

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 2

Amendment 41 – June 2019

1. This letter provides details on Amendment 41; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

<https://www.gov.uk/government/publications/decision-makers-guide-vol-2-international-subjects-staff-guide>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 41 affects Chapter 7 - Parts 1, 2 and 3. The changes:

Chapter 7, Part 1 - introduces new guidance at 070838 in respect of 'person subject to immigration control & EU right to reside'

Chapter 7, Part 2 - introduces new guidance at 071706 in respect of 'person subject to immigration control & EU right to reside'

Chapter 7, Part 3 – makes various amendments to text throughout chapter; incorporation of Memo DMG 15/18; new guidance added at 072862 – 072864 regarding 'retaining self-employed status'; additional text added to guidance at 073092, 073093, 073258, 073385; new guidance on 'Section 67 Leave to Remain' at 073193 – 073197; amendment to 'definition of EEA national' at 073262; insertion of new guidance at 073263; guidance deleted at 073265; new guidance regarding 'Dual nationals' at 073264 – 073268; new paragraphs on 'Sharing equal responsibility' & examples at 073386; new guidance regarding 'Best interest of the child' at 073389; new guidance regarding 'Croatian Restrictions End' at 073651 and new guidance added at 073680.

4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Chapter 7 Part 2

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Appendix

Stateless persons

070829 Stateless persons are people who are not considered to be a national of any country¹. Under UK legislation they are defined as “persons who are not considered as a national by any State under the operation of its law”².

*1 Convention of the Status of Stateless Persons, Art 1; Reg (EEC) 1408/71, Art 1(e);
2 FA, NI & II (Stateless Persons) Order, Sch 1, Art 1*

070830 Stateless persons can obtain a document issued by the authorities of the State in which they are ordinarily resident confirming their status. If they are resident in the UK they can get, either

1. a travel document issued by the HO under the 1954 Convention **or**
2. a statement from the HO stating that the person concerned would be eligible for such a document.

Subject to immigration control

070831 Legislation¹ was introduced on 3.4.00 which removed entitlement to benefits for any person **subject to immigration control**. These provisions replaced most of the social security legislation relating to PFAs.

1 I & A Act 99, s 115; the Social Security (Immigration & Asylum) Consequential Regs 2000, reg 3(4)

070832 The regulations¹ now define PFA only as a person who is not habitually resident in the CTA (see DMG 072770 et seq).

1 IS (Gen) Regs, reg 21(3) & JSA Regs, reg 85(4)

070833 A PSIC means 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 subject to the condition ‘no recourse to public funds’ **or**
3. has leave to enter or remain in the UK given as a result of a maintenance undertaking.

If a PSIC is granted British citizenship, then he is no longer subject to immigration control from the date it is granted.

Note: a person granted leave to enter and remain in the UK under the family union provisions are **not** persons subject to immigration control (see DMG 070711 et seq).

070834 The regulations provide for exemptions from the effects of section 115 for certain categories of persons and certain benefits¹.

1 SS (I&A) Cql Amdt Regs

070835 For JSA(IB), IS, ESA(IR), SF, HB CTB and SPC the exemptions are¹

1. sponsored immigrants whose sponsor has died

2. sponsored immigrants who have been in the UK for five years
3. nationals of countries which have ratified either ECSMA or CESC and who are lawfully present in the UK.

The exemptions for SPC came into force on 6.10.03.

1 SS (I&A) Cql Amdt Regs, reg 2(1) & Sch Part I

Note 1: Countries which have ratified ECSMA and/or CESC include Cyprus, Czech Republic, Estonia, Hungary, Latvia, Macedonia, Malta, Poland, Slovakia and Turkey. Estonia ratified ECSMA on 1.8.04; and CESC was ratified by Latvia on 2.3.02, Croatia on 28.3.03, and Macedonia on 30.4.05. Cyprus, Czech Republic, Hungary, Latvia, Malta, Poland and Slovakia acceded to the EU from 1.5.04.

Note 2: 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

070836 For AA, DLA, SDA, CA, SF, CHB¹, IB under the youth provisions², and ESA under the youth provisions³ the exemptions are

1. a member of the family of a national of an EU or EEA country
2. a person who is legally working and living in GB and is a national of a State with which the EU has made an Agreement relating to equal treatment and any member of their family living with them
3. a sponsored immigrant regardless of the length of stay in the UK.

1 SS (I&A) Cql Amdt Regs, reg 2(3) & Sch Part II; 2 SS (IB) Regs, reg 16(5); 3 ESA Regs, reg 11(3)

The countries mentioned in 2. above are Turkey, Morocco, Algeria, Tunisia, Slovenia and Switzerland. From 1.5.04 Slovenia acceded to the EU.

070837 Persons claiming CHB, DLA and AA are also exempt if they are a national of a country which has a RA with the UK covering the benefit concerned¹. For further guidance on RAs see DMG 070310.

1 SS (I&A) Cql Amdt Regs, reg 2(3)

Person subject to immigration control & EU right to reside

070838 A person's right to reside in the UK can depend on

1. their status as determined by the Home Office **or**
2. what right a person may acquire under EU law.

There are occasions where a person subject to immigration control can claim public funds (see DMG 070798). This can be, for example, where they are the family member of an EEA national, and that EEA national is exercising a freedom of movement right (see DMG 073250 et seq) (for example, as a worker or a self-employed person), or where they demonstrate a derivative right of residence (for

example, Ibrahim/Teixeira) (see DMG 073387). The granting of leave to enter or remain (whether granted with or without recourse to public funds) is made under the Immigration Rules. Where the claimant has been granted leave to enter or remain without recourse to public funds, and that person also has a right to reside under the Imm (EEA) Regs 2016, the condition of having “no recourse to public funds” does not have effect for as long as the person has a right to reside under the Imm (EEA) Regs 2016¹.

1 Imm (EEA) Regs 2016, reg 43 & Sch 3, para 1

Transitional protection

070839 The regulations include transitional protection¹ for asylum seekers who were entitled (or would have been entitled had they claimed) to benefit immediately before 3.4.00. Previous legislation will continue to apply to these persons until they cease to be asylum seekers.

1 SS (I&A) Cql Amdt Regs, reg 12

070840 A person ceases to be an asylum seeker for

1. IS, JSA(IB), ESA(IR), HB & CTB when his claim for asylum is recorded by the HO (other than on appeal) as having been decided or abandoned. For these benefits the first recorded decision on the asylum claim will be effective and asylum seeker status cannot be reinstated.
2. AA, DLA, ICA, SDA and CHB when
 - 2.1 his claim for asylum is recorded by the HO as having been decided or abandoned **or**
 - 2.2 if the claimant appeals against the first decision on his claim for asylum, the final decision is made on the appeal. Payment of benefit should be reinstated if it was terminated before the appeal was made. If the application for reinstatement of benefit is made after the time limit for applying for revision has expired any special circumstances should be taken into account.

Subject to the legislation of a Member State

070841 In general a person is only subject to the legislation of one country. That country is the competent country. Competency means deciding which EEA country is responsible for paying benefit. Full guidance is at DMG 070230 - 070248.

Supplements

Family benefits

070842 Family benefits payable by one EEA country may be suspended (see DMG 070833) where family benefits are also being provided by the EEA country where the members of the family are residing¹.

1 Reg (EEC) 1408/71, Art 76(1); Reg (EEC) 574/72, Art 10

070843 The rate of family benefits payable by that first country can be suspended up to the amount provided for in their legislation. If the family benefits paid by the country where the family are residing are less than the benefit provided by the other country then a supplement is payable¹.

1 Case 153/84, Ferraioli v. Deutsche Bundespost

070844 For further guidance see the detailed guidance for family benefits.

Sickness benefits

070845 A person is entitled to a supplement, equivalent to the difference in the rate of benefits paid by the UK and the Republic of Ireland, where

1. that person is entitled to benefit from only one country **and**
2. the rate of sickness benefit in that country is lower than the rate paid in the other country.

Detailed guidance is at DMG 074260 - 074263.

Industrial Injuries benefits

070846 The country in which a person has been working is responsible for paying a supplement if

1. that person's condition is aggravated because of continued employment in prescribed employment in a EEA country **and**
2. the claimant is receiving Industrial Injuries benefits from a different EEA country.

070847 The supplement is the difference between the amount which would have been payable under that country's legislation before the aggravation and the amount payable after aggravation.

Survivors

070848 For the UK the following are survivors¹

1. a woman or man² whose spouse or civil partner has died **and**
2. a child of someone who has died and benefit is payable for the child³.

1 Reg (EEC) 1408/71, Art 1(g); 2 SS CB Act 92, sec 41(1) & 51(1)(a) & Sch 7; 3 sec 56, 70 & 77

070849 A person is a survivor if that person is entitled to survivor's benefits in another EEA country but there is no equivalent benefit in UK. UK survivors benefits are listed at DMG 077073.

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Part 2 - AA/DLA/CA, Dependency Increases, and ESA (see Part 6 for Bereavement/Widow's Benefits)

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United Kingdom law - residence and presence conditions

071705 A claimant must satisfy prescribed conditions of residence and presence in GB on any day included in the claim¹. Claimants must

1. be habitually resident in the CTA **and**
2. not be subject to immigration control (see DMG 070831 to 070834) **or** a person who is exempt from the exclusion of persons subject to immigration control for the purposes of AA, DLA and CA (see DMG 070836) **and**
3. be present in GB **and**
4. subject to special rules relating to young children (see DMG 071718 to 071720), have been present in GB for a period of (or periods totalling) not less than 104 weeks in the previous 156 weeks².

*1 SS CB Act 92, s 64 (1) S 70(4), & s 71(6);
2 SS (AA) Regs, reg 2(1); SS (DLA) Regs, reg 2(1); SS (ICA) Regs, reg 9(1)*

Note: The regs were amended in April 2013 replacing the requirement that the claimant be ordinarily resident with a requirement that they be habitually resident in the CTA. These amendments also changed the past presence test from a requirement of presence for 26 weeks out of the previous 52 to the requirement referred to in DMG 071705 4. See DMG 071713 for the dates these changes take effect.

Person subject to immigration control & EU right to reside

071706 A person's right to reside in the UK can depend on

1. their status as determined by the Home Office **or**
2. what right a person may acquire under EU law.

There are occasions where a person subject to immigration control can claim public funds (see DMG 070798). This can be, for example, where they are the family member of an EEA national, and that EEA national is exercising a freedom of movement right (see DMG 073250 et seq) (for example, as a worker or a self-employed person), or where they demonstrate a derivative right of residence (for example, Ibrahim/Teixeira)(see DMG 073387). The granting of leave to enter or remain (whether granted with or without recourse to public funds) is made under the Immigration Rules. Where the claimant has been granted leave to enter or remain without recourse to public funds, and that person also has a right to reside under the Imm (EEA) Regs 2016, the condition of having "no recourse to public funds" does not have effect for as long as the person has a right to reside under the Imm (EEA) Regs 2016¹.

1 Imm (EEA) Regs 2016, reg 43 & Sch 3, para 1

The Habitual Residence Test

071707 With effect from the date determined in accordance with DMG 071713 below, it is a condition of entitlement for AA, DLA and CA that the claimant be habitually resident in the CTA (which comprises the UK, the Channel Islands, The Isle of Man and the Republic of Ireland).

Note: it is also a condition of entitlement that the claimant be “in GB”.

071708 The term “habitually resident” is not defined in UK law but there is detailed case law on what it means. It is for DMs to determine whether a claimant is habitually resident in the CTA based on all the facts of the case. DMs are referred to DMG 073707 et seq for full guidance.

Serving Members of the Forces

071709 For AA, DLA and CA, a person who is absent from GB shall be treated as though they were habitually resident in GB (and therefore the CTA) where that person is resident outside GB in their capacity as a “serving member of the forces”¹.

Note: Persons who are abroad in their capacity as serving members of the forces are also treated as present in GB (including for the purposes of the past presence test) (see DMG 071725 1.).

1 SS (AA) Regs, reg 2(1B)(a); SS (DLA) Regs, reg 2(1B)(a); SS (ICA) Regs, reg 9(1B)(a)

Meaning of “serving member of the forces”

071710 Subject to the exceptions in DMG 071710, a “serving member of the forces” means¹ a person who

1. is over 16 **and**
2. is a member of one of the following organisations and establishments who gives full pay service
 - 2.1 any of the regular naval, military or air forces of the crown
 - 2.2 the reserved forces, namely the Royal Fleet Reserve, The Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve and the Royal Auxiliary Air Force
 - 2.3 The Royal Irish Regiment (to the extent that its members are not members of the regular forces).

1 SS (AA) Regs, 2(3A)(a); SS (DLA) Regs, reg 2(3A) (a); SS (ICA) Regs, reg 9(3)(a)(i); SS (Conts) Regs 01, reg 1(2) & Part I of Sch 6

071711 The following persons do not come within the definition of “serving members of the forces”¹

1. deserters
2. persons serving as a member of any naval force of Her Majesty’s forces who locally entered that naval force at an overseas base, provided that the person has
 - 2.1 not previously been an insured person under Part 1 of the National Insurance Act 1965 **and**
 - 2.2 is not and has not been a National Insurance contributor under the Social Security Act 1975
3. persons serving as a member of any military force of Her Majesty’s forces who entered that force or was recruited to that force outside the UK, where the depot of their unit is situated outside the UK
4. persons serving as a member of any air force of Her Majesty’s forces who entered that force or was recruited for that force outside the UK **and** is liable under the terms of engagement to serve only in a specified place outside the UK.

1 SS (Conts) Regs 01, reg 1(2) & Part 2 of Sch 6

Serving Member of the Forces - Family Members

071712 For AA, DLA and CA a claimant who is living with a person who is resident outside GB in their capacity as a serving member of the forces (as defined in DMG 071710 & 071710 above) and who is that person’s

1. spouse or civil partner
2. son or daughter
3. step-son or step-daughter
4. father or mother
5. step-father or step-mother
6. father-in-law or mother-in-law

shall be treated as habitually resident in the CTA¹.

Note: Persons satisfying these conditions will also be treated as present in GB (see DMG 071725.4).

1 SS (AA)Regs, reg 2(3A)(b); SS (DLA) Regs, reg 2 (3A)(b); SS (ICA) Regs, reg 9(3)(a)(ii)

Date the change to a Habitual Residence Test applies from

071713 The change from the test of ordinary residence to habitual residence and the consequent rules about serving members of the forces and their family members described in DMG 071709 to DMG 071712 take effect from¹

1. in the case of a person who has an existing award of AA, DLA or CA on 7.4.13, whichever is the earlier of¹
 - 1.2. the day immediately following the day on which the existing award terminates (i.e. when a fixed period award comes to an end) **or**
 - 1.3. on the day on which the first revision or supersession is made on or after 8.4.13 **or**
2. in any other case, 8.4.13².

Note: as the main change here is from a requirement to be “ordinarily resident” to a requirement to be “habitually resident”, it will be unusual for the change in legislation to affect entitlement.

1 SS (DLA, AA & CA) (Amend) Regs 2013, reg 1(3) &(4); 2 reg 1(2)

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Part 3 - Habitual residence & right to reside - IS/JSA/SPC/ESA

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Habitual residence

Introduction

072770 The habitual residence test applies to IS, JSA(IB), ESA(IR) and SPC. A claimant who is not habitually resident in the CTA

1. is a person from abroad and has an applicable amount of nil for IS, JSA(IB) and ESA(IR)¹ **and**
2. is treated as not in GB for SPC².

*1 IS (Gen) Regs, reg 21(3) & 21AA; JSA Regs, reg 85(4) & 85A; ESA Regs, reg 70(1) & Sch 5 Part 1 para 11;
2 SPC Regs, reg 2*

072771 Regulations¹ provide that a claimant cannot be habitually resident unless he has the right to reside in the CTA (see DMG 073234). However certain types of EU rights to reside do not count² (see DMG 073450 et seq).

*1 IS (Gen) Regs, reg 21AA; JSA Regs, reg 85A; ESA Regs, reg 70(2); SPC Regs, reg 2;
2 IS (Gen) Regs, reg 21AA (3); JSA Regs, reg 85A(3); ESA Regs, reg 70(3); SPC Regs, reg 2(3)*

072772 - 072779

General principle

072780 Although it is used in both domestic and European law, there is no statutory definition of the term 'habitual residence'. There are different considerations in applying domestic and EC law but in both instances the expression should be given its ordinary and natural meaning. DMs should determine the question by considering all the facts of the case in a common sense way and applying the relevant case law.

072781 - 072785

Common travel area

072786 The legislation requires that a claimant is habitually resident in the UK, the Channel Islands, the Isle of Man or the Republic of Ireland. This is known as the Common Travel Area (CTA)¹.

1 IS (Gen) Regs, reg 21AA; JSA Regs, reg 85A; ESA Regs, reg 70(1); SPC Regs, reg 2

072787 - 072790

When the test should be applied

072791 If other conditions of entitlement to benefit are satisfied the DM should consider whether the claimant is excluded from benefit by being a PSIC. If not the DM should consider

1. whether the claimant is excluded from treatment as a person from abroad in consequence of EC law or under other specific exclusions **if not**
2. whether the claimant has the right to reside in the CTA **and**
3. whether that right to reside is excluded.

If the claimant has the right to reside in the CTA which is not excluded the DM should apply the test for actual habitual residence.

072792 The second element of the habitual residence test, the factual assessment of habitual residence should also be applied if a claimant at any time ceases to be subject to immigration control or gains the right to reside in the CTA (for instance, where a PSIC is granted British citizenship).

072793 - 072799

Persons who are not a “person from abroad/person not in Great Britain”

072800 A claimant who

1. is an EEA national and a qualified person as a worker or a S/E person under EU law¹ (see DMG 072810 & 072481) **or**
2. is an EEA national who retains worker or S/E status under EU law² (see DMG 072821 & 072861) **or**
3. is a family member of one of the above³ (see DMG 072900) **or**
4. is a person exempted from the normal rule concerning the right of permanent residence⁴ (see DMG 073174) **or**
5. is a refugee⁵ (see DMG 073175) **or**
6. is a person who⁶
 - 6.1 has been granted discretionary leave to enter or remain in the UK outside the Immigration Rules (see DMG 073178) **or**
 - 6.2 has been granted leave to remain outside the Immigration Rules under the Domestic Violence concession (see DMG 07311) **or**
 - 6.3 is deemed to have been granted leave outside the Immigration Rules by virtue of specific legislation⁷ which, in accordance with an EU directive⁸ 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 **6.3** is triggered **or**

7. has humanitarian protection granted under the Immigration Rules⁹ (see DMG 073175) **or**

8. is a person who is not subject to immigration control and 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

is neither a person from abroad nor a person not in GB.

1 Directive 2004/38/EC, Art 7(1)(a); 2 Art 7(3); 3 Art 2(2); 4 Art 17; 5 Convention relating to the Status of Refugees, Art 1 (As extended); 6 IS (Gen) Regs, reg 21AA(4)(h); JSA Regs, reg 85A(4)(h); ESA Regs, reg 70(4)(h); SPC Regs, reg 2(4)(h); 7 Displaced Persons (Temporary Protection) Regs 2005, reg 3; 8 Directive 2001/55/EC; 9 IS (Gen) Regs, reg 21AA(4)(hh); JSA Regs, reg 85A(4)(hh); ESA Regs, reg 70(4)(i); SPC Regs, reg 2(4)(hh); 10 IS (Gen) Regs, reg 21AA(4)(i); JSA Regs, reg 85A(4)(i); ESA Regs, reg 70(4)(j); SPC Regs, reg 2(4)(i);

072801 The amendment to DMG 072800, removing certain Croatians who are not persons from abroad, does not affect the exemption from HRT of those Croatians covered by DMG 073678.

072802 - 072809

Workers

072810 A national of another EEA state who is in genuine and effective employment in the UK is a worker for EU purposes¹. A person who has retained worker status (see DMG 072821) is also not a person from abroad. 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 DMG 073768).

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

072811 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 below about whether the work itself is genuine and sufficient, 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 MDB (Italy) 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 IS on 2.1.13. The DM established that the only work Thijs

had done in the UK was a period of 8 weeks in November and December 2012 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.

072812 - 072815

Genuine and effective work

072816 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 EC 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.

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

Note: see also DMG 073049 et seq for further guidance in relation to genuine and effective work.

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 JSA immediately on arrival. The claimant is not a refugee and has not been given discretionary 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 and in order to qualify for benefit would need to be able to demonstrate an alternative right to reside.

072817 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 EC 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 JSA 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

5. can establish that they continue to seek employment in the UK

it should be accepted that the claimant is not a person from abroad/person not in GB.

Involuntary Unemployment

072828 DMG 072822 and 072823 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”

072829 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

072830 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 JSA. In order to retain worker status, the claimant must act promptly and without undue delay¹.

1 CIS/2423/09

072831 Where there is a delay of more than a few days between the end of employment and the making of a claim to JSA, 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 JSA, 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 JSA immediately, although she continues to look for work, contacting prospective employers. After a month, Maria claims JSA. 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 JSA, Maria explains that she had not claimed JSA 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 JSA, 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 JSA. Consequently Maria retains her worker status.

072832 - 072840

Self-employed persons

072841 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 **and**
2. the activity is engaged under the person's own responsibility **and**
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

072842 Questions may arise as to whether (for the purposes of the EU right to reside) 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”.

DMs will have to arrive at a judgement based on all the facts of the case in accordance with this guidance.

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

072843 In order for a person to be regarded as self-employed for the purposes of the right to reside, the condition that the work involved be genuine and effective must also be satisfied (see DMG 072816 & 072817).

072844 Unless Tier 1 of the MET (DMG 073038) 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.

- 072845 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

- 072846 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 072843).

072847 - 072860

Retaining the status of being a self-employed person

- 072861 A self-employed person retains that status if he is unable to work temporarily as a result of an illness or accident¹.

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

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.

- 072862 A person who is no longer in self-employment continues to be treated as a self-employed person¹ provided that person

1. is in duly recorded involuntary unemployment after having worked as a self-employed person in the UK for at least one year² provided the person
 - 1.1 has registered as a jobseeker with the relevant employment office **and**
 - 1.2 satisfies condition D (072863) and condition E (072864) **or**
2. is in duly recorded involuntary unemployment after having worked as a self-employed person in the UK for less than one year³ provided the person
 - 2.1 has registered as a jobseeker with the relevant employment office **and**
 - 2.2 satisfies condition D (072863) and condition E (072864) **or**
3. is involuntarily no longer in self-employment and has embarked on vocational training⁴ **or**
4. has voluntarily ceased self-employment and has embarked on vocational training that is related to the person's previous occupation⁵.

Note: A person to whom sub-paragraph 2. applies, only retains their status as a self-employed person for a maximum of six months⁶.

1 Florea Gusa (case C-442/16); Imm (EEA) Regs 2016, reg 6(4); 2 reg 6(4)(b); 3 reg 6(4)(c); 4 reg 6(4)(d); 5 reg 6(4)(e); 6 reg 6(4A)

Condition D

072863 Condition D¹ is that the person

1. entered the UK as a self-employed person, or in order to seek self-employment **or**
2. is present in the UK seeking employment or self-employment, immediately after enjoying a right to reside as a self-employed person; a self-sufficient person; or a student (disregarding any period during which self-employed status was retained pursuant to paragraphs 072862 **2.** or 072862 **3.**

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

Condition E

072864 Condition E¹ is that the person provides evidence of seeking employment or self-employment and has a genuine chance of being engaged.

1. provides evidence of seeking employment or self-employment **and**
2. has a genuine chance of being engaged.

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

072865 – 072899

Family members of workers and self-employed persons

072900 Family members of persons referred to in 072800 **1.** and **2.** have the same rights of residence as those persons and are entitled to reside in the UK for as long as they remain family members of a worker or s/e person or someone who retains the status of worker or s/e person. These family members are deemed **not** to be persons from abroad/not in GB (see DMG 072800 **3.**). The following are family members for these purposes¹

1. spouse 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.

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 state² (see DMG 073254 et seq for full details of the conditions). Thus where the conditions are satisfied and the British citizen would fall within the terms of DMG 072800 **1.** and **2.**, 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 DMG 072800 **3.** As such they will not be a “person from abroad” for the purposes of IS, JSA(IB) and ESA(IR). Nor will they be a person treated as not in GB for the purposes of SPC.

1 Directive 2004/38/EC, art 2; 2 Imm (EEA) Regs 2016, reg 9

Meaning of “dependent”

072901 Direct descendants aged 21 or over (see 072900 **2.2**) and any relatives in the ascending family line (see 072900 **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 **and**
2. there need be no right to that support and it is irrelevant that there are alternative sources of support available **and**
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

072902 - 072985

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)

073091

The Genuine Prospect of Work Test

073092 With effect from 1.1.14, an EEA national cannot have a right to reside as

1. a jobseeker (as defined in DMG 073084) **or**
2. a person who has retained worker status in accordance with DMG 073085 to 073090 **or**
3. a self-employed person who retains the status of a self-employed person in accordance with 072862 **1.** and **2.**

for longer than the relevant period unless they can provide **compelling evidence** that they are continuing to seek employment and have a **genuine chance of being engaged**¹. This is assessed through the genuine prospect of work test.

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

The Relevant Period

073093 The meaning of the relevant period¹

1. in relation to a retained worker or a self-employed person who retains the status of a self-employed person who becomes involuntarily unemployed following a period of more than 12 months in work, is defined as a continuous period of 6 months **or**
2. in relation to a jobseeker, is defined as 91 days, minus the cumulative total of any days during which jobseeker status has been enjoyed previously, not including any days prior to a continuous absence from the UK of at least 12 months.

Note 1: In practice, prior to 10.11.14 when the relevant period for a jobseeker was 182 days (see **Note 2**), DMs should not apply the distinction between the relevant periods in **1.** and **2.** above. DMs should apply **a period of 6 months** to a jobseeker falling within **2.**

Note 2: From 10.11.14 (see DMG 073142) in relation to a jobseeker at **2.** above, the relevant period was amended from 182 days to 91 days.

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

When does the relevant period start?

073094 The relevant period starts from the first day of any successful claim to JSA made on or after 1.1.14. But see guidance at DMG 073101 to 073108 about the effect of interruptions occurring during the relevant period.

Note: Waiting days (see DMG 20901) count towards calculating the relevant period.

073095 The relevant period starts from the date of the successful claim to JSA, where the 3 month residence requirement has already been satisfied.

Standard of proof

073096 Whether a person has a genuine chance of being engaged in genuine and effective work (*Antonissen* (see 073240)) is a matter which falls to be decided on the civil standard of proof (see DMG Chapter 1 (01343 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 DMG Chapter 1 (01392)).

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

073097 The requirement to provide compelling evidence applies both to

1. continuing to seek genuine and effective employment (see DMG 21522 – 21791) **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

Actively seeking employment

073098 The claimant is required to be actively seeking employment for each week of their JSA 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 be actively seeking employment each week in relation to any continued payments of their JSA claim.

Example 2

Person B, a Spanish national, will have been in receipt of JSA(IB) as a retained worker for 6 months on 4.11.15. On 8.10.15, person B suffers an injury and submits a fit note to say that she is unfit to work for 13 weeks, as a result of sustaining a torn ligament which requires complete rest, followed by extensive physio treatment. Person B's extended period of sickness is set from 8.10.15 to 6.1.16. During her relevant period, person B has previously had a 2 week period (10.6.15 to 23.6.15) of illness due to influenza, and a further 2 week period (5.8.15 to 18.8.15) of illness as a result of a chest infection. Person B was treated as available for and ASE for each of these 2 week periods.

The DM calculates that by the end of her relevant period on 4.11.15, person B will have had periods of sickness totalling 8 weeks:

10.6.15 to 23.6.15	=	2 weeks
5.8.15 to 18.8.15	=	2 weeks
8.10.15 to 4.11.15	=	4 weeks (of her 13 week extended period of sickness)
Total	=	8 weeks

As person B's extended period of sickness was set for 13 weeks ending on 6.1.16, the DM determines that person B will have a balance of 9 weeks (5.11.15 to 6.1.16) outstanding at the date of her original GPoW assessment due date (under **2.** above). As this 9 week period is longer than the 8 weeks which person B would have exercised at the end of her relevant period (under **1.**), the DM allows a fixed extension of 9 weeks (under **2.**) and extends person B's relevant period to 6.1.16. Person B will be required to attend a GPoW assessment interview on 7.1.16.

Maximum extension period

- 073173 An extension to the relevant period, in respect of sickness could never be awarded for more than 13 weeks for a jobseeker. This is because, in circumstances where the claimant has
1. been treated as within a period of sickness from the start of their claim (i.e. throughout their 91 day relevant period), the total period of sickness already exercised by the end of the claimant's relevant period (DMG 073172 **1.**) exceeds any balance of extended period of sickness that may be outstanding at their GPoW assessment due date (DMG 073172 **2.**) **or**
 2. provided a 13 week fit note shortly before their GPoW assessment due date, so is within an extended period of sickness at their GPoW assessment due date, the balance of the extended period of sickness outstanding under DMG 073172 **2.** would exceed the period already exercised under DMG 073172 **1.**
- but, in neither **1.** or **2.** would ever exceed 13 weeks.

Note: However, a retained worker could receive an extension of up to 17 weeks, if 13 of those weeks were as a result of an extended period of sickness.

Example

Person A, an Estonian national, has been in receipt of JSA(IB) as a retained worker for 6 months on 29.10.15. During his relevant period, person A has had a 2 week period of sickness (from 21.5.15 to 3.6.15), suffering from vertigo. This was followed by a further 2 week period of sickness (from 18.6.15 to 1.7.15), when person A experienced lower back pain. He was treated as available for and ASE for each of these 2 week periods.

On 16.7.15 person A was involved in a car accident, where he sustained fractures to his arm and clavicle. He submitted a fit note to say that he was unfit for work for 13 weeks. Person A's extended period of sickness was set from 16.7.15 to 14.10.15. On 15.10.15, person A recovers as expected and resumes his normal jobseeking activities.

The DM calculates that by the end of person A's relevant period on 29.10.15, he will have had periods of sickness totalling 17 weeks:

21.5.15 to 3.6.15	=	2 weeks
18.6.15 to 1.7.15	=	2 weeks
16.7.15 to 14.10.15	=	13 weeks (extended period of sickness)
Total	=	17 weeks

The DM allows a fixed extension of 17 weeks (see DMG 073171 above) and extends person A's relevant period to 25.2.16. Person A will be required to attend a GPoW assessment interview on 26.2.16.

Exemptions to the Habitual Residence Test

Persons exempted from the general rule on the right of permanent residence

073174 The general rule on the right of permanent residence requires that EEA nationals and their family members have resided legally in the UK for five years¹ (see DMG 073350 et seq). Workers or S/E persons and their family members, who have ceased activity, acquire the right to reside in the UK permanently without that requirement². To be a “worker or S/E person who has ceased activity” a person must be an EEA national who either

1. stops working **and**
 - 1.1 has reached the age at which he is entitled to a state pension on the day he stops working **or**
 - 1.2 if he is a worker, stops working to take early retirement **and**
2. was working in the UK for at least twelve months before stopping **and**
3. resided in the UK continuously for more than three years before stopping³ **or**
4. stops working in the UK because of a permanent incapacity to work **and**
 - 4.1 has resided in the UK continuously for over two years before stopping **or**
 - 4.2 the incapacity resulted from an accident at work or an occupational disease entitling him to a pension payable in full or in part by an institution in the UK⁴ **or**
5. a person who was the family member of a worker or S/E person where
 - 5.1 the worker or S/E person has died **and**
 - 5.2 the family member resided with him immediately before his death **and**
 - 5.3 the worker or S/E person had resided continuously in the UK for at least two years immediately before his death or the death was the result of an accident at work or an occupational disease⁵.

Where the spouse or civil partner of the worker or S/E person is a UK national the conditions on length of residence or time working will not apply⁶.

1 Imm (EEA) Regs 2016, reg 15(1)(a) & (b) & Directive 2004/38/EC, Art 16; 2 reg 15(1)(c) & (d); 3 reg 5(2); 4 reg 5(3); 5 reg 15(1)(e); 6 reg 5(6)

Refugees/Persons granted humanitarian protection

073175 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)

073176 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 persons from abroad (or persons not treated as in GB for SPC purposes).

073177 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 EC 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.

1 Directive 2004/83/EC

Discretionary leave

073178 The HO may alternatively grant discretionary leave outside the immigration rules.

073179 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.

073180 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 a person from abroad (or a person not treated as in GB for SPC purposes) for as long as the leave lasts, including periods when he/she has applied in time for an extension of leave.

Destitution domestic violence concession

073181 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 three months limited leave to remain (granted outside the Immigration Rules) pending consideration of an application for indefinite leave to remain.

073182 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

073183 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.

073184 During any period when a person has limited leave under the Destitution Domestic Violence concession (including the periods of extension described in DMG 073183 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 IS, ESA(IR), JSA(IB) or SPC, as the case may be).

1 IS (Gen) Regs, reg 21AA(4)(h); ESA Reg, reg 70(4)(h); JSA Regs, reg 85A(4)(h); SPC Regs, reg 2(4)(h)

Asylum seekers

073185 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 person subject to immigration control (PSIC).

1 R(IS) 2/06

073186 A PSIC is not normally entitled to any benefits¹ (see DMG 070831 et seq) but there are some exceptions (see DMG 070835). For means-tested benefits these exceptions include any nationals of countries which have ratified either ECSMA or CESC who are lawfully present in GB².

1 I & A Act 99, s 115; 2 SS (Immigration & Asylum) Consequential Regs 2000, reg 2(1) & Para 4 of Sch Part 1

073187 Therefore an asylum seeker from Macedonia, or Turkey is not precluded from income related benefits 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

073188 **[See Memo DMG 08/18]** 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.

073189 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.

073190 The evidence in 073189 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.

073191 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.

Continuation of leave

073192 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

Section 67 Leave To Remain

073193 The UK Government is required¹ to make arrangements as soon as possible to relocate and support a specified number of unaccompanied child asylum seekers who have been accepted for transfer from another European state to the UK (commonly known as the "Dubs Amendment"). The number of children must be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.

1 Immigration Act 2016, s 67

Relocation and support of unaccompanied child asylum seekers from Europe

073194 From 5.7.18 new Immigration Rules¹ are introduced by the Home Office, setting out the basis on which the transfer² of unaccompanied child asylum seekers will be made from another European state to the UK.

1 Immigration Rules, paras 352ZG – 352ZS; 2 Immigration Act 2016, s 67

073195 Upon arrival to the UK, the child will be granted temporary admission as an asylum seeker (see 070671 & 073185). Following the processing of their asylum seeking application, the Home Office may grant the child

1. refugee status (see 070800 et seq & 073175 – 073177) **or**
2. humanitarian protection (see 070693 et seq & 073175 – 073177) **or**
3. section 67 leave to remain¹.

1 Immigration Act 2016, s 67

073196 Section 67¹ is a new type of leave to remain. Those who hold this status are not refugees, persons granted humanitarian protection, nor asylum seekers. They will not be persons subject to immigration control and will have access to public funds. Consequently they will have access to claim JSA, ESA, IS or SPC (provided all other entitlement conditions are met). For the purposes of JSA, ESA, IS or SPC,

section 67 cases do not fall within the specified category² of persons to be exempt from the habitual residence test.

Note: The Home Office have confirmed that the Biometric Residence Permit will have “SECTION 67 LEAVE” printed on it to identify this cohort.

1 Immigration Act 2016, s 67; 2 IS (Gen) Regs, reg 21AA(4); ESA Regs, reg 70(4); JSA Regs, reg 85A(4); SPC Regs, reg 2(4)

Evidence

073197 Evidence of nationality must be in the form of a valid passport or Biometric Residence Permit (see DMG 073189). The evidence within these documents 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.

Note: 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 Home Office to confirm this, the DM should allow the claimant a reasonable timescale to provide supporting evidence before making a decision.

073198 - 073202

Right to reside

073234 [See Memo DMG 08/18] Regulations¹ provide that a person cannot be habitually resident where he does not have a qualifying right to reside in the CTA unless he falls within one of the exclusion categories. But see transitional provisions² for those already in receipt of benefit at 30.4.04. There is no statutory definition of the term “right to reside”. 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 arriving in the UK and claiming free movement rights³.

*1 IS (Gen) Regs, reg 21AA; JSA Regs, reg 85A; ESA Regs, reg 70(2); SPC Regs, reg 2;
2 SS Hab Res Regs, reg 6; 3 R(IS) 8/07*

073235 The following persons have the right to reside in the UK and therefore in the CTA

1. UK nationals (including persons from other countries who are granted British citizenship) **or**
2. all EEA nationals and their family members with an initial right of residence **or**
3. “qualified persons” **or**
4. family members of “qualified persons” or EEA nationals with a permanent right of residence **or**
5. extended family members of “qualified persons” or EEA nationals with a permanent right of residence **or**
6. family members who retain the right of residence **or**
7. persons who have acquired the right of permanent residence **or**
8. the primary carer of the child of a migrant worker who is in education in the UK (see 073381 et seq).

Note: this list is not exhaustive.

Extended right of residence

073236 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 DMG 073252 for the definition of “family member”).

073237

Qualified persons

073238 A “qualified person”¹ is an EEA national who is in the UK and, by virtue of EU legislation, is

1. a jobseeker (see DMG 073084) **or**
2. a worker **or**
3. a S/E person **or**
4. a self-sufficient person **or**
5. a student.

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

073239

Jobseekers

073240 Jobseekers who have registered with Jobcentre Plus and have claimed JSA will have a right to reside for an initial period of six months, and for longer if they can provide evidence that they are seeking employment, and have a genuine chance of being engaged¹. A person who is a jobseeker will not satisfy the right to reside element of the habitual residence test for IS, ESA(IR) and SPC², but will satisfy the test for JSA(IB)³. Family members of persons who have a right to reside as a jobseeker will not have a right to reside for IS, ESA(IR) or SPC purposes⁴.

Note: Decision makers should keep under review whether the person continues to have a genuine chance of being engaged, for example where they make repeated claims for JSA having not previously secured work.

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

2 IS (Gen) Regs, reg 21AA(3); ESA Regs, reg 70(3); SPC Regs, reg 2(3); 3 JSA Regs, reg 85A(3);

4 IS (Gen) Regs, reg 21AA(3)(b)(ii); ESA Regs, reg 70(3)(b)(ii); SPC Regs, reg 2(3)(b)(ii)

073241

Workers and self-employed persons

073242 Workers and S/E persons continue to have a right to reside¹ (see DMG 072821 & DMG 072861).

1 Directive 2004/38/EC, Art 7; Imm (EEA) Regs 2016, reg 14(1)

073243

Self-sufficient persons with comprehensive sickness insurance

073244 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**

3. direct ascendant relatives of the EEA national, his spouse or civil partner, who are dependants **or**
4. extended family members (see DMG 073293)

Note 1: See DMG 072901 for advice on dependency

Note 2: See the Note to DMG 073445 for guidance in respect of a child under the age of 21 where they are estranged from their parents.

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

073253

Family Members of British Citizens

073254 If certain conditions are satisfied, family members (as defined in DMG 073252) of British citizens have the same EU law rights to reside as they would if they were a family member of another EEA state¹. Those conditions were amended with effect from 1.1.14 but there are some transitional provisions. The following guidance gives the conditions as they were before 1.1.14, then the new conditions and finally the details of the transitional provisions.

1 Imm (EEA) Regs 2016, reg 9

073255

The old rules

073256 Prior to the amendment described below, a person who was a family member of a British citizen ("BC") enjoyed the same rights to reside as if they were a family member of an EEA national but only if

1. the BC was either
 - 1.1 residing in an EEA State as a worker or S/E person **or**
 - 1.2 so residing before returning to the UK **and**
2. if the family member was the spouse or civil partner of the BC, they were living together in the EEA state where the BC was residing as a worker or S/E person as in **1.1 or**
3. had married or entered into a civil partnership before the BC returned to the UK after having resided in an EEA state as a worker or a S/E person as in **1.2.**

073257

The new rules

073258 With effect from 25.11.16, a person who is a family member (as defined in 073252) 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, 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 **and**
4. they have had the status of "family member" within the meaning of specified legislation² for all or part of their joint residence in a non-UK EEA member state where the British citizen was exercising Treaty rights³ **and**
5. genuine family life was created or strengthened during their joint residence in the EEA state⁴.

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 state⁵, if such residence would have led to the acquisition of the right of permanent residence⁶, had it taken place in the UK.

*1 Imm (EEA) Regs 2016, reg 9(2); O&B (C-456/12); 2 Directive 2004/38, Art. 2(2);
3 Imm (EEA) Regs 2016, reg 9(2)(d); 4 reg 9(2)(e), 5 reg 9(6); 6 reg 15*

073259 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. the 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)

073260 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 073293).

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

073261 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 073238)

1. any requirement to have comprehensive sickness insurance (see 073244 – 073246 and 073249) 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 073084) **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)

Definition of EEA national

073262 The definition of an EEA national means¹ a national of an EEA state who

1. is not also a British citizen **or**
2. is also a British citizen and who prior to acquiring British citizenship, exercised a right to reside as such a national during their extended right of residence² or right of permanent residence³. The exception to the above definition, is that a person does not fall within subparagraph 2. if the person's EEA state of nationality became a member state after that person acquired British citizenship.

1 Imm (EEA) Regs 2016, reg 2(1); 2 reg 14; 3 reg 15

Transitional provisions

073263 In determining whether a person satisfies the requirements of being a dual national who may continue to be treated as an EEA national, transitional provisions provide that the definition of EEA national (073262) is to be read as if that definition was in force at all relevant times¹.

1 Imm (EEA) (Amendment) Regs 2018, reg 3(a)

Dual national – EEA national who acquires British citizenship

073264 Specified legislation¹ provides the circumstances where a national of an EEA state, who is also a British citizen (a dual national), may continue to be treated as an EEA national.

1 Imm (EEA) Regs 2016, reg 9A; Lounes (C-165/16)

Meaning of dual national

073265 A dual national means¹ a person falling within 073262 2..

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

Dual national who may continue to be treated as an EEA national

073266 A dual national must not have, at any point since having acquired British citizenship, lost their right of permanent residence or their status as a qualified person.

073267 A dual national (073265) must provide evidence that they

1. had acquired a right of permanent residence prior to becoming a British citizen and have not at any time, subsequent to acquiring their British citizenship, lost their right of permanent residence¹ **or**

2. were a qualified person at the time of acquiring their British citizenship² and have not at any time subsequent to acquiring British citizenship, lost their status as a qualified person³.

1 Imm (EEA) Regs 2016, reg 9A(3); 2 reg 9A(3) & (4); 3 reg 9A(2)(b)

Transitional provisions

073268 Transitional provisions specify that the legislation providing the requirements for a dual national who may continue to be treated as an EEA national (073266 – 073267) is to be treated if that legislation was in force at all relevant times.

1 Imm (EEA) (Amendment) Regulations 2018, reg 3(b); 2 Imm (EEA) Regs 2016, reg 9A

Example

Mrs B, an Estonian national, arrived in the UK in March 2010 using her Estonian passport. She began full-time employment immediately. In March 2015, Mrs B acquired a right of permanent residence (HO issuing a document certifying this). In April 2016, she acquired her British citizenship, but retained her Estonian citizenship.

On 6.1.18, Mrs B's father (Mr G) arrived in the UK, claiming SPC on 14.4.18 as the dependent family member of Mrs B. Mr G provided evidence of Mrs B's permanent residence document dated March 2015, her valid UK passport and valid Estonian passport, along with a variety of her wage slips in order to show that, since acquiring her right of permanent residence, this has not been lost through an absence from the UK in excess of 2 years.

The DM determines that Mrs B falls within the definition of being an EEA national, as she has exercised free movement rights as an EEA national prior to acquiring her British citizenship. The DM also determines that Mrs B may continue to be treated as an EEA national as she had acquired a right of permanent residence prior to becoming a British citizen, and had not lost that right of permanent residence since acquiring her British citizenship.

073269 - 073290

Family members of students

073291 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 **or**
2. the dependent children of the student, his spouse or civil partner.

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

073292

“Extended family members”

073293 An “extended family member” is a person (who is not a family member of an EEA national within the meaning given in DMG 073252 **1 to 3.**) who is a relative (plus, 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 nationals¹.

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

073294 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 DMG 072901) on the EEA national or a member of his household⁴ **or**
4. on serious health grounds strictly require the personal care of the EEA national, his spouse or civil partner⁵ **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 national were the EEA national a person settled and present in the UK⁶ (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)(a) & 8(7); 3 reg 8(2)(b) & 8(7);
4 reg 8(2)(c) & 8(7); 5 reg 8(3) & 8(7); 6 reg 8(4); 7 reg 8(5)*

073295 - 073299

“Family member who retains the right of residence”

073300 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

1. must
 - 1.1 have been the family member of a qualified person or an EEA national with a permanent right to reside when that person died **and**
 - 1.2 have resided in the UK in accordance with the Regulations for at least the year before the death of the qualified person or the EEA national with a permanent right to reside **and**
 - 1.3 satisfy the condition that either
 - 1.3.a although not an EEA national, he would, if he were one, be a worker, self-employed person or self-sufficient person for the “qualified person” provisions **or**
 - 1.3.b he is the family member of a person who falls within 1.3.a².

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 the right relates to the attendance by the person or their children on an educational course³ or where it relates to termination of the marriage or civil partnership of the family member to the qualified person⁴.

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

4 Directive 2004/38/EC, Art 13; Imm (EEA) Regs 2016, reg 10(5)

073301 - 073349

Permanent right of residence - 5 Years Residence

[See Memo DMG 02/16]

073350 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 2006

073351 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 **or**
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 DMG 073360, a break in continuity during which residence is not in accordance with the Imm (EEA) Regs will mean that the five year qualifying period has to be served afresh.

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

1. the person was absent from the UK **or**
2. the person's residence in the UK was not in accordance with paragraphs DMG 073362 or DMG 073364 **or**
3. was not otherwise in accordance with the Imm (EEA) Regs 2016.

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

073367

Effect of absence after right to permanent residence acquired

073368 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); Imm (EEA) Regs 2016, reg 15(3)

073369 - 073380

Primary Carers

Introduction

073381 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.

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

073382

Meaning of “exempt person”

073383 In DMG 073385 & 073387 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 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

073384

Meaning of “primary carer”

073385 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”)

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 to be regarded as having responsibility for a person’s care on the sole basis of a financial contribution towards that person’s care².

Note 3: where there is another person who is able and willing to assume to continue primary day to day care of the child, this is a relevant factor, but is not in itself sufficient ground for concluding whether or not an EU citizen would be compelled to leave their own country or the territory of the EU as a whole³.

1 Imm (EEA) Regs 2016, reg 16(8); 2 reg 16(11); 3 Chavez-Vilchez (C133/15)

Sharing equal responsibility

073386 Two people should be considered to share equally the responsibility for a child when they both have responsibility for the care and welfare of the child, both long-term and on a day to day basis. This may include

1. deciding where the child lives
2. choosing what school the child attends
3. providing for the child’s education
4. deciding how and where the child spends time outside of school
5. looking after the child’s property
6. disciplining the child
7. authorising medical treatment
8. authorising school trips.

This is not an exhaustive list.

Note: Two people who spend different amounts of time with a child may still have equal responsibility for that child. Equal responsibility does not mean there has to be evidence of an equal sharing of responsibilities (as this is not always practical). Each case should be considered on its individual merits.

Example 1

Child resides with mother during the week, and resides with father at weekends. Unless there is evidence to indicate that the father is unable to care for the child at all, it can be accepted that both parents share equal responsibility¹.

1 Imm (EEA) Regs 2016, reg 16(8)(b)(ii)

Example 2

Child resides with the mother full-time, but father has regular contact. Whilst the father may not provide the majority of care for the child, the father is actively involved in the child's life and continues to have parental responsibility for the child. Unless there is evidence to indicate that the father is unable to care for the child at all, it can be accepted that both parents share equal responsibility¹.

1 Imm (EEA) Regs 2016, reg 16(8)(b)(ii)

Derivative Rights to Reside

073387 A person who is not an exempt person has a derivative right to reside¹

Primary Carer of a 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 DMG 073248). 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. **A primary carer with the type of derivative right to reside described in subparagraph 1 will not normally be entitled to IS, JSA(IB), ESA(IR) and SPC.**

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 (see DMG 073407 below) **and**
 - 2.3 the child is in general education (see DMG 073405 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 DMG 073385) of a person in general education in the UK who satisfies the conditions in subparagraph 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 DMG 073403 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 subparagraph 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 ESA(IR) in April 2013. The DM decided that Lucia had a right to reside in the UK as Alba’s primary carer in accordance with 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.

073388 Once a child of a migrant worker has gained a derivative right to reside, that right and the consequent right to reside of the primary carer will continue whilst ever the child remains in general education in the UK (see DMG 073405) and the ability of the child to remain in general education continues to require the presence of the parent/primary carer. It will not matter that the migrant worker might subsequently leave the UK.

Best interest of the child

073389 A DM should consider all of the information and evidence provided, concerning the best interests of the child¹ in the UK, when assessing whether a relevant child would be unable to remain or be educated in the UK if the primary carer left the UK for an indefinite period. The assessment must take account of all their specific circumstances including

1. the age of the child **and**
2. the child's physical and emotional development **and**
3. the extent of the child's emotional ties to both the third country national parent and the EEA national parent **and**
4. the risks, which separation from the third country national parent might entail for the child's equilibrium.

This is not an exhaustive list.

1 Chavez-Vilchez and Others (C-135/15)

073390 - 073399

Effect of Absences

073400 If the child leaves the UK for anything other than temporary periods, the rights under Article 12 will end. Absences of less than 6 months could be considered as temporary if that was the intention at the outset and remained so throughout. Longer absences could still be temporary depending on the reason for the absence.

073401 The derived rights to reside of a child in education described in DMG 073387 **2. & 3.** have their origins in a specific EU provision intended to facilitate the free movement of workers. They are triggered where an EEA national parent of the child is employed in the host Member State. Where an EEA national parent has worked in the UK and this is followed by a period when the parent and child are absent from the UK where (on return) the parent is not employed here, the DM will need to make a judgement as to whether the right has been lost during the absence in the light of the circumstances of the case. While a substantial period of habitual residence in another EEA state will mean that the right is lost, an absence that can properly be regarded as temporary will not have that effect. DMs should consider the following factors in relation to the period of absence

1. the reasons why the parent ceased to be resident in the UK **and**
2. the activities of the parent in the country to which they went, including economic activity **and**
3. the roots the parent put down in the country to which they went **and**
4. the contact which the parent maintained with the UK whilst absent and the quality of that contact **and**

5. the length of the absence (the longer the absence the more difficult it will be to maintain that the right can be reasserted).

073402

Application to joint primary carers

- 073403 Where there are joint primary carers, the condition described in DMG 073387 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)

073404

Meaning of “general education”

- 073405 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 DMG 073387 3. 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. Whether there is a continuing need for the presence and care of the parent is a matter for determination by the DM. Factors to take into account include: the age of the child, whether the child is residing in the family home or whether the child needs financial or emotional support from the parent in order to be able to continue and to complete his education³. 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 age⁴. 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 education⁵.

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 Olaitan Ajoke Alarape and Olukayode Azeez Tijani v Secretary of State for the Home Department, Case C-529/11;

4 Imm (EEA) Regs 2016, reg 16(7)(a); 5 Shabani[2013] UKUT 315 (IAC)

073406

Meaning of “worker”

- 073407 In 073387 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 DMG 072821. It also does not include a self employed person².

Note: See DMG 072810 to 072817 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

073408 Work carried out by a national of another Member State before that Member State joined the EU cannot trigger a right under DMG 073387. 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 reside¹ 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)

073409 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, and A2 nationals from 1.1.14, have full EU rights and do not need to register any work with the Home Office scheme.

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

073410

Self-employed Parent

073411 A derivative right to reside under DMG 073387 **2. to 4.** 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 DMG 072816 to 072817). 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; RM v Secretary of State for Work and Pensions (IS) [2014] UKUT 401 (AAC) [2015] AACR 11

073412

Derivative residence card

073413 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 DMG 073387. DMs should not therefore rely on the existence of a derivative residence card as conclusive proof of a derivative right to reside.

1 Imm (EEA) Regs 2016, reg 20

EEA Right to reside - permanent residence

Introduction

073414 Guidance at DMG 073415 to 073443 is to enhance existing DMG guidance regarding permanent residence for EEA nationals and their families.

073415 **[See Memo DMG 02/16]** 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 DMG [073350 - 073352](#)). This means they must have resided in the UK as a worker/S/E person (or someone who retained that status), or as a student or self-sufficient person (and had comprehensive sickness insurance - see [DMG 073246](#) and 073248 - 073249).

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

073416 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 DMG [073368](#)).

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

Continuity of residence - Breaks during 5 year qualifying period

073417 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 DMG [073360](#). 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

[See Memo DMG 02/16]

073418 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 DMG [073350](#) 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 DMG [073174](#), [073528](#) and [073613](#)).

Note: With regard to a family member, who retains the right of residence², see DMG [073300](#).

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

073419 A worker or S/E person who has ceased activity is a person who satisfies the conditions in DMG 073420, 073421, 073422 or 073423, and can acquire the right to reside in the UK permanently with less than 5 years residence.

073420 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)

073421 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)

073422 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)

073423 A person who satisfies the condition in paragraph 073422 1. but not 073422 2. shall, for the purposes of 073420 and 073421, 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)

073424 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 DMG [073254](#).

Note 2: For guidance in relation to extended family members – see DMG [073293 - 073294](#).

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

Periods of residence prior to 30.4.06

073425 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 DMG [073362](#)). 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 DMG [073366](#)).

Note: Subject to DMG [073360](#), a break in continuity during which residence is not in accordance with the Imm (EEA) Regs will mean that the 5 year period has to be served afresh.

Derivative right of residence

073426 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 (see DMG [073354](#)).

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

Long-term jobseeker

073427 Guidance at DMG [073240](#) and [073080](#) advises that EEA jobseekers who 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 JSA(IB) may be allowed (DMG [073099 – 073100](#) and 073138 - 073139).

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

073428 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 therefore be accepted that their continuous period of 5 years of pure jobseeking, would be sufficient for the acquisition of permanent residence.

Note 1: An accession state national, whose JSA claim commenced within the accession period, must have satisfied the accession regulations, in order to have had jobseeker status.

Note 2: With effect from 1.1.14, an EEA national cannot have a right to reside as a jobseeker or 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 DMG [073092](#)). As such, unless they can demonstrate an alternative right to reside, their right to reside as a jobseeker or 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

073429 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 DMG [073246](#) or 073248) 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**
 - 12.2 documentation confirming their EEA family member was employed or S/E prior to retirement or becoming permanently incapacitated **and**

- 12.3** documentation confirming permanent incapacity (where appropriate)
- 13.** where the family member of an EEA national applies on the basis that the EEA national has died, they must supply
 - 13.1** the death certificate of the EEA national **and**
 - 13.2** evidence confirming the relationship **and**
 - 13.3** evidence that the EEA national had resided continuously in the UK for at least 2 years prior to death, or evidence that the death was as a result of an accident at work or occupational disease **and**
 - 13.4** evidence that they were residing in the UK with the EEA national immediately prior to the EEA national's death
- 14.** Worker registration or Worker Authorisation documents in cases where the claimant is an accession state national who worked during the relevant accession period.

Note 1: For the purposes of **7.** and **8.**, documents cease to be valid if the holder ceases to have a right of permanent residence. This can happen when the right to reside is lost through absence from the UK for a period exceeding 2 consecutive years.

Note 2: For the purposes of **12.** and **13.**, the claimant could be an EEA national or non-EEA national.

This is not an exhaustive list.

Claimant unable to provide original documentary evidence

- 073430 The claimant has primary responsibility to provide original documentary evidence of their nationality, continuous residence and their qualifying status, throughout the 5 year period within which they wish to confirm that they have met the conditions for permanent residency. If the claimant has not provided sufficient evidence to the DM to confirm their status, the conditions for permanent residency will not be met.
- 073431 DMs should also utilise additional records available to them, to confirm whether or not the conditions for permanent residency have been met. For example, National Insurance Contribution records.
- 073432 Where the claimant declares that they may have acquired a right to permanent residency, but they are awaiting documentation to confirm this, the DM should allow the claimant a reasonable timescale to provide supporting evidence before making a decision.

Moving between alternate rights to reside

073433 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.

073434 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 (see DMG [073500](#) et seq), work carried out during the accession period must be in accordance with the accession regulations.

Note 3: Periods of residence as a Saint Prix worker (see DMG [073203 – 073216](#)) would count towards permanent residence.

Example 1

Person A 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 person A's contract. Person A 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 person A made a claim to JSA the next day. The DM decided that person A 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

Person B 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. Person B 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. Person B presented this evidence at her GPoW interview and was

awarded an extension of JSA(IB) until 31.10.14. Person B left her job on 31.7.15 and claimed JSA. The DM decided that person B had acquired a permanent right to reside as she had demonstrated 5 years continuous residence as a qualified person. Person B 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.

073435 A break, as described within 073433 and 073434, 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 073440 with regard to disallowances).

Imprisonment

073436 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)

073437 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.

073438 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.

073439 – 073441

Sanctions & Disallowances of JSA

073442 In the case of a sanction, payment of JSA is removed for a 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 or 91 days as a jobseeker. The period of the sanction would not break continuity for the calculation towards the 5 year period for permanent residence.

073443 In the case of a disallowance, the JSA award ends. If the disallowance is for a fixed period, the claimant will have to reclaim JSA once the disallowance has ended. Once the claimant has made a repeat claim as a jobseeker (who has received such

a disallowance), they will get the balance (if any) of their relevant period. A period of disallowance would therefore break the continuity for the calculation towards the 5 year period for permanent residence.

Separation from EEA partner

073444 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 (DMG [073250](#)).

The meaning of family member² includes (amongst others) a spouse or civil partner (DMG [073252](#) 1.)

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

073445 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 (DMG [073300](#)).

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)

073446 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 (DMG 21369) 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 (DMG 01400). Where oral evidence is the only evidence available, the DM must decide on the balance of probability (DMG 01343) whether the claimant has discharged the burden of proof (DMG 01405 et seq).

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

Deportation orders

073447 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 & Sch3

073448 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 it is the serving of the deportation order itself (not the decision to make such an order) that invalidates any leave to remain in the UK that was given to the person before the deportation order was made².

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

073449

Saving Provisions

“Accession Worker”

073524 In the guidance in DMG 073516 to 073520 to the phrase “accession worker” means an A8 national who was required to register as a worker as at 30.4.11.

Right to reside

073525 With effect from 1.5.11 accession workers (as defined in DMG 073515 above) will retain worker status when¹

1. they become unable to work, become unemployed or ceased to work in the circumstances described in DMG 072821 on or after 1.5.11 **or**
2. they had ceased working in the circumstances described at DMG 072821 for an authorised employer
 - 2.1 within the first month of employment **and**
 - 2.2 they were still within that one month period.

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

073526 It follows that an A8 national required to register as at 30.4.11, who, ceased work in the circumstances described in DMG 072821 **before 1.5.11** will not retain worker status on account of the ending of the A8 restrictions. The only exception is where the A8 national had started work for an authorised employer after 1.4.11. Provided such a person satisfies the conditions in DMG 072821 they will retain worker status on ceasing work and on past 1.5.11.

Acquiring a permanent right to reside

073527 An EEA national who has resided in the UK in accordance with the Imm (EEA) regs 2016 continuously for five years¹ acquires a permanent right to reside. An accession worker (within the definition in DMG 073515 above) is treated² as having resided in accordance with the regulations

1. during any period before 1.5.11 in which they were working in the UK for an authorised employer³ **and**
2. in the case of an accession worker who started work for an authorised employer after 1.4.11 and ceased that work before 1.5.11 on the grounds set out in DMG 072821, for the remainder of April 2011 after work ceased.

1 Imm (EEA) Regs 2016, reg 15; 2 Imm (EEA) Regs 2006, reg 7A(5); 3 Accession Regs 2004, reg 2(7)

Workers who have ceased activity

073528 Certain persons who permanently cease activity as workers or self-employed persons can acquire a permanent right to reside in the UK¹ (see DMG 073174). The conditions for acquiring this right include the need to have completed certain periods of activity as a worker and the regs² 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)

073529 In the case of accession workers, periods of involuntary unemployment duly recorded by the relevant employment office will only be treated as periods of activity as a worker where¹

1. the accession worker ceased working during the first month of registered employment, for the remainder of that month **or**
2. the accession worker became unemployed or ceased work on or after 1.5.11.

1 Imm (EEA) Regs 2006, reg 7A(3)

Savings and modifications of Immigration (EEA) Regs 2006

073530 Arrangements within the Imm (EEA) Regs for accession member states¹ continue to have effect in relation to any EEA national to whom the provisions applied immediately before 1.2.17².

1 Imm (EEA) Regs 2006, reg 7A & 7B; 2 Imm (EEA) Regs 2016, Sch 4, para 2

073531 - 073550

Bulgarians and Romanians - Ending of Restrictions

Effect on JSA(IB)

073600 With effect from 1.1.14, A2 nationals can be jobseekers (see DMG 073240). This means that, for the purpose of JSA(IB) they have a right to reside if they are seeking work¹. DMs are reminded however that JSA(IB) claimants with a right to reside as jobseekers must be actually habitually resident in the UK (see DMG 073707 et seq).

1 JSA Regs, reg 85A(2) & (3); Imm (EEA) Regs 2016, reg 6(1)

073601 - 073604

Transitional Rules

A2 National who was subject to worker authorisation

073605 Where an A2 national was subject to worker authorisation (see DMG 073555 et seq) before 1.1.14 then certain particular rules, as described in DMG 073607 to 073614 below apply to them.

073606

Retaining Worker Status

073607 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)

073608

Permanent Right to Reside

073609 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 DMG 073611 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; 2Imm (EEA) Regs 2006, reg 7B(6)

073610

Meaning of “legally working”

073611 For the purpose of DMG 073609, 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.

073612

Workers who have ceased activity

073613 Certain EEA nationals who permanently cease activity as workers or self-employed persons can acquire a permanent right to reside in the UK¹ (see DMG 073174). The conditions for acquiring this right include the need to have completed certain periods of activity as a worker and the Imm (EEA) regs² 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)

073614 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)

073615 - 073649

Right to reside – Croatian nationals

Introduction

073650 The Republic of Croatia became a member state of the EU on 1.7.13¹. DMG paragraphs 073660 et seq provide guidance for DMs on the EU law rights to reside of Croatian nationals and their family members on the restrictions that applied until 30.6.18.

1 Treaty concerning the accession of the Republic of Croatia, Art 3.2

Croatian restrictions end

073651 Employment restrictions that have applied to Croatian nationals since 1.7.13 ceased to have effect on 1.7.18¹. From that date all Croatian nationals have full EU rights in accordance with Directive 2004/38/EC.

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

073652 - 073659

Transitional provisions of the Treaty

073660 Transitional provisions in the Croatia Treaty¹ allowed EU Member States to impose certain restrictions on the rights to freedom of movement within the EEA², and allowed EU Member States to apply national measures restricting the access of Croatian nationals to the UK's labour market for a limited period, for five years from 1.7.13³. 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. 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.

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

073661 - 073664

The Two Groups

073665 For the purposes of entitlement to IS, JSA(IB), ESA(IR) and SPC Croatian nationals fell into two main group

1. persons who were subject to worker authorisation **and**
2. those who were exempt from the requirement for worker authorisation.

073666 - 073669

Croatian nationals who were subject to worker authorisation

073670 Unless they come within the exempt group described in DMG 073689 below, all Croatian nationals are "accession state nationals subject to worker authorisation"¹ from 1.7.13 until 30.6.18. This means that, in order to be able to work as employed

persons in the UK, Croatian nationals subject to worker authorisation had to apply to the Home Office for a worker authorisation document giving details of the employer they wished to work for. A worker authorisation document was only issued where the Croatian national met the relevant requirements¹. Those requirements were 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 2013, reg 2(1)

073671 - 073675

Worker authorisation document

073676 The worker authorisation document was either¹

1. a passport or other travel document endorsed before 1.7.13 to show that the holder had 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 of employment.

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

073677

Exemption from the Habitual Residence Test

073678 With effect from 1.7.13 until 30.6.18, a Croatian national subject to worker authorisation did not have to satisfy the habitual residence test for IS, JSA(IB), ESA(IR) or SPC during any period when they¹

1. held an accession worker authorisation document **and** were working in accordance with the conditions set out in that document **or**
2. were a self-employed person in the UK² (see DMG 073683 and DMG073700-073701 for more advice on the self-employed).

They will therefore not be treated as a person from abroad for the purposes of IS, JSA(IB) or ESA(IB), nor will they be treated as not in GB for the purposes of SPC.

Note: nonetheless they will have to satisfy the other conditions of entitlement for these benefits which, as they are working, will not normally be the case.

1 IS (Gen) Regs, reg 21AA(4)(f)(ii); JSA Regs, reg 85A(4)(f)(ii); ESA Regs, reg 70(4)(f)(ii); SPC Regs, reg 2(4)(f)(ii); 2 IS(Gen) Regs, reg 21AA(4)(b); JSA Regs, reg 85A(4)(b); ESA Regs, reg 70(4)(b); SPC Regs, reg 2(4)(b)

073679

Right to Reside

073680 With effect from 1.7.18, Croatian nationals have a right to reside¹ as a

1. jobseeker (see DMG 073084 and 073141) **or**

2. person retaining worker status (see DMG 072821) **or**
3. person retaining the status of a self-employed person (see DMG 072862).

1 JSA Regs, reg 85A(2) & (3); Imm (EEA) Regs, reg 6(1)

073681 From 1.7.13 to 30.6.18, a Croatian national subject to worker authorisation **did not** have a right to reside

1. as a jobseeker¹ **or**
2. as a person retaining worker status² (see DMG 072821).

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

073682 Croatian nationals subject to worker authorisation nonetheless **did** have rights to reside if they are self-employed persons¹ (see DMG 073683 and DMG 073700 - 073701 below for more on self-employment).

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

Self-employment stops

073683 A Croatian national subject to worker authorisation retained the status of being a self-employed person if they were temporarily unable to pursue activity as a self-employed person as a result of illness or accident¹. However if self-employment ceased altogether (on which see DMG 072842) a Croatian national subject to worker authorisation did not have a right to reside as a jobseeker².

1 Imm (EEA) Regs 2016, reg 14 & 6; 2 Accession (Croatia I & WA) Regs 2013, reg 5(1)

073684

Self-sufficient persons and students

073685 Croatian nationals subject to worker authorisation did have a right to reside¹ as

1. self-sufficient persons (see DMG 073244 - 073246) **or**
2. students (see DMG 073248).

However these groups need to have sufficient resources not to become a burden on UK social assistance (which includes IS, JSA(IB), ESA(IR) and SPC) throughout their period of stay and they must have comprehensive sickness insurance-

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

073686

Summary

073687 In practice the result of these rules is that a Croatian national subject to worker authorisation will not normally be entitled to IS, JSA(IB), ESA(IR) or SPC. They will usually either be persons from abroad/treated as not in GB for the lack of a right to reside or they will fail to satisfy the other conditions of entitlement.

073688

Croatian nationals who were not subject to worker authorisation

073689 A Croatian national was 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 employment¹, or they are given leave of this type (including that their immigration status has no condition restricting employment) **or**
2. they were legally working (see DMG 073691 – 073692) 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 worked (see DMG 073691 - 073692) 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 had dual nationality and were also a national of the UK or an EEA State (other than Croatia)⁵, except that, where the person was also a Bulgarian or Romanian national subject to worker authorisation in accordance with the Accession Regs 2006 (see DMG 073551 et seq), they would only be exempt from worker authorisation as a Croat during any period when they were working in accordance with the Accession Regs 2006 **or**
5. during any period in which they were⁶
 - 5.1 the spouse, civil partner, unmarried or same sex partner (see DMG 073696) 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 **or**
6. during any period when they were⁷ the spouse, civil partner, unmarried or same sex partner (see DMG 073696) of a national of the UK or a person settled (as defined in specific legislation⁸) in the UK **or**
7. during any period when they were⁹ 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 **or**

8. they had a permanent right to reside in the UK under the Imm (EEA) Regs¹²
or
9. except where sub-paragraph 10 applies, during any period when they were a family member of an EEA national who has a right to reside in the UK¹³ **or**
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 were 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 DMG 073696) **or**
 - 10.3 a direct descendent of Y, 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 **or**
11. they were highly skilled as defined¹⁵ and held a registration certificate from the HO that included a statement that they have unconditional access to the UK labour market **or**
12. during any period when they were a student in the UK and either
 - 12.1 they held a registration certificate which stated that they were a student who may work on 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 had leave to enter or remain under the Immigration Act 1971 as a student provided they were working in accordance with any conditions attached to that leave¹⁷ **or**
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 **or**
14. they were 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 1971, s 33(2A); 9 Croatia (I & WA) Regs 2013, reg 2(10) & (11); 10 Immigration Act 1971, 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

073691 For the purposes of DMG 073689 **2. & 3.**,

1. 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
 - 1.1 they had leave to enter or remain in the UK under the Immigration Act 1971 for that period **and**
 - 1.2 that leave allowed them to work in the UK **and**
 - 1.3 they 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 until 30.6.18

073692 For the purposes of DMG 073689.3, a Croatian national is legally working in the UK on or after 1.7.13 during any period in which they¹

1. are exempt from worker authorisation because they fall within one of subparagraphs.4 to 13 of DMG 073689 above **or**
2. hold an accession worker authorisation document (see DMG 073678) above and are working in accordance with the conditions set out in that document.

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

073693

Meaning of “family member”

073694 For the purposes of DMG 073689 above, a Croatian national’s family members are¹ (subject to the special rules about the family members of students described in DMG 073291)

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 DMG 073293.

Note: see DMG 073703 for more on family members

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

073695

Meaning of “unmarried or same sex partner”

073696 An “unmarried or same sex partner” means¹ a person who is in a durable relationship with another person. 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 & WA) Regs 2013, reg 1(2)

073697

Right to Reside

073698 For as long as they continue to satisfy one of the conditions for exemption in DMG 073689 above, Croatian nationals **who are not subject to worker authorisation** have the same rights to reside as are enjoyed by a non-accession EEA national such as a French or German national.

073699

Self-employment

073700 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.

Note: DMs are reminded that work as a self-employed person must be genuine and effective (see DMG 072816). In addition DMs may need to establish whether at any particular moment in time a claimant is a self-employed person (see DMG 072842)

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

073701 Any Croatian national who is a self-employed person in the UK will retain that status and a right to reside only if he is temporarily unable to pursue his activity as a self-employed person as the result of an illness or accident¹ (see DMG 072861). Such a person is deemed not to be a person from abroad/person not in GB for the purposes of IS², JSA(IB)³, ESA(IR)⁴ or SPC⁵ (see DMG 072800 2.)

*1 Imm (EEA) Regs 2016, reg 6(4); 2 IS (Gen) Regs, reg 21AA(4)(b); 3 JSA Regs, reg 85A(4)(b);
4 ESA Regs, reg 70(1)(4)(b); 5 SPC Regs, reg 2(4)(b)*

073702

Family members

073703 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. Where a Croatian national **not** subject to worker authorisation (“C”) has a right to reside in the UK then their family members (as defined in DMG 073694) are

not subject to worker authorisation and have the same rights to reside as the family members of any other EEA national.

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

073704 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 grand children

who are aged under 21 or dependant

escape the requirement for worker authorisation (see DMG 073689.10). A Croatian national’s Croatian father, father in law, mother, mother in law, and 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 DMG 073670 to 073676) (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.

073705 – 073706

Actual habitual residence

Requirement to establish a residence that is habitual in nature

073707 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

073708 - 073710

Settled intention to remain

073711 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.

073712 - 073715

Relevant factors

073716 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 (this is sometimes called "centre of interest" (see 073758)) 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

073717 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.

073718 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.

073719 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

073720 - 073722

Appropriate period of time

073723 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

073724 - 073725

Becoming habitually resident

073726 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.

073727 - 073728

Resuming a previous habitual residence

073729 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. Factors to be considered in deciding whether the previous habitual residence has been immediately resumed include the settled intention to remain, whether the person is in a position to make an informed decision about residence in the UK, the ties and contacts with the UK retained or established by the person while abroad, the reasons why the claimant left the UK and became habitually resident elsewhere, the similarity between their residence in the UK now and when they were previously here, and the length of the period of absence². 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.

Note: For claims made to JSA with effect from 1.1.14, please see guidance at 072986 et seq with regard to the three month residence requirement.

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

Example 1

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 JSA 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.

Example 2

Karen has British nationality. In December 2010 she left the UK to live and work in the United States. In January 2013, when her two year employment contract came to an end, Karen returned to the UK. She claimed JSA on 18.1.13. It emerged that, during her absence, Karen had retained a property here and had continued to pay the mortgage on it. She had put the bulk of her belongings in storage in the UK. She had also returned to the UK twice a year. The DM decided that Karen was resuming her previous habitual residence here immediately on her return.

073730 - 073745

