Meaning of “legally working”	C1572
Workers who have ceased activity.....	C1573
Family members of workers and self-employed persons.....	C1596
Meaning of “family member”	C1597
Meaning of “dependent”	C1598
Family members of British citizens.....	C1599
Transitory provisions	C1603
Certain persons with a permanent right to reside in the EEA	
Worker or self-employed person who has ceased activity.....	C1615
Retirement.....	C1616
Permanent incapacity.....	C1617
Working abroad but place of residence retained in the UK	C1618
Periods treated as periods of working.....	C1619
Family member of worker who has died	C1620
Refugees	C1670
Discretionary Leave.....	C1672

Destitution Domestic Violence concession	C1674
Humanitarian Protection.....	C1678
Continuation of leave.....	C1679
Right to Reside – Habitual Residence Test applies	
Introduction.....	C1690
Extended right of residence	C1692
Certain qualified persons	C1710
Jobseekers.....	C1711
Self-sufficient persons with comprehensive sickness insurance	C1728
Students	C1732
Family members of students.....	C1733
Comprehensive Sickness Insurance for family members of students... ..	C1734
Family members.....	C1735
Meaning of “family member”	C1736
“Extended family members”	C1737
Permanent Right to Reside – 5 Years’ residence	C1750
Temporary absences that do not break continuity.....	C1772
Qualifying period – effect of periods of residence before 30.4.06 – EEA nationals.....	C1774
Qualifying period – periods before accession.....	C1775
Periods where residence was not in accordance with the regs.....	C1776
Effect of absence after right to permanent residence acquired	C1777
Family members who have retained the right to reside	C1778
EEA right to reside – permanent residence	
Introduction	C1793
Continuity of residence - Breaks during 5 year qualifying period.....	C1796
Permanent residence with less than 5 years residence	C1797
Periods of residence prior to 30.4.06	C1804
Derivative right of residence.....	C1805
Long-term jobseeker	C1806
Evidence to demonstrate permanent residence	C1808
Claimant unable to provide original documentary evidence	C1809
Moving between alternate rights to reside	C1812
Imprisonment	C1815
Sanctions & Disallowances of UC.....	C1820
Separation from EEA partner	C1822
Primary Carer – child in education	
Introduction	C1830

Meaning of “exempt person”	C1831
Meaning of “primary carer”	C1832
Derivative rights to reside.....	C1833
Application to joint primary carers.....	C1834
Meaning of “general education”	C1835
Meaning of “worker”	C1836
Self-employed parent.....	C1839
Derivative residence card.....	C1840
Deportation orders.....	C1841
Persons to be treated as not “in GB”	C1851
Initial right of residence under EU law.....	C1852
EEA Jobseekers.....	C1854
Existing award of UC.....	C1860
Parents of EU citizen children	C1861
EU citizenship rights.....	C1863
Croatian nationals	
Introduction.....	C1925
The two groups.....	C1927
Croatian nationals subject to worker authorisation	C1928
Worker authorisation document.....	C1929
Exemption from the habitual residence test.....	C1930
Self-employment stops.....	C1931
Rights to reside	C1932
Self-sufficient persons and students	C1933
Croatian nationals who are not subject to worker authorisation	C1934
Meaning of legally working.....	C1935
Meaning of “family member”	C1937
Meaning of “unmarried or same sex partner”	C1938
Right to reside	C1939
Self-employment	C1940
Family members.....	C1943
Meaning of “Habitual Residence”	C1946
Meaning in UK law	
Requirement to establish a residence that is habitual in nature	C1951
Settled intention to remain	C1952
Relevant factors	C1953
Appropriate period of time.....	C1957
Becoming habitually resident	C1958

Resuming a previous habitual residence	C1959
Meaning in EU law	C1961
Resuming previous residence.....	C1962
Factors to take into account.....	C1965
Centre of interest.....	C1966
Length and continuity of residence	C1967
Length and purpose of absence	C1968
Employment	C1969
Intentions.....	C1970
Absences from GB	C1976
Temporary absences	
One month.....	C1986
Extension to one month disregard	C1987
Six months – medical treatment.....	C1988
Meaning of “qualified practitioner”.....	C1989
Meaning of “partner”.....	C1990
Six months – Mariners and Continental Shelf Workers	C1991
Meaning of “mariner”	C1992
Meaning of “continental shelf worker”	C1993

International issues

Chapter C1: Universal Credit

Introduction

C1001 This section provides guidance for Decision-Makers about the international aspects of UC. In particular it deals with

1. The exclusion from UC of persons subject to immigration control
2. The presence condition
3. Absences from GB

Overview of the Rules

C1002 With some exceptions people (called “persons subject to immigration control” (PSICs)) who require leave to enter the UK but do not have it (or who have certain types of conditional leave) are excluded from UC by the Immigration Act¹. Everyone else has to satisfy the basic condition that they be “in GB”. The law allows people to be treated or not treated as in GB. The end result is that

1. people with certain rights to reside only have to be present in GB
2. everyone else has to have a right to reside **and** to be habitually resident in the Common Travel Area (the UK, the Channel Islands, the Isle of Man and the Republic of Ireland) as well as being present in GB, **but**
3. certain rights of EEA nationals to reside in the UK do not count

Finally, certain absences from GB are disregarded.

1 I & A Act 99

Note: this is just a simplified outline of the rules, DMs will need to read and apply the detailed guidance below

Definitions

Meaning of EEA National

C1003 [See Memo ADM 21/18] “EEA national” is defined as a national of an EEA State who is not also a British Citizen¹. Thus a person with dual nationality (a national of both an EEA state and the UK) is not entitled to a right to reside conferred by the Imm (EEA) Regs 2016 in their own right; neither can family members derive an EU right to reside from such a person. This reflects the judgment of the CJEU in McCarthy².

1 Imm (EEA) Regs 2016, reg 2(1);

2 Case C-434/09 Shirley McCarthy v Secretary of State for the Home Department

Meaning of EEA State

C1004 An “EEA State” means¹

1. an EU Member State (other than the UK)
2. Norway, Iceland or Liechtenstein **and**
3. Switzerland

Note: In this Chapter therefore references to an “EEA national” include Swiss nationals.

1 Imm (EEA) Regs 2016, reg 2(1)

EU – Member States

C1005 The Member States of the European Union are

1. Austria (joined the EU on 1.1.95)
2. Belgium
3. Bulgaria (joined the EU on 1.1.07)
4. Croatia (joined the EU on 1.7.13)
5. Cyprus (joined the EU on 1.5.04)
6. Czech Republic (joined the EU on 1.5.04)
7. Denmark (excluding the Faroe Islands and Greenland)
8. Estonia (joined the EU on 1.5.04)
9. Finland (including the Aaland Islands) (joined the EU on 1.1.95)
10. France (including Corsica, Guadeloupe, Martinique, Mayotte, Reunion, Saint Barthelemy and Saint Martin and French Guiana, but excluding Monaco)
11. Germany
12. Greece
13. Hungary (joined the EU from 1.5.04)
14. Ireland
15. Italy (excluding the Vatican City and San Marino)
16. Latvia (joined EU on 1.5.04)
17. Lithuania (joined EU on 1.5.04)
18. Luxembourg
19. Malta (joined the EU on 1.5.04)
20. Netherlands (excluding, for the purposes of this Chapter, the Dutch Antilles)

21. Poland (joined EU on 1.5.04)
22. Portugal (including Madeira and the Azores)
23. Romania (joined the EU on 1.1.07)
24. Slovakia (joined the EU on 1.5.04)
25. Slovenia (joined the EU on 1.5.04)
26. Spain (including the Balearic Islands, the Canary Islands and the Spanish enclaves of Ceuta and Melilla)
27. Sweden (joined the EU on 1.1.95)
28. United Kingdom (including Gibraltar, but excluding, for the purposes of this Chapter, the Isle of Man and the Channel Islands).

C1006 - C1039

Persons Subject to Immigration control

C1040 Unless one of the exemptions below applies, a Person Subject to Immigration Control (PSIC) is not entitled to Universal Credit¹.

1 I & A Act 99, s 115(1)

Meaning of PSIC

C1041 A PSIC is¹ a person who is not an EEA national and who

1. requires leave to enter or remain in the UK but does not have it; **or**
2. has leave to enter or remain in the UK subject to the condition that they do not have recourse to public funds; **or**
3. has leave to enter or remain in the UK given as a result of a maintenance undertaking.

1 I & A Act 99, s 115(9)

Meaning of “maintenance undertaking”

C1042 A “maintenance undertaking” means¹ a written undertaking under the immigration rules made by one person to be responsible for the claimant’s maintenance and accommodation.

1 I & A Act 99, s 115(10)

C1043 - C1059

Exemptions

C1060 For the purposes of UC, the following people are exempt¹ from the exclusion of PSICs

1. Persons who²
 - 1.1 have been given leave to enter or remain in the UK upon an undertaking by another person or persons to be responsible for their maintenance and accommodation **and**
 - 1.2 have been resident in the UK for a period of less than 5 years beginning with the later of the date of entry or the date of the undertaking **and**
 - 1.3 the sponsor (or all the sponsors if there is more than one) has died.
2. Persons who³
 - 2.1 have been given leave to enter or remain in, the UK upon an undertaking by another person or persons to be responsible for their maintenance and accommodation **and**
 - 2.2 have been resident in the UK for a period of at least 5 years beginning with the later of the day of entry or the date of the undertaking

Note: Within 2.2. DMs should consider the person's residency when deciding whether absences abroad affect the 5 year period. The absence abroad may still count as the claimant being resident in the UK, but will be dependant upon the duration and circumstance of the absence (for 'absences from GB' see C1976 et seq). If the absence abroad is such that the claimant ceases to be resident in the UK, the periods of residency at either side of the 'gap' can be added together in order to meet the 5 year rule⁴.

3. Persons who are⁵
 - 3.1 nationals of a state which has ratified the European Convention on Social and Medical Assistance (ECSMA) done in Paris on 11.12.1953
or
 - 3.2 nationals of a state which has ratified the Council of Europe Social Charter (CESC) signed in Turin on 18.10.1961

provided they are lawfully present in the UK.

*1 SS (I&A) Cql Amdts Regs, reg 2(1A); 2 Sch 1, Part I, para 23; 3 Sch 1, Part I, para 3;
4 R(IS)2/02; 5 SS (I&A) Cql Amdts Regs, Sch 1, Part I, para 4*

The European Convention on Social and Medical Assistance

C1061 All the EU states, plus Iceland, Norway and Turkey have ratified the ECSMA.

The Council of Europe Social Charter

C1062 All the EU states plus Iceland, Norway, Croatia, Macedonia and Turkey have ratified the CESC.

Note: Croatia acceded to the EU on 1.7.13. From that date Croatian nationals are EU nationals and cannot be persons subject to immigration control¹ (as defined in DMG 070833)

1 Immigration Act 1988, s 7

Asylum seekers

C1063 [See Memo ADM 21/18] A person who is awaiting a decision on an application for asylum is given temporary admission and is lawfully present in GB¹. However, unless and until granted asylum, an asylum seeker is a PSIC.

1 R(IS) 2/06

C1064 A PSIC is not normally entitled to any benefits¹ but there are some exceptions which include any nationals of countries which have ratified either ECSMA or CESC who are lawfully present in GB².

1 Immigration and Asylum Act 1999, s 115; 2 SS (I&A) Cpl Amdts Regs, reg 2(1A) & Sch 1, para 4

C1065 Therefore an asylum seeker from Macedonia, or Turkey is not precluded from UC under section 115. However, an asylum seeker on temporary admission has neither a right to reside nor can be habitually resident. Simple lawful presence following temporary admission does not equate to a right to reside¹.

1 R(IS) 8/07 & R(IS) 3/08

Claimant unable to provide documentary evidence of nationality

[\[See memo DMG 14/18\]](#)

C1066 The claimant has primary responsibility to provide documentary evidence of their nationality, to support their continued residence in the UK. If the claimant has not provided sufficient evidence to the DM to confirm that they have leave to enter or remain in the UK with recourse to public funds, they will be a person subject to immigration control.

C1067 Evidence of nationality must be in the form of

1. a valid passport containing the immigration stamp or vignette granting them leave to remain **or**
2. a Biometric Residence Permit.

Note: A Home Office Immigration Status Document with a residence permit vignette granting leave to remain **or** a Home Office decision letter granting leave to remain may accompany a passport.

C1068 The evidence in C1067 should contain information detailing

1. the type of leave to enter or remain that has been granted (where limited leave to enter or remain has been granted, an expiry date should also be shown) **and**
2. whether the person has been granted recourse to public funds.

C1069 Where the claimant declares that they have leave to enter or remain in the UK with recourse to public funds, but are awaiting documentation from the HO to confirm this, the DM should allow the claimant a reasonable timescale to provide supporting evidence before making a decision.

C1070 - C1119

The Presence Condition

C1120 It is one of the basic conditions of entitlement to UC that a person is “in Great Britain”¹. However regulations can²

1. provide for exceptions to this basic requirement³
2. specify circumstances in which a person is to be treated as being or not being in GB
3. specify circumstances in which temporary absences can be disregarded **and**
4. modify the UC rules where a person is entitled to UC because a temporary absence has been disregarded.

Note: in the case of joint claims, both members of the couple have to satisfy the basic condition that they be “in GB”⁴. But see Chapter D1 for guidance on when one member of a joint claim couple does not satisfy the basic condition while the other continues to do so⁵.

1 WRA 2012, s 4(1)(c); 2 s 4(5); 3 s 4(2); 4 s 3(2); 5 s 4(2) & UC Regs, reg 3

Meaning of “in Great Britain”

C1121 To be “in” a place means to be physically there on the day or period in question. It is not the same as being resident in a place. A person may be resident in a place without being present there¹ and vice versa.

1 R(U) 18/60; R(P) 2/67

C1122 With regard to any particular day, a person should be regarded as present if they are in GB for part of a day: thus the day when a person arrives in GB and a day when they leave count as days when they are “in” GB.

Meaning of “Great Britain”

C1123 GB includes¹

1. England and Wales, and Scotland
2. adjacent islands including, Orkney, Shetland, the Hebrides, the Isles of Scilly, the Isle of Wight and Lundy

1 Union with Scotland Act 1706 preamble & Art 1; Union with England Act 1707 (Scottish Parliament), Art 1

C1124 N Ireland¹, the Isle of Man² and the Channel Islands³ are not part of GB.

C1125 - 1165

Persons who do not have to satisfy the condition that they be “in GB”

Crown Servants and Members of Her Majesty’s Forces posted overseas

C1166 Crown servants posted overseas and members of Her Majesty’s Forces posted overseas do not have to meet the basic condition that they be “in GB”¹ provided that they¹

1. are performing overseas the duties of an office or employment as a Crown servant or (as the case may be) as a member of Her Majesty’s Forces **and**
2. were habitually resident in the UK immediately before the first posting (or the first of consecutive postings).

1 UC Regs, reg 10

C1167 In the case of joint claimants, the partner of a Crown servant posted overseas or a member of Her Majesty’s Forces posted overseas (who, in either case, satisfies the conditions in C1166) also does not have to meet the basic condition that they be “in GB”¹ while they are accompanying that Crown servant or member of Her Majesty’s Forces on that posting.

1 UC Regs, reg 10(1)(b)

C1168 Provided the conditions in C1166 are satisfied,

1. Crown servants posted overseas,
2. members of Her Majesty’s Forces posted overseas and, where C1167 is satisfied, their joint claim partners,

do not have to be habitually resident in¹, and do not need to have a right to reside in¹, the Common Travel Area.

1 UC Regs, reg 10(1) & WRA 2012, s 4(1)(c)

Meaning of “Crown servant”

C1169 “Crown servant” means¹ a person holding an office or employment under the Crown.

1 UC Regs, reg 10(3)

Meaning of “Member of Her Majesty’s Forces”

C1170 A “member of Her Majesty’s forces” means¹

1. a member of the regular forces¹, namely the Royal Navy, the Royal Marines, the regular army or the Royal Air Force **or**
2. a member of the reserve forces¹, namely the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Regular Reserve, the Royal Air Force Reserve or the Royal Auxiliary Air Force

who is over the age of 16 and who gives full pay service (excluding any such person while absent on desertion).

1 UC Regs, reg 10(3) & Armed Forces Act 06

C1171 – C1224

Habitual Residence

C1225 A person who is **not habitually resident** in the CTA (the UK, the Channel Islands, the Isle of Man or the Republic of Ireland) is to be **treated as not being in GB¹** and therefore not satisfying one of the basic conditions of entitlement to UC. A person must not be treated as habitually resident in the CTA unless that person has a right to reside, and certain rights to reside do not count (see C1851 to C1898).

Note: Croatia acceded to the EU on 1.7.13 and the rights of Croatian nationals to reside in the UK are restricted for an initial period of 5 years (i.e. until 30.6.18). Guidance on how the habitual residence test applies to Croatian nationals can be found at C1925 – C1945

1 UC Regs, reg 9(1)

C1226 – C1278

Persons with specific rights to reside

C1279 One of the basic conditions of entitlement to UC is that the person is in GB¹ (see C1120 et seq). Consequently an EEA national will meet that UC entitlement condition if they

1. are present in GB **and**
2. have a right to reside that is not excluded² (see C1851 et seq) **and**
3. are factually habitually resident in the CTA (see C1946 et seq).

If the EEA national falls within any of the exemptions listed in C1280, they do not have to demonstrate that they are factually habitually resident in the CTA.

1 WRA 2012, s 4(1)(c); 2 UC Regs, reg 9(3)

C1280 Persons who are determined to have certain specific rights to reside are not subject to the requirement that they be habitually resident in the CTA. These persons are

1. EEA nationals who are “qualified persons” for the purposes of specific legislation¹ **as workers** or a **self-employed persons²** (see C1360 - C1451)

2. a family member within the meaning given in certain regulations³ of an EEA national who is a qualified person as a worker or self-employed person⁴ (see C1596 to C1598)

Note: this does not include “extended family members” (see paragraph C1737 et seq)

3. certain persons with a **right to reside permanently**⁵ in the UK by virtue of specific regulations⁶ (see C1615 to C1620)
4. a **refugee**⁷ (see C1670 to C1671)
5. a person⁸ who
 - 5.1 has been granted discretionary leave to enter or remain in the UK outside the Immigration Rules (see C1672) **or**
 - 5.2 has been granted leave to remain outside the Immigration Rules under the Domestic Violence concession (see C1674 to C1677) **or**
 - 5.3 is deemed to have been granted leave outside the Immigration Rules by virtue of specific legislation which, in accordance with an EU directive provides temporary protection to persons affected when the Council of the EU decides that there is (or will be) a mass influx of displaced persons who cannot return to their country of origin.

Note DMs will be notified when the provision in sub-para **5.3** is triggered

6. a person who has humanitarian protection granted under the immigration rules⁹ (see C1678)
7. a person who is not a PSIC (see paragraph C1040 et seq) who is in the UK as a result of his deportation, expulsion or other removal by compulsion of law from another country to the UK¹⁰.

1 Imm (EEA) Regs 2016, reg 6(1); 2 UC Regs, reg 9(4)(a); 3 Imm (EEA) Regs 2016, reg 7(1)(a)(b) or (c);

4 UC Regs, reg 9(4)(b); 5 UC Regs, reg 9(4)(c); 6 Imm (EEA) Regs 2016, reg 15(1)(c), (d) & (e);

7 UC Regs, reg 9(4)(d); 8 reg 9(4)(e); 9 reg 9(4)(f); 10 reg 9(4)(g)

C1281 - C1359

Workers

- C1360 An EEA national who is in genuine and effective employment in the UK is a worker for EU purposes¹. A person who moves from one Member State to another in order to seek work is not a worker for EU regulations² and is subject to the habitual residence test (but see C1972).

1 Imm (EEA) Regs 2016, reg 4(1)(a) & Case C-53/81 D.M. Levin v Staatssecretaris van Justitie;

2 Case C-138/02 Collins v. Secretary of State for Work and Pensions

- C1361 However in order for a person to be exercising their EU law rights of free movement as a “worker”, there must be a genuine link between that person and the labour market of the host member state. A worker must be actively pursuing activities as

an employed person¹. Accordingly, before considering the guidance in C1362 - C1363 below about whether the work itself is genuine and effective, DMs should consider the preliminary question of whether the claimant is genuinely exercising their EU rights as a “worker”. In deciding this question, DMs can look at all the circumstances, including the person’s primary motivation in taking up employment and whether, during periods when they were not employed, the person seriously wished to pursue employment by actively looking for work with a genuine chance of being engaged. Thus it is open to DMs to conclude that (for example) a person who does a very brief period of part-time work solely in order to establish a right to reside and thus entitlement to benefit is not exercising their EU rights as a worker.

1 De Biasi v Secretary of State for the Home Department [2012] EWCA Civ 1015

Example

Thijs is a Dutch national. He first came to the UK in 1999 and has resided in the UK ever since. He claimed UC on 2.4.14. The DM established that the only work Thijs had done in the UK was a period of 8 weeks February and March 2014 when he worked as a part-time cleaner for 8 hours per week at an hourly rate of £10 per hour. There was no evidence that he had been self sufficient at any time since 1999, nor that he had genuinely been seeking employment during that period. The DM concluded that Thijs was not a worker and that accordingly he had not retained worker status.

Genuine and effective work

C1362 The DM should be satisfied that the work is genuine and effective and is not on such a small scale as to be marginal and ancillary¹. As the terms “genuine and effective” and “marginal and ancillary” are not defined in EU law, the DM should decide each case on its own merit. The DM should take account of all work done in the UK and consider, amongst other things

1. the period of employment
2. the number of hours worked
3. the level of earnings
4. whether the work was regular or erratic.

In some cases the DM will have to weigh, for example, low hours against long duration of work as part of their overall assessment of whether work is genuine and effective. However, case law does not identify one consistent approach to applying these and other factors: each case must be decided on its own merits.

1 CH/3314/2005, CIS/3315/2005 paras 21-30; Case C-357/89 Raulin (1992) ECR 1027;

Example

An EEA national arrives in the UK and stays with a relative who has a shop. She does not have an offer of a job but helps out in the shop for an hour or two when

she can, for which she is paid £20 per week. She claims UC immediately on arrival. The claimant is not a refugee and has not been given exceptional leave to remain in the UK. The DM considers whether the work in the UK was genuine and effective. As she only worked for a few hours a week, in work that was irregular and low paid the DM decides that the work was not genuine and effective because it was on such a small scale as to be marginal and ancillary. The claimant is not a worker.

C1363 Work that is part time or low paid is not necessarily always marginal and ancillary. A part time worker may be considered a worker for EU purposes and retain a right to residence in the UK as long as the work is genuine and effective.

Example

An EEA national who claims UC shows that he has been working for three hours per day, five days per week for the last four months. The DM decides that the work is genuine and effective because it is not on such a small scale as to be marginal and ancillary. The work was on a regular basis continuing for a reasonable length of time.

C1364 – C1390

Retaining Worker Status

Temporary illness or accident

C1391 Workers can retain worker status when they

1. stop working **and**
2. are temporarily unable to work as a result of illness or accident¹.

Note 1: These retained workers are not subject to their right to reside status ending after six months and do not therefore have to satisfy a GPoW assessment (C1403 et seq).

Note 2: For retaining the status of being a self-employed person, see C1475.

Note 3: The illness or accident which results in a worker being temporarily unable to work must be suffered by that worker².

1 Imm (EEA) Regs 2016, reg 6(2)(a); 2 CIS/3182/2005, para 20

Involuntary unemployment - Employed in the UK for one year or more

C1392 Workers retain worker status when they stop working, after having worked as an employee in the UK for **one year or more** provided¹ the person

1. has registered as a jobseeker with the relevant employment office **and**
2. is in duly recorded involuntary unemployment after having been in genuine and effective work for **one year or more and**

3. can provide evidence that they are seeking employment and have a genuine chance of being engaged.

Note: See also C1360 to C1363 for guidance on whether the person was a worker the first place

1 Imm (EEA) Regs 2016, reg 6(2)(b)

Involuntary unemployment - Employed in the UK for less than one year

C1393 ADM C1392 sets out the conditions for a right to reside as a worker who retains worker status after having worked as an employee for one year or more and then becomes involuntarily unemployed. This paragraph sets out the conditions for a right to reside as a worker who retains worker status after having worked as an employee in the UK for **less than one year**. A person who¹

1. has registered as a jobseeker with the relevant employment office **and**
2. is in duly recorded involuntary unemployment after having been in genuine and effective employment for **less than one year and**
3. can provide evidence that they are seeking employment and have a genuine chance of being engaged.

will only retain worker status for a maximum of 6 months starting with the first day of duly recorded involuntary unemployment².

Note: this paragraph should be read in conjunction with ADM C1394 below.

1 Imm (EEA) Regs 2016, reg 6(2)(c); 2 reg 6(3)

C1394 This group will cease to have a right to reside as retained workers after 6 months (there has been no change to the immigration rules for this group). However in practice, if a claimant falls into this group and makes a claim after 1.1.14, they will be subject to a GPoW assessment at the end of 6 months and the reclaiming rules apply (see ADM C1425)

Vocational Training

C1395 Workers can retain worker status when they

1. are involuntarily unemployed and have embarked on vocational training¹ **or**
2. have voluntarily ceased working and have embarked on vocational training that is related to the person's previous employment².

1 Imm (EEA) Regs 2016, reg 6(2)(d); 2 reg 6(2)(e)

Involuntary unemployment

C1396 DMG C1392 and C1393 set out the conditions which need to be satisfied for a person to retain their worker status¹. These conditions are that

1. the claimant must be in involuntary unemployment **and**
2. the involuntary unemployment must be duly recorded **and**
3. the claimant must have registered as a jobseeker with the relevant employment office **and**
4. the claimant can provide evidence that they are seeking employment **and** have a genuine chance of being engaged.

1 Imm (EEA) Regs 2016, reg 6(2)(b) & (c); Directive 2004/38/EC, Art. 7(3)(b)

The meaning of “involuntary unemployment”

C1397 The concept of involuntary unemployment is interpreted as meaning that the person retains a link with the labour market¹. That is determined by having regard to

1. the reasons why the previous employment ended **and**
2. the person's intention **and**
3. the person's activities after leaving their employment.

Note: The reasons why the previous employment ended are relevant considerations as to whether or not the claimant is genuinely still in the labour market, but those reasons are not necessarily the determining factor. They provide the context for a person's activities after they have left their employment².

1 R(IS)12/98; Case C-413/01 Ninni-Orasche [2003] ECR I-13217; 2 CIS/3315/2005 & CIS/2423/2009

Undue delay

C1398 Consideration should be given to the timeliness within which the conditions for retaining worker status are satisfied and whether there has been any undue delay between the end of employment and the claim to UC. In order to retain worker status, the claimant must act promptly and without undue delay¹.

1 CIS/2423/09

C1399 Where there is a delay of more than a few days between the end of employment and the making of a claim to UC, the DM should make enquiries into the reasons for, and circumstances of, any delay. What the claimant did between the ending of employment and their claim to UC, will be determining factors as to whether there are reasonable grounds for the delay, such that it is not right to regard it as an undue delay. It follows that the longer the delay, the more compelling the reasons must be for it.

Example

Maria, a Spanish national, has been working for her employer for 14 months, working set shift patterns. Following a change to her shift patterns, Maria now has difficulty with travel arrangements for the late shift. Maria's employer will not let her deviate from the new shift pattern, stating that she must work the same shifts as her colleagues. Maria gives her notice and looks for work closer to home whilst she is working her notice. Once her employment ceases, Maria does not claim UC immediately, although she continues to look for work, contacting prospective employers. After a month, Maria claims UC. The DM determines that

- Maria's employment ended due to a change in her shift pattern which was outside Maria's control and
- Maria's intention was to find another job and that she had commenced looking for alternative work whilst working her notice and
- Once her employment ceased, Maria continued looking for work, contacting prospective employers.

When the DM considers the one month delay in Maria's claim to UC, Maria explains that she had not claimed UC immediately after ceasing employment because she was confident of getting another job quickly. She had provisionally been offered a job which was due to start the day before she made her claim to UC, but at the last minute, the job had fallen through. Maria produced a letter from the company giving details of why the job was no longer available. The DM determines that there are reasonable grounds for the delay and that Maria remained in the labour market between the ending of her employment and the date of making her claim to UC. Consequently Maria retains her worker status.

C1400 - C1402

The Genuine Prospect of Work test

Introduction

C1403 EEA nationals who have been unemployed and claiming UC for 6 months as a retained worker will lose their EU right to reside in the UK, **unless** they provide **compelling evidence** that they are continuing to seek employment and that they have a genuine chance of being engaged. In which case, a short extra period of UC will be allowed.

Note: This paragraph will not apply to anyone with a right to reside other than as a person retaining worker status under C1392 – C1393.

C1404 The key changes deal with the extent to which it is possible to enjoy repeat periods of residence as a person retaining worker status from 1.7.14.

Jobseekers

C1405 Guidance at ADM C1711 explains a jobseeker's right to reside. With effect from 1.1.14, the definition of a jobseeker¹ is a person who

1. either
 - 1.1 entered the UK in order to seek employment² **or**
 - 1.2 is present in the UK and seeking employment immediately after having a right to reside as a worker, self-employed person, a self sufficient person or a student³ **and**
2. can provide evidence that they are seeking employment and have a genuine chance of being engaged⁴.

Note 1: a "worker" within **1.2** does not include a person retaining worker status under specified legislation⁵.

Note 2: From 10.6.15, EEA nationals whose only right to reside is as a 'jobseeker' are not entitled to claim UC (see ADM C1854 et seq).

1 Imm (EEA) Regs 2016, reg 6(1); 2 reg 6(5)(a); 3 reg 6(5)(b); 4 reg 6(6); 5 reg 6(2)(c)

Retaining Worker Status

C1406 Guidance at ADM C1392 and C1393 sets out the conditions for a right to reside as a worker who retains worker status after having worked as an employee and then becoming involuntarily unemployed.

Employed in the UK for less than one year

C1407 A person who¹

1. has registered as a jobseeker with the relevant employment office **and**
2. is in duly recorded involuntary unemployment after having been in genuine and effective employment in the UK for **less than one year and**
3. can provide evidence that they are seeking employment and have a genuine chance of being engaged

will only retain worker status for a maximum of 6 months starting with the first day of duly recorded involuntary unemployment².

Note: This group will cease to have a right to reside as retained workers after 6 months (there has been no change in the immigration rules for this group).

However, in practice if a claimant falls into this group, and makes a claim after 1.1.14, they will be subject to a GPoW assessment at the end of 6 months and the reclaiming rules apply (see ADM C1425).

1 Imm (EEA) Regs 2016, reg 6(2)(c); 2 reg 6(3)

Employed in the UK for one year or more

C1408 From 1.1.14, a person who¹

1. has registered as a jobseeker with the relevant employment office **and**
2. is in duly recorded involuntary unemployment after having been in genuine and effective employment in the UK for **a year or more and**
3. can provide evidence that they are seeking employment and have a genuine chance of being engaged

retains worker status for 6 months starting with the first day of duly recorded involuntary unemployment. After that they can only retain worker status if they can provide compelling evidence that they are continuing to seek employment and have a genuine chance of being engaged² (see ADM C1415). Transitional provisions³ provide that any period of duly recorded involuntary unemployment or any period during which a person is a jobseeker, prior to 1.1.14, should be disregarded.

1 Imm (EEA) Regs 2016, reg 6(2)(b), (5) & (6); 2 reg 6(7); 3 Immigration (European Economic Area) (Amendment) (No. 2) Regs 2013, Sch 3, para 1(b)

The Genuine Prospect of Work Test

C1409 [See Memo ADM 21/18] With effect from 1.1.14 for the purposes of UC, an EEA national cannot have a right to reside as a person who has retained worker status in accordance with ADM C1392 to C1394, for longer than 6 months unless they can provide compelling evidence that they are continuing to seek employment and have a genuine chance of being engaged¹. This is assessed through the genuine prospect of work test.

Note: EEA nationals whose only right to reside is as a 'jobseeker' are not entitled to claim UC (see ADM C1854 et seq).

1 Imm (EEA) Regs 2016, reg 6(7)

The Relevant Period

C1410 [See Memo ADM 21/18] The meaning of the relevant period, in relation to a retained worker, who becomes involuntarily unemployed following a period of more than 12 months in work, is defined as a continuous period of 6 months¹.

1 Imm (EEA) Regs 2016, reg 6(1)

GPoW assessment interview date

C1411 The date of the GPoW assessment interview should be set 6 months from the start of the first UC assessment period. This will ensure that UC is paid for at least a 6 month period. But see guidance at ADM C1417 to C1418 about the effect of interruptions occurring during the relevant period.

Example

EEA national claims UC from 7 September. Waiting days apply from 7 September to 13 September, and UC entitlement commences 14 September. The DM identifies that the claimant retains worker status so is entitled to UC for 6 months, when the claimant will then be subject to a GPoW interview. The claimant's UC assessment period begins 14 September and runs until 13 October (and each subsequent assessment period running for the same period). The GPoW interview date should be set to 14 March, to ensure payment of UC is made for a full 6 month period.

Standard of proof

C1412 Whether a person has a genuine chance of being engaged in genuine and effective work (*Antonissen* (see C1711)) is a matter which falls to be decided on the civil standard of proof (see ADM Chapter A1 (A1340 et seq)). That is proof that

1. the fact more probably occurred than not **and**
2. common sense, not law, requires that in deciding the question, regard should be given to inherent probabilities (see ADM Chapter A1 (A1392)).

Within this context, the evidence provided by the claimant for having a genuine chance of being engaged must outweigh the fact that the claimant has been unable to find work after 6 months of unsuccessful jobseeking.

Genuine chance of being engaged

C1413 The requirement to provide compelling evidence applies both to

1. continuing to seek genuine and effective employment (see ADM Chapter J3) **and**
2. having a genuine chance of being engaged.

Note: The need for the chance should be founded on something objective (i.e. that it is **genuine** as opposed to illusory or speculative), but also the **likelihood** that the **chance** will come to fruition within a reasonable period of time. There has to be a chance of a real prospect of success in obtaining work that is genuine and effective. The evidence provided at the end of the relevant period must show that their circumstances have changed in such a way that merits a continuation of their jobseeker status¹.

1 [2017] AACR 6

Work search requirement

C1414 The claimant is required to comply with their work search requirement for each week of their UC claim. This means taking steps that the claimant can reasonably be expected to take, to give them the best chance of getting employment. The requirement to have a chance of being engaged requires a degree of looking forward over a foreseeable period, on the balance of probability. However it should also be borne in mind that, during any forward looking period, there will still be the

requirement for the claimant to comply with their work search requirement each week in relation to any continued payments of their UC claim.

Compelling evidence of continuing to comply with the work search requirement and having a genuine chance of being engaged

C1415 The DM can extend the claimant's UC entitlement where the claimant has provided compelling evidence that a change of their circumstances has now given them a genuine chance of being engaged. This may be

1. where the claimant has provided reliable evidence that they have a genuine offer of a specific job which will be genuine and effective work (see ADM C1426 to C1427). In this case the relevant period can be extended for a foreseeable period if this is within 3 months (see **Note** below) and extended up to the day before the job actually starts or is due to start (whichever is the earlier) **or**
2. where the claimant can provide proof during the relevant period that a change of circumstance has given them genuine prospects of employment (which will be genuine and effective work (see ADM C1426 to C1427) and as a result they are awaiting the outcome of job interviews. In these cases the relevant period can be extended for a foreseeable period. In this case up to the day before the substantial change of circumstance if this is within 3 months (see **Note** below). Any extension is backdated to the date of the change of circumstances. However, time within the current relevant period is disregarded and as such, any change that occurs more than 3 months before the last day of the relevant period will not, in practice, result in any extension beyond the six month point.

Note: The claimant is required to continue to satisfy both elements of the GPoW: the work search requirement and a genuine chance of engagement for each week of the period of extension, up to the date of the substantial change of circumstances e.g. starting work. The work search requirement is reviewed following each week of jobseeking; whereas the element of a genuine chance of engagement requires a degree of looking forward over a foreseeable period, to reasonably determine, based on the balance of probability and on the evidence provided, when a claimant is likely to change their circumstance (e.g. start work). Therefore, taking into account both elements, it would be reasonable for DMs to consider a short period of extension where a change of circumstance is likely to occur within 3 months. A substantial change of circumstances to show a genuine chance of being engaged should be one which comes to fruition within a reasonable period of time (see C1413). If following the assessment of evidence, DMs are unable to determine a "reasonable period" for a change of circumstance, please refer the case to DMA

Leeds for guidance. Please see C1414 with regard to the claimant's work search requirement during any extension period.

C1416 Inherent probability does not mean giving the benefit of the doubt. It is a material consideration to take into account a period of six months or more of unsuccessful jobseeking as part of the assessment of genuine evidence to determine whether the claimant has provided compelling evidence of a genuine chance of being engaged. Examples of genuine evidence which may be taken into account in assessing whether, on the balance of probability, there is a genuine chance of being engaged may include

1. the length of period of unsuccessfully seeking work
2. a definite job offer of genuine and effective work
3. awaiting the outcome of a job interview
4. completion of a training course which offers real prospects of success in obtaining genuine and effective work
5. previous genuine and effective work history
6. acquisition of qualifications which enhances the claimant's employment prospects
7. relocation to an area where there are improved chances in obtaining genuine and effective work
8. steps taken by the claimant to improve their prospects of being offered genuine and effective work within a reasonable period

These examples are not exhaustive. It is open to the DM to obtain other genuine evidence which is considered to be compelling.

Note 1: The evidence of whether a claimant has a genuine chance of being engaged is a matter decided on the civil standard of proof (see C1412). The evidence provided should be substantial enough to demonstrate that the change of circumstance has significantly improved the claimant's genuine chance of engagement and that the chance of engagement will come to fruition within a foreseeable period.

Note 2: See ADM C1426 to C1427 for guidance on genuine and effective work.

Example 1

Pavel, a Polish national attends his GPoW assessment interview on 1.8.16 and provides a letter from an employer. This shows that Pavel has been guaranteed a job to start once he has passed the security course that he has been undertaking. The position will be permanent and the pay will be £200 per week. Pavel has obtained top grades throughout his coursework and has already sat the exam. The

results of his exam are awaited and due 23.9.16. As the work is genuine and effective the DM grants an extension up to the date that the exam results are due. Once Pavel receives his exam results he returns with another letter from the employer. Because of the nature of the work, employees cannot start without a security check and, unfortunately, these are taking longer than expected. Pavel will not be able to start work until 5.12.16. The DM determines that as the delay is outside Pavel's control and an extension is appropriate until 4.12.16.

Example 2

Solange, a Portuguese national, attends her GPoW assessment interview on 22.7.16. She provides a letter saying that she is due to start genuine and effective work on 22.8.16 following the completion of a one week training programme. The training programme commences 15.8.16 and has already been booked and paid for. The DM determines that Solange has demonstrated that she has a genuine chance of being engaged. The DM therefore determines that Solange is entitled to an extension until 21.8.16.

Example 3

Christophe, a French national, after being unsuccessful in obtaining employment for 5 months and 1 week, relocated from Manchester to Dorset and is now attempting to find work in tourism. He applied for some jobs in the area before moving. As it is the start of the season he has found numerous vacancies, has had a couple of interviews in the past week and has a number of upcoming interviews. He is expecting the outcome of the interviews within the next 2 weeks. Christophe feels very hopeful of these as he speaks English well and worked in tourism in France before coming to the UK.

The DM determines that, in the field in which Christophe is now looking, at this time of year and this area he has a genuine chance of being engaged. As Christophe has only recently relocated the DM determines that an extension is appropriate. The DM grants an extension of 2 weeks on the basis that Christophe has been told in the last couple of interviews he had had to expect a decision from the employer by then. The DM considers that a longer extension would be inappropriate as he had applied for jobs before he moved and has had a number of interviews, the season has started and employers are likely to have all the staff they need shortly.

Example 4

Magda, a Hungarian national, has been claiming UC for the relevant period and has been invited to attend a GPoW assessment. At interview she states that 4 months ago she moved from Inverness to Newcastle as she is an experienced production line worker and believed that this would give her more chances of finding work. She provides evidence to show that since her move she has been able to apply for more jobs in her line of work than in Inverness where she was principally limited to

hospitality work; she has also found more employers to send her CV to. However, as yet she has had very few interviews and these have been unsuccessful. She has no upcoming interviews.

The DM determines that although the reason for Magda's move was to put herself in a better labour market this has not been shown to be successful on the basis of her jobseeking activity during the last 4 months. The DM determines that Magda has not shown that she has a genuine chance of being engaged in the foreseeable future and an extension is not appropriate. The DM therefore determines that Magda no longer has a qualifying right to reside and not entitled to UC.

Example 5

Kurt, a German national, is invited to provide compelling evidence to show that he has a GPoW on 1.8.16 as he has now been in receipt of UC for the relevant period.

At his interview Kurt provides a letter from an agency "Right4Work" offering him a job which is due to start in 2 weeks time. The offer does not contain any further details of the hours to be worked, the wages or the length of the contract. Before the job offer can be considered, Kurt is asked to provide further information about the job from the agency. Kurt provides a letter from the agency saying that they will always endeavour to arrange a placement for their workers but this cannot be guaranteed. The work is minimum wage, but as it is dependant on the requirements of the clients, neither the hours per week or the duration of the placements can be guaranteed. No contract is deemed to exist when the worker is not on a placement.

The DM determines that although he has a job offer, there is no compelling evidence that the work will be genuine or effective because the income, hours per week and duration cannot be confirmed.

The DM therefore determines that Kurt has not provided compelling evidence to show a genuine chance of being engaged. Kurt no longer has a right to reside and consequently is not entitled to UC from the GPoW assessment due date.

Other relevant considerations

C1417 In the case of a person retaining worker status, the relevant period means a continuous period of 6 months¹.

1 Imm (EEA) Regs 2016, reg 6(1)

C1418 Where a claimant, who was previously claiming UC and whose claim ended before the GPoW assessment, makes a subsequent claim to UC and had

1. obtained genuine and effective work **and**
2. worker status in that job

they will be entitled to a fresh right to reside, and consequently entitled to UC for 6 months. At the end of that 6 month period, the GPoW assessment is conducted as normal.

C1419

JSA(Cont)

C1420 JSA(Cont) is not subject to a right to reside condition. However there will be cases where when they first become unemployed, claimants satisfy the conditions for JSA(Cont) only and then later become entitled to UC. Time spent on JSA(Cont) would only be relevant to the GPoW assessment, where a person, reaching their 6 month point for receiving JSA(Cont), seeks to transfer from JSA(Cont) to UC.

Note 1: Whilst JSA(Cont) is limited to 6 months, this is a separate period to the relevant GPoW period.

Note 2: In some circumstances UC can be paid in addition to JSA(Cont) (see ADM Chapter S1 for guidance).

C1421 Only periods of entitlement to JSA(Cont) or UC count towards the relevant period. Periods of credits only and periods between claims do not count towards calculating the relevant period. However, what the claimant has done between periods of claim will affect whether a further relevant period applies e.g. whether the claimant has worked since his last claim and retained worker status.

Note: Credits only claims are not subject to HRT. However, the period of a JSA(Cont) claim can be taken into account when calculating the balance of time to the GPoW end date.

Example

Maria, a Dutch national, has been living and working in the UK for 3 years when she is laid off due to a downturn in the business. She claims JSA(Cont). Although this is not subject to HRT she was given the GPoW fact sheet at her New Jobseeker Interview.

After 6 months her JSA(Cont) exhausts and she completes a claim for UC. The DM determines that as she has already been claiming JSA(Cont) for 6 months (during which time she had a right to reside as a person who retained worker status) her GPoW is due immediately and must be completed before a final decision can be given on her right to reside. If she cannot show a GPoW at this time, she will no longer have a right to reside as a retained worker and will have no entitlement to UC.

C1422 Certain interruptions will be disregarded in calculating when the relevant period ends. Where the claimant offers evidence at their GPoW interview that they have previously been treated as available for work (see ADM J3110 et seq),

consideration can be given to an extension of the GPoW end date. Examples for consideration may include periods of

1. up to 13 weeks when the claimant is a victim of domestic violence and is treated as available for work in accordance with the guidance at ADM J3187 et seq **or**
2. temporary absence from GB (see ADM C1976 et seq) **or**
3. Sickness.

Note: The above list is not exhaustive. However, the period that the claimant was treated as available for work must have been previously accepted by the employment office and must have been noted on the system.

C1423 – C1424

Further claim to UC made after GPoW assessment

C1425 Where a claimant makes a further claim to UC after having a GPoW assessment and they

1. obtained genuine and effective work **and**
 2. had retained their worker status (see ADM C1392 – C1394) through that job
- they are entitled to a new relevant period on UC before a GPoW assessment is due¹.

1 Imm (EEA) Regs 2016, reg 6(7)(a)

Genuine and effective work

C1426 DMs should only accept that the claimant has provided compelling evidence of good prospects of employment or self-employment if, after applying the criteria described in ADM C1480 – C1506, the prospective employment or self-employment would be genuine and effective work.

C1427 If, following the examination of the case

1. the DM decides that the employment or self-employment will not be genuine and effective work, he should decide that the claimant has not provided compelling evidence that he has good prospects of employment **or**
2. the DM decides that the employment or self-employment will be genuine and effective, he should decide that the claimant has provided compelling evidence that he has good prospects of employment and extend the relevant period as per ADM C1415.

C1428 - C1430

Part-time work

C1431 Where a claimant is undertaking work activity at the date of claim which (although part-time) is determined by the DM to be genuine and effective (see ADM C1480 to C1506), the claimant has current “worker” or “self-employed” status as appropriate¹. They are not subject to GPoW while they have this status. The right to reside status should be reviewed if the work activity ends.

1 Imm (EEA) Regs 2016, reg 6(1)

C1432 Where a claimant is undertaking work activity at the date of claim which is not determined by the DM to be genuine and effective (i.e. that the work is on such a small scale as to be marginal and ancillary), the claimant has not gained “worker” status and therefore cannot retain worker status (see ADM C1406). Although they are working, the claimant would have “jobseeker” status¹ and not entitled to UC² (see ADM C1857)

1 Imm (EEA) Regs 2016, reg 6(1)(a); 2 UC regs, reg 9(3)(aa)(i)

What happens if claimant fails GPoW test

Joint Claims

C1433 Where a claimant (claimant 1) loses their right to reside following a GPoW assessment in which they fail to demonstrate a genuine prospect of work, claimant 1 will no longer be entitled to UC. In circumstances where the claimant’s partner (claimant 2) then makes a claim to UC, demonstrating their own right to reside as a retained worker (having satisfied the habitual residence test), claimant 2 will be entitled to UC for the relevant period. Claimant 1 can also be included within the claim made by claimant 2, as claimant 1 now derives a right to reside from claimant 2. If claimant 2 then loses their right to reside following a GPoW assessment, neither claimant 1 or claimant 2 will be eligible for further UC unless they can demonstrate a new right to reside in such circumstances as are described in this guidance.

Family Members

C1434 DMs will need to be aware that, if a UC claimant has lost their EU rights to reside, it may be that there are family members whose EU right to reside derives from the claimant’s who will, as a consequence, also lose their EU rights to reside. The following are family members¹ for these purposes

1. spouse (husband or wife) or civil partner **or**
2. direct descendants of the EEA national, his spouse or civil partner who are
 - 2.1 under the age of 21 **or**
 - 2.2 dependants of his, his spouse or civil partner **or**
3. direct ascendant relatives of the EEA national, his spouse or civil partner, who are dependants.

Where this applies the DM should decide that the claimant is not entitled to UC. If a family member makes a claim for UC the DM should also decide that they are also not entitled to UC.

Note 1: “Spouse” within this paragraph includes two people of a same sex couple.

Note 2: This may also be the case with regard to extended family members (see ADM C1691 4. and C1737).

Note 3: This paragraph also applies to family members who make a claim for IS, ESA(IR) or SPC, whose only EU right to reside is derived from the claimant.

1 Imm (EEA) Regs 2016, reg 7(1)

Alternative right to reside

C1435 During the GPoW assessment interview, the claimant may offer an alternative right to reside (see ADM C1690 et seq). Where the claimant is exercising an alternative right to reside, they are advised to provide supporting evidence.

C1436 Alternative rights to reside may include

1. self-sufficient persons with comprehensive sickness insurance (ADM C1728 to C1730) **or**
2. self-sufficient students with comprehensive sickness insurance (ADM C1732 to C1734) **or**
3. family members (DMG C1735) of
 - 3.1 a qualified person (ADM C1710) **or**
 - 3.2 a British Citizen (if certain conditions are satisfied) (ADM C1599 to C1602) **or**
 - 3.3 a student (ADM C1732 et seq) **or**
 - 3.4 an EEA national with a permanent right of residence (ADM C1751) **or**
4. family members who retain their right of residence (ADM C1778) **or**
5. extended family members (ADM C1738) **or**
6. permanent rights of residence (ADM 1750 et seq) **or**
7. derivative rights of residence (ADM C1830 et seq).

This is not an exhaustive list.

C1437 Supporting evidence could include

1. job contracts
2. letters from employers
3. evidence of permanent residence, which may include evidence of

- 3.1 5 years as a qualified person
 - 3.2 certified accounts, tax returns or HMRC registration (S/E people)
 - 3.3 evidence of previous work
 - 3.4 P45s
 - 3.5 study and comprehensive sickness insurance (Students)
 - 3.6 self-sufficiency and comprehensive sickness insurance
 - 3.7 Worker Registration and Worker Authorisation documents (Accession state nationals)
4. evidence of a derivative right to reside e.g. evidence of a child in general education (ADM C1833 2.3), evidence that the child's EEA national parent was working in the UK whilst the child resided in the UK (ADM C1833 2.2)
 5. evidence of the claimant's nationality (where this is not already held).

This is not an exhaustive list.

C1438 – C1450

Self-employed persons

C1451 In the context of EU rights to reside it is the EU law meaning of self-employed that has to be applied. EU law distinguishes between “workers” (who are persons who perform “services for and under the direction of another person in return for which he receives remuneration”¹) and self-employed (who are “independent providers of services who are not in a relationship of subordination with the person who receives the services”²). The CJEU has also stated³ that the following three factors are characteristic of self-employment

1. there is no relationship of subordination concerning the choice of activity, working conditions and conditions of remuneration
2. the activity is engaged under the person's own responsibility
3. the remuneration is paid in full to the person so engaged directly

In addition self-employed earners derive their right to move and reside from article 49 of the TFEU rather than article 45 which applies to workers.

1 Case C-357/89 Raulin v Minister Van Onderwijs en Wetenschappen;

2 Case C-256/01 Allonby v Accrington and Rossendale College;

3 Case C-268/99, Jany v Staatssecretaris van Justitie

C1452 Questions may arise as to whether at any particular moment in time a claimant is a self-employed person. An Upper Tribunal Judge has said this¹

“I do not accept that a claimant who is for the moment doing no work is necessarily no longer self-employed. There will commonly be periods in a person's self-employment when no work is done. Weekends and holiday periods are obvious

examples. There may also be periods when there is no work to do. The concept of self-employment encompasses periods of both feast and famine. During the latter, the person may be engaged in a variety of tasks that are properly seen as part of continuing self-employment: administrative work, such as maintaining the accounts; in marketing to generate more work; or developing the business in new directions. Self-employment is not confined to periods of actual work. It includes natural periods of rest and the vicissitudes of business life. This does not mean that self-employment survives regardless of how little work arrives. It does mean that the issue can only be decided in the context of the facts at any particular time. The amount of work is one factor. Whether the claimant is taking any other steps in the course of self-employment is also relevant. The claimant's motives and intentions must also be taken into account, although they will not necessarily be decisive."

1 SSWP v JS [2010] UKUT 240 (AAC)

- C1453 DMs will have to arrive at a judgement based on all the facts of the case in accordance with this guidance
- C1454 Self-employment must also satisfy the condition that the work involved be genuine and effective (see para C1362).
- C1455 Unless Tier 1 of the MET (see C1487) is satisfied to establish that the self-employed work is genuine and effective, the DM should consider all the circumstances of each particular case. Factors to consider may include
1. periods of actual work
 2. monies received for such work
 3. administration tasks relating to the business
 4. maintaining accounts
 5. marketing work to generate more work
 6. development of business in new directions
 7. receipts for tools, stock or materials purchased

This is not an exhaustive list.

- C1456 A person must have more than an intention to be self-employed. They must provide evidence of the steps taken, or the ways used to set up their self-employment¹.

1 R(IS)6/00

- C1457 It helps to have registered with HMRC as a self-employed person. However, a person not registered with HMRC does not necessarily mean that they are not self-employed. Registration with HMRC may be one of the factors towards establishing that the person has self-employed status. However that registration should link to genuine and effective work (see C1454).

C1458 – C1474

Retaining the status of being a self-employed person

C1475 A self-employed person retains that status only if he is unable to work temporarily as a result of an illness or accident¹.

Note: the illness or accident which results in a self-employed person being temporarily unable to work must be suffered by that self-employed person.

1 Imm (EEA) Regs 2016, reg 6(4); R (on the application of Marian Tilianu) v Social Fund Inspector and SSWP [2010] EWCA Civ 1397

C1476 – C1479

Minimum Earnings Threshold

C1480 Persons with certain specific rights to reside are not subject to the requirement that they be habitually resident in the CTA¹.

1 UC Regs, reg 9(1)

C1481 Amongst this group are EEA nationals who are

1. workers (ADM C1360) **or**
2. persons who retain their worker status (ADM C1393 & C1394) because
 - 2.1 they are in duly recorded involuntary unemployment after having been employed in the UK, as long as they have registered as a jobseeker with the relevant employment office **or**
 - 2.2 work as an employee in the UK has stopped because the person is temporarily unable to work due to illness or accident **or**
3. self-employed persons (ADM C1451) **or**
4. persons who retain the status of self-employed person (ADM C1475) because they are temporarily unable to pursue their activities as a self-employed person as a result of illness or accident¹

and family members (ADM C1596 et seq) of persons described in **1.** to **4.** above².

Note: the following guidance is to provide more detailed advice on the criteria for deciding whether a person is or was a 'worker' or a 'self-employed person'.

1 UC Regs, reg 9(4)(a); 2 reg 9(4)(b)

C1482 – C1483

Meaning of 'worker' – two tier approach

C1484 It is well established in EU law that, in order to be a worker or self-employed, the person must be doing work which is genuine and effective and is not on such a small scale as to be marginal and ancillary¹. In order to clarify the position for DMs

the Department has decided to apply a Minimum Earnings Threshold, as part of a two tier process.

Tier 1: whether the Minimum Earnings Threshold has been met for a required period **and**

Tier 2: in cases where the Minimum Earnings Threshold criteria have not been met, whether the EEA national was in genuine and effective work assessed against a set of secondary criteria.

1 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie

C1485 – C1486

Tier 1 – Minimum Earnings Threshold

C1487 An EEA national who has worked as an employee or in a self-employed capacity will be automatically considered as a worker or self-employed person for the purposes of EU law if

1. their average gross earnings from employment or self-employment in the UK were more than £646 pcm (£149 a week) in 2013/14, and or £663 pcm (£153 a week) in 2014/15, and or £672 pcm (£155 a week) in 2015/16 or 2016/17 and or £681 pcm (£157 a week) in 2017/18 **and**
2. the gross earnings were at or above that level for a continuous period of 3 months immediately before the date from which UC has been claimed.

If these conditions are met, DMs should accept that the work activity was genuine and effective and that while the work was done, the EEA national had worker or self-employed status, as appropriate, in EU law. In this case, there is no need to apply the Tier 2 assessment.

Note: The level of the Minimum Earnings Threshold is linked to the level of the HMRC Primary Earnings Threshold (PET), which is the point at which employees must pay Class 1 National Insurance Contributions (NICs) (see the Appendix to ADM Chapter H3). Self-employed persons have to pay Class 2 and Class 4 NICs around this point too. As the PET level is usually updated every April, DMs should ensure that they use the PET level relevant to the 3 month period of earnings under consideration. Where this period spans the April PET updating, DMs should use the pre-updating PET rate for the entire 3 month period.

C1488

Tier 2 – Minimum Earnings Threshold criteria not met

C1489 In all cases where an EEA national's average gross earnings from employment or self-employment fall below the Minimum Earnings Threshold and/or their earnings have not been at or above that level for a continuous period of 3 months, the DM

will need to examine each case as a whole. The DM will need to take account of all the circumstances, to determine whether the EEA national's activity was genuine and effective, and not marginal and ancillary and decide whether the person is or was a worker or self-employed person, applying the guidance set out below.

C1490

Deciding if a person is/was a 'worker' – factors to take into account

C1491 Article 45 of the Treaty on the Functioning of the European Union (TFEU) says that freedom of movement for workers shall be secured within the EU and specified legislation¹ defines 'worker' as meaning a worker within the meaning of Article 45 of the TFEU (see ADM C1360 – C1361).

1 Imm (EEA) Regs 2016, reg 4(1)(a)

C1492 The following principles can be derived from EU case law

1. the term 'worker' has an EU law meaning¹ and may not be interpreted restrictively²
2. the term 'worker' applies to employees rather than the self-employed. In EU law terms the essential characteristics of an employment relationship is that a person performs services for and under the direction of another person in return for which he receives remuneration³
3. in deciding whether a person is a 'worker', account should be taken of all the occupational activities the person has undertaken in the host member state³
4. a person working part-time can be a 'worker' provided that the work undertaken is genuine and effective, but not where activities are on such a small scale as to be regarded as purely marginal and ancillary⁴
5. as a 'worker' must receive remuneration, unpaid voluntary activity is not 'work'⁵
6. the mere fact that there is a legally binding employment relationship is not of itself conclusive of whether the employee is a 'worker'⁶
7. as long as the work is 'genuine and effective' it is irrelevant whether it yields an income lower than the amount considered the minimum required for subsistence in the host Member State⁷ (in the case of the UK, the relevant applicable amount for UC)
8. the fact that the person seeks to supplement the remuneration from his work by means of financial assistance drawn from public funds does not preclude him from being regarded as a 'worker'⁸

9. once it has been established that the person is genuinely exercising his right of free movement as a 'worker', the motives which have prompted the worker to work in another Member State are irrelevant⁹ provided the work is genuine and effective
10. a person employed under an 'on-call' or 'zero-hour' contract is not precluded from being a worker provided the work is genuine and effective¹⁰
11. an employee undertaking genuine and effective work is a worker, even if the person is employed under a contract that is performed illegally¹¹
12. a Commissioner has held that a claimant's physical incapacity to do the work she had undertaken and the fact that she had been dismissed from it after a short period were irrelevant to the issue of whether the work was genuine and effective¹².

1 Case C-75/63 Hoekstra (née Unger) v Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten;

2 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie; 3 Case C-357/89 Raulin (1992) ECR 1027

4 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie (para 17); 5 CIS/868/08 & CIS/1837/06;

6 Case C-344/87 Betray v Staatssecretaris van Justitie;

7 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie;

8 Case C-139/85 Kempf v Staatssecretaris van Justitie;

9 Case C-53/81 D.M. Levin v Staatssecretaris van Justitie (para 23);

10 Case C-357/89 Raulin (1992) ECR 1027; 11 JA v SSWP (ESA) [2012] UKUT 122 (AAC), CE/2190/11;

12 CSIS/467/07

C1493 Where the Minimum Earnings Threshold is not met, the DM will need to consider two questions

1. is the person exercising their EU freedom of movement rights as a "worker" (see ADM C1495 - C1496) **and**
2. is the work 'genuine and effective' (see ADM C1498 to C1499).

C1494

Is the person exercising their rights as a worker

C1495 In order for a person to be exercising their EU law rights of free movement as a "worker", there must be a real link between that person and the labour market of the host Member State (see ADM C1361). A worker must be actually pursuing activities as an employed person or seriously wish to pursue activities as an employed person¹. Accordingly, before considering the guidance below about whether the work itself is genuine and effective, DMs may consider the preliminary question of whether the claimant is genuinely exercising their EU rights as a 'worker'.

1 MDB (Italy) v Secretary of State for the Home Department [2012] EWCA Civ 1015

C1496 In deciding this question, DMs can look at all the circumstances, including the person's primary motivation in taking up employment and whether, during periods when they were not employed, the person seriously wished to pursue employment by actively looking for work with a genuine chance of being engaged¹.

Note: if a person is exercising their EU rights, their conduct before and after periods of employment (including their primary motivation) are not relevant when considering whether work is genuine and effective (see ADM C1498 – C1499).

1 MDB (Italy) v Secretary of State for the Home Department [2012] EWCA Civ 1015

C1497

Genuine and Effective Work

C1498 Provided the DM is satisfied that the claimant is in fact exercising his rights as a worker in accordance with ADM C1495 – C1496, the DM can then consider whether the work is genuine and effective and not marginal or ancillary (see ADM C1362).

C1499 When determining whether or not someone is a worker, the following can be relevant considerations:

1. whether work was regular or intermittent
2. the period of employment
3. whether the work was intended to be short-term or long-term at the outset
4. the number of hours worked
5. the level of earnings.

In some cases the DM will have to weigh, for example, low hours against long duration of work as part of their overall assessment of whether work is genuine and effective. However, case law does not identify one consistent approach to applying these and other factors: each case must be decided on its own merits.

C1500

Part-time work

C1501 Work below the Minimum Earnings Threshold that is part time or low paid is not necessarily always marginal and ancillary. A part time worker may be considered a worker for EC purposes and retain a right to residence in the UK as long as the work is genuine and effective.

Note: It is not possible to provide a formula of hours, earnings and periods of work which determine whether or not a person is a worker.

Example 1

Wolfgang is a German national who came to the UK on 18.6.15. On 20.6.15 he made an arrangement with a British family to act as an au pair. The agreement was

that he would work 13 hours per week in return for which he would receive £35 and free board and lodging. At the outset the intention was that the arrangement would be long term, but the arrangement was terminated by the family on 28.7.15 and on 31.7.15 a claim was made for UC. The DM considered that the claimant had not yet been in the UK for long enough for his residence here to have become habitual. However she considered whether the claimant might be exempt from that requirement as a worker who had become involuntarily unemployed. The DM decided that Wolfgang had been a worker: his activities as an au pair had been genuine and effective; he had provided services of economic value to his employers in return for remuneration. Finally the arrangement had been intended at the outset to be long term and had terminated unexpectedly early.

Example 2

The claimant is a Dutch national. He worked in the Netherlands from 1995. The firm he was working for in the Netherlands closed down in June 2012 and so he came to the UK to look for work. In October 2015 he claimed UC. It emerged that in the period since June 2012 the claimant had been looking for work and that between 2012 and 2014 he had been doing unpaid voluntary work. The DM decided that the claimant did not meet the basic condition to be in GB because he did not have a qualifying right to reside for the purposes of entitlement to UC. In particular the claimant wasn't a person who retained worker status because he had never been a "worker" in the UK. His activities had consisted of voluntary community work which was outside the "economic" form of activity for remuneration which is an essential factor in being a "worker".

Example 3

The claimant is a Polish national. She sustained a back injury in a car accident in Poland in 2008, and despite medical treatment the result was that she is unable to stand for more than half an hour at a time. She came to the UK on 18.3.15 and started work as a full-time shop assistant on 20.3.15. The claimant worked for about 2 weeks, following which she went off work for a week due to severe back pain. She was paid SSP for this absence. The claimant then returned to work for a few days but she was unable to continue. The claimant did not return to work and her employment was terminated on 15.5.15. A claim for UC was made on 12.6.15. The DM examined whether the claimant had been a "worker". He assessed all the circumstances of the case relating to the nature of both the activities concerned and the employment relationship at issue. The DM held that the claimant's physical capacity for work was an issue when considering the employment relationship which was critical to the determination of whether the claimant was a worker. The DM decided that the existing nature of the claimant's condition, the lack of physical capacity to do the work, the short interrupted duration of the employment and the reasons for the claimants dismissal were compelling grounds for finding that the

claimant had not been a worker. The DM therefore decided that the claimant did not have a qualifying right to reside and was therefore not entitled to UC.

Example 4

An EEA national who claims UC shows that he has been working for three hours per day, five days a week for the last four months. The DM decides that the work is genuine and effective because it is not on such a small scale as to be marginal and ancillary. The work was on a regular basis continuing for a reasonable length of time.

C1502 - C1504

Self-employment

C1505 See ADM C1451 for the characteristics of being a self-employed person rather than a 'worker'. The UT has held that, in order for a person to be regarded as self-employed for the purposes of the right to reside, the activity as a self-employed person must be genuine and effective rather than marginal or ancillary¹.

Note: see ADM C1528 in relation to self-employment and the CJEU judgment of *Saint Prix*.

1 Bristol City Council v FV (HB) [2011] UKUT 494 (AAC), CH/2859/11

C1506 The Minimum Earnings Threshold described in ADM C1487 may not always be easy to apply in the case of self-employed persons, but in general if

1. average profits (before tax and NI) are more than £681 pcm (£157 pw) in 2017/18 (see **Note 2** below) **and**
2. average profits have been at or above that level for a continuous period of 3 months

the DM should accept that the self-employment is genuine and effective and they can be considered as self-employed persons under EU law.

Note 1: If average profits are less than £681 pcm (£157 pw) in 2017/18 (see **Note 2** below) and/or have not been at or above that level for a continuous period of 3 months, the DM will need to examine the case under the Tier 2 process (see ADM C1489) with a view to determining whether the self-employment is genuine and effective.

Note 2: The level of the Minimum Earnings Threshold is linked to the level of the HMRC Primary Earnings Threshold (PET), which is the point at which employees must pay Class 1 National Insurance Contributions. Self-employed have to pay Class 2 and Class 4 NICs around this point too. As the PET level is updated every April, DMs should ensure that they use the PET level relevant to the 3 month period of earnings under consideration. Where this period spans the April PET updating, DMs should use the pre-updating PET rate for the entire 3 month period.

Note 3: DMs should exercise care in applying the guidance on EU case law in ADM C1492 and C1493 (on the meaning of ‘worker’) to the question of whether self-employment is genuine and effective. Account must be taken of the different nature of self-employment: it may include periods of relative inactivity (see ADM C1452) and there will be periods particularly as a business is starting up when the person may be working long hours but not yet receiving much profit.

Examples of Self-Employment

Example 1

The claimant is a Czech national who came to the UK in 4.1.16. He claimed UC on 11.2.16. The claimant said that he had a right to reside as a self-employed person. He had a contract with a local business under which he provided bookkeeping services for a local business. The contract was for 2 hours work per month, at a fee of £25 an hour and the claimant had completed the work for January 2016 on 1.2.16. He had not advertised his services, nor had he sought any other contracts. On 14.2.16 a DM considered the claim and decided that the claimant’s self-employment activities were marginal rather than genuine and effective, so the claimant did not have a right to reside as a self-employed person. The DM decided that the claimant was not entitled to UC.

Example 2

The claimant is a French national. She came to the UK on 6.10.15 and claimed UC on 17.12.15. It emerged that the claimant had been working on a self-employed basis as an interpreter. Since arriving, she had worked for 12 hours per week on average, charging a fee of £15 per hour. The DM decided that the claimant’s activity as a self-employed person was genuine and effective and that consequently the claimant had a right to reside as a self-employed person. As she had a right to reside as a self-employed person, she meets the basic condition of being a person to be treated as being in GB and was awarded UC accordingly.

C1507 – C1509

CJEU Judgment *Saint Prix v. SSWP*

Introduction

C1510 In its judgment¹, delivered on 19.6.14, the CJEU considered a case involving an EEA national who was exercising a right to reside as a worker in the UK and who ceased work due to pregnancy 11 weeks before her expected date of confinement.

C1511 The impact of the judgment applies to new UC claims from pregnant women who give up work, and takes effect from the date that the judgment was delivered i.e. 19.6.14.

Note: More complex cases may need referral to DMA Leeds (see ADM C1526).

Facts of the case

C1512 The claimant – Ms Saint Prix - is a French national who entered the UK in July 2006 and worked mainly as a teaching assistant from September 2006 to August 2007. She then commenced a university course from September 2007. During this period of study she became pregnant with an expected date of confinement of 2.6.08. In January 2008, hoping to find work in secondary schools, the claimant registered with an employment agency and in February 2008, withdrew from her university course. As no secondary school work was available, she took agency work in nursery schools. When nearly six months pregnant the claimant stopped that work on the grounds that the demands of caring for nursery school children had become too strenuous for her. She looked for a few days, without success, for work that was more suited to her pregnancy. In March 2008, being within 11 weeks of her expected date of confinement, she made a claim for IS, which was rejected on the grounds that she had lost her status as a worker and did not have a right to reside. In August 2008, three months after the premature birth of her child, the claimant resumed work.

CJEU ruling

C1513 In their judgment, the CJEU ruled

Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of “worker”, within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.

Reasonable period

C1514 The CJEU ruled that a pregnant woman in Ms Saint Prix's circumstances could only retain worker status if she returns to work or finds another job within a “reasonable period” after the birth of her child. The CJEU didn't determine what constitutes a “reasonable period”, but stated that it was for the national court (in Ms Saint Prix's case) to determine this. The CJEU gave guidance that the national court should take account of all the specific circumstances of the case and the applicable national rules on the duration of maternity leave, in accordance with Article 8 of the

Council Directive 92/85/EEC (which relates to the health and safety of pregnant women at work and those who have recently given birth).

- C1515 Under domestic legislation, pregnant women in employment are entitled to 26 weeks maternity leave. Where they are not entitled to SMP or MA, they may be able to claim IS¹ for a period which is aligned with the 26 week maternity leave period (up to 11 weeks before the expected week of confinement and 15 weeks after childbirth). There was Departmental agreement to use the 15 week period after childbirth as a yardstick for considering whether an EEA national in Ms Saint Prix's circumstances returned to work within a "reasonable period".

1 IS (Gen) Regs, Sch 1B, para 14

- C1516 Pending the outcome of the CJEU's *Saint Prix* judgment, several cases were stayed at the UT. Four lead cases were identified and their judgment¹ has been delivered by the UT. The UT adopted the approach that in the UK the "reasonable period", for the purposes of a *Saint Prix* right, is to be determined by taking account of the national rules on the duration of maternity leave and additional maternity leave (in accordance with specified legislation²). That is the 52 week period made up of ordinary maternity leave and additional maternity leave. The UT also emphasised that there had to be fact specific consideration of any case in which those circumstances arose. However, the UT noted that it would be an unusual case in which the period was other than the 52 week period. The effects of this UT judgment take effect from the date that the judgment was delivered i.e. 10.9.15.

*1 SSWP v SFF, ADR v SSWP, CS v LB Barnett & SSWP [2015] UKUT 0502 (AAC);
2 Directive 92/85/EEC Art 8*

Returning to work or jobseeking

- C1517 The UT in their judgment¹ agreed with DWP's approach that a *Saint Prix* worker can move from retained worker status under specified legislation² to a *Saint Prix* status and back to retained worker status provided she complies with the retained worker provisions of that specified legislation. However the UT goes on to extend that approach to someone who enters the *Saint Prix* reasonable period as a worker and whose job ends for lawful or unlawful reasons whilst being in the reasonable period. The UT held that a woman in that situation should be allowed to move to retained worker status provided the relevant conditions of the specified legislation are satisfied.

Note: More complex cases may need referral to DMA Leeds (see ADM C1526).

*1 SSWP v SFF, ADR v SSWP, CS v LB Barnett & SSWP [2015] UKUT 0502 (AAC);
2 Directive 2004/38/EC Art 7(3)(b) or (c)*

Example 1

Eva, an EEA national, ceased work on 31.12.15 when her fixed-term employment contact came to an end. She claimed and was awarded UC as a retained worker from 4.1.16. In February 2016, she finds out she is pregnant with an expected date

of confinement of 30.6.16. On 15.4.16 she notifies the department that she is no longer looking for work, as she is within 11 weeks of her expected date of confinement. Although she states that she intends to look for a job after the birth of her baby.

The DM reviews Eva's claimant commitment (ADM chapter J1), determining that as Eva is within 11 weeks of her expected date of confinement, she is no longer subject to work related requirements (ADM chapter J2). Eva enters the *Saint Prix* period from 15.4.16, retaining worker status in line with the UT judgment¹ and is entitled to a fixed award of UC for the remainder of the 52 week reasonable period.

At the end of the reasonable period, having returned to the employment market, the DM determines that Eva no longer falls within the *Saint Prix* period and she resumes her retained worker status. The DM reviews her work conditionality requirements and calculates the balance of time that Eva has as a retained worker who is again looking for work and allows a fixed award of UC to the GPoW assessment date.

1 SSWP v SFF, ADR v SSWP, CS v LB Barnett & SSWP [2015] UKUT 0502 (AAC);

Example 2

Carla, an EEA national, began work as a cleaner on a six month temporary employment contract on 30.3.15. In April she finds out that she is pregnant with an expected confinement date of 21.11.15. Towards the end of August, she is finding it difficult to carry cleaning equipment and to carry out her usual cleaning duties. On 4.9.15 she gives up her job and claims UC on 14.9.15. She is not entitled to MA as she has not worked for the required period of time before her baby is due. Her employer told her that she can return to her job under a new contract when she is able to after the birth of her baby and she stated at the point of her claim to UC that it was her intention to return to work.

As she gives up work within 11 weeks of her expected date of confinement, the DM considers that Carla is a worker, and retains her worker status in line with the *Saint Prix* judgment from the date that her contract of employment ceases. The DM awards UC from 14.9.15, until 41 weeks after the date that the claimant's pregnancy ends.

Nature of the Saint Prix right to reside – prospective or retrospective assessment

- C1518 The UT concluded that the *Saint Prix* right to reside should be assessed prospectively and the issue is to be approached as primarily a question of the woman's intention. The proviso in paragraph 41 of the CJEU *Saint Prix* judgment, that a woman must return to work or find another job within the reasonable period, should be treated as a condition subsequent for terminating the *Saint Prix* right where it is not met, and not a condition precedent to the right coming into existence.

C1519 DMs should

1. continue to assess a *Saint Prix* right of residence prospectively at the point of the claim (ADM C1522) **and**
2. assume that the claimant will return to work, where she says that she has an intention to do so (ADM C1523).

C1520 Where the claimant's circumstances change and she

1. changes her mind during the reasonable period and does not return to work
or
2. does not comply with the conditions for retained worker status

her *Saint Prix* right of residence will be lost.

Note: Although the claimant will have been paid benefit up to the point that her *Saint Prix* right is lost, no recovery will be sought.

DM Action

C1521 From 10.9.15, DMs may make an award of UC to an EEA national worker who

1. gives up or stops seeking work due to the physical constraints of the late stages of pregnancy **and**
2. at the outset of their UC claim, expresses an intention to return to their previous work, or find another job, by the end of the 41 week period following the birth of their child.

An award of UC may be made for up to 52 weeks, commencing 11 weeks before the expected date of confinement and ending 41 weeks after (but a shorter award period may be relevant if the claim is made closer to the expected date of confinement).

C1522 To enable DMs to determine whether a claimant falls within the scope of the *Saint Prix* judgment, relevant questions may include

1. was the claimant in genuine and effective work and did she give up work due to the late stages of pregnancy?
2. was the claimant complying with the conditions for retained worker status (see ADM C1391 1.) when she gave up looking for work due to the late stages of pregnancy?
3. does the claimant intend to go back to work?
4. does the claimant have a job to return to?
5. what is the timescale for their return to work?

C1523 Where a claimant indicates that they have an intention to return to their previous job or that they will find another job, the DM can award UC for a fixed period until the end of the 41 week period after the expected date of confinement. If the claimant subsequently does not return to work, a recovery of the UC paid will not be required.

C1524 Where the claimant indicates at the outset of the UC claim that they

1. have no intention of returning to any work within the 41 week period after childbirth **or**
2. plan to return to work much later

the conditions in the *Saint Prix* judgment will not be satisfied, the claimant will not retain worker status and does not obtain a *Saint Prix* right at any point.

C1525 Circumstances in which a claimant will fall **outside** the scope of the *Saint Prix* judgment include

1. if they give up, or stop seeking work as a retained worker for reasons **unrelated** to the physical constraints of the late stages of pregnancy **or**
2. if they were registered as a jobseeker for a significant period before the 11th week of their expected date of confinement **or**
3. if they were self-employed (see ADM C1528).

Note 1: This is not an exhaustive list of circumstances.

Note 2: This guidance will be updated to reflect Tribunal decisions which may provide further examples of claims which fall outside the scope of the *Saint Prix* judgment.

Example 1

Magda, a Hungarian national, began work as a cleaner on a six month temporary employment contract on 24 February 2015. In March she found out that she was pregnant with an expected confinement date of 20 October 2015. Towards the end of July, she was finding it difficult to carry her cleaning equipment and to bend over when cleaning floors. On 5 August she gave up her job and claimed UC on 12 August (she was not entitled to MA as she had not worked for at least 26 weeks in 66 week period before her baby was due). Her employer told her she could return to her job under a new contract when she was able to after she gave birth, and it was her intention to return to work. As she was within 11 weeks of her expected date of confinement, the DM considered that Magda had retained worker status (in line with the judgement in *Saint Prix*). The DM therefore awarded UC from 12 August until 41 weeks after the (expected date of) birth of her child.

Example 2

Dominique, a Belgian national, was an agency worker who had several spells of employment between 2011 and 2014. In June 2015, she claimed JSA as an EEA jobseeker and received this benefit from 26 June 2015. In 2015 while receiving JSA she became pregnant with an expected confinement date of 30 November.

At the beginning of September 2015 Dominique changed her address, moving into an area where UC had been rolled out. She claimed UC as she was within 11 weeks of her expected date of confinement. The DM considered that Dominique's situation was not covered by the *Saint Prix* judgment, as when she claimed UC (in the late stages of pregnancy) she was a jobseeker. Her claim for UC was therefore disallowed.

Complex cases

- C1526 If DMs are dealing with claims that cannot be resolved using this guidance, please contact DMA Leeds for further assistance.

Entitlement to SMP or MA

- C1527 Pregnant women may be entitled to claim SMP (from their employer) or MA (from the Department) if they had been working. Both are payable for a maximum period of 39 weeks. SMP or the standard rate of MA is generally paid at a higher rate than the standard rate of UC, and entitlement to SMP or MA is not subject to the right to reside test. DMs should therefore ensure that any pregnant EEA national claiming UC is made aware of a possible entitlement to SMP or MA, as this would likely be more advantageous to claim than UC.

Self-employment

- C1528 Self-employed persons do not fall within the scope of the *Saint Prix* judgment. The CJEU only considered the retention of "worker" status under Article 45 TFEU.

C1529 - C1535

A2 Nationals (Nationals of Bulgaria and Romania)

- C1536 Romania and the Republic of Bulgaria joined the EU on 1.1.07. Transitional provisions in the Treaty of Accession allow derogation from the principle of freedom of movement within the EEA¹ for a limited period, initially five years after 1.1.07. Regulations on immigration² restrict the right to reside in the UK of nationals of Bulgaria and Romania (known as A2 nationals). The transitional provisions also gave Member States the option of extending the initial period for a further two years.

The UK government has decided to exercise this option and the restrictions continued until 31.12.13³.

Note 1: The restrictions on the EU law rights to reside of Bulgarian and Romanian nationals described in C1536 to C1547 were lifted with effect from 1.1.14 (see C1568 et seq).

Note 2: From 1.1.14 all A2 nationals have full EU rights in accordance with Directive 2004/38/EC⁴. The guidance at C1537 to C1547 below is retained for cases where the period at issue is between 1.1.07 and 31.12.13. ADM C1569 et seq gives guidance on some savings provisions that apply at the end of this period.

Note 3: Savings and modifications provisions continue to have effect on any EEA national to whom the provisions applied immediately before 1.2.17⁵.

1 Treaty establishing the European Community; Regulation (EEC) 1612/68, A 1-6;

2 Accession Regs 2006, reg 6; 3 reg 1(2)(c), definition of "accession period";

4 Immigration (EEA)(Amendment)(No 2)Regs 2013; 5 Imm (EEA) Regs 2016, Sch 4, para 2

Derogation for A2 nationals

C1537 A2 nationals wishing to work in the UK must, except where they are exempt from the requirement, obtain a worker authorization document before they commence employment in the UK¹. (See C1542 onwards for those A2 nationals who are not subject to worker authorization).

1 Accession Regs, reg 9(1)

C1538 To have a right to reside as a worker, an A2 national who is subject to worker authorization, must have a worker authorization document and be working in accordance with the conditions set out in that authorization document¹.

1 Accession Regs, reg 6(2)

C1539 If A2 nationals subject to worker authorization cease working for any reason, including illness or involuntary unemployment, they cease to have a right to reside in the UK as a worker¹.

1 Accession Regs, reg 6(3)

C1540 An A2 national who is subject to worker authorization and who is a work seeker, does not have a right to reside as a work seeker¹, although he may have a right to reside if he is self-sufficient.

1 Accession Regs, reg 6(2); The Imm (EEA) Regs 2016, reg 6

A2 nationals exempt from the habitual residence test

C1541 A2 nationals do not have to satisfy the habitual residence test if they

1. are subject to worker authorization **and**
2. have a worker authorization document **and**
3. are working in accordance with the conditions in that document¹.

Exempt from worker authorisation

C1542 However certain categories of nationals of Bulgaria and Romania are not subject to worker authorization. A2 nationals are not subject to worker authorization where they

1. have leave to enter or remain in the UK under the Immigration Act 1971 and their immigration status has no condition restricting employment¹ **or**
2. were legally working² in the UK on 31.12.06 and had been so working in the UK without interruption for a continuous period of 12 months ending on that date³ **or**
3. legally work in the UK without interruption for a period of 12 months falling partly or wholly after 31.12.06, at the end of that 12 month period⁴ **or**
4. have dual nationality and is also a national of the UK or some other EEA State (other than Bulgaria or Romania)⁵, or during any period where they are the spouse or civil partner of a UK national⁶ **or**
5. are the spouse, civil partner or child under 18 of a person who has leave to enter or remain in the UK⁷, where that leave allows the person to work in the UK⁸.
6. has a permanent right of residence⁹ under regulation 15 of the Immigration (EEA) Regs 2006 **or**
7. is a family member of an EEA national¹⁰ who has a right to reside in the UK under certain legislation¹¹ other than a family member in an excluded category¹² **or**
8. is¹³ the spouse, civil partner or descendant of an accession A2 national subject to worker authorisation who has a right to reside as a worker¹⁴. However the descendant must be either
 - 8.1 under 21 **or**
 - 8.2 dependent on the accession state worker subject to worker authorisation.
9. is highly skilled and holds a registration certificate from the HO that includes a statement that they have unconditional access to the UK labour market¹⁵ **or**
10. is in the UK as a student and does not work for more than 20 hours per week and holds a registration certificate that includes a statement that they are a student who has access to the UK labour market for 20 hours a week¹⁶ **or**
11. is a posted worker¹⁷ as defined in EU legislation¹⁸, being an A2 national working for an employer of another member state but posted to work in the UK, during the period of the posting.

Note These A2 nationals exempt from worker authorisation should be treated in the same way as “normal” EEA nationals (see C1544).

1 Accession Regs, 2006 reg 2(2); 2 reg 2(12); 3 reg 2(3); 4 reg 2(4); 5 reg 2(5); 6 reg 2(6); 7 Imm Act 71; 8 Accession Regs 2006, reg 2(5A); 9 reg 2(7); 10 reg 2(8); 11 Imm (EEA) Regs 2016; 12 Accession Regs 2006, reg 3(8)(a) & (b); 13 reg 2(8A); 14 Imm (EEA) Regs 2016, reg 14(1) & 6(1)(b); 15 Accession Regs 2006, reg 2(9); 16 reg 2(10); 17 reg 2(11); 18 Directive 96/71/EC, Art 1(3)

C1543 A2 nationals who fall into the above groups can obtain a registration certificate from the HO to confirm their status, or may have a valid passport marked with

1. a UK residence permit granting leave to remain with permission to work that has not expired **or**
2. indefinite leave to remain **or**
3. a “no time limit” stamp.

C1544 A2 workers who are exempt from the worker authorization scheme (see C1542) should be regarded in the same way as other EEA nationals. So if, for example, they are exempt by virtue of being workers (or retain the status of worker as described in C1391 & C1393), they do not need to be habitually resident in the CTA¹.

1 UC Regs, reg 9(4)(a)

Uninterrupted work

C1545 A person is treated as having worked in the UK without interruption for a period of twelve months if he was

1. legally working in the UK at the beginning and end of that period **and**
2. any intervening periods in which he was not legally working in the UK do not, in total, exceed 30 days¹.

1 Accession Regs 2006, reg 2(12)(c)

Self-employed

C1546 Transitional provisions in the Treaty of Accession do not allow derogation from the principle of freedom of movement for self-employed persons within the EEA¹. Bulgarian and Romanian nationals who are working in the UK in a self-employed capacity are not subject to worker authorization while they are working, and are qualified persons with normal EEA rights whilst pursuing activities as self-employed persons.

1 TFEU, art 49

C1547 An A2 national who is a self-employed person in the UK will retain that status if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident¹.

*1 Imm (EEA) Regs 2016, reg 6(4);
2 reg 6(1)(c); R (on the application of Marian Tilianu) v Social Fund Inspector and
SSWP [2010] EWCA Civ 1397*

C1548 – C1567

Bulgarians and Romanians - Ending of Restrictions

C1568

Transitional Rules

A2 National who was subject to worker authorisation

C1569 Where an A2 national was subject to worker authorisation (see ADM C1573 et seq) before 1.1.14 then certain particular rules, as described in ADM C1570 to C1574 below apply to them.

Retaining Worker Status

- C1570 An A2 national who is subject to worker authorisation on 31.12.13 can **only** retain worker status as a person
1. who, having worked in the UK, is in duly recorded involuntary unemployment, is registered with the relevant employment office and has genuine prospects of engagement **or**
 2. where that person became unemployed or ceased to work because of illness on or after 1.1.14¹.

1 Imm (EEA) Regs 2006, reg 7B(5)

Permanent Right to Reside

C1571 An EEA national who has resided in the UK in accordance with the Imm (EEA) regs continuously for five years¹ acquires a permanent right to reside. An A2 national who was subject to worker authorisation before 1.1.14 shall be treated as having resided as a worker in accordance with the Imm (EEA) Regs only for those periods when they were “legally working” in the UK² (see ADM C1572 below).

Note: A2 nationals may also have resided in accordance with the Imm (EEA) regs in other ways which may count for the purposes of the acquisition of a permanent right to reside; for example as a self-employed person or as a student.

1 Imm (EEA) Regs 2016, reg 15; 2 Imm (EEA) Regs 2006, reg 7B(6)

Meaning of “legally working”

- C1572 For the purpose of ADM C1571, a person was “legally working” with respect to periods of work by an A2 national in the UK on or after 1.1.07 either
1. when they were exempt from worker authorisation when working **or**
 2. when they held an accession worker authorisation document and were working in accordance with the conditions set out in that document **or**

3. with regard to any period when they were working lawfully under UK domestic law.

Workers who have ceased activity

C1573 Certain EEA nationals who permanently cease activity as workers or self-employed persons can acquire a permanent right to reside in the UK¹ (see ADM C1615 to C1620). The conditions for acquiring this right include the need to have completed certain periods of activity as a worker and the Imm (EEA) regs 2016² treat certain periods of unemployment, sickness etc as periods of such activity.

1 Imm (EEA) Regs 2016, reg 15(1)(c); 2 reg 5(7)

C1574 In the case of A2 nationals who are/were subject to worker authorisation as at 31.12.13, periods of involuntary unemployment duly recorded by the relevant employment office will **only** be treated as periods of activity as a worker if the unemployment began on or after 1.1.14¹.

1 Imm (EEA) Regs 2006, reg 7B(4)

C1575 – C1595

Family Members of Workers and Self-employed persons

C1596 Family members (see paragraph C1597) of EEA nationals who are workers or self-employed persons have the same rights of residence as those persons and are entitled to reside in the UK for as long as they remain family members¹. This includes the family members of EEA nationals who retain worker status (see paragraph C1391 & C1393) or retain the status of self-employed person (see paragraph C1475).

1 Imm (EEA) Regs 2016, reg 14(1) & (2)

Meaning of “Family Member”

C1597 The following are family members

1. a spouse (husband or wife) or civil partner¹;
2. direct descendants of the EEA national, or of the EEA national's spouse or civil partner, who are²
 - 2.1 under the age of 21 **or**
 - 2.2 dependants of the EEA national or the EEA national's spouse or civil partner
3. dependent direct ascendant relatives of the EEA national, the EEA national's spouse or civil partner³.

Note: If certain conditions are met, family members of British citizens have the same EU law rights to reside as they would if they were a family member of another EEA state⁴ (see ADM C1599 et seq for the full conditions). Thus where the

conditions are satisfied and the British citizen would fall within the terms of ADM C1280 1. and if they were a national of another EEA state, their family members should be treated in the same way as a family member described in ADM 1280 2. .

1 Imm (EEA) Regs 2016, reg 7(1)(a); 2 reg 7(1)(b); 3 reg 7(1)(c); 4 reg 9

Meaning of “dependent”

C1598 Direct descendants aged 21 or over (see C1597 2.2) and any relatives in the ascending family line (see C1597 3.) must prove they are dependent on the EEA national or his spouse or civil partner. A UT Judge has analysed the EU case law on the meaning of “dependent” in this context. He summarised that case law¹ as finding that²

1. a person is only dependent who actually receives support from another
2. there need be no right to that support and it is irrelevant that there are alternative sources of support available
3. that support must be material³, although not necessarily financial, and must provide for, or contribute towards the basic necessities of life.

1 Case C-316/85, Centre Public D'Aide Sociale de Courcelles v Lebon; Case C-2000/02, Chen v Secretary of State for the Home Department; Case C-1/05, Jia v Migrationsverket; 2 CIS/2100/07; 3 C-423/12 Reyes

Family Members of British Citizens

C1599 [See Memo ADM 21/18] With effect from 25.11.16, a person who is a family member (as defined in C1597) of a British citizen (BC) has the same rights to reside in the UK as if they were the family member of a national of any other EEA state (except Croatia – on which see C1925 et seq), provided that the following conditions are satisfied¹

1. the BC
 - 1.1 was residing in an EEA state (other than the UK) as a worker, S/E person, self-sufficient person or student immediately before returning to the UK **or**
 - 1.2 had acquired a right of permanent residence in an EEA state **and**
2. the family member and BC resided together in the EEA state **and**
3. the family member and BC's residence in the EEA state was genuine.

Note: For the purposes of 1.2, the BC is only to be treated as having acquired the right of permanent residence in the EEA state², if such residence would have led to the acquisition of the right of permanent residence³, had it taken place in the UK.

1 Imm (EEA) Regs 2016, reg 9(2); O&B (C-456/12); 2 Imm (EEA) Regs 2016, reg 9(6); 3 reg 15

C1600 With effect from 25.11.16, factors that are relevant to whether residence in an EEA state (other than the UK) is or was genuine include¹

1. whether the centre of the BC's life transferred to the EEA state **and**
2. length of the family member and BC's joint residence in the EEA state **and**
3. the nature and quality of the family member and BC's accommodation in the EEA state and whether it is or was the BC's principal residence **and**
4. the degree of the family member and BC's integration in the EEA state **and**
5. whether the family member's first lawful residence in the EU with the BC was in an EEA state.

1 Imm (EEA) Regs 2016, reg 9(3)

C1601 There is no application¹ of the regulation in the circumstances where

1. the purpose of the residence of the BC in the other EEA state was as a means to circumvent any immigration laws² applicable to any non-EEA family members to have leave to enter or remain in the UK **or**
2. a person is only eligible to be treated as a family member as a result of being an extended family member³ (see C1737).

1 Imm (EEA) Regs 2016, reg 9(4); 2 Immigration Act 1971; 3 Imm (EEA) Regs 2016, reg 7(3)

C1602 Where it is necessary to treat a BC as though the BC were an EEA national¹, for the purposes of determining whether the BC would be a qualified person² (see C1710)

1. any requirement to have comprehensive sickness insurance (see C1728 – C1730 and C1734) cover in the UK still applies, except that cover is not required to extend to the BC **or**
2. in assessing whether the BC can continue to be treated as a retained worker³, the BC is not required to satisfy condition A⁴ (see C1405) **or**
3. in assessing whether the BC can be treated as a jobseeker², the BC is not required to satisfy condition A⁴ and where relevant, condition C⁵.

1 Imm (EEA) Regs 2016, reg 9(7); 2 reg 6(1); 3 reg 6(2)(b) or (c); 4 reg 6(5); 5 reg 6(9)

Transitory provisions

C1603 For the purposes of C1599 to C1602, any application made under the Imm (EEA) Regs 2006 between 25.11.16 and 1.2.17 for

1. an EEA family permit **or**
2. a registration certificate **or**
3. a residence card **or**
4. a document certifying permanent residence **or**
5. a permanent residence card **or**

6. a derivative residence card

made but not determined before 25.11.16, is to be treated as having been made under the Imm (EEA) Regs 2006¹.

1 Imm (EEA) Regs 2016, reg 44 & Sch 5, para 2

C1604 – C1614

Certain Persons with a Permanent Right to Reside in the EEA

Worker or Self-employed person who has ceased activity

C1615 EEA nationals who are workers or self-employed persons who have ceased activity in the circumstances described in paragraphs C1616 to C1620 below and their family members (as defined in paragraph C1597) acquire a permanent right to reside in the host Member State¹. Such a person is not required to be habitually resident in CTA².

1 Imm (EEA) Regs 2016, reg 15(1)(c), (d) & (e); 2 UC Regs, reg 9(4)(c)

Retirement

C1616 A person is a worker or self-employed person who has ceased activity if that person¹-

1. stops working **and**
2. **either**
 - 2.1 has reached the age at which he is entitled to a state pension on the day they stop work **or**
 - 2.2 in the case of a worker, has taken early retirement **and**
3. was working in the UK for at least 12 months before stopping (but see note) **and**
4. resided in the UK continuously for more than three years before stopping work (but see note)

Note: Where the spouse or civil partner of the worker or S/E person is a British citizen, the conditions in subparagraphs **3** and **4** above on length of residence or time working will not apply²

1 Imm (EEA) Regs 2016, reg 5(2); 2 reg 5(6)

Permanent Incapacity

C1617 A person is a worker or self-employed person who has ceased activity if that person¹

1. stops working as a result of a permanent incapacity for work **and**

2. either

- 2.1** except where the person is the spouse or civil partner of a British citizen², resided in the UK continuously for 2 years prior to stopping work **or**
- 2.2** the permanent incapacity is the result of an accident at work or an occupational disease that entitles them to a pension payable (in full or in part) by a UK institution.

1 Imm (EEA) Regs 2016, reg 5(3); 2 reg 5(6)

Working Abroad but Place of residence retained in the UK

C1618 A person is a worker or self-employed person who has ceased activity where they¹

1. are working in employment or as a self-employed person in an EEA state other than the UK but retain a place of residence in the UK to which they return at least once a week **and**
2. before that work started, had been continuously resident and continuously active as a worker or self-employed person in the UK for at least 3 years.

1 Imm (EEA) Regs 2016, reg 5(4)

Periods treated as periods of working

C1619 In calculating periods when the person was working for the purposes of paragraphs C1616 to C1618, the following periods are included as periods of work¹

1. periods of inactivity not of the person's own making **and**
2. periods of inactivity due to illness or accident **and**
3. in the case of
 - 3.1. a worker, periods of involuntary unemployment duly recorded by the relevant employment office except where subparagraph **3.2** applies,
 - 3.2. A8 nationals who were required to register as a worker as at 30.4.11. periods of involuntary unemployment duly recorded by the relevant employment office but only where²
 - 3.2.a. they ceased working during the first month of registered employment, for the remainder of that month **and**
 - 3.2.b. the accession worker became unemployed or ceased work on or after 1.5.11.

1 Imm (EEA) Regs 2016, reg 5(7); 2 Imm (EEA) Regs 2006, reg 7A(3)

Family Member of Worker who has died

C1620 A person who was a family member (within the meaning given in paragraph C1597) of a worker or self-employed person acquires a permanent right to reside where¹

1. the worker or self-employed person has died **and**

2. the family member resided with the worker or self-employed person immediately before their death **and**
3. **either** the worker or self-employed person
 - 3.1 had resided continuously in the UK for at least 2 years immediately before they died **or**
 - 3.2 the death was as a result of an accident at work or an occupational disease

Such a person is not required to be habitually resident in the CTA for UC purposes².

1 Imm (EEA) Regs 2016, reg 15(1)(e); 2 UC Regs, reg 9(4)(c)

C1621 – C1669

Refugees

C1670 [See Memo ADM 21/18] Refugees¹ are people who are outside their country of origin and are unwilling to return there for fear of persecution because of their

- race
- religion
- nationality
- political opinion
- membership of a social group.

1 Convention relating to the Status of Refugees, Art. 1 (as extended)

C1671 People recognized as refugees by the Immigration and Nationality Directorate are granted asylum. From 30 August 2005 they will have been granted limited leave to enter or remain for five years, rather than indefinite leave. Spouses, recognized civil partners, and dependent children under the age of 18 are normally allowed to join a refugee in the UK immediately, and are also granted asylum. Refugees, their spouses or recognized civil partners and dependants who are granted asylum are not subject to the habitual residence test¹.

1 UC Regs, reg 9(4)(d)

Discretionary leave

C1672 The HO may alternatively grant discretionary leave outside the immigration rules.

C1673 Humanitarian protection and discretionary leave replaced exceptional leave to enter or remain from 1 April 2003 but there will still be residual cases of exceptional leave to 2007. Whereas indefinite leave to remain gave a right to permanent residence, limited leave, humanitarian protection, discretionary leave and exceptional leave do not guarantee that right.

The HO may refer to

1. limited leave given to refugees **or**
2. exceptional leave to remain **or**
3. leave to remain on an exceptional basis **or**
4. humanitarian protection **or**
5. discretionary leave.

A claimant given one of the above is not subject to the habitual residence test¹ for as long as the leave lasts, including periods when he/she has applied in time for an extension of leave.

1 UC Regs, reg 9(4)(e) & (f)

Destitution Domestic Violence concession

C1674 Since 1.4.12, individuals who came to the UK or were granted leave to stay in the UK as the spouse or partner of

1. a British citizen **or**
2. someone settled in the UK

and whose relationship has broken down due to domestic violence have been able to apply to the Home Office for limited leave to remain (granted outside the Immigration Rules) pending consideration of an application for indefinite leave to remain.

C1675 The Home Office consider whether:

1. the applicant entered the UK or was given leave to remain in the UK as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone present and settled in the UK **and**
2. the relationship has broken down due to domestic violence **and**
3. they do not have the means to access accommodation or to support themselves and need financial help **and**
4. they will apply to stay permanently in the UK under the Destitution Domestic Violence immigration rule¹.

If the Home Office accepts that someone satisfies **all 4** of the conditions above it will issue the applicant with letters notifying the start and end date for 3 months limited leave to remain in the UK. During this 3 month period the claimant must apply to stay permanently under the Domestic Violence immigration rule¹.

1 Immigration Rules, rule 289B

- C1676 If the person has made an application to stay permanently within the 3 month period but the Home Office has not yet made a decision by the end of the 3 month period, the period of limited leave under the Destitution Domestic Violence concession continues until the final decision is made. In these circumstances (i.e. where an application has been made within the 3 month period but the Home Office has not made a decision within that 3 month period) where the final decision is a refusal to grant indefinite leave to remain, the limited leave continues for a further 10 days after the Home Office decision is sent to the applicant.
- C1677 During any period when a person has limited leave under the Destitution Domestic Violence concession (including the periods of extension described in paragraph 8 above), that person does not have to satisfy the requirement that they be habitually resident in the CTA¹ and therefore (provided they satisfy the other conditions of entitlement) will be eligible for UC.

1 UC Regs, reg 9(1) & (4)(e)(ii)

Humanitarian Protection

- C1678 The HO may grant humanitarian protection within the immigration rules to persons who have not been recognised as refugees but who are considered likely to face serious harm in their country of origin. As with refugees the family members of a person granted humanitarian protection are allowed to join that person and are granted the same leave. Under EU law common criteria for the identification of persons genuinely in need of international protection are applied across EU Member States¹. A new category of protection is introduced, known as subsidiary protection, which is aligned with the present category of humanitarian protection. Persons granted humanitarian protection within the immigration rules do not have to satisfy the habitual residence test².

1 Directive 2004/83/EC; 2 UC Regs, reg 9(4)(f)

Continuation of leave

- C1679 Where a person has a limited period of leave to remain in the UK and they make a timeous application (i.e. before their existing leave to remain expires) to the HO to have their leave extended, the person's existing leave continues until the HO has made a decision on the application (or until the application is withdrawn)¹. If the application to extend the leave period is made after the applicant's current leave has expired, the applicant's leave period is not extended and the person is treated as an 'overstayer'.

1 Immigration Act 1971, s 3C

C1680 – C1689

Right to Reside - Habitual Residence Test Applies

[\[See ADM memo 14/18\]](#)

Introduction

C1690 C1280 to C1678 set out the groups of people with certain specific rights to reside who are exempt from the requirement that they be habitually resident in the CTA. As stated in C1225, a person cannot be treated as habitually resident in the CTA unless that person has a right to reside in the CTA¹. The following paragraphs set out the groups of people who have a right to reside in the CTA. These people will nonetheless have to be actually habitually resident in the CTA² (see C1946 et seq). The list is not exhaustive and DMs may need to contact the Home Office to establish whether a person has a right to reside.

Note: whether a person has a right to reside in the UK is determined by domestic nationality and immigration law for non-EEA nationals and by EU law and domestic immigration law for EEA nationals and their family members arriving in the UK and claiming free movement rights.

1 UC Regs, reg 9(2); 2 reg 9(1)

C1691 The following persons have the right to reside in the UK and therefore in the CTA but **will** have to satisfy the requirement that they be actually habitually resident in the CTA

1. UK nationals (including persons from other countries who are granted British citizenship).
2. certain qualified persons (see C1710)
3. family members of certain qualified persons and certain family members of EEA nationals with a permanent right of residence
4. extended family members of “qualified persons” or EEA nationals with a permanent right of residence (C1737)
6. persons who have acquired the right of permanent residence (except the groups referred to in C1615 to C1620)
7. family members who have retained a right to reside (C1778)
8. the parent and primary carer of the child of a migrant worker who is in education in the UK (C1830 et seq)

Extended right of residence

C1692 Qualified persons have the right to reside in the UK for as long as they remain qualified persons. Family members of qualified persons and of EEA nationals with a

permanent right of residence are entitled to reside in the UK as long as they remain family members of those persons (see ADM C1736 for the meaning of “family member”).

C1693 – C1709

Certain Qualified persons

C1710 The following persons¹ (who are EEA nationals in the UK) and their family members have an EU right to reside as “qualifying persons” but must satisfy the habitual residence test.

1. jobseekers (from 10.6.15 see C1854 to C1860)
2. self-sufficient persons (see C1728)
3. students (see C1732)

1 Imm (EEA) Regs 2016, reg 6(1)

Jobseekers

C1711 Jobseekers and their family members have a right to reside for an initial period of six months, and for longer if they are seeking employment, and have a genuine chance of being engaged¹. However, from 10.6.15, see C1854 to C1860.

1 Directive 2004/38/EC, Art 14(4)(b); Case C-292/89, Antonissen; Imm (EEA) Regs 2016, reg 6(1), & reg 14;

C1712 - C1727

Self-sufficient persons with comprehensive sickness insurance

C1728 EEA nationals who

1. have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the UK **and**
2. have comprehensive sickness insurance cover in the UK

and their family members have a right to reside¹ but must satisfy the habitual residence test.

1 Directive 2004/38/EC, Art 7(1)(b); Imm (EEA) Regs 2016, reg 4(1)(c)

C1729 An EEA national’s resources (and where applicable the resources of their family members) are to be regarded as “sufficient” if¹

1. they are greater than the level of resources at or below which a British Citizens (and where appropriate their family members) would be entitled to social assistance in the UK **or**
2. C1729.1 does not apply (i.e. resources are not above social assistance levels) but, taking into account the personal situation of the person concerned

(and where applicable their family members), it appears to the DM that the resources of the person(s) concerned should be regarded as sufficient.

Note: In the UK, social assistance includes SPC and UC

1 Imm (EEA) Regs 2016, reg 4(4)

C1730 The requirement for comprehensive sickness insurance is not met by simple access to free treatment under the NHS. However, a claimant will have comprehensive sickness insurance where the UK is entitled to reimbursement of NHS healthcare costs from another Member State¹. This will usually be the case where the claimant is receiving a pension or invalidity benefit from another Member State, but it can arise in other circumstances. The European Health Insurance Card (EHIC) only offers comprehensive sickness insurance where the EU citizen concerned has not moved residence to the UK and intends to return to his home state, such as a student on a course in the UK².

1 SG v Tameside MBC (HB) [2010] UKUT 243 (AAC);

2 European Commission COM 2009) 313 & SG v Tameside MBC (HB) [2010] UKUT 243 (AAC)

C1731

Students

C1732 A student¹ means a person who

1. is enrolled for the principal purpose of following a course of study (including vocational training) at a public or private establishment which is
 - 1.1 financed from public funds **or**
 - 1.2 otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing such courses or training within the law or administrative practice of the part of the UK in which the establishment is located”
- and**
2. assures the Secretary of State that he has, and his family members have, sufficient resources (see C1729) to avoid him and his family members becoming a burden on the social assistance system of the UK **and**
 3. is covered, and his family members are covered, by sickness insurance in respect of all risks in the UK (see C1730 above) .

Note: Students and their family members (see C1733) have a right to reside but will not normally be entitled to UC because that right depends upon them not becoming a burden on the UK’s social assistance system (of which UC is a part).

1 Directive 2004/38/EC, Art 7(1)(c) and (d); Imm (EEA) Regs 2016, reg 4(1)(d)

Family members of students

C1733 In the case of an EEA student, other than a student who is a “qualified person” under other provisions, after the period of three months beginning on the date on which the student is admitted to the UK only the following shall be treated as his family members¹

1. his spouse or civil partner
2. the dependent children of the student, his spouse or civil partner.

1 Imm (EEA) Regs 2016, reg 7(2)

Comprehensive Sickness Insurance for family members of students

C1734 From 6.4.15, specified legislation¹ was amended which brings in the requirement for EEA nationals who are exercising Treaty rights in the UK as a student, to hold comprehensive sickness insurance cover not only for themselves, but also for their family members. Prior to 6.4.15, EEA nationals who were residing in the UK as students were required to hold comprehensive sickness insurance for themselves, but the regulations did not explicitly require such persons to also hold comprehensive sickness insurance for any family members who were residing in the UK with them. That was in contrast to the requirements for self-sufficient persons, who are explicitly required to hold comprehensive sickness insurance for themselves and their family members. The changes from 6.4.15 bring the requirements for family members of students in line with those for the family members of self-sufficient persons.

1 Imm (EEA) Regs 2016, reg 4(2) & 4(4)

Family Members

C1735 The family members of the qualified persons listed at C1710 residing in the UK have the same rights to reside as that qualifying person as long as¹

1. they remain a member of the family of that person **and**
2. that person continues to be a qualifying person or to have a permanent right to reside.

Note: Like the qualified persons listed at C1710 from whom they derive their right to reside these family members have to be actually habitually resident.

1 Imm (EEA) Regs 2016, reg 14(2)

Meaning of “family member”

C1736 For the purposes of C1735, a “family member” means¹

1. spouse (husband or wife) or civil partner
2. direct descendants of the EEA national, his spouse or civil partner who are
 - 2.1 under the age of 21 **or**

- 2.2 dependants of his, his spouse or civil partner
- 3. direct ascendant relatives of the EEA national, his spouse or civil partner, who are dependants.
- 4. extended family members (C1737)

Note 1: See C1598 for advice on dependency

Note 2: see the Note to C1823 for guidance in respect of a child under the age of 21, who is estranged from their parents.

1 Imm (EEA) Regs 2016, reg 7(1)

“Extended family members”

C1737 An “extended family member” is¹ a person (who is not a family member of an EEA national within the meaning given in C1597) who is a relative (or in one case, a partner) of an EEA national, who is treated as a family member for the purposes of the right to reside aspect of the habitual residence test only. They may or may not be EEA nationals².

1 Imm (EEA) Regs 2016, reg 8; 2 Directive 2004/38/EC, Art 3(2)

C1738 An extended family member should have an EEA family permit, a registration certificate or a residence card. They will continue to be treated as a family member as long as they hold such documents¹ **and**

1. reside in any state other than the UK and are dependent on the EEA national or is a member of the EEA national’s household² **or**
2. satisfied the conditions in 1., and are accompanying the EEA national to the UK or wish to join the EEA national in the UK³ **or**
3. satisfied the conditions in 1., and have joined the EEA national in the UK and continue to be dependent (see C1598) on the EEA national or to be a member of his household⁴ **or**
4. on serious health grounds strictly require the personal care of the EEA national⁵ **or**
5. would meet the requirements in the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the UK as a dependent relative of the EEA national⁶ (where this applies DMs should submit such cases to DMA Leeds for advice as evidence from the HO will be needed and their guidance will be required on the application of the Immigration Rules) **or**
6. are the partner of an EEA national (other than a civil partner) and can prove that they are in a durable relationship with the EEA national⁷.

Extended family members of EEA nationals who are students are issued with family permits, registration certificates or residence cards under specific provisions. DMs

should submit such cases to DMA Leeds for advice as evidence from the HO will be required about the provisions under which those documents have been issued.

*1 Imm (EEA) Regs 2016, reg 7(3); 2 reg 8(2)(b); 3 reg 8(2)(b)(i);
4 reg 8(2)(b)(ii); 5 reg 8(3); 6 reg 8(4); 7 reg 8(5)*

C1739 -C1749

Permanent Right to Reside - 5 Years' Residence

[See ADM Memo 04/16]

C1750 The EU Citizenship Directive¹ introduced for the first time a permanent right to reside for EU citizens and members of their family who have resided legally in a host Member State of the EU for a continuous period of five years. The Directive was brought into force in the UK by regs² which took effect from 30.4.06.

1 Directive 2004/38/EC; 2 Imm (EEA) Regs 2016

C1751 Under the Imm (EEA) regs 2016 the following persons acquire the right to reside in the UK permanently

1. an EEA national who has resided in the UK in accordance with the Imm (EEA) Regs 2016 for a **continuous** period of five years¹
2. family members of EEA nationals (who are not themselves EEA nationals) who have resided in the UK in accordance with the Imm (EEA) Regs 2016 for a **continuous** period of five years².

Note: subject to C1773, a break in continuity during which residence is not in accordance with the Imm (EEA) Regs 2016 will mean that the five year qualifying period has to be served afresh. Periods when the person resided legally before the break will not count. Put another way, the clock is reset to zero.

1 Imm (EEA) Regs 2016, reg 15(1)(a); 2 reg 15(1)(b)

C1752 The five year qualifying period therefore includes periods during which the EEA national

1. was a worker or self employed person in the UK; **or**
2. retained worker status in the UK whilst temporarily incapable of work because of illness or accident or whilst involuntarily unemployed and seeking work **or**
3. was both self-sufficient and had comprehensive sickness insurance for themselves and their family members **or**
4. was a student who is both self sufficient and has comprehensive sickness insurance for themselves and their family members **or**
5. was a family member accompanying or joining a person who satisfied the above conditions.

Note: this list is not exhaustive

C1753 – C1771

Temporary absences that do not break continuity

C1772 Certain temporary absences from the host Member State will not break the continuity of residence¹

1. absences not exceeding six months in a year
2. absences of more than six months for compulsory military service
3. one absence of a maximum of 12 consecutive months for important reasons such as
 - 3.1 pregnancy
 - 3.2 childbirth
 - 3.3 serious illness
 - 3.4 study or vocational training
 - 3.5 a posting abroad

Note: Although these absences do not break the continuity of residence requirement, they do not count towards the accrual of the 5 years continuous residence².

1 Directive 2004/38/EC, Art 16(3); 2 CIS/2258/08

C1773 From 1.2.17, additional criteria are added to the circumstances where continuity of residence is broken¹. This is when the EEA national

1. serves a sentence of imprisonment² **or**
2. has a deportation or exclusion order made in relation to that person **or**
3. is removed from the UK under the Imm (EEA) Regs 2016.

1 Imm (EEA) Regs 2016, reg 3(3); 2 Onuekwere (C-378/12); MG (C-400/12)

Qualifying period - effect of periods of residence before 30.4.06 - EEA nationals

C1774 Subject to paragraph C1776 below, any period during which an EEA national carried out activities or was resident in the UK in accordance with specific regulations¹ (i.e. the UK regulations and Directives concerning the right to reside in EU law that were in force before 30.4.06) is to be treated as a period in which that activity or residence was in accordance with the Imm (EEA) Regs 2016². Accordingly this will count towards the qualifying period for the acquisition of a permanent right to reside. **But note that the permanent right to reside can only take effect from 30.4.06.**

1 Imm (EEA) Regs 00; Imm (EEA) Order 94; Dir 64/221 /EEC; Dir 68/360/EEC; Dir 72/194/EEC; Dir 73/148/EEC; Dir 75/34/EEC; Dir 75/35/EEC; Dir 90/364/EEC; Dir 90/365/EEC; Dir 93/96/EEC;

2 Imm (EEA) Regs 2016, Sch 6, para 8(2);

Qualifying period - periods before accession

C1775 Subject to paragraph C1776 below, any period during which a national of a non-EEA state which subsequently became an EEA state carried out an activity or was resident in the UK throughout which they

1. had leave to enter or remain in the UK **and**
2. would have been carrying out that activity or residing in the UK in accordance with the Imm (EEA) Regs 2016

2.1 had the Imm (EEA) Regs 2016 been in force **and**

2.2 the person's state of nationality had been an EEA state at the time

is to be treated¹ as a period of activity or residence in the UK completed in accordance with the Imm (EEA) Regs 2016. Such periods will therefore count towards the acquisition of a permanent right to reside.

1 Imm (EEA) Regs 2016, Sch 6, para 8(3)

Periods where residence was not in accordance with the regs

C1776 A period during which the conditions in paragraphs C1774 or C1775 above were satisfied will not be regarded¹ as a period of activity or residence completed in accordance with the Imm (EEA) Regs 2016 where it was followed by a period of more than two consecutive years throughout which

1. the person was absent from the UK **or**
2. the person's residence in the UK was not in accordance with paragraphs C1774 or C1775 **or**
3. was not otherwise in accordance with the Imm (EEA) Regs 2016.

1 Imm (EEA) Regs 2016, Sch 6, para 8(4)

Effect of absence after right to permanent residence acquired

C1777 Once acquired on or after 30.4.06, the right of permanent residence is only lost by absence from the host Member State for a period exceeding two consecutive years¹.

1 Directive 2004/38/EC, art 16(4)

Family Members who have retained the right to reside

C1778 Under certain circumstances a family member of an EEA national may retain the right to reside on the death or departure from the UK of the EEA national¹. To retain the right of residence the person must²

1. have been the family member of a qualified person (or an EEA national with a permanent right to reside) when that person or EEA national died **and**
2. have resided in the UK in accordance with the Imm (EEA) Regs 2016 for at least the year before the death of the qualified person (or the EEA national with a permanent right to reside) **and**
3. satisfy the condition that either
 - 3.1 although not an EEA national, they would, if they were one, be a worker, self-employed person or self-sufficient person for the “qualified person” provisions **or**
 - 3.2 they are a family member of a person who falls within **3.1**

In other situations where the claim is based on a family member’s retained right of residence cases should be submitted to DMA Leeds for guidance. This applies in particular to cases where it relates to termination of the marriage or civil partnership of the family member to the qualified person³.

Note: 1 a “qualified person” in C1778.1 & 2 means a jobseeker, a worker, a self-employed person, a self sufficient person or a student

Note: 2 family members can also acquire a permanent right to reside in some circumstances where the EEA national has ceased activity or died (see C1615 and C1620). Family members who have acquired a permanent right to reside by this route are not subject to the rules described above⁴.

*1 Directive 2004/38/EC, Art 12; Imm (EEA) Regs 2016, reg 10; 2 reg 10(2);
3 Directive 2004/38/EC, Art 13; Imm (EEA) Regs 2016, reg 10(5); 4 reg 10(8) & (9)*

C1779 – C1792

EEA Right to reside - permanent residence

Introduction

C1793 Guidance at ADM C1794 to C1824 is to enhance existing ADM guidance regarding permanent residence for EEA nationals and their families.

C1794 Since 30.4.06, EEA nationals and their family members, who have resided legally in the UK for a continuous period of 5 years in accordance with laws relating to EU free movement rights that were in force during the 5 year period, will acquire a right of permanent residence¹ (see ADM C1750 – C1752). This means they must have resided in the UK as

1. a worker **or**
2. a S/E person **or**
3. someone who retained the status of worker or S/E person **or**

4. a student (and had comprehensive sickness insurance – see ADM C1734) **or**
5. a self-sufficient person (and had comprehensive sickness insurance - see ADM C1730).

1 Directive 2004/38/EC, Art. 16; Imm (EEA) Regs 2016, reg 15

C1795 An EEA national who has acquired the right of permanent residence on or after 30.4.06 will only lose that right if they are absent from the UK for more than 2 consecutive years¹ (see ADM C1777).

1 Directive 2004/38/EC, Art. 16(4); Imm (EEA) Regs 2016, reg 15(3)

Continuity of residence - Breaks during 5 year qualifying period

C1796 Detailed guidance in relation to temporary absences from the UK that do not break continuity of residence during the 5 year qualifying period can be found at ADM C1773. In general, temporary absences from the UK will not break the continuity of residence¹ if they

1. are no more than a total of 6 months a year **or**
2. comprise of one absence of up to a maximum of 12 consecutive months for important reasons, such as pregnancy and childbirth, serious illness, study or vocational training, or a posting to another country abroad **or**
3. are for compulsory military service.

Although these absences do not break the continuity of the residence requirement, they do not count towards the accrual of the 5 years continuous residence². This is because these absences will generally be periods when the claimant is not exercising a right to reside as defined within the EEA regulations.

1 Directive 2004/38/EC, Art. 16(3); 2 CIS/2258/08

Permanent residence with less than 5 years residence

C1797 The general rule on the right of permanent residence requires that EEA nationals and their family members have resided legally in the UK for a continuous period of 5 years (see ADM C1750 et seq). Workers or S/E persons and their family members, who have ceased activity, can acquire a right to reside in the UK permanently without that 5 year requirement¹ (see ADM C1615 to C1620).

Note: With regard to a family member, who retains the right of residence², see ADM C1778.

1 Imm (EEA) Regs 2016, reg 15(1)(c) & (d); 2 reg 15(1)(f) & reg 10

C1798 A worker or S/E person who has ceased activity is a person who satisfies the conditions in ADM C1799, C1800, C1801 or C1802, and can acquire the right to reside in the UK permanently with less than 5 years residence.

Note: This also applies to the family member of a worker or S/E person in ADM C1803.

C1799 A worker or S/E person who

1. ceases activity as a worker or S/E person **and**
2. has reached the age at which they are entitled to a state pension on the date their work ceases or in the case of a worker, ceases working to take early retirement **and**
3. was working in the UK, as a worker or S/E person, for at least 12 months prior to ceasing work **and**
4. resided in the UK continuously for more than 3 years prior to ceasing work¹.

1 Imm (EEA) Regs 2016, reg 5(2)

C1800 A worker or S/E person who

1. ceases activity in the UK as a worker or S/E person as a result of a permanent incapacity to work **and**
2. either
 - 2.1 that person resided in the UK continuously for more than 2 years prior to ceasing work **or**
 - 2.2 the incapacity is the result of an accident at work or an occupational disease that entitles that person to a pension payable in full or in part by an institution in the UK¹.

1 Imm (EEA) Regs 2016, reg 5(3)

C1801 A worker or S/E person who

1. is active in an EEA state, but retains their place of residence in the UK, to which they return (as a rule) at least once a week **and**
2. prior to becoming active in that EEA state, had been continuously resident and continuously active as a worker or S/E person in the UK for at least 3 years¹.

1 Imm (EEA) Regs 2016, reg 5(4)

C1802 A person who satisfies the condition in paragraph C1801 **1.** but not C1801 **2.** shall, for the purposes of C1799 and C1800, be treated as being active and resident in the UK during any period that they were working or S/E in the EEA state¹.

1 Imm (EEA) Regs 2016, reg 5(5)

C1803 The family member of a worker or S/E person where

1. the worker or S/E person has died **and**
2. the family member resided with the worker or S/E person immediately before their death **and**

3. the worker or S/E person has resided continuously in the UK for at least 2 years immediately before their death, or the death was a result of an accident at work or occupational disease¹.

Note 1: For guidance in relation to family members of British citizens – see ADM C1599.

Note 2: For guidance in relation to extended family members – see ADM C1737 – C1738.

1 Imm (EEA) Regs 2016, reg 15(1)(e)

Periods of residence prior to 30.4.06

C1804 In accordance with the CJEU judgments in *Lassal* and *Dias*, periods of residence prior to 30.4.06 (the date of transposition of Directive 2004/38) which were in accordance with earlier EU instruments relating to residence must be taken into account for the purposes of acquisition of permanent residence under Directive 2004/38 (see ADM C1774). However, where a period of residence in accordance with the earlier EU instruments is followed by a period of more than 2 years during which the person's residence is not in accordance with earlier EU instruments, then the earlier period of residence will not count (see ADM C1776).

Note: Subject to ADM C1773, a break in continuity during which residence is not in accordance with the Imm (EEA) Regs 2016 will mean that the 5 year period has to be served afresh.

Derivative right of residence

C1805 Residence in the UK, which is a result of a derivative right of residence does not count towards the period for calculation of the 5 year period for permanent residence¹.

1 Imm (EEA) Regs 2016, reg 15(2); Alarape and Tijani (C-529/11)

Long-term jobseeker

C1806 Guidance at ADM C1403 advises that EEA jobseekers who have retained worker status and have registered with Jobcentre Plus will have a right to reside for an initial period of 6 months¹. If the claimant is able to provide compelling evidence that they are continuing to seek employment and have a genuine chance of being engaged, a short extension period of UC may be allowed (ADM C1415 – C1416).

1 Directive 2004/38/EC, Art 14(4)(b); Antonissen (C-292/89); Imm (EEA) Regs 2016, regs 6(1) & 14

C1807 Where a claimant is relying entirely on a right to reside as a jobseeker for the entire 5 year period for calculating permanent residence, it should be accepted that the immigration regulations¹ would be satisfied in those circumstances. This is because an EEA national acquires the right to reside in the UK permanently, where they

have resided in the UK, in accordance with the immigration regulations for a continuous period of 5 years. Where a claimant has been awarded JSA(IB) on the basis of having a right to reside as a jobseeker, it should be accepted that their continuous period of 5 years of pure jobseeking would be sufficient for the acquisition of permanent residence.

Note: With effect from 1.1.14, an EEA national cannot have a right to reside as a retained worker for longer than their relevant period, unless they provide compelling evidence that they are continuing to seek employment and have a GPoW² (see ADM C1410). As such, unless they can demonstrate an alternative right to reside, their right to reside as a retained worker would cease at the end of their relevant period and they would no longer be residing legally in the UK.

1 Imm (EEA) Regs 2016, reg 15(1)(a); 2 reg 6(7)

Evidence to demonstrate permanent residence

- C1808 The following documents may be evidence that can be used when determining whether a person has gained a permanent right to reside
1. valid passport or ID card
 2. marriage or civil partnership certificates
 3. P60s, contracts or letters of employment for workers
 4. business accounts & tax returns for S/E persons
 5. leases for premises used to conduct business
 6. utility bills
 7. document certifying permanent residence (issued by the HO) where the person is an EEA national – this document does not carry a date of expiry
 8. permanent residence card (issued by the HO) where the person is a non-EEA national – this document is valid for 10 years from the date of issue and must be renewed upon application.
 9. comprehensive sickness insurance (see ADM C1730 or C1734) where the EEA national claims to have resided in the UK as a self-sufficient person or student
 10. Bank statements showing self-sufficiency
 11. evidence of study
 12. where the family member of an EEA national applies on the basis that the EEA national is a worker or S/E person who has ceased activity, they must supply
 - 12.1 evidence confirming the relationship **and**

Moving between alternate rights to reside

- C1812 Where a qualified person switches their status to that of another qualified person, the DM has the discretion to allow a period of up to 30 days, so that the gap between the claimant's statuses does not break a permanent right of residence.
- C1813 A cumulative break of up to 30 days in any 12 month period is allowable when switching between rights to reside, for example student to worker, worker to S/E person, S/E person to jobseeker, or between the end of one job and the start of the next. In such circumstances, the claimant will be required to provide evidence of
1. acquiring another right to reside as a jobseeker, worker, S/E person, student or self-sufficient person (or as a dependent) within 30 days of their previous right to reside ending **and**
 2. acquiring a right to reside as a jobseeker, worker, S/E person, student, or self-sufficient person (or as a dependent) for the remainder of the 5 year period of continuous residence.

Note 1: Any work activity carried out must be genuine and effective.

Note 2: For accession state nationals, work carried out during the accession period must be in accordance with the accession regulations (see ADM C1837 & C1838).

Note 3: Periods of residence as a *Saint Prix* worker (see ADM C1510 – C1528) would count towards permanent residence.

Example 1

Giovanni is an Italian national. He arrived in the UK as a single person on 1.6.10. He claimed JSA as a jobseeker on 3.6.10 and signed off to start full time work as a retail assistant on 3.7.10. On 28.2.12 his employer closed down the shop and terminated Giovanni's contract. Giovanni claimed JSA on 25.3.12 but was unsuccessful in finding work and signed off on 10.8.12. He started a F/T course as a student on 3.9.12 and took out a comprehensive sickness insurance policy. The course ended on 6.8.15 and Giovanni made a claim to UC the next day. The DM decided that Giovanni had acquired a permanent right to reside as he had demonstrated 5 years continuous residence as a qualified person, and the break between his right to reside as a retained worker and a student maintained continuity as the break was within 30 days.

Example 2

Greta is a Dutch national. She arrived in the UK as a single person and started F/T work as a barista on 30.6.10. She continued to work F/T until 2.2.14 and then decided to leave. The next day she claimed JSA. The DM decided she was a jobseeker and informed her that she would be subject to a GPoW interview if she was still claiming JSA in 6 months time. Greta began receiving JSA(C) until it

exhausted on 6.8.14. She found a F/T job as a receptionist which was due to start on 1.11.14. Greta presented this evidence at her GPoW interview and was awarded an extension of JSA(IB) until 31.10.14. Greta left her job on 31.7.15 and claimed UC. The DM decided that Greta had acquired a permanent right to reside as she had demonstrated 5 years continuous residence as a qualified person. Greta was treated as a jobseeker for the period 3.2.14 – 31.10.14 as she had demonstrated she was actively seeking employment and had a genuine chance of engagement throughout that period.

- C1814 A break, as described within C1812 and C1813, would not be allowable when the break is within a single right to reside, such as a jobseeker. This is because the claimant, in those circumstances, has failed to comply with the requirements to demonstrate that right continuously (see C1821 with regard to disallowances).

Imprisonment

- C1815 Periods of imprisonment by an EEA national (or their family member) interrupt continuity of residence¹ for the purposes of satisfying the Residence Directive².

1 MG (C-400/12); Onuekwere(C-378/12); 2 Directive 2004/38/EC, Art. 16(3)

- C1816 The CJEU in *MG* point out that the imposition of a custodial sentence by a national court is an indication that the person concerned has not respected the values expressed by the society of the host Member State in its criminal law. Accordingly the taking into consideration of periods of imprisonment, for the purposes of the acquisition of the right of permanent residence, would clearly be contrary to the aim pursued by the Directive in establishing that right of residence.

- C1817 The CJEU in *Onuekwere* also found that the continuity of residence of 5 years is interrupted by periods of imprisonment in the host Member State. As a consequence, periods which precede and follow the periods of imprisonment may not be added up to reach the minimum period of 5 years required for the acquisition of a permanent residence permit. Therefore upon release from prison, a person must satisfy a new 5 year period, in order to acquire permanent residence status. The period of imprisonment does not count towards a permanent right to reside because it is a period when the claimant was not exercising a right to reside, nor exercising free movement rights.

C1818 – C1819

Sanctions & Disallowances of UC

- C1820 In the case of a sanction, payment of UC is removed for a fixed period of time, but entitlement may continue. So where the EEA national has not yet reached their GPoW assessment interview, they would still get their 6 months as a retained worker. The period of the sanction would not break continuity for the calculation towards the 5 year period for permanent residence.

Note: For guidance on all sanctions in UC, see ADM Chapters K1 – K9

C1821 In the case of a disallowance, the UC award ends. If the disallowance is for a fixed period, the claimant will have to reclaim UC once the disallowance has ended. A period of disallowance would therefore break the continuity for the calculation towards the 5 year period for permanent residence.

Separation from EEA partner

C1822 Family members have an automatic right of residence in the UK for as long as they remain the family member of an EEA national¹ who

1. is entitled to reside in the UK for an initial period of three months **or**
2. is a qualified person **or**
3. has a right of permanent residence (ADM C1735).

The meaning of family member² includes (amongst others) a spouse or civil partner (ADM C1736 1.)

1 Imm (EEA) Regs 2016, reg 14(2); 2 reg 7(1)(a)

C1823 Where there has been a breakdown in the relationship and the spouse or civil partner no longer live in the same household as the EEA national, the spouse or civil partner is still considered to be a family member for as long as

1. the relationship between the spouse or civil partner and the EEA national has not been dissolved **and**
2. the EEA national continues to be a qualified person, or have a permanent right to reside¹.

If they later get divorced or legally terminate their civil partnership, the spouse or civil partner will only have a right to live in the UK if they satisfy the conditions² relating to a family member who has retained the right of residence (ADM C1778).

Note: The breakdown in the relationship can also include a child under the age of 21, who is estranged from their parents. Such a child remains a family member without being in the same household³.

1 Imm (EEA) Regs 2016, reg 14(2); Diatta (C-267/83); 2 Imm (EEA) Regs 2016, reg 10; 3 reg 7(1)(b)(i)

C1824 Where there has been a breakdown in the relationship and the claimant wishes to demonstrate permanent residence, the onus is on the claimant to provide documentary evidence of their EEA national sponsor. Where the claimant has been the victim of domestic violence (see ADM Chapter J3) and so cannot provide anything other than oral evidence to demonstrate their residency status, the DM should adopt a pragmatic approach. It must be remembered that a claimant's oral statement is evidence (ADM A1400). Where oral evidence is the only evidence available, the DM must decide on the balance of probability (ADM A1343) whether the claimant has discharged the burden of proof (ADM A1405 et seq).

Note: This guidance does not cover a couple who are LTAMC.

C1825 – C1829

Primary Carer – Child in education

Introduction

C1830 Certain children and their primary carers have a right to reside in the UK. This is known as a derivative right to reside. The guidance below describes the conditions for this right to reside. A primary carer satisfying those conditions satisfies the requirement that they have a right to reside in the CTA. However they have to be actually habitually resident in the CTA (see C1946 et seq).

Note: Periods of residence in the UK as a result of a derivative right to reside do not count towards the 5 year qualifying period needed to acquire a permanent right of residence.

Meaning of “exempt person”

- C1831 In the paragraphs C1833 & C1834 below “exempt person” means¹ a person
1. who has a right to reside in the UK as a result of any provision in the Imm (EEA) regs 2016 other than a derivative right to reside² **or**
 2. who has a right of abode in the UK by virtue of specific legislation³ (which includes British citizens) **or**
 3. to whom specific legislation⁴ exempting certain persons from the requirement to have leave to enter or remain applies (for example certain aircrew & seamen who are under an engagement requiring them to leave within 7 days and certain diplomats) **or**
 4. who has indefinite leave to enter or remain in the UK.

1 Imm (EEA) Regs 2016, reg 16(7)(c); 2 reg 16; 3 Immigration Act 1971, s 2; 4 s 8

Meaning of “primary carer”

- C1832 [See Memo ADM 21/18] A person is to be regarded¹ as the primary carer of another person (“the child”) if they are a direct relative or legal guardian of the child **and**
1. they have primary responsibility for the child’s care **or**
 2. they share equally the responsibility for the child’s care with one other person (“the joint primary carer”) provided that the joint primary carer is not an exempt person

Note 1: the term “direct relative” is not defined in the Imm (EEA) Regs but should be taken as including direct relatives in the ascending line (i.e. parents, grand parents, great grandparents) of the child, but not uncles, aunts, cousins etc.

Note 2: a person is not be regarded as having responsibility for a person's care on the sole basis of a financial contribution towards that person's care².

1 Imm (EEA) Regs 2016, reg 16(8); 2 reg 16(11)

Derivative Rights to Reside

C1833 A person who is not an exempt person has a derivative right to reside¹

Self sufficient child

1. where that person² is the primary carer of an EEA national **and** that EEA national
 - 1.1 is under the age of 18 **and**
 - 1.2 is residing in the UK as a self-sufficient person **and**
 - 1.3 would be unable to remain in the UK if the primary carer left the UK for an indefinite period

Note: The child must be self sufficient (see C1728 et seq) The primary carer is treated as a family member of the child³ so the child and the primary carer must have sufficient combined resources to ensure that the primary carer does not become a burden on the social assistance system of the UK during their period of residence. Equally both must have comprehensive health insurance cover.

Person in general education

2. where⁴
 - 2.1 any of the child's parents is an EEA national who resides or has resided in the UK **and**
 - 2.2 both the child and EEA national parent reside or have resided in the UK at the same time and during such a period of residence, the EEA national parent has been a worker in the UK (see paragraph C1837 below) **and**
 - 2.3 the child is in general education (see paragraph C1835 below) in the UK

Note 1: The EEA national who has worked or been a worker must be the parent of the child(ren) (see **2.2** above). A derivative right of residence does not arise where the worker is a grandparent.

Note 2: From 1.2.17, where a child of an EEA national has a derivative right to reside because they are in education in the UK, the EEA national parent does not have to have been resident when the child first entered education (see **2.3** above)

Primary carer of a person in general education

3. where⁵

- 3.1 that person is the primary carer (see C1832) of a person in general education in the UK who satisfies the conditions in sub-paragraph 2. above **and**
- 3.2 that person in education would be unable to continue to be educated in the UK if the primary carer left the UK for an indefinite period (but see C1834 for how this rule applies where there are joint primary carers).

Dependant children of a primary carer

- 4. where⁶
 - 4.1 that person (“the child”) is under the age of 18 **and**
 - 4.2 the child does not have leave to enter, or remain in the UK **and**
 - 4.3 the child’s primary carer is entitled to a derivative right to reside in the UK as the primary carer of a person in education in accordance with sub paragraph 3. above **and**
 - 4.4 the child’s primary carer would be prevented from residing in the UK if the child left the UK for an indefinite period.

*1 Imm (EEA) Regs 2016, reg 16(1);
2 reg 16(2); Case C-200/02 Zhu and Chen v Secretary of State for the Home Department;
3 Imm (EEA) Regs 2016, reg 4(5); 4 reg 16(3); NA (Pakistan)(C-115/15) Reg (EEC) 1612/68, art 12;);
5 Imm (EEA) Regs 2016, reg 16(4) Case C-310/08 Ibrahim v London Borough of Harrow and
Secretary of State for the Home Department; Case C-480/08 Teixeira v London Borough of Lambeth and
Secretary of State for the Home Department); 6 reg 16(6);*

Example

Lucia is a Spanish national. She entered the UK in July 2012 with her husband Hugo, also a Spanish national. Hugo worked in the UK but Lucia did not. The couple have a child, Alba born on 25.8.2003 who started primary school in the UK in September 2012. Alba is a Spanish national. In March 2013 the couple separated and Hugo returned to Spain. Lucia claimed UC in April 2013. The DM decided that Lucia had a right to reside in the UK as Alba’s primary carer in accordance with C1833.3 above. It was evident that Alba would not be able to continue his general education in the UK if his mother and sole carer had to leave the country.

Application to joint primary carers

C1834 Where there are joint primary carers, the condition described in paragraph C1833.3.2 is that the child would be unable to continue to be educated in the UK if **both** joint primary carers were required to leave the UK¹. However this condition does not apply if² one of the joint primary carers had acquired a derivative right to reside as a sole primary carer before sharing responsibility for care with a joint primary carer.

1 Imm (EEA) Regs 2016, reg 16(9); 2 reg 16(10)

Meaning of “general education”

C1835 General education can include up to and including university or similar courses and vocational courses, but the primary carer's right to reside set out in C1833.2, generally ends when the child reaches the age of majority. This is 18 in the UK¹. However it can continue beyond that age if the child continues to need the presence and care of that parent in order to be able to complete their education². General education excludes nursery education but does not exclude education received before compulsory school age where that education is equivalent to the education received at or after compulsory school age³. It usually starts around age 5. A primary carer of the child of an EEA national who has been employed in the host Member State is entitled to a derivative right to reside once that child has entered into reception class education⁴.

*1 Family Law Reform Act 1969, s 1 Age of Majority (Scotland) Act 1969;
2 Teixeira v London Borough of Lambeth CJEU Case C-480/08 (para 87);
3 Imm (EEA) Regs 2016, reg 16(7)(a); 4 Shabani [2013] UKUT 315 (IAC)*

Meaning of “worker”

C1836 In C1833.2.2 above a “worker” does not include¹ a jobseeker or a person who, on stopping work retains worker status in the circumstances described in C1392 & C1393. It also does not include a self employed person².

Note: see C1361 to C1363 for guidance on when a person is a worker

*1 Imm (EEA) Regs 2016, reg 16(7)(b);
2 Secretary of State for Work and Pensions v Lucja Czop (C-147/11) and Margita Punakova (C-148/11);
RM v Secretary of State for Work and Pensions (IS) [2014] UKUT 401 (AAC) [2015] AACR 11*

C1837 Work carried out by a national of another Member State before that Member State joined the EU cannot trigger a right under C1833¹. Where an A8 or A2 national has been employed in the UK on or after the date of accession, they may be a “worker” for the purposes of a derivative right to reside if it is for an authorised employer, or the migrant worker is otherwise exempt from the requirement to register or seek authorisation. The A2/A8 national does not have to complete 12 months registered or authorised work in order to be regarded as a worker for the purposes of the derivative right to reside².

1 Reg (EEC) 1612/68, Art 12; 2 S of S for W & P v JS (IS) [2010] UKUT 347 (AAC)

C1838 An A8 national is working for an authorised employer in the first month of any employment in the UK starting on or after 1.5.04¹, even if it is not subsequently registered: but an A2 national must seek authorisation before starting employed work in the UK². From 1.5.11 A8 nationals have full EU rights and do not need to register any work.

1 Accession Regs 2004, reg 7(3); 2 Accession Regs 2006, reg 9

Self-employed Parent

C1839 A derivative right to reside under C1833 can only apply where there is an EEA national parent who resided in the UK as a “worker” i.e. those who are in genuine and effective work that is more than marginal and ancillary and are under the direction of another (see C1360 to C1362). It does not therefore apply to those who are genuinely self-employed i.e. employed on their own account¹.

1 Secretary of State for Work and Pensions v Lucja Czop (C-147/11) and Margita Punakova (C-148/11), at para 33

Derivative residence card

C1840 A derivative residence card is a card issued to a person as proof of the holder’s derivative right to reside as at the date of issue¹. The card can also take the form of a stamp in the person’s passport. The card or stamp will be valid for five years or until a specified date and can be renewed upon application. However the card itself does not confer a derivative right to reside which can only arise from satisfaction of the conditions in C1833.

1 Imm (EEA) Regs 2016, reg 20

Deportation orders

C1841 An EEA national (or family member of an EEA national) may be deported from the UK, where it is decided that the person’s removal is justified on the grounds of public policy, public security or public health¹.

1 Imm (EEA) Regs 2016, reg 23(6)(b); Immigration Act 1971, s 3(5), s.5 & Sch 3

C1842 A person exercising a right to reside under the Imm (EEA) Regs 2016 (for example, a permanent right of residence) continues to hold that status until such time as a deportation order is served¹.

Note: DMs should note that the serving of the deportation order invalidates any leave to remain in the UK².

1 Imm (EEA) Regs 2016, reg 23(9); 2 Immigration Act 1971, Sch 3, para 2(2)

C1843 – C1850

Persons to be treated as not “in GB”

C1851 The starting point is that a person is to be treated as not being in GB if he does not have a right to reside (or is not habitually resident) in the CTA¹. However the regulations go on to say that certain rights to reside described do not count². The following paragraphs give details of those excluded rights to reside.

1 UC Regs, reg 9(1); 2 reg 9(2)

Initial Right of Residence under EU law

C1852 All EEA nationals and their family members have the right to reside in any other Member State for a period of three months¹.

1 Imm (EEA) Regs 2016, reg 13

C1853 Persons who have a right to reside solely on the basis of the initial three month residence right referred to above do not satisfy the right to reside requirement of the habitual residence test and so are to be treated as not in GB¹ and therefore not satisfying the basic conditions for entitlement to UC.

1 UC Regs, reg 9(3)(a)

EEA jobseekers

C1854 Amendments are made to the UC entitlement condition that claimants must be in GB¹. EEA nationals who are jobseekers and their family members with a right to reside in the UK will no longer be treated as being habitually resident in the CTA and therefore are not in GB for the purposes of UC entitlement². These amendments also ensure that those EEA nationals who are entitled to UC are allocated to appropriate WRA groups on the same basis as all other UC claimants.

1 WRA 2012, s 4(1)(c) & s.4(5)(a); 2 UC Regs, reg 9

C1855 Claimants can only satisfy the basic UC entitlement condition of being in GB if they are also habitually resident in the CTA¹ (see C1225).

1 UC Regs, reg 9(1)

C1856 Claimants can only be regarded as habitually resident if they have a legal right to reside in the CTA¹. However, certain rights are excluded for this purpose² (see C1851).

1 UC Regs, reg 9(2); reg 9(3)

C1857 From 10.6.15, the right to reside as an EEA national jobseeker or family member of an EEA national jobseeker is added to the list of exclusions¹ (see C1852 to C1865). A person to whom this exclusion applies therefore cannot meet the habitual residence test and will not be treated as being in GB, so will not be entitled to UC.

1 UC reg, reg 9(3)(aa)

C1858 From 10.6.15, guidance at ADM C1710 1. and C1711 in respect of EEA jobseekers should no longer be followed.

C1859 EEA nationals who are in the UK

1. working for an employer and retain their worker status (see C1391 et seq) during periods of
 - 1.1 involuntary unemployment **or**
 - 1.2 vocational training **or**
 - 1.3 temporary incapacity for work (see C1391) **or**
2. working as a S/E person and retain their worker status during periods of temporary incapacity for work (see C1475) **or**
3. as a student (see C1732) **or**
4. as a self-sufficient person (see C1728 to C1730)

are not affected by this amendment.

Note: A person who retains their worker status, after having worked as an employee and then becoming involuntarily unemployed (see C1394 1.) will cease to have a right to reside as a retained worker after 6 months. This is unless they provide compelling evidence that they are continuing to seek employment and have a GPoW.

Existing award of UC

C1860 Where there is an existing award of UC, the change takes effect (for the purposes of that award)

1. on 10.6.15, if there is an assessment period (see ADM E2110) for that award that begins on that day **or**
2. if 1. above does not apply, on the first day of the next assessment period for the award that begins after that date¹.

Note: Existing award of UC means an award that exists on 10.6.15².

1 Universal Credit (EEA Jobseekers) Amendment Regulations 2015, reg 1(2); 2 reg 1(3)

Parents of EU citizen children

C1861 A person who is not an “exempt person” has a derivative right to reside in the UK if¹

1. they are the primary carer of a British citizen **and**
2. that British citizen is residing in the UK **and**
3. that British citizen would be unable to reside in
 - 3.1 the UK **or**
 - 3.2 another EEA state or Switzerland

if the person (i.e. the primary carer) left the UK for an indefinite period.

1 Imm (EEA) Regs 2016, reg 16(1) & (5)

C1862 A person who has a right to reside solely on the basis of paragraph C1861 above is an **excluded** right to reside¹. Such a person will therefore not satisfy the right to reside element of the habitual residence test, will be treated as not in GB and therefore will not satisfy the basic conditions for entitlement to UC.

Note: The regulations described in C1861 and in this paragraph were introduced with effect from 8.11.12 because of a judgment of the CJEU dated 8.3.11 (“the *Zambrano* judgment”)

1 UC Regs, reg 9(3)(b)

EU Citizenship rights

C1863 EU case law has established the principle that in certain circumstances a third country national may have a right to reside where to deny that right would mean that

an EU citizen would be deprived of their rights under as an EU citizen under the Treaty¹ to move and reside freely within the territory of the EU. In the *Zambrano* case² the basis of the CJEU's judgment was that, if Mr Zambrano (a third country national) was not granted a right to reside and a work permit in Belgium, the result would be that his dependent children, who were Belgian (and thus EU) citizens, would be deprived of the genuine enjoyment of the substance of their rights as EU citizens under article 20 of the Treaty¹.

1 TFEU, art 20; 2 Ruiz Zambrano v Office national de l'emploi (ONEm) Case C-34/0

C1864 A right to reside which exists in accordance with the Treaty¹ where that right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Citizen is an excluded right to reside².

1 TFEU, art 20; 2 UC Regs, reg 9(3)(b)

C1865 So, a person claiming UC whose sole right to reside is the right described in paragraph C1863 above will not satisfy the right to reside condition of the habitual residence test. Such a person will therefore be treated as not being in GB and will therefore not satisfy the basic conditions of entitlement to UC.

C1866 – C1924

Croatian Nationals

Introduction

C1925 [See Memo ADM 21/18] The Republic of Croatia became a member state of the EU on 1.7.13¹ Transitional provisions in the Croatia Treaty¹ allow EU Member States to impose certain restrictions on the rights to freedom of movement within the EEA², and allow EU Member States to apply national measures restricting the access of Croatian nationals to the UK's labour market for a limited period, initially for five years after 1.7.13³ (i.e. until 30.6.18).

1 Act concerning the accession of the Republic of Croatia, Art 18 & Annex V;

2 TFEU Art 45 & Reg (EU) 492/11, Arts 1 to 6; 3 Act concerning the accession of the Republic of Croatia, Art 18 & Annex V, section 2, para 2

C1926 The rights of EEA nationals (and in some circumstances their family members) to reside in the UK are set out in the Imm (EEA) regs 06. The Croatia (I & WA) Regs 2013 limit those rights to reside and set out the measures restricting access to the UK's labour market in the case of Croatian nationals.

The Two Groups

C1927 For the purposes of entitlement to UC, Croatian nationals will fall into two main groups

1. persons who are subject to worker authorisation **and**

2. those who are exempt from the requirement for worker authorisation

Croatian nationals subject to worker authorisation

C1928 Unless they come within the exempt group described in C1934, all Croatian nationals are “accession state nationals subject to worker authorisation”¹. This means that, in order to be able to work as employed persons in the UK, Croatian nationals subject to worker authorisation have to apply to the Home Office for a worker authorisation document giving details of the employer they wish to work for. A worker authorisation document will only be issued where the Croatian national meets the relevant requirements¹. Those requirements are set out in the “Statement of relevant requirements”, dated May 2013 and published by the Secretary of State for the Home Department.

1 Croatia (I & WA) Regs, reg 2(1)

Worker authorisation document

- C1929 The worker authorisation document will be either¹
1. a passport or other travel document endorsed before 1.7.13 to show that the holder has leave to enter or remain in the UK under the Immigration Act 1971, subject to a condition restricting his employment in the UK to a particular employer or category of employment **or**
 2. a worker authorisation registration certificate issued in accordance with the Croatia (I & WA) regs 2013 and endorsed with a condition restricting the holder’s employment to a particular employer and authorised category employment.

1 Croatia (I & WA) Regs 2013, reg 8(2)

Exemption from the habitual residence test

- C1930 With effect from 1.7.13, a Croatian national subject to worker authorisation will not have to satisfy the habitual residence test for UC during any period when they¹
1. hold an accession worker authorisation document **and** are working in accordance with the conditions set out in that document.
- or**
2. are a self-employed person in the UK (see C1940 to C1942 for more about self-employment).

Note: nonetheless they will have to satisfy the other conditions of entitlement for UC

1 Croatia (I & WA Regs) 2013, reg 5(1) & UC Regs, reg 9(4)(a)

Self-employment stops

C1931 A Croatian national subject to worker authorisation will retain the status of being a self-employed person and will remain exempt from the habitual residence test¹ if they are temporarily unable to pursue activity as a self-employed person as a result of illness or accident². However If self-employment ceases altogether (on which see C1452) a Croatian national subject to worker authorisation will not have a right to reside as a jobseeker (see C1932.1 below).

1 UC Regs, reg 9(4)(a); 2 Imm (EEA) Regs 2016, reg 6(4)

Rights to reside

C1932 A Croatian national subject to worker authorisation **does not** have a right to reside

1. as a jobseeker¹
2. as a person retaining worker status¹ (stated briefly, a person who ceases work as an employed person temporarily because of illness or accident (see C1391) or a person who is in duly recorded involuntary employment and registered at a relevant employment office after working in the UK (see C1392 – C1393).

1 Croatia (I &WA) Regs 2013, reg 5(1)

Self-sufficient persons and students

C1933 Croatian nationals subject to worker authorisation do have a right to reside as¹

1. self-sufficient persons (see C1728 to C1730) **or**
2. students (see C1732).

However these groups need to have sufficient resources not to become a burden on UK social assistance (which includes UC) throughout their period of stay and they must have comprehensive sickness insurance.

1 Imm (EEA) Regs 2016, reg 6(1)

Croatian nationals who are not subject to worker authorisation

C1934 A Croatian national is not subject to worker authorisation if

1. on 30.6.13, they had leave to enter or remain in the UK under the Immigration Act 1971 and their immigration status has no condition restricting employment or if they are given leave of this type (including that their immigration status has no condition restricting employment) after 30.6.13¹ **or**
2. they were legally working (See C1935 & C1936) in the UK on 30.6.13 and had been legally working in the UK without interruption (see note) throughout the period of 12 months ending on that date² **or**
3. they legally work (see C1935 & C 1936) in the UK without interruption (see note) for a period of 12 months falling partly or wholly after 30.6.13, at the end of that 12 month period³ **or**

Note for sub-paragraphs 2 & 3: a person shall be treated⁴ as having worked without interruption for a period of 12 months provided they were legally working in the UK at the beginning and end of the 12 month period and, if their work was interrupted any intervening period(s) do not exceed 30 days in total.

4. they have dual nationality and are also a national of the UK or an EEA State (other than Croatia)⁵, except that, where the person is also a Bulgarian or Romanian national subject to worker authorisation in accordance with the Accession Regs 2006, they will only be exempt from worker authorisation as a Croat, during any period when they are working in accordance with the Accession regs 2006 **or**
5. during any period in which they are⁶
 - 5.1 the spouse, civil partner, unmarried or same sex partner (see C1938) **of or**
 - 5.2 a child under 18 of
a person who has been given leave to enter or remain in the UK under the Immigration Act 1971 where that leave allows that person to work
6. during any period when they are⁷ the spouse, civil partner, unmarried or same sex partner (see C1938) of a national of the UK or a person settled in the UK (as defined in specific legislation⁸.
7. during any period when they are⁹ a member of a diplomatic mission (or a family member of a member of a diplomatic mission) as defined in specific legislation¹⁰ and other persons who are not British citizens specified in an order of the Secretary of State for the Home Department¹¹ exempting them from any or all of the provisions of the Immigration Act 1971.
8. they have a permanent right to reside in the UK under the Imm (EEA) Regs¹².
9. Except where sub-paragraph 10 applies, during any period when they are a family member of an EEA national who has a right to reside in the UK¹³.
10. Where the EEA national with a right to reside in the UK referred to in sub-paragraph 9 is a Croatian national subject to worker authorisation or a Bulgarian or Romanian national subject to worker authorisation (referred to below as "Y") then only the following family members are not subject to worker authorisation¹⁴
 - 10.1 Y's spouse or civil partner **or**
 - 10.2 an unmarried or same sex partner of Y (see C1938) **or**
 - 10.3 a direct descendent of Y or Y's spouse or civil partner who is
 - 10.3.a under 21 **or**
 - 10.3.b dependent on Y, Y's spouse or Y's civil partner

11. they are highly skilled as defined¹⁵ and hold a registration certificate from the HO that includes a statement that they have unconditional access to the UK labour market¹⁵
12. during any period when they are a student in the UK and either
 - 12.1 they hold a registration certificate which states that they are a student who may work in the UK for not more than 20 hours per week (except where they are working, as part of a course of vocational training or during vacations) and provided they comply with those work conditions¹⁶ **or**
 - 12.2 they have leave to enter or remain under the Immigration Act 1971 as a student provided they are working in accordance with any conditions attached to that leave¹⁷
13. during the 4 months starting from the end of the course where they are a former student who holds a registration certificate (issued before they completed their course) saying that they may work during that period¹⁸.
14. they are a posted worker¹⁹ as defined in specific EU legislation²⁰, being a person posted to the UK by an employer based in another EEA state in pursuance of a contract to provide services in the UK.

1 Croatia (I & WA) Regs 2013, reg 2(2); 2 reg 2(3); 3 reg 2(4); 4 reg 2(5)(c); 5 reg 2(6) & (7); 6 reg 2(8); 7 reg 2(9); 8 Immigration Act 71, s 33(2A); 9 Croatia (I & WA) Regs 2013, reg 2(10) & (11); 10 Immigration Act 71, s 8(3); 11 s 8(2); 12 Croatia (I & WA) Regs 2013, reg 2(12); 13 reg 2(13); 14 reg 2(14); 15 reg 2(15); 16 reg 2(16)(a) & (17); 17 reg 2 (16) (b); 18 reg 2(18); 19 reg 2(19); 20 Reg 2(20) & Directive 96/71/EC, Art 1(3)

Meaning of legally working

Periods before 1.7.13

C1935 For the purposes of C1934. **2 & 3**, a Croatian national working in the UK during a period falling before 1.7.13, was working legally in the UK during that period if¹

1. they
 - 1.1 had leave to enter or remain in the UK under the Immigration Act 1971 for that period **and**
 - 1.2 had leave that allowed them to work in the UK **and**
 - 1.3 were working in accordance with any condition on that leave restricting their employment **or**
2. they were exempt from the provisions of the Immigration Act 1971 in accordance with specific legislation **or**
3. they were entitled to reside in the UK under the Imm (EEA) Regs.

1 Croatia (I & WA) Regs 2013, reg 2(5)(a)

Periods on or after 1.7.13

C1936 For the purposes of C1934.3, a Croatian national was legally working in the UK on or after 1.7.13 during any period in which

1. they are exempt from worker authorisation because they fall within one of C1934 4 to C1934 13 above **or**
2. hold an accession worker authorisation document (see C1929).

1 Accession (Croatia I & WA) Regs 2013, reg 2(5)(b)

Meaning of “family member”

C1937 For the purposes of C1934 above a Croatian national's family members are¹ (subject to the special rules about the family members of students described in C1733)

1. their spouse or civil partner **and**
2. their direct descendents or the direct descendents of their spouse or civil partner who are
 - 2.1 under the age of 21 **or**
 - 2.2 their dependants or dependants of their spouse or civil partner **and**
3. their direct ascendant relatives or the direct ascendant relatives of their spouse or civil partner **and**
4. extended family members as described in C1735 to C1736.

Note: see C1943 to C1945 for more on family members

1 Accession (Croatian I & WA) Regs 2013, reg 1(2)(a) & Imm (EEA) Regs 2016, reg 7

Meaning of “unmarried or same sex partner”

C1938 An “unmarried or same sex partner” means a person who is in a durable relationship with another person¹. If a DM has doubts about whether this is the case, a view should be sought from the Home Office in the first instance.

1 Croatia (I & W) Regs 2013, reg 1(2)

Right to reside

C1939 For as long as they continue to satisfy one of the conditions for exemption in C1934 above, Croatian nationals **who are not subject to worker authorisation** have the same rights to reside as a non -accession EEA national such as a French or German national.

Self-employment

C1940 Transitional provisions in the Treaty of Accession do not allow limitation of the principle of freedom of movement for self-employed persons within the EEA. This means that, from 1.7.13, all Croatian nationals regardless of whether or not they are

subject to worker authorisation have a right to reside as a “qualified person” when they are working as a self-employed person in the UK¹.

1 Imm (EEA) Regs 2016, reg 6(1); reg 14

C1941 Any Croatian national who is a self-employed person in the UK will retain that status and a right to reside if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident¹.

1 Imm (EEA) Regs 2016, reg 6(4)

C1942 With effect from 1.7.13, a Croatian national who is self employed in the UK or who retains that status in accordance with C1941 is exempt from the habitual residence test for the purposes of UC¹.

1 UC Regs, reg 9(4)(a)

Note: DMs are reminded that work as a self employed person must be genuine and effective (see C1362 to C1363). In addition DMs may need to establish whether at any particular moment in time a claimant is a self-employed person (on which see C1452).

Family members

C1943 In general the family members of an EEA national with a right to reside in the UK, also have a right to reside derived from and linked to the EEA national’s right to reside¹.

1 Imm (EEA) Regs 2016, reg 14(2)

C1944 Where a Croatian national **not** subject to worker authorisation has a right to reside in the UK then C’s family members (as defined in C1937) are not subject to worker authorisation and have the same rights to reside as the family members of any other EEA national.

C1945 However where a Croatian national **is** subject to worker authorisation then only

1. their spouse, civil partner, unmarried or same sex partner (hereafter “partner”) **and**
2. their (or their partner’s)
 - 2.1 children **or**
 - 2.2 grandchildrenwho are aged under 21 or dependant

escape the requirement for worker authorisation (see paragraph C1934.10). A Croatian national’s Croatian father, father in law, mother, mother in law or grandparents will have a right to reside as family members of an EEA national. However in their own right they will only have the limited rights to reside of any Croatian national subject to worker authorisation (see C1928 to C1933) (i.e. as an authorised worker, a self-employed or self sufficient person or a student). In other

words they have a right to reside in the UK but their access to work and the labour market here is limited.

Meaning of “Habitual Residence”

C1946 There is no definition of “habitual residence” in UK domestic or EU law. However the meaning of this phrase has been discussed in case law. Although broadly similar there are some differences between the meaning of habitual residence in UK domestic law and the meaning that has developed in EU law.

C1947 Where EU applies the EU law meaning will take precedence, but if EU law does not apply the meaning developed in domestic law should be applied. EU law will apply if the person concerned has exercised their right¹ to move and reside freely in the territory of the Member States.

1 TFEU, Art 21

C1948 – C1950

Meaning in UK law

Requirement to establish a residence that is habitual in nature

C1951 To be habitually resident in a country a person must have actually taken up residence and lived there for a period. It is not sufficient that the person came to this country voluntarily and for settled purposes. He must be resident in fact for an appropriate period of time which demonstrates that his residence has become, and is likely to remain, habitual in nature¹.

1 House of Lords, Nessa v CAO (1999) 1 WLR 1937 HL

Settled intention to remain

C1952 The period of time cannot begin before the person is both living in the UK, and has a settled intention to remain in the UK for the time being. The person does not have to intend to remain permanently.

Relevant factors

C1953 Whether and when a person’s residence has become habitual in nature is a question of fact. The period is not fixed and depends on the facts of each case. Amongst the relevant factors to be taken into account are bringing possessions so far as is practicable, doing everything necessary to establish residence before coming, having a right of abode, seeking to bring family, and having durable ties with the country of residence or intended residence¹. The list is not exhaustive and any facts which may indicate whether or not the residence is habitual in nature should be taken into account.

1 House of Lords, Nessa v CAO (1999) 1 WLR 1937 HL

C1954 Only the appropriate weight should be given to factors wholly or partly outside the person’s control. The person may have close relatives, even immediate family,

outside the UK. There may be an intention that family members will join the person here when permission to do so can be obtained. The person may, quite reasonably, visit them regularly. That need not indicate that the person himself does not have a settled intention to remain in the UK, or that he cannot be habitually resident here. Cultural differences in the nature of contact between family members should be respected.

C1955 It is not necessary to have permanent or private accommodation to establish habitual residence. A person may be resident in a country whilst having a series of temporary abodes.

C1956 A person's financial viability may be a relevant factor, but the test for habitual residence should not be applied so as to prevent access to public funds. It must be applied in a way that allows for the possibility of a claimant establishing both habitual residence and an entitlement to benefits¹.

1 House of Lords, Nessa v CAO (1999) 1 WLR 1937 HL

Appropriate period of time

C1957 The appropriate period of time need not be lengthy if the facts indicate that a person's residence has become habitual in nature at an early stage¹. In some circumstances the period can be as little as a month, but it must be a period which is more than momentary in a claimant's life history². A period of between one and three months is likely to be appropriate to demonstrate that a person's residence is habitual in nature. Cogent reasons should be given where a period longer than three months is considered necessary³.

1 House of Lords, Nessa v CAO (1999) 1 WLR 1937 HL; 2 CIS/4389/99; 3 CIS/4474/03

Becoming habitually resident

C1958 The nature of a person's residence should be considered throughout the period in question, to establish whether or when it became habitual. The fact that a person's residence has become habitual in nature after a period of time does not mean that the residence was habitual in nature from the outset. Residence only changes its quality at the point at which it becomes habitual.

Resuming a previous habitual residence

C1959 There may be special cases where a person who has previously been habitually resident in the UK resumes that habitual residence immediately when he returns to the UK following a period living abroad¹. The only element of habitual residence that is bypassed by a returning former resident is the need to be resident in the UK for an appreciable period.

1 House of Lords, Nessa v CAO (1999) 1 WLR 1937 HL

C1960 Factors to be considered in deciding whether the previous habitual residence has been immediately resumed include¹

1. the settled intention to remain,
2. whether the person is in a position to make an informed decision about residence in the UK,
3. the ties and contacts with the UK retained or established by the person while abroad,
4. the reasons why the claimant left the UK and became habitually resident elsewhere,
5. the similarity between their residence in the UK now and when they were previously here, **and**
6. the length of the period of absence².

Note: this is a different situation to that where a person is temporarily absent from the UK and does not lose their habitual residence during that period of absence.

Example

On 4.2.18, Alex returned to the UK after undertaking a 12 week placement in Tanzania. This was a voluntary placement with the International Citizen Service, a scheme funded by the UK Government Department for International Development (DfID). Alex makes a claim to UC from 5.2.18.

As this was a recognised voluntary scheme funded by DfID, which from the outset was temporary in nature (i.e. a 12 week programme), and as the claimant's intention was to return to the UK following the end of the programme, the DM determines that Alex's centre of interest remained in the UK during his absence, that the absence was temporary and that Alex did not lose his habitual residence during the period of his absence.

1 House of Lords, Nessa v CAO (1999) 1 WLR 1937 HL; 2 CIS/1304/1997 and CISA/5394/1998

Meaning in EU Law

C1961 When deciding whether a person is habitually resident for EU law DMs should consider whether a person is resuming a previous habitual residence before taking into account other factors in paragraph C1960.

Resuming previous residence

C1962 A person with habitual residence in the CTA who exercised his right to freedom of movement under European law and then returns to resume his residence in the CTA may be habitually resident immediately on his return¹.

1 Case C-90/97, Swaddling v CAO (1999) All ER (EC) 217

C1963 A UC claimant who

1. was previously habitually resident in the CTA **and**

2. moved to live in another Member State **and**
3. returns to resume the previous habitual residence

is habitually resident immediately on arrival in the CTA.

C1964 In deciding whether the claimant is resuming previous residence the DM should take account of the length and continuity of the previous residence in the CTA and whether the claimant has maintained sufficient links with the previous residence to be said to be resuming it rather than commencing a new period of residence.

Example

The claimant, a UK national, lived and worked in UK before moving to Germany where he worked for several years. He was made redundant and having failed to find work in Germany for three months he returned to the UK where he had family and friends. On claiming UC he stated that his intention was to find work and remain permanently in the UK. UC was awarded because he was resuming a previous habitual residence

Factors to take into account

C1965 When deciding where a person is habitually resident for EU law, the DM should take into account the

1. person's main centre of interest¹
2. length and continuity of residence in a particular country
3. length and purpose of the absence from that country **and**
4. intention of the claimant.

Note: This is not an exhaustive or conclusive list. There may be other factors that are important in deciding whether a person is habitually resident in an individual case.

1 Case 76/76 Di Paolo; R(U)7/85; R(U)8/88

Centre of interest

C1966 People who maintain their centre of interest in the UK, for example a home, a job, friends, membership of clubs, are likely to be habitually resident in the UK. People who have retained their centre of interest in another country and have no particular ties here are unlikely to be habitually resident in the UK.

Length and continuity of residence

C1967 A person who has a home or close family in another country would normally retain habitual residence in that country. A person who has previously lived in several different countries but has now moved permanently to the UK may be habitually resident here.

Length and purpose of absence

- C1968 Where a person spends time away from the UK, the DM should consider the frequency, length and purpose of the absences and decide whether habitual residence in the UK has been lost. If a person who is working abroad returns frequently, for example to visit family or because a home has been retained here, it is likely that habitual residence in the UK has not been lost. Infrequent visits or the purchase of a home abroad may point to the opposite.

Employment

- C1969 The claimant's employment record and in particular the nature of any previous occupation and plans for the future are relevant. A person with the offer of genuine and effective work in the UK, whether full time or part time is likely to be habitually resident here.

Intentions

- C1970 The fact that a person may intend to live in the UK for the foreseeable future does not, of itself, mean that habitual residence has been established. However, the claimant's intentions along with other factors, for example the purchase of a home in the UK and the disposal of property abroad may indicate that the claimant is habitually resident in the UK.
- C1971 A claimant who intends to reside in the UK for only a short period, for example on holiday, to visit friends or for medical treatment, is unlikely to be habitually resident in the UK.
- C1972 Workseekers do not come within the scope of the Regulations and Directives¹ which define 'workers' for the purpose of deeming the satisfaction of the habitual residence test and EEA nationals who are seeking work in the UK may be subject to the test if they have no established link with the UK employment market².

1 Regulation 1612/68; Directive 2004/38/EC; 2 Case C-138/02 Collins v Secretary of State for Work and Pensions.

- C1973 However citizens of the EU are entitled not to be discriminated against whether or not they come within the scope of the regulations and Directives which apply to 'workers'¹. In a judgment of the ECJ² it was held that although the habitual residence test discriminated against work seekers, because it could be satisfied more easily by UK nationals than by nationals of other Member States, that discrimination was not unlawful if it could be justified on the basis of objective criteria independent of nationality. The test had to be proportionate to the legitimate aim of ensuring that there is a genuine link between a claimant and the geographic employment market in question. When this case returned to the domestic courts the Court of Appeal concluded that the habitual residence test was not incompatible with EU law³.

*1 TFEU, Arts 18 & 20; Case C-184/99 (Grzelczyk); 2 Case C-138/02 (Collins)
3 Collins v SSWP [2006] EWCA Civ 376*

C1974 The period required for the Secretary of State to be satisfied that there is a genuine link with the UK employment market is not defined and must be considered in the light of the circumstances. However it should be long enough to demonstrate the sustained nature and relevance of the search. The Commissioner has held¹ that the period was not sufficient in a case where the claimant

- had not previously worked in any Member State other than temporary work in the UK 17 years previously
- had not made any real enquiries about work before arriving in the country
- had not made any arrangements for accommodation and was staying with a friend
- was single with no dependents
- had close family and a bank account in the USA
- had a return ticket to the USA (although that was bought because it was cheaper than a single)
- had been looking for work for no more than a month.

The Commissioner further expressed the opinion that, in the circumstances, a further month of residence and work search would not be enough even though at the end of that time the claimant found work that was full time but not in the sector in which he was particularly interested.

1 R(JSA)3/06, para 50

C1975

Absences from GB

C1976 The Act allows¹ regulations to be made specifying circumstances in which

1. a person is or is not to be treated as in GB
2. a temporary absence from GB is to be disregarded.

1 WRA 12, s 4(5)

C1977 - C1985

Temporary Absences

One Month

C1986 For the purposes of deciding whether a person is "in GB" a temporary absence is disregarded provided that¹

1. the person was entitled to UC immediately before the temporary absence started **and**
2. the absence²

2.1 is not expected to exceed **and**

2.2 does not exceed

one month.

1 UC Regs, reg 11(1); 2 reg 11(1)(b)(i)

Extension to One Month disregard

C1987 Where the temporary absence is

1. in connection with the death of
 - 1.1 a partner, **or**
 - 1.2 a child or qualifying young person¹ for whom the person is responsible **or**
 - 1.3 a close relative of the person, his partner or a child or qualifying young person¹ for whom the person or their partner is responsible **and**
2. the Secretary of State considers that it would be unreasonable to expect the person concerned to return to GB within the first month

the one month disregard described in paragraph C1986 may be extended by up to one further month².

Note: for guidance on the meaning of qualifying young person see ADM Chapter E2.

1 UC Regs, reg 2(1) & 5; 2 reg 11(2)

Six Months - Medical treatment

C1988 In deciding whether a claimant satisfies the basic condition that they be "in GB", a temporary absence which is not expected to exceed and does not exceed 6 months is disregarded where the absence was solely in connection with

1. the claimant undergoing¹
 - 1.1 treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner **or**
 - 1.2 medically approved (see note below) convalescence or care as a result of treatment for an illness or physical or mental impairment, **provided** that the claimant had that illness or disability before leaving GB **or**
2. the claimant accompanying their partner, or a child or QYP for whom they are responsible where that partner, child or QYP is undergoing²
 - 2.1 treatment for an illness or physical or mental impairment by or under the supervision of a qualified practitioner **or**
 - 2.2 medically approved (see note below) convalescence or care as a result of treatment for an illness or physical or mental impairment provided

the partner, child or QYP had that illness or disability before leaving GB.

Note: “medically approved” means³ certified by a medical practitioner

1 UC Regs, reg 11(3)(a); 2 reg 11(3)(b); 3 reg 11(5)

Meaning of “qualified practitioner”

C1989 “qualified practitioner” means¹ a person qualified to provide medical treatment, physiotherapy or a form of treatment that is similar to, or related to, either of those forms of treatment.

1 UC Regs, reg 11(5)

Meaning of “partner”

C1990 A partner means¹ the other member of a couple “couple” is defined in the Act² as meaning

1. a man and woman who are married to each other and are members of the same household;
2. a man and woman who are not married to each other but are living together as husband and wife;
3. two people of the same sex who are civil partners of each other and are members of the same household;
4. two people of the same sex who are not civil partners of each other but are living together as civil partners.

Note: For the purposes of this definition, two people of the same sex are to be treated as living together as if they were civil partners if, and only if, they would be treated as living together as husband and wife were they of opposite sexes.

1 UC Regs, reg 2(1); 2 WRA 1, s 39

Six Months – Mariners & Continental Shelf Workers

C1991 In deciding whether a claimant satisfies the basic condition that they be “in GB”, a temporary absence is disregarded if it is not expected to exceed, and does not actually exceed, 6 months and the claimant is¹

1. a mariner **or**
2. a continental shelf worker who is in a designated area or a prescribed area

1 UC Regs, reg 11(4)

Meaning of “mariner”

C1992 A “mariner” means¹ a person who is in employment under a contract of service as a

1. master or member of the crew of any ship or vessel **or**

2. in any other capacity on board any ship or vessel provided that the employment in that capacity is for the purposes of that ship or vessel or her crew or any passengers, cargo or mails carried by the ship or vessel

provided the contract of service is entered into in the UK with a view to its performance while the ship or vessel is on her voyage.

1 UC Regs, reg 1(5)

Meaning of “continental shelf worker”

C1993 A continental shelf worker means¹ a person who is employed (whether under a contract of service or not) in a designated area or a prescribed area in connection with any activity mentioned in specific legislation² (stated briefly activities connected with the exploration or exploitation of natural resources on the shore or on the sea bed).

1 UC Regs, reg 11(5); 2 Petroleum Act 1998, s 11(2)

C1994 Designated area means¹ any area designated by Order in Council under specific legislation² as an area where the UK’s rights with respect to the seabed and subsoil and their natural resources can be exercised.

1 UC Regs, reg 11(5); 2 Continental Shelf Act 1964

C1995 Prescribed area means¹ any area over which Norway or any EU country* (except the UK) exercises sovereign rights to explore the seabed and subsoil and exploit their natural resources. This area must be outside the territorial water of

1. Norway **or**
2. any EU country (except the UK) **or**
3. any other area specified under specific legislation².

1 UC Regs, reg 11(5); 2 Petroleum Act 1998, s 10(8)

C1996 – C1999

The content of the examples in this document (including use of imagery) is for illustrative purposes only