



Home Office

# Treaty rights passport applications

Version 19.0

Guidance for His Majesty's Passport Office on how to deal with a passport application for a customer whose claim is through a European Economic Area national who exercised Treaty rights

# Contents

Contents.....	2
About: Treaty rights passport applications .....	6
Contacts .....	7
Publication .....	7
Changes from last version of this guidance .....	7
What Treaty rights is .....	8
Treaty rights for EU nationals .....	8
Treaty rights: UK .....	9
Treaty rights: Germany .....	9
Treaty rights: Greenland .....	10
Treaty rights: Cyprus.....	10
Treaty rights: Spain and Portugal.....	10
Treaty rights: Republic of Ireland .....	10
Treaty rights: Greece .....	11
Treaty rights: EU8 and EU2 countries.....	11
Treaty rights: Croatia.....	11
Treaty rights for European Economic Area nationals.....	11
Treaty rights for Swiss nationals.....	12
Posted workers the UK .....	12
Treaty rights for territories of an EU or EEA country.....	12
How EU, EEA and Swiss nationals could exercise Treaty rights .....	12
EU, EEA or Swiss nationals born elsewhere .....	13
Treaty rights and family members.....	13
How Treaty rights affect a passport application .....	13
Effect of the UK leaving the EU (ending of free movement).....	15
Who can rely on Treaty rights after 31 December 2020 .....	15
Child born between 1 January 2021 and 30 June 2021 .....	16
Treaty rights: child born on, or after 1 July 2021 .....	16
If an EEA national made an application to the EUSS .....	17
How to deal with a first time Treaty rights passport application.....	18
Before you process a first time Treaty rights passport application.....	18
Application came with Treaty rights evidence .....	19
Application did not come with any Treaty rights evidence.....	19

How to process first time Treaty rights passport applications .....	20
Treaty rights: when and how to set the complexity indicator.....	21
Treaty rights: exempt from immigration control.....	21
Treaty rights: immigration court and tribunal decisions.....	21
Treaty rights: checking an EEA's nationality.....	22
EEA national born outside EEA country they are a national of .....	22
EEA national born in an EEA country they are a national of .....	22
Treaty rights: qualifying periods.....	23
Qualifying period: customer born on or before 30 September 2004.....	23
Qualifying period: customer born on or after 30 April 2006 .....	23
Both parent's exercised Treaty rights during the qualifying period .....	24
First 3 months residence as part of qualifying period .....	24
Treaty rights application: asking for Treaty rights evidence.....	25
Treaty rights application: making a decision on the application .....	25
Treaty rights: customer has a claim .....	26
Treaty rights: no claim.....	26
Treaty rights: lack of evidence or loss of contact.....	27
Treaty rights: what case notes to use on first time applications.....	28
When UKVI withdraw permanent residency .....	29
How to deal with renewal or replacement Treaty rights applications.....	30
How to process renewal or replacement Treaty rights applications .....	30
No previous Treaty rights or WRS errors .....	31
Previous WRS error .....	31
Previous Treaty rights error that is not a WRS error .....	32
Treaty rights: worker.....	33
About Treaty rights applications for workers.....	33
Treaty rights worker: genuine and effective work.....	33
What marginal or ancillary work means.....	34
Workers who got paid cash in hand .....	34
Workers whose salary is paid by a non-UK company .....	34
How to assess if work is genuine and effective .....	34
P60s shows a decrease in earnings.....	35
Treaty rights worker: stops working.....	35
Treaty rights worker: jobseeking after involuntarily stopping work .....	36
Treaty rights worker: charity or voluntary work.....	36
Treaty rights worker: au pairs.....	36
Worker: customer born on, or before 30 September 2004.....	37

Worker: customer born on, or after 30 April 2006 .....	38
Treaty rights: jobseeker .....	41
About Treaty rights applications for jobseekers .....	41
Jobseeker: EU8, EU2 and Croatian nationals .....	41
Jobseeker: how long an EEA national can be a jobseeker .....	42
Jobseeker: actively seeking work and genuine chance of being employed .....	42
Jobseeker: customer born on, or before 30 September 2004 .....	43
Treaty rights jobseeker: born on, or after 30 April 2006 .....	44
Treaty rights: self-employed person .....	46
About Treaty rights applications for a self-employed person .....	46
Construction Industry Scheme .....	46
Treaty rights self-employed: genuine and effective work .....	46
Treaty rights self-employed: stops working .....	47
Jobseeking after involuntarily stopping self-employment .....	47
Treaty rights self-employed: partnerships and directors .....	47
Self-employed: customer born on, or before 30 September 2004 .....	47
Self-employed: customer born on, or after 30 April 2006 .....	48
Treaty rights: self-sufficient person .....	50
About Treaty rights applications for a self-sufficient person .....	50
Self-sufficient: comprehensive sickness insurance .....	50
Self-sufficient: charity workers .....	51
Self-sufficient: retired .....	51
Self-sufficient: customer born on, or before 30 September 2004 .....	51
Self-sufficient: customer born on, or after 30 April 2006 .....	52
Treaty rights: student .....	54
About Treaty rights applications for a student .....	54
Student: comprehensive sickness insurance .....	54
Studying at recognised educational establishment .....	55
Student: customer born on, or before 30 September 2004 .....	56
Student: customer born on, or after 30 April 2006 .....	57
Treaty rights: family members .....	59
Who are direct family members .....	59
Treaty rights applications from direct family members .....	59
Direct family members: evidence of dependency .....	60
Direct family members of an EEA national who ceased activity .....	61
Who are extended family members .....	61
Treaty rights applications from extended family members .....	62

Family member who also exercised Treaty rights.....	63
Family member of different EEA nationals.....	63
Family members and domestic violence.....	63
Treaty rights: assessing sufficient resources.....	65
Students and self-declaration .....	65
How to check if an EEA national has sufficient resources .....	65
UK social assistance payments .....	66
Cannot provide DWP evidence showing no social assistance received .....	67
Treaty rights: Ziolkowski ruling .....	68
How the Ziolkowski ruling affects passport applications .....	68
Treaty rights: Jersey, Guernsey and Isle of Man.....	70
Part residence in Jersey, Guernsey or the Isle of Man .....	70
Jersey, Guernsey and Isle of Man observations.....	71
Treaty rights: break in residence .....	72
Treaty rights: break in residency.....	72
Circumstances that will not affect a period of residency.....	72
Circumstances that will affect a period of residency.....	73
Break in residence: imprisonment .....	73
Break in residence: removed from the UK.....	73
Treaty rights: break between permission to be in the UK .....	73
Treaty rights: gap in 5 year qualifying period evidence.....	73
Absent from the UK for 2 or more years .....	74
Treaty rights: born between 2 October 2000 and 29 April 2006 .....	75
Comprehensive sickness insurance: refunds and compensation requests .....	76

# About: Treaty rights passport applications

This guidance tells His Majesty's Passport Office operational staff about Treaty rights, including:

- what they are
- how they affect applications for British passports
- how to deal with a passport application for a customer whose nationality claim relies on a European Union (EU), European Economic Area (EEA) or Swiss national who exercised Treaty rights

It applies to customers born in the UK from:

- 1 January 1983 up to and including 30 September 2004, as some EEA nationals could exercise Treaty rights in:
  - England, Northern Ireland, Scotland and Wales from 1 January 1983 up to and including 1 October 2000
  - the Isle of Man from 1 October 1994 up to and including 1 October 2000
  - Guernsey from 1 August 1993 up to and including 30 September 2004
  - Jersey from 1 January 1983 up to and including 8 February 2004
- 30 April 2006 up to, and including 30 June 2021, as some EEA nationals could exercise Treaty rights in the UK from 30 April 2006 up to an including 30 June 2021

You must deal with applications using the European Union Settlement Scheme guidance if the customer was born on, or after 1 July 2021.

Some customers born from 2 October 2000 up to and including 29 April 2006 cannot have a claim to British nationality through an EEA national who exercised Treaty rights (see Treaty rights: born between 2 October 2000 and 29 April 2006).

When this guidance makes reference to the UK, it means England, Northern Ireland, Scotland, Wales, the Isle of Man, Jersey and Guernsey.

For the purposes of this guidance, any reference to parents exercising Treaty rights after 1 July 2021, also includes a qualifying activity in line with the Withdrawal Agreement.

If you are not sure how to deal with a Treaty rights passport application, you must discuss it with:

- an operational team leader (OTL)
- the Quality and Examination Support team (if, after discussing the application with an OTL, you are still not sure how to deal with it)

When this guidance mentions:

- EEA nationals, it means a citizen of a member state of the EU, EEA or Switzerland
- exercised Treaty rights, it means someone who exercised free movement rights in the UK

You may use this guidance in line with the following UK Visas and Immigration guidance:

- European Economic Area (EEA) and Swiss nationals: free movement rights
- European Economic Area nationals qualified persons
- Free movement rights: direct family members of European Economic Area (EEA) nationals
- Extended family members of EEA nationals guidance

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, email the [Guidance team](#).

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

## Publication

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

- version **19.0**
- published for Home Office staff on **13 November 2023**

## Changes from last version of this guidance

We have updated this guidance to include:

- another example of when a child born after 1 July 2021 can have a claim using Treaty rights (see Treaty rights: child born on, or after 1 July 2021)
- guidance on how to deal with applications where the customer is born between 2 October 2000 and 29 April 2006 but the EEA national was a worker or self-employed person who had ceased activity

We have also updated this guidance to remove instructions that told examiners to manually create system letter 591 if the application is on Digital Application Processing. This is because letter 591 is now available on the comms builder.

## Related content

[Contents](#)

# What Treaty rights is

This section tells HM Passport Office about Treaty rights, including who were able to exercise them and how they affect British passport applications.

European Union (EU), European Economic Area (EEA) and Swiss nationals (and their family members) had certain rights under [Directive 2004/38/EC](#). One of them was the right to stay in the UK for up to 3 months without restrictions, as long as, they:

- held a valid national identity card or passport
- did not become a burden on the UK social assistance system (also known as the social system or benefits system)

Under EU law, EU, EEA and Swiss nationals could stay in the UK for longer than 3 months if they exercised Treaty rights. When they exercised Treaty rights for 5 consecutive years in the UK, they could apply for a permanent right of residence.

The UK left the EU on 31 January 2020 and entered into a transition period that ended on 31 December 2020. EU, EEA and Swiss nationals could exercise Treaty rights in the UK up to 31 December 2020 (and in some cases up to 30 June 2021).

When dealing with passport applications for children born in the UK on, or after 1 July 2021 whose nationality claim relies on an EU, EEA or Swiss national, you must refer to the EU Settlement Scheme.

## Treaty rights for EU nationals

The following table shows countries that are members of the European Union (EU) and the date their nationals could exercise free movement rights from, for the purpose of their child's passport application.

Country	Free movement
Austria	1 January 1994
Belgium	1 January 1983 (30 June 1992 for students and the self-sufficient)
Bulgaria	1 January 2007
Croatia	1 July 2013
Cyprus	1 May 2004
Czech Republic	1 May 2004
Denmark	1 January 1983 (30 June 1992 for students and the self-sufficient)
Estonia	1 May 2004
Finland	1 January 1994
France	1 January 1983 (30 June 1992 for students and the self-sufficient)



Germany	1 January 1983 (30 June 1992 for students and the self-sufficient)
Greece	1 January 1983 for the self-employed 1 January 1988 for workers and jobseekers 30 June 1992 for students and the self-sufficient
Hungary	1 May 2004
Republic of Ireland	1 January 1983 (30 June 1992 for students and the self-sufficient)
Italy	1 January 1983 (30 June 1992 for students and the self-sufficient)
Latvia	1 May 2004
Lithuania	1 May 2004
Luxembourg	1 January 1983 (30 June 1992 for students and the self-sufficient)
Malta	1 May 2004
Netherlands	1 January 1983 (30 June 1992 for students and the self-sufficient)
Poland	1 May 2004
Portugal	1 January 1986 for the self-employed 1 January 1992 for workers and jobseekers 30 June 1992 for students and the self-sufficient
Romania	1 January 2007
Slovakia	1 May 2004
Slovenia	1 May 2004
Spain	1 January 1986 for the self-employed 1 January 1992 for workers and jobseekers 30 June 1992 for students and self-sufficient
Sweden	1 January 1994

## Treaty rights: UK

The UK was a member state of the EU from 1 January 1973 up until 31 January 2020 when it entered a transition period that ended on to 31 December 2020. EU, EEA and Swiss nationals could exercise Treaty rights in the UK up to 31 December 2020 (and in some cases up to 30 June 2021).

## Treaty rights: Germany

The reunification of Germany on 3 October 1990 resulted in the enlargement of the European Community to include East Germany, however, it did not involve the accession of a new member state. This means we can consider citizens of East Germany to have always been European Union citizens.

## Treaty rights: Greenland

Greenland is an autonomous territory within Denmark and was part of the EU between 1973 and 1985.

For the purpose of passport applications, it means nationals of Greenland could exercise Treaty rights as a worker, self-employed person or jobseeker from 1 January 1983 to 31 December 1984.

## Treaty rights: Cyprus

Unlike Cypriot nationals, nationals of the Turkish Republic of Northern Cyprus are not EU nationals. This means nationals of the Turkish Republic of Northern Cyprus could not exercise Treaty rights in the UK.

## Treaty rights: Spain and Portugal

Spanish and Portuguese nationals:

- were free to set up a business, become self-employed or provide (or receive) services in return for payment from 1 January 1986
- did not benefit from free movement of labour provisions until 1 January 1992 and anyone who wanted to start employment before this date, either:
  - needed a work permit
  - had to qualify for permit-free employment to enter the UK (in line with immigration laws)

This means Spanish and Portuguese nationals could exercise Treaty rights for the purpose of passport applications from:

- 1 January 1986, if they exercised them as a self-employed person
- 1 January 1992, if they exercised them as a worker or jobseeker
- 30 June 1992, if they exercised them as a student or self-sufficient person (as this only affects applications for customers born on, or after 30 June 1992)

## Treaty rights: Republic of Ireland

Irish nationals are automatically settled for nationality purposes from the date they started living in the UK.

If a customer's parent is an Irish national and living in the UK at the time they were born, they will have a claim without the need for their parent to have exercised Treaty rights (regardless of how the parent gained Irish nationality).

## Treaty rights: Greece

A transitional arrangement was in place when Greece joined the EU meaning Greek nationals could exercise Treaty rights for the purpose of passport applications from:

- 1 January 1983, if they exercised them as a self-employed person
- 1 January 1988, if they exercised them as a worker or jobseeker
- 30 June 1992, if they exercised them as a student or self-sufficient person (as this only affects applications for customers born on or after 30 June 1992)

## Treaty rights: EU8 and EU2 countries

We refer to some countries in the European Union (EU) as EU8 or EU2 countries:

- EU8 countries are:
  - Czech Republic
  - Estonia
  - Hungary
  - Latvia
  - Lithuania
  - Poland
  - Slovakia
  - Slovenia
- EU2 countries are:
  - Romania
  - Bulgaria

## Treaty rights: Croatia

Croatia joined the EU on 1 July 2013. This means a passport application for a child whose nationality claim relies on a Croatian national who exercised Treaty rights, will normally only have a claim if they were born on, or after 1 July 2018. However, they may have a claim before 1 July 2018 if the Croatian national meets the Ziolkowski ruling).

## Treaty rights for European Economic Area nationals

The European Economic Area (EEA) was established on 1 January 1994. Although there are membership differences between the EU and EEA, we treat EEA nationals in the same way as EU nationals for immigration, nationality and Treaty rights purposes.

All countries in the EU are members of the European Economic Area (EEA). The following table shows other countries that are members of the EEA and the date their nationals could exercise free movement rights from, for the purpose of their child's passport application.

Country	Free movement
---------	---------------

Iceland	1 January 1994
Norway	1 January 1994
Liechtenstein	1 May 1995

## Treaty rights for Swiss nationals

Under the Switzerland-EU agreement that came into effect on 1 June 2002, Swiss nationals have the same rights as EU and EEA nationals. This means we treat them in the same way as EU and EEA nationals for immigration, nationality and Treaty rights purposes.

## Posted workers the UK

Under the 2002 Swiss agreement, a Swiss national or Swiss company (such as Credit Suisse and the Union Bank of Switzerland) that conducts business in the UK, can send non-EEA national employees to the UK to carry out (or provide) services on their behalf. They could be in the UK for up to 90 days without needing permission to work.

Such people are known as posted workers and are exempt from Treaty right provisions. This means they were not able to exercise Treaty rights.

If you have doubts if someone in the UK is a Swiss posted worker, you must send a guidance query to Quality and Examination Support team (QuEst).

## Treaty rights for territories of an EU or EEA country

Some countries may be a territory of a European Union (EU) or European Economic Area (EEA) country but are not a member of the EU or EEA. For example, Greenland and the Faroe Islands are a territory of Denmark, however, they are not part of the EU or EEA. Therefore, nationals of Greenland and Faroe Islands could not exercise Treaty rights in the UK.

If you are unsure if a territory is part an EU or EEA country, you must ask for advice by sending a guidance query.

## How EU, EEA and Swiss nationals could exercise Treaty rights

European Union (EU), European Economic Area (EEA) and Swiss nationals will usually have exercised Treaty rights in 1 (or more) of the following ways:

- as a worker
- as a jobseeker
- as a self-employed person
- as a student (only from 30 June 1992)
- as a self-sufficient person for example, someone who is retired (only from 30 June 1992)

EU, EEA and Swiss nationals could change how they exercised Treaty rights (for example, they can change from a jobseeker to a worker).

## EU, EEA or Swiss nationals born elsewhere

Someone born in another country may gain the citizenship (or have dual nationality) with a European Union (EU) or European Economic Area (EEA) country or Switzerland. Although we consider them to be an EU, EEA or Swiss national for Treaty rights passport applications, we must be satisfied they were an EEA national:

- at the time the customer was born
- when they exercised Treaty rights

## Treaty rights and family members

The direct family member of an EU, EEA or Swiss national has the right to live in the UK, as long as the EU, EEA or Swiss national:

- was in the UK (and remained in the UK)
- exercised Treaty rights

The extended family member of an EU, EEA or Swiss national has the same residency rights as a direct family member, as long as they have a residence document to confirm it.

## How Treaty rights affect a passport application

You may get a Treaty rights passport application, when:

- a customer born in the UK applies for a passport for themselves and their parent is either:
  - an EU, EEA or Swiss national
  - the family member of an EU, EEA or Swiss national
- an EU, EEA or Swiss national parent applies for a passport for their child who was born in the UK
- the family member of an EU, EEA or Swiss national applies for a passport for their child who was born in the UK

Regardless of who makes the application, the customer's nationality claim will rely on the EU, EEA or Swiss national who exercised Treaty rights. For example, if the customer's parent is:

- an EU, EEA or Swiss national, the customer's nationality claim will rely on their EU, EEA or Swiss national parent who exercised Treaty rights
- the direct or extended family member of an EU, EEA or Swiss national, the customer's nationality claim will rely on the EU, EEA or Swiss national who exercised Treaty rights

A customer will have a claim to British citizenship ([under section 1\(1\)\(b\) BNA81](#)) if they meet all of the following criteria:

- they were born in the UK between from 1 January 1983 up to and including 30 September 2004 to a parent who, is:
  - an EU, EEA or Swiss national
  - the direct or extended family member of an EU, EEA or Swiss national
- at the time the customer was born in the UK, the EU, EEA or Swiss national can demonstrate they exercised Treaty rights in:
  - England, Northern Ireland, Scotland and Wales (only for customers born in the UK from 1 January 1983 up to an including 1 October 2000)
  - the Isle of Man (only for customers born in the UK from 1 October 1994 up to and including 1 October 2000)
  - Guernsey (only for customers born in the UK from 1 August 1993 up to and including 30 September 2004)
  - Jersey (only for customers born in the UK from 1 January 1983 up to and including 8 February 2004)

A customer will also have a claim to British citizenship (under section 1(1)(b) BNA81), if they meet all the following criteria:

- they were born in the UK from 30 April 2006 up to and including 30 June 2021 to a parent who, is:
  - an EU, EEA or Swiss national
  - the direct or extended family member of an EU, EEA or Swiss national
- for a 5 year consecutive period before the customer was born, the EU, EEA or Swiss national can demonstrate they exercised Treaty rights in the UK

## **Related content**

Contents

# Effect of the UK leaving the EU (ending of free movement)

This section tells HM Passport Office operational staff about the impact on Treaty rights passport applications when the UK left the European Union (EU).

The transition arrangements in place for the UK leaving the European Union (EU) came to an end at 11pm on 31 December 2020. At this time, the [Immigration and Social Security Coordination \(EU Withdrawal\) Act 2020](#) replaced the [Immigration \(EEA\) Regulations 2016](#). This ended a European Economic Area (EEA) nationals' right of free movement in the UK.

Unless an EEA national meets an exception allowing them to continue to rely on EU free movement rights, it means from 11pm on 31 December 2020, they:

- no longer have free movement rights under Directive 2004/38/EC
- cannot rely on a right of entry to the UK under the Immigration (European Economic Area) Regulations 2016 (they must have an alternative legal basis to enter the UK instead)

EEA nationals living in the UK on 31 December 2020 who are not already British citizens or have indefinite leave to remain, had to apply to the EU Settlement Scheme (EUSS) if they wanted to remain in the UK after 30 June 2021. This includes EEA nationals who:

- may already have a right of permanent residence (through exercising Treaty rights)
- have a document certifying permanent residence

The deadline to apply to the EUSS was 30 June 2021.

If there's reasonable grounds to, UK Visas and Immigration (UKVI) may accept late applications.

The UK leaving the EU does not affect passport applications for customers born on, or before 31 December 2020. You must continue to deal with their Treaty rights passport application (in line with this guidance).

## Who can rely on Treaty rights after 31 December 2020

If a child was born from 1 January 2021 up to, and including 30 June 2021, their passport application can still rely on an EEA national who exercised Treaty rights. These rules are different if a child was born on, or after 1 July 2021.

## Child born between 1 January 2021 and 30 June 2021

From 1 January 2021 up to and including 30 June 2021 (known as the grace period), EEA nationals already living in the UK on 31 December 2020 could continue to exercise Treaty rights.

If a customer was born from 1 January 2021 up to, and including 30 June 2021, their nationality claim can still rely on an EEA national who exercised Treaty rights, if both of the following apply:

- the EEA national who the nationality claim relies on, was resident in the UK on 31 December 2020
- the EEA national who the nationality claim relies on, did not already have the right of permanent residence in the UK at the time the customer was born, including if they:
  - made an application for the EUSS that is still being processed
  - were granted pre-settled status through the EUSS
  - were granted indefinite leave to remain (ILR), indefinite leave to enter (ILE) or No Time Limit (NTL) after the customer was born

When dealing with an application for a customer born from 1 January 2021 up to, and including 30 June 2021, you:

- do not need evidence to show the EEA national whose nationality claim relies on, was living in the UK on 31 December 2020, unless there's evidence to suggest they were not – if you need evidence to show an EEA national was living in the UK on 31 December 2020, you may accept:
  - rent or mortgage agreements
  - bank statements
  - utility bills
- must deal with the application and apply the same Treaty rights guidance we do for customers born on, or after 30 April 2006

## Treaty rights: child born on, or after 1 July 2021

In most cases, the right of permanent residence (through exercising Treaty rights) ended on 30 June 2021. However, an EEA national can still rely on a right of permanent residence, if their circumstances match either of the following 2 examples:

### Example 1

- they were permanently living in the UK on the 31 December 2020
- they exercised Treaty rights for 5 continuous years before 30 June 2021
- UKVI received their EUSS application on, or before 30 June 2021
- their EUSS application was unsuccessful (this means UKVI did not grant them with ILR)
- UKVI made the decision on the EUSS application after the child was born



## Example 2

- they were permanently living in the UK on the 31 December 2020; and,
- they were granted pre-settled status at the time of the child's birth; and,
- they exercised Treaty rights for 5 continuous years before the child's date of birth

When dealing with an application for a child born on, or after 1 July 2021 to an EEA national, you must refer to the EU Settlement Scheme.

## If an EEA national made an application to the EUSS

If a European Economic Area (EEA) national made an application to the EU Settlement Scheme (EUSS), you must refer to the EU Settlement Scheme guidance. This is because an EEA national may not need to demonstrate they exercised Treaty rights (depending on the outcome of their EUSS application).

You must be aware, when UKVI consider an EEA national's EUSS application, they:

- ask for evidence to show the EEA national lived in the UK for 5 continuous years
- do not ask for evidence to show the EEA national exercised Treaty rights

If you get a Treaty rights passport application for a customer whose nationality claim relies on an EEA national who applied for the EUSS and was granted pre-settled status or granted ILR after they were born, you must:

1. Deal with the application in line with this guidance.
2. Ask for evidence to show the EEA national exercised Treaty rights for the full qualifying period.

### Related content

Contents

# How to deal with a first time Treaty rights passport application

This section tells HM Passport Office operational staff how to deal with first time passport applications for a customer whose claim is through a European Economic Area (EEA) national who exercised Treaty rights.

From 1 March 2021, we introduced a process for a dedicated resource team in each application processing centre (APC) to deal with all first time Treaty rights passport applications. The aim of the process is to improve the quality of decision making in HM Passport Office.

## Before you process a first time Treaty rights passport application

You must be aware, Digital Application Processing (DAP) identifies possible Treaty rights applications and will create a Treaty rights task based on:

- where the customer and their parents were born
- the nationality of the customer's parents
- when the customer was born

When you get a Treaty rights passport application, you must check if the customer already has a claim other than through Treaty rights (using the UK Visas and Immigration system and the documents that came with the application). This is because they may have a claim without their parent needing to demonstrate they exercised Treaty rights. For example, when:

- at the time they were born, their parent was granted:
  - indefinite leave to remain (ILR) through the EU Settlement Scheme (EUSS) (only for children born on or after 28 August 2018)
  - ILR other than through the EUSS, indefinite leave to enter, no time limit or a right of permanent residence (see British citizenship guidance)
- they registered or naturalised as a British citizen

If at the time the customer was born their EEA national parent had ILR, ILE (indefinite leave to remain), NTL (no time limit) or a right of permanent residence, or they have a claim other than through Treaty rights, the application is not a Treaty rights application. You must:

- select **No**, add a case note to explain the actions and decision you made, click **Save** and continue to process the application in line with current guidance (if the application is on DAP with a Treaty rights task)
- continue to process the application in line with current guidance (if the application is on DAP without a Treaty rights task or it is on the Application Management System (AMS))

If the customer does not already have a claim and you need to deal with the application as a Treaty rights application, you must:

1. Complete standard examination of the application that does not involve you needing to contact the customer (in line with current guidance).
2. Set the complexity indicator (for applications on AMS)
3. Send letter 594 to the customer (if the application is on AMS). If the application is on DAP, you must create the letter manually and email it to the customer (using the AMS letter template):
4. Check if the application came with any evidence to show to EEA national exercised Treaty rights.

## Application came with Treaty rights evidence

If the application came with Treaty rights evidence, you must refer the application to the dedicated resource team by:

- using the agreed local process in your office (for applications on AMS)
- clicking **I can't do this** (for applications on DAP)

## Application did not come with any Treaty rights evidence

If the application did not come with any Treaty rights evidence and the application is on DAP, you must refer the application to the dedicated resource team by clicking **I can't do this**.

If the application did not come with any Treaty rights evidence and the application is on AMS, you must:

1. Send the customer the Treaty rights triage letter by email from your team's mailbox, making sure you use the correct table (depending on if the child was born on, or before 1 October 2000 or on, or after 30 April 2006). This letter asks the customer how they exercised Treaty rights and will allow you to ask the customer for the correct evidence.
2. Scan the Treaty rights triage letter onto the application as a permanent record (see How to keep scans of supporting documents).

If the customer does not respond to the Treaty rights triage letter, you must send them a reminder and withdraw the application - see Withdrawing passport applications guidance for:

- when to send the reminder
- when to withdraw the application
- how to withdraw the application

If the customer responds to the Treaty rights triage letter, you must:

1. Add a case note to show details of the response, including:
  - the date the customer said they started living in the UK (for applications for children born on, or after 30 April 2006)
  - a summary of how they exercised Treaty rights
  - any other important information the customer supplied
2. Check if the response shows an indication there is no claim through Treaty rights, for example, when the response shows the:
  - application is for a child born on, or after 2006 but their EEA parent has not been living in the UK for 5 years before they were born
  - EEA national was not exercising Treaty rights

If the response indicates the customer:

- does not have a claim to British nationality through Treaty rights, you must:
  - consider if they have a claim through any other means
  - refer to Refusing passport applications and passport facilities (if they do not have a claim to British nationality)
- has a claim to British nationality through Treaty rights, you must refer the application to the dedicated resource team by using the agreed local process in your APC

## How to process first time Treaty rights passport applications

The dedicated resource team deal with first time Treaty rights passport applications. To process a Treaty rights application, you must:

1. Set the correct complexity indicator (if it is not already set and the application is on AMS).
2. Consider if the EEA national is someone who is exempt from immigration control
3. Consider if any decisions about an EEA national have been made by an immigration court or tribunal.
4. Check you have evidence to show:
  - the relationship between the customer and the EEA national (for example, a birth certificate)
  - the EEA national's nationality
5. Check the EEA national exercised Treaty rights for the correct qualifying period. To do this, you must refer to:
  - Treaty rights: worker (if the EEA national exercised Treaty rights as a worker)
  - Treaty rights: jobseeker (if the EEA national exercised Treaty rights as a jobseeker)
  - Treaty rights: self-employed person (if the EEA national exercised Treaty rights as a self-employed person)
  - Treaty rights: self-sufficient person (if the EEA national exercised Treaty rights as a self-sufficient person)
  - Treaty rights: student (if the EEA national exercised Treaty rights as a student)

- Treaty rights: family members (if the customer's claim is through the family member of an EEA national).
- 6. Ask the customer for Treaty rights evidence, if you need any (see Treaty rights application: asking for Treaty rights evidence).
- 7. Decide the outcome of the Treaty rights application (see Treaty rights application: making a decision on the application).

## Treaty rights: when and how to set the complexity indicator

You must set a complexity indicator when dealing with a Treaty rights passport application on AMS and the application is:

- for a first passport
- to renew (or replace) a passport and you need to reassess it as we made an error on the original application, for example, because:
  - you need to carry out checks on the WRS (if we previously did not do it)
  - the EEA national needed CSI and the passports notes on the original application show they did not have it

To set the complexity indicator on AMS, you must:

1. Select the **Prepare Passport** tab.
2. Click on the **Set Complexity** drop down menu (in the **Links tab** section on the right hand side of the screen).
3. Select **ENTITLEMENT** from the list.
4. Select **TREATY RIGHTS** from the list.

If you do not set the correct complexity indicator, you will receive a quality check fail.

## Treaty rights: exempt from immigration control

Some EEA nationals may be exempt from immigration control, for example, foreign diplomats posted in the UK, members of the North Atlantic Treaty Organization (NATO) or other European organisations.

Such EEA nationals could still exercise Treaty rights meaning if they meet all other requirements in line with this guidance, their child could be a British national.

This is because Treaty rights is a matter of free movement laws and not immigration rules.

## Treaty rights: immigration court and tribunal decisions

In some cases, the outcome of an immigration court or tribunal appeal may rule an EEA national gained the right of permanent residence.

When dealing with an application that includes decisions made by immigration courts or tribunal appeals, you must:

1. Send a guidance query to QuEST to ask them how to deal with the application.
2. Wait for QuEST to respond.

QuEST will check with policy teams to decide if you can accept a decision made by an immigration court or tribunal appeal (as they may be subject to further challenges).

## Treaty rights: checking an EEA's nationality

You must be satisfied about a European Economic Area (EEA) national's nationality. Evidence we will accept to show someone is an EEA national, are:

- a passport
- an identity card (you must carefully check the nationality shown on the identity card)
- a registration or naturalisation certificate
- UKVI documents showing they are a national of an EEA country, such as accession worker authorisation documents (only if you can confirm them using UKVI systems)
- an official document (for example, from a consulate) that confirms when they became an EEA national

You must carefully check the document to make sure it shows someone is an EEA national. This is because the document does not confirm someone is a national of that country if:

- it only says they are a resident of that country
- they have an alien passport (a passport issued by a country to a non-national resident who is stateless or unable to get a passport from the country they are a national of (for example, refugees))

A birth certificate on its own is not proof of nationality.

## EEA national born outside EEA country they are a national of

If a European Economic Area (EEA) national was born outside of the EEA country they are a national of, you must be satisfied they were an EEA national before the start of the qualifying period. This means the document they use to confirm they are an EEA national must, either:

- have been issued to them before the start of the qualifying period
- confirm when they became an EEA national (so you can check they became an EEA national before the start of the qualifying period)

## EEA national born in an EEA country they are a national of

If a European Economic Area (EEA) national supplies a document showing they are a national of an EEA country they were born in, it does not matter if it was issued to them:

- before the qualifying period
- during or after the qualifying period (as long as there is no other evidence to suggest they may not have been national of the EEA country)

## Treaty rights: qualifying periods

For a customer to have a claim, the EEA national who the nationality claim relies on, must have exercised Treaty rights for the correct period of time (known as the qualifying period). This depends on when the customer was born.

### Qualifying period: customer born on or before 30 September 2004

If the customer was born in the UK from 1 January 1983 up to and including 30 September 2004, the EEA national who the nationality claim relies on must have exercised Treaty rights at the time the customer was born. The EEA national must have exercised Treaty rights in:

- England, Wales, Scotland and Northern Ireland (for customers born in the UK from 1 January 1983 up to and including 1 October 2000)
- the Isle of Man (for customers born in the UK from 1 October 1994 up to and including 1 October 2000)
- Guernsey (for customers born in the UK from 1 August 1993 up to and including 30 September 2004)
- Jersey (for customers born in the UK from 1 January 1983 up to and including 8 February 2004)

### Qualifying period: customer born on or after 30 April 2006

If a customer was born in the UK on or after 30 April 2006, the EEA national who the nationality claim relies on, must have exercised Treaty rights in the UK for at least 5 consecutive years before they were born. It does not have to be the 5 years directly before the customer was born.

EEA nationals did not have to exercise the same Treaty right during the 5 year qualifying period, for example, they could have exercised Treaty rights as, a:

- worker for the full 5 years
- student for the first 2 years and as a worker for the remaining 3 years
- self-employed person for the first 4 years and as a worker for the remaining year

This means the evidence you get to show an EEA national exercised Treaty rights can be from different sources.

If the customer's claim is through the family member of an EEA national, the EEA national must have exercised Treaty rights for 5 consecutive years before the

customer was born. However, there are occasions when the family member may be regarded as having gained the right of permanent residence even when the EEA national did not exercise Treaty rights for 5 consecutive years (see Free Movement Rights: retained rights of residence).

If an EEA national exercised Treaty rights as a worker or self-employed person but temporarily stopped working, we may still consider them to have exercised Treaty rights while they were not working. For more information, see retaining worker or self-employed status.

An EEA national may still gain a right of permanent residence without exercising Treaty rights for the full 5 year qualifying period. This is when they exercised Treaty rights as a worker or self-employed person but ceased activity (see Worker or self-employed person who has ceased activity). It means a child could have a claim even though their EEA national parent may not have exercised Treaty rights for 5 consecutive years before they were born.

## Both parent's exercised Treaty rights during the qualifying period

EEA national parents cannot combine their own individual circumstances to show they exercised Treaty rights during the 5 year qualifying period in order for their child to have a claim. For example, a customer will not have a claim if their:

- father exercised Treaty rights as a worker for the first 2 years of the qualifying period and their mother exercised Treaty rights as a student for the final 3 years
- mother and father were working throughout the 5 year qualifying period and their individual employment circumstances show they were not in genuine and effective employment

However, a child could have a claim if their parent was exercising Treaty rights in their own right for part of the qualifying period and was a qualifying family member for the other part (see Family member who also exercised Treaty rights).

## First 3 months residence as part of qualifying period

When an EEA national began to live in the UK, they had a 3 month initial right of residence. This means they could live in the UK without restrictions and did not need to show they are (or would be) exercising Treaty rights, providing they meet all of the following criteria:

- they held a valid identity card or passport from an EEA country
- they supplied evidence to show when they started living in the UK (for example, proof of travel to the UK and they were living in UK, such as registering at a doctors or rental agreements)
- they were not a burden on the UK social assistance system

For example, if an EEA national provided evidence to show they started living in the UK on 1 April 2010 and began exercising Treaty rights, on:



- 1 June 2010, there will not be a gap between the 3 month initial right of residence and the date the EEA national started to exercise Treaty rights – this means you:
  - can accept the period between 1 April 2010 and 1 June 2010 as part of the qualifying period
  - will only need evidence they exercised Treaty rights from 1 June 2010 to 1 April 2015
- 1 August 2010, there will be a gap between the end of the initial 3 month period right of residence and the date the EEA national started to exercise Treaty rights – this means you:
  - cannot accept any period between 1 April 2010 and 1 August 2010 as part of the qualifying period
  - will need evidence they exercised Treaty rights from 1 August 2010 for 5 consecutive years

## Treaty rights application: asking for Treaty rights evidence

If you need to ask the customer for Treaty rights evidence and the application is on:

- AMS, you must send the correct letter, for example, AMS letter:
  - 586 (for customers born on, or before 1 October 2000)
  - 585 (for customers born on, or after 30 April 2006)
  - 579 (if you need evidence an EU2 national met the Accession State Worker Registration Scheme conditions)
- DAP, you must select **Not sure, need new documents** and send the customer an email to ask for the information you need, using the Comms builder (see How we communicate with customers)

## Treaty rights application: making a decision on the application

Once you have the information you need and you are dealing with an application on AMS, you must:

1. Use all of the evidence and information to assess the application (in line with this guidance).
2. Refer:
  - the application to the Counter Fraud team (if you have fraud or safeguarding (child protection) concerns)
  - to Treaty rights: customer has a claim (if the customer has claim)
  - to Treaty rights: no claim (if the customer does not have a claim)
  - to Treaty rights: lack of evidence or loss of contact (if the customer could not give you the evidence you need or you lost contact with them)

Once you have the information you need, and you are dealing with an application on Treaty rights: customer has a claim on DAP, you must:

1. Use all of the evidence and information to assess the application (in line with this guidance).
2. Select:
  - **Delay decision on this task**, add a case note and click **Save** (if you cannot make a decision because you need to email the customer as part of another DAP task first)
  - **Refer for investigation**, add a case note and click **Save** (if you have fraud or safeguarding (child protection) concerns)
3. Refer to:
  - Treaty rights: customer has a claim (if the customer has claim)
  - Treaty rights: no claim (if the customer does not have a claim)
  - Treaty rights: lack of evidence or loss of contact (if the customer could not give you the evidence you need or you lost contact with them)

## Treaty rights: customer has a claim

If you are satisfied from the Treaty rights evidence the customer has a claim and the application is on AMS, you must:

1. Add the correct case notes to the application.
2. Send system letter 591 to make the EEA national aware of the EUSS (if the EEA national is not already a British citizen or does not have ILR).

If you are satisfied, from the Treaty rights evidence, the customer has a claim and the application is on DAP, you must:

1. Send system letter 591 to the customer (if the EEA national is not already a British citizen or does not have ILR).
2. Select **Yes, I've completed examination**.
3. Add the correct case notes to the application.
4. Click **Save**.

## Treaty rights: no claim

If the reason there's no claim to British nationality is because an EU8 national met all Treaty rights conditions except for the Workers Registration Scheme (WRS) conditions, you must refer to WRS: conducting checks. This is because you may be able to:

- accept the EU8 national complied with the WRS if they registered on it once before the child was born
- offer discretionary registration

Before you refuse an application, you must be satisfied the customer does not have a claim. You must consider if, the:

- EEA national who the nationality claim is through, does not already have a right of permanent residence (by checking UKVI systems)

- customer has a claim through the other EEA national parent (as they may have exercised Treaty rights or already gained a right of permanent residence) - you must only do this if both of the following apply:
  - the other EEA national parent is named on the application
  - the other EEA national parent provided supporting documents (as this gives you implied consent to check their details on UKVI systems)

If you are satisfied the customer does not have a claim and the application is for a first passport on AMS, you must:

1. Add the correct Treaty rights case note to the application.
2. Refuse the application.
3. Send AMS letter:
  - 592 (if the customer was born on, or before 1 October 2000)
  - 612 (if the customer was born on, or after 30 April 2006 up to, and including 30 June 2021)

If you are satisfied the customer does not have a claim and the application was to renew (or replace) a passport on AMS, you must refer to withdrawing passport applications and passport facilities.

If you are satisfied the customer does not have a claim and the application is for a first passport on DAP, you must:

1. Select **No**.
2. Add the correct case notes to the application.
3. Click **Save**.
4. Deal with the application as part of the DAP nationality task (the nationality task allows you to check how a customer has a nationality claim and withdraw their application if they do not have one).

If you are satisfied the customer does not have a claim and the application is to renew (or replace) a passport on DAP, you must transfer the application to AMS and add a case note to explain the customer does not have a claim.

You, the AMS examiner, must deal with the application in line with the withdrawing passport applications and passport facilities guidance.

## Treaty rights: lack of evidence or loss of contact

If the customer cannot provide the Treaty rights evidence you need (and they could not provide alternative evidence) or you lost contact with them, you must:

1. Add the correct Treaty rights case notes to the application.
2. Send AMS letter 592 (for customers born on, or before 1 October 2000) or 612 (for customers born on, or after 30 April 2006 up to, and including 30 June 2021). You must only do this if you did not lose contact the customer.
3. Withdraw the application and return any supporting documents to the customer unless you lost contact with them (see Withdrawing passport applications).

## Treaty rights: what case notes to use on first time applications

When you deal with a first time Treaty rights passport application (or a renewal or replacement application that you need to reassess as a first time application), you must include the following mandatory case note:

**[Mother / Father] held EU – [include country] nationality atob & for full qualifying period: [Y / N]**

**Evidence from [Mother / Father] exercising TR [date] to [date]**

**[Mother / Father] exercised TR as [Worker / Jobseeker / Self-employed person / Student / Self-sufficient person / Dependent of family member, including who the family member is and the relationship]**

**[Mother / Father] met CSI requirements as they provided evidence to show they exercised Treaty rights as a [student / self-sufficient person] meaning at that time, they were ordinarily resident in the UK and would have had access to the NHS**

**[Mother / Father] required to register on [WRS / AWS]: [Y / N / Exempt, including reasons]**

If the customer's mother or father was required to register on the Workers Registration Scheme (WRS) or Accession Worker Scheme (AWS) scheme, you must add the following mandatory note:

**[Mother / Father] met [WRS / AWS] requirements: [Y / N, including reasons]**

If applicable, you must also add the following mandatory case notes:

**Registration required as did not qualify under WRS. Reg cert No: [certificate number] Issued: [DD/MM/YYYY]**

**WRS case – Reg Cert No: [certificate number] conf regularised [status], on [date]**

If you refuse or withdraw an application, you may tailor the mandatory case notes to fit the application's situation. For example, if you refuse an application because an EEA national could not provide evidence they were an EEA national:

- all of the mandatory case notes will not be relevant
- your case note must clearly explain you refused the application because the parent could not provide evidence to show they were an EEA national

Your case note must also show:

- clear reasons why you refused or withdraw an application
- what evidence you used as part of the application, including the types of document and the differences between them (for example, '5xP60's for 2012 to 2013, 2013 to 2014, 2014 to 2015, 2015 to 2016, and 2016 to 2017')
- the customer has a claim under section 1(1)(b) BNA81 (if the customer has a claim through an EEA national who exercised Treaty rights)
- all the actions and decisions you made during the application process
- details of the EEA national's income levels you used to assess the claim (for example, when deciding if employment is genuine and effective) – the case note must, show:
  - why you assessed the income levels (for example, to help you decide if employment is genuine and effective)
  - the amount of income and where it came from (for example, the 2014 – 2015 P60)
  - who the income relates to (the name of the EEA national)

## When UKVI withdraw permanent residency

We may have issued a passport to a customer because UK Visa and Immigration (UKVI) granted the EEA national who the nationality claim relies on, the right of permanent residence. If UKVI withdraw it (for example, because they applied for it fraudulently), you must refer to withdrawing passports and passport facilities.

### Related content

Contents

# How to deal with renewal or replacement Treaty rights applications

This section tells HM Passport Office operational staff how to deal with renewal and replacement passport applications for a customer whose claim is through a European Economic Area (EEA) national who exercised Treaty rights.

Digital Application Processing (DAP) will generate a Treaty rights assessment task on a child renewal if their parents were born in, or are a national of, a European Economic Area (EEA) country.

If you are not presented with a DAP Treaty rights assessment task or the application is on the Application Management System (AMS), you must:

1. Check the application to see if it shows any of the customer's parents are European Economic Area (EEA) nationals living in the UK. If it does, you must send the customer system letter 591.
2. Deal with the application in line with How to process renewal or replacement Treaty rights applications (below).

If you are presented with the DAP Treaty rights assessment task, you must:

1. Check the application to see if it shows any of the customer's parents are EEA nationals living in the UK. If it does, you must send system letter 591 to the customer.
2. Check the passport history to see if we issued the original passport through a Treaty rights claim. If we:
  - o did not, you must clear the task by selecting **No**, adding a case note to explain the actions and decisions you made and clicking **Save**
  - o did, you must deal with the application in line with How to process renewal or replacement Treaty rights applications (below)

## How to process renewal or replacement Treaty rights applications

When processing a renewal or replacement application on DAP or AMS, you must check if there is an indication we assessed the original claim through an EU8 national who exercised Treaty rights as a worker. This is because we need to reassess certain applications to see if the EU8 national registered on the WRS. An indication could be when:

- there are documents listed on this or the previous application relating to an EU8 national
- there is a DAP Treaty rights task (a task will always appear on a child renewal if the child was born on, or after 30 April 2006 to parents who were born in an EEA country)

- when you check a child's parent has parental responsibility and find the parent is an EU8 national

As part of any renewal or replacement application on DAP or AMS, you may also need to check the customer's passport history in order to deal with the application (for example, when other guidance tells you to). If you do, and the passport history shows we issued the original passport through Treaty rights, you will need to check if there's clear evidence we made a Treaty rights related error. Clear evidence:

- means there is something present in the passport history to show an error was definitely made, for example:
  - there is a case note that explains a parent exercised Treaty rights as self-sufficient person, but they were over reliant on UK social assistance payments (also known as public funds or benefits)
- does not mean situations where you believe (or assume) we could have made an error but there is no evidence to definitely show we did, for example, there is a case note that explains we issued the passport because the parent exercised:
  - Treaty rights as a student but the case note does not explain what evidence we used (as there is no evidence to show we definitely issued the passport incorrectly)
  - Treaty rights but it does not explain how they did (as there is no evidence to show we definitely issued the passport incorrectly)

## No previous Treaty rights or WRS errors

If we issued the original passport through Treaty rights and there is no evidence we made an error and you do not need to check if an EU8 national previously registered on the WRS, you must:

1. Continue to deal with application (in line with current guidance). If the application is on DAP with a Treaty rights task, you must clear it by:
  - selecting **Yes, I've completed examination**
  - adding a case note to explain the actions and decisions you have made, including any evidence the customer sent with their application
  - clicking **Save**
2. Add a case note to the application to explain the actions and decision you have made, including any evidence the customer sent with their application.

## Previous WRS error

If we made an error on the original Treaty rights application because we did not previously check if an EU8 national registered on the WRS, you must refer to WRS: completing checks to deal with the application. You'll need to transfer the application to AMS if it is on DAP and as part of the WRS: completing checks guidance, you need to use UKVI systems but you do not have access.

If you can issue the passport without having to write to the customer to ask for WRS evidence or reassessing the Treaty rights claim, you must:

1. Continue to process the application in line with current guidance. If the application is on DAP with a Treaty rights task, you must clear it by:
  - Selecting **Yes, I've completed examination**
  - adding a case note to explain the actions and decision you made, including any evidence the customer sent with their application
  - Clicking **Save**
2. Add a case note to the application to explain the actions and decision you have made, including any evidence the customer sent with their application.

However, if the WRS: completing checks guidance tells you to write to the customer for WRS evidence or to reassess a Treaty rights claim, the dedicated resource team will deal with the application. You must refer the application to them by:

- using the agreed local process in your application processing centre (for applications on AMS)
- clicking **I can't do this** and referring it to your operational team leader (for applications on DAP)

## Previous Treaty rights error that is not a WRS error

If we made an error on the original Treaty rights application but it was not because we did not previously check if an EU8 national registered on the WRS, the dedicated resource team will deal with the application. You must refer the application to them by:

- using the agreed local process in your application processing centre (for applications on AMS)
- clicking **I can't do this** and referring it to your operational team leader (for applications on DAP)

When the dedicated resource team deal with the application, they must reassess it as a first time Treaty rights passport application.

## Related content

Contents



# Treaty rights: worker

This section tells HM Passport Office operational staff how to deal with passport applications for customers whose nationality claim relies on a European Economic Area (EEA) national who exercised Treaty rights as a worker.

How we deal with an application when a European Economic Area (EEA) national who exercised Treaty rights as a worker, depends on if a customer was born in the UK:

- from 1 January 1983 up to and including on or before 30 September 2004, 1 October 2000 in the UK (30 March 2004 in the Isle of Man, 30 September 2004 in Guernsey or 8 February 2004 in Jersey) as:
  - the principle law in place at the time was the Immigration Act 1971
  - [The Immigration \(European Economic Area\) Order 1994](#) explains how someone who exercised Treaty rights would not be subject to immigration control
- on, or after 30 April 2006, as The Immigration (European Economic Area) Regulations 2006 was in place at the time (amended by [The Immigration \(European Economic Area\) Regulations 2016](#) and [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#))

## About Treaty rights applications for workers

A worker is someone who is employed part-time or full-time, usually in return for payment of wages (but in some cases can be return for living expenses or accommodation).

## Treaty rights worker: genuine and effective work

There is no minimum number of hours an EEA national must work to qualify as a worker. However, the work they do, must:

- be genuine and effective
- not be marginal or ancillary

Effective work may not have a formal contract offer, but it should have:

- something that is recognisable as a labour contract
- an employer
- agreements between an employer and employee that the employee will perform certain tasks
- confirmation the employer will pay or offer services (for example, accommodation or goods) for the tasks an employee will carry out

## What marginal or ancillary work means

Marginal means the work involves so little time and money that it is unrelated to the lifestyle of the worker. Work is ancillary if the worker is clearly spending most of their time on something else and not work. For example, a student who works in a student union bar for 2 hours per week, is a student (as their work is marginal and ancillary to their role as a student).

## Workers who got paid cash in hand

If an EEA national got paid cash in hand, it does not mean they did not exercise Treaty rights as a worker (as long as they meet all other Treaty rights conditions in line with this guidance, including that they were in genuine and effective work).

You may identify someone got paid cash in hand if they tell you they did or they provide handwritten pay slips.

## Workers whose salary is paid by a non-UK company

Some EEA nationals may have worked in the UK, but their salary was paid by a non-UK company. Providing they were working in the UK and all other Treaty rights conditions were met (for example, their work was genuine and effective), you can still consider them to have exercised Treaty rights as a worker.

If the EEA national is a Swiss national, you must consider if they are a posted worker.

## How to assess if work is genuine and effective

You must assess each application on a case by case basis to decide if the EEA national's work is genuine and effective.

An EEA national's work is likely to be genuine and effective if it meets His Majesty's Revenue and Customs (HMRC) primary earning threshold (PET). This is the point at which an employee must pay class 1 National Insurance contributions. GOV.UK shows, the:

- PET levels for the [current years](#)
- PET levels for [previous years](#)

If an EEA national's income is less than the PET, or there is no PET level for the year the EEA national was working, it does not mean their employment is not genuine and effective. Instead, you must decide if their employment is genuine and effective taking in to account:

- if there is a genuine employer and employee relationship
- if there is an employment contract
- if the work is regular
- how long they have been employed for

- the number of hours they worked

## P60s shows a decrease in earnings

When assessing evidence to show an EEA national exercised Treaty rights as a worker, you may get 5 P60s, all of which are above the PET level with 1 that shows a significant decrease in earnings, for example:

- 2013 – 2014 P60 amount is £50,000
- 2014 – 2015 P60 amount is £48,000
- 2015 – 2016 P60 amount is £12,000
- 2016 – 2017 P60 amount is £52,000
- 2017 – 2018 P60 amount is £47,000

This could be a sign the EEA national stopped work or was out of the UK. You must contact the customer to investigate why the P60 amount was lower. If they tell you they:

- stopped working, you must refer to Treaty rights worker: stops working
- were temporarily out of the UK, you must refer to Treaty rights: break in residence
- were working throughout the year, you must check if their work was genuine and effective

## Treaty rights worker: stops working

If an EEA national stopped working, we may still consider them to have exercised Treaty rights (see retaining worker or self-employed person status and worker or self-employed person who has ceased activity).

If an EEA national is temporarily incapacitated and returns to work, you may still be able to consider them a worker (see retaining worker or self-employed person status). This includes someone who was working before being temporarily incapacitated who then received Jobseekers Allowance (as the Department for Work and Pensions will be satisfied they were able to work).

The retaining worker status following pregnancy guidance explains an EEA national woman can retain worker status if they were unable to remain in employment during the later stages of pregnancy (for example, they left their employment or went on early maternity leave). They will retain their worker status if they return to their previous job or find another job (including as a self-employed person) within 52 weeks of leaving the job or starting maternity leave. You do not need to check they returned to work if, at the time of the child's birth, the mother has already completed the 5 year treaty rights requirement.

You can consider an EEA national to be a worker for the period of time they received maternity pay from an employer or statutory maternity pay from the government.

## Treaty rights worker: jobseeking after involuntarily stopping work

Someone who looks for work after involuntarily leaving employment may retain their worker status. For more information, on when this happens and what evidence you need, see (see retaining worker or self-employed person status).

If an EU national cannot provide evidence they were actively looking for work, you may accept evidence they received Jobseekers Allowance together with a signed statement that confirms they were actively looking for work.

## Treaty rights worker: charity or voluntary work

An EEA national doing charity or voluntary work, including ministers of religion will:

- not qualify as a worker if they did unpaid charity work (they may still have exercised Treaty rights if they are self-sufficient)
- qualify as a worker if the work they did involved taking part in the commercial activities of the charity or organisation for which they received payments in the form of living expenses or accommodation

## Treaty rights worker: au pairs

Au pairs are nannies who work for a family. They:

- are usually treated as a member of the family
- are not entitled to the National Minimum Wage
- do not get paid holidays
- may get pocket money instead of a salary

Au pairs may not be able to provide evidence of earnings to show they were in genuine and effective employment. However, you can consider them to be a worker if you get evidence to show they were an au pair, for example a letter, reference or contract that shows:

- an agreement between them and the family to show:
  - what their role or tasks were
  - when they worked for the family
- the family paid for goods or provided services (such as free accommodation) for the work they did

If an au pair cannot provide evidence of an agreement between them and the family they worked for or what goods and services they received in the form of a salary, you must consider if they could have exercised Treaty rights as a self-sufficient person.

## Worker: customer born on, or before 30 September 2004

A customer born from 1 January 1983 up to and including 1 October 2000 in England, Northern Ireland, Scotland or Wales (or 1 October 1994 up to and including 1 October 2000 in the Isle of Man, 1 August 1993 up to and including 30 September 2004 in Guernsey, 1 January 1983 up to and including 8 February 2004 in Jersey will have a claim if at the time of their birth, the EEA national who the nationality claim relies on, was issued with a:

- Home Office letter confirming they were living in the UK in line with the Immigration (European Economic Area) Order 1994 or the immigration rules that were in place at that time

If a customer supplies one of these, you must:

1. Check the UK Visas and Immigration systems (UKVI) to make sure it is genuine and have not been revoked (cancelled). If you have doubts, it is genuine or suspect UKVI issued it in error, you must send a guidance query to the Quality and Examination Support team (QuEST).
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not supply any of these, we need evidence the EEA national exercised Treaty rights as a worker at the time they were born (see Qualifying period: customer born on or before 30 September 2004). This is any of the following:

- payslips or P60's
- HMRC employment history statements showing employment start and end dates, pay and tax
- letters from an employer or a contract of employment that show employment start and end dates, together with payslips or P60s

If a customer needs to ask HMRC for information or evidence, you must allow them enough time to provide it, before you withdraw their application (see withdrawing passport applications).

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a worker at the time the customer was born and they were in genuine and effective employment. If the customer does not supply evidence the EEA national was working at the time they were born, you must:
  - ask for alternative evidence that show the EEA national was working at the time they were born
  - ask them to get a signed letter from the EEA national that explains what their working circumstances were at the time they were born (if the customer cannot supply alternative evidence)
  - accept annual statement's (such as P60's) that show it was likely the EEA national was working for the full tax year the customer was born in (for

example, a P60 showing £30,000 income is likely to mean an EEA national was working for the full year)

- refer to balance of probabilities to decide if it is more likely than not the EEA national was working at the time the customer was born (using the evidence they gave us)
- 2. Check if the EEA national's evidence is from a Swiss registered company (as Swiss workers posted in the UK are exempt from the provisions of Treaty rights).
- 3. Check Companies House to see if the EEA national's employer exists. If it does not, you must ask for other evidence to show the EEA national was working.
- 4. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
- 5. Check if the EEA national is a retained worker or ceased activity (if they stopped working).
- 6. Continue to process the Treaty rights passport application.

## Worker: customer born on, or after 30 April 2006

A customer will have a claim if before they were born, their parent was issued with a:

- document certifying permanent residence
- permanent residence card (for customers whose parent is the non-EEA national family member of an EEA national)

If you get any of these, you must:

1. Check the UKVI system to make sure the right of permanent residence was granted before the child was born, they are genuine and have not been revoked. If you have doubts they are genuine or suspect UKVI issued them in error, you must send a guidance query to QuESt.
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide a document certifying permanent residence or a permanent residence card and the EEA national exercised Treaty rights as a worker during the 5 year qualifying period, we need evidence to show they did. This is any of the following:

- payslips or P60's
- HMRC employment history statements showing employment start and end dates, pay and tax
- start and end dates, together with payslips or P60s

If a customer needs to ask HMRC for information or evidence, you must allow them enough time to provide it before you withdraw their application (see withdrawing passport applications).

If the EEA national was an:

- EU2 national working between 1 January 2007 and 31 December 2013 or a Croatian national working between 1 July 2013 and 30 June 2018, we also need either of the following:
  - a Registration Certificate (known as a Home Office blue card)
  - all Accession State Worker Scheme Cards (purple cards) together with P60s, P45s and wage slips to confirm they were working with the named employer on the cards, covering the first 12 months of employment
- EU8 national who was working between 1 May 2004 and 30 April 2009, we also need either of the following:
  - a Registration Certificate (known as a Home Office blue card)
  - all Accession State Worker Registration Scheme Certificates together with P60s, P45s and wage slips to confirm they were working with the named employer on the certificates, for the first 12 consecutive months

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a worker during the 5 year qualifying period and they were in genuine and effective employment.
2. Check if the EEA national exercised Treaty rights other than as a worker during the 5 year qualifying period. If they were and it was as, a:
  - jobseeker, you must refer to Treaty rights: jobseeker
  - self-employed person, you must refer to Treaty rights: self-employed person
  - self-sufficient person, you must refer to Treaty rights: self-sufficient person
  - student, you must refer to Treaty rights: student)
3. Check if you can count periods of residence before the EEA national's country joined the EEA (see Treaty rights: Ziolkowski ruling).
4. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
5. Refer to Treaty rights: break in residence (if there's a gap in the EEA national's evidence or there's evidence to suggest they have been out of the UK for 2 or more years).
6. Check if the EEA national's evidence is from a Swiss registered company (as Swiss workers posted in the UK are exempt from the provisions of Treaty rights).
7. Check Companies House to see if the EEA national's employer exists. If it does not, you must ask for other evidence to show the EEA national was working).
8. Check if the EEA national is a retained worker or ceased activity (if they stopped working).
9. Refer to Treaty rights: authorisation to work, if the EEA national is:
  - an EU8 national who started work between 1 May 2004 and 30 April 2009 (as you must check they had the correct authorisation to work)
  - an EU2 national who started work between 1 January 2007 and 31 December 2013 (as you must check they had the correct authorisation to work)
  - a Croatian national who started work between 1 July 2013 and 30 June 2018 (as you must check they had the correct authorisation to work)
10. Continue to process the Treaty rights passport application.

**Related content**  
Contents



# Treaty rights: jobseeker

This section tells HM Passport Office operational staff how to deal with passport applications for customers whose nationality claim relies on a European Economic Area (EEA) national who exercised Treaty rights as a jobseeker.

How we deal with an application when a European Economic Area (EEA) national who exercised Treaty rights as a jobseeker depends on if a customer was born:

- from 1 January 1983 up to and including 30 September 2004 as:
  - the principle law in place at the time was [The Immigration Act 1971](#)
  - [The Immigration \(European Economic Area\) Order 1994](#) explains how someone who exercised Treaty rights would not be subject to immigration control
- on, or after 30 April 2006, as [The Immigration \(European Economic Area\) Regulations 2006](#) was in place at the time (amended by [The Immigration \(European Economic Area\) Regulations 2016](#) and [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#))

## About Treaty rights applications for jobseekers

A jobseeker is someone, who:

- enters the UK looking for employment
- is in the UK looking for employment directly after they were exercising Treaty rights as, a:
  - worker
  - self-employed person
  - self-sufficient person
  - student

EEA nationals who exercised Treaty rights as a jobseeker:

- must be able to show they were actively looking for employment and that they had a genuine chance of being employed
- are expected to get employment within 6 months of looking for work

## Jobseeker: EU8, EU2 and Croatian nationals

EU8, EU2 and Croatian nationals could not exercise Treaty rights as a jobseeker if they were subject to worker authorisation. It means:

- an EU8 national could only exercise Treaty rights as a jobseeker:
  - between 1 May 2004 and 30 April 2009 (inclusive) if they were exempt from worker authorisation or completed 12 months legal employment on the Workers Registration Scheme

- from 1 May 2009 (this is when the worker authorisation transitional arrangements ended, meaning EU8 nationals had the same rights as any other EEA national worker or jobseeker)
- an EU2 national could only exercise Treaty rights as a jobseeker:
  - between 1 January 2007 and 31 December 2013 (inclusive) if they were exempt from worker authorisation or completed 12 months legal employment on the Accession Worker Scheme (AWS)
  - 1 January 2014 (this is when the worker authorisation transitional arrangements ended, meaning EU2 nationals had the same rights as any other EEA national worker or jobseeker)
- a Croatian national could only exercise Treaty rights as a jobseeker:
  - between 1 July 2013 and 30 June 2018 (inclusive) if they were exempt from worker authorisation or completed 12 months legal employment on the AWS
  - 1 July 2018 (this is when the worker authorisation transitional arrangements ended, meaning Croatian nationals had the same rights as any other EEA national worker or jobseeker)

You must be aware, an EU8, EU2 or Croatian national could have exercised Treaty rights as a self-sufficient person while they looked for work.

## Jobseeker: how long an EEA national can be a jobseeker

There is no limit on how:

- long a European Economic Area (EEA) national could be a jobseeker during the qualifying period
- many times an EEA national could be a jobseeker during the qualifying period

Providing you are satisfied the EEA national was actively seeking work and had a genuine chance of being employed for the period of time they were jobseeking, you can accept they were a jobseeker.

## Jobseeker: actively seeking work and genuine chance of being employed

You must be satisfied an EEA national who exercised Treaty rights as a jobseeker was actively seeking work and had a genuine chance of being employed. If an EEA national:

- can provide evidence they received Jobseekers Allowance, you can accept they were actively seeking work and had a genuine change of being employed for that period
- cannot provide evidence they received Jobseekers Allowance, you must have evidence they were actively seeking work and had a genuine chance of being employed, for example:
  - job application forms or letters sent to employers or employment agencies
  - job interview invitation letters (or emails)
  - job rejection letters (or emails)
  - Jobcentre Plus letters (or emails)

Unless there is something with the application that suggests an EEA national did not have a genuine chance of being employed, you must accept they did. An example of when there is a suggestion an EEA national did not have a genuine chance of being employed is when they provided evidence that shows both of the following:

- evidence they applied for a job that required specific qualifications
- evidence of their qualifications that shows they did not have the required qualification for the job they applied for

## **Jobseeker: customer born on, or before 30 September 2004**

A customer born from 1 January 1983 up to and including 1 October 2000 in England, Northern Ireland, Scotland or Wales (or 1 October 1994 up to and including 1 October 2000 in the Isle of Man, 1 August 1993 up to and including 30 September 2004 in Guernsey, 1 January 1983 up to and including 8 February 2004 in Jersey) will have a claim if at the time of their birth, the EEA national who the nationality claim relies on, was issued with a:

- Home Office letter confirming they were living in the UK in line with the Immigration (European Economic Area) Order 1994 or the immigration rules that were in place at that time

If a customer supplies any of these, you must:

1. Check the UK Visas and Immigration systems (UKVI) to make sure it is genuine and has not been revoked (cancelled). If you have doubts it is genuine or suspect UKVI issued it in error, you must send a guidance query to QuEst.
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not supply any of these, we need evidence the EEA national exercised Treaty rights as a jobseeker, at the time they were born (see Qualifying period: customer born on or before 30 September 2004). This can be either of following:

- evidence they were actively looking for employment, such as:
  - job application forms or letters sent to employers or employment agencies
  - job interview invitation letters (or emails)
  - job rejection letters (or emails)
  - Jobcentre Plus letters (or emails)
- evidence of Jobseekers Allowance (if they received Jobseekers Allowance)

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a jobseeker at the time the customer was born, taking into account how long they have been a jobseeker.

2. Continue to process the application.

## Treaty rights jobseeker: born on, or after 30 April 2006

A customer will have a claim if before they were born, their parent was issued with a

- document certifying permanent residence
- permanent residence card (for customers whose parent is the non-EEA national family member of an EEA national)

If you get any of these, you must:

1. Check the UKVI system to make sure the right of permanent residence was granted before the child was born, they are genuine and have not been revoked. If you have doubts, they are genuine or suspect UKVI issued them in error you must send a guidance query to QuEST.
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide a document certifying permanent residence or a permanent residence card and the EEA national exercised Treaty rights as a jobseeker during the 5 year qualifying period, we need evidence to show they did. This is either of the following:

- evidence they were actively looking for employment, such as:
  - job application forms or letters sent to employers or employment agencies
  - job interview invitation letters (or emails)
  - job rejection letters (or emails)
  - Jobcentre Plus letters (or emails)
- evidence of Jobseekers Allowance (if they received Jobseekers Allowance)

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a jobseeker during the 5 year qualifying period, taking into account how long they have been a jobseeker.
2. Check if the EEA national exercised Treaty rights other than as a jobseeker during the 5 year qualifying period. If they were and it was as, a:
  - worker, you must refer to Treaty rights: worker
  - self-employed person, you must refer to Treaty rights: self-employed person
  - self-sufficient person, you must refer to Treaty rights: self-sufficient person
  - student, you must refer to Treaty rights: student
3. Check if you can count periods of residence before the EEA national's country joined the EEA (see Treaty rights: Ziolkowski ruling).
4. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
5. Refer to Treaty rights: break in residence (if there's a gap in the EEA national's evidence or there's evidence to suggest they have been out of the UK for 2 years).

6. Continue to process the Treaty rights passport application.

**Related content**

Contents

# Treaty rights: self-employed person

This section tells HM Passport Office operational staff how to deal with passport applications for customers whose nationality claim relies on a European Economic Area (EEA) national who exercised Treaty rights as a self-employed person.

How we deal with an application when a European Economic Area (EEA) national who exercised Treaty rights as a self-employed person depends on if a customer was born:

- from 1 January 1983 up to and including 30 September 2004 as:
  - the principle law in place at the time was [The Immigration Act 1971](#)
  - [The Immigration \(European Economic Area\) Order 1994](#) explains how someone who exercised Treaty rights would not be subject to immigration control
- on, or after 30 April 2006, as [The Immigration \(European Economic Area\) Regulations 2006](#) was in place at the time (amended by [The Immigration \(European Economic Area\) Regulations 2016](#) and [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#))

## About Treaty rights applications for a self-employed person

A self-employed person is someone who works for themselves and generates an income in a self-employed capacity.

### Construction Industry Scheme

You must treat an EEA national who worked for a contractor and registered under the Construction Industry Scheme (CIS) as a self-employed person. They will normally have:

- tax returns and tax calculations (SA302s)
- monthly statements from the contractor showing payments and deductions

An EEA national who worked for a contractor did not need to register on the CIS if they were an employee (worker). If the EEA national was an employee, you must treat them as a worker.

### Treaty rights self-employed: genuine and effective work

There is no minimum number of hours an Economic Area (EEA) national exercising Treaty rights as a self-employed person must work. However, you must be satisfied their self-employed work is:

- genuine and effective

- not marginal or ancillary (supplementary) (when their self-employed activity involves so little time and money it is mostly irrelevant to their lifestyle)

## Treaty rights self-employed: stops working

If an EEA national stopped self-employed work, we may still consider them to have exercised Treaty rights (see retaining worker or self-employed person status and worker or self-employed person who has ceased activity).

If an EEA national is temporarily incapacitated and returns to work, you may still be able to consider them a worker (see retaining worker or self-employed person status). This includes someone who was working before being temporarily incapacitated who then received Jobseekers Allowance (as the Department for Work and Pensions will be satisfied they were able to work).

## Jobseeking after involuntarily stopping self-employment

Someone who looks for work after involuntarily leaving self-employment may retain their self-employed status. For more information, on when this happens and what evidence you need, see (see Retaining worker or self-employed person status).

If an EU national cannot provide evidence they were actively looking for work, you may accept evidence they received jobseekers allowance together with a signed statement that confirms they were actively looking for work.

## Treaty rights self-employed: partnerships and directors

You must treat an EEA national as a self-employed person if they are:

- the director of their own company and they pay themselves a wage from their company profits
- in a partnership

## Self-employed: customer born on, or before 30 September 2004

A customer born from 1 January 1983 up to and including 1 October 2000 in England, Northern Ireland, Scotland or Wales (or 1 October 1994 up to and including 1 October 2000 in the Isle of Man, 1 August 1993 up to and including 30 September 2004 in Guernsey, 1 January 1983 up to and including 8 February 2004 in Jersey) will have a claim if at the time of their birth, the EEA national who the nationality claim relies on, was issued with a:

- Home Office letter confirming they were living in the UK in line with the Immigration (European Economic Area) Order 1994 or the immigration rules that were in place at that time

If a customer supplies any of these, you must:

1. Check the UK Visas and Immigration systems (UKVI) to make sure it is genuine and has not been revoked (cancelled). If you have doubts it is genuine or suspect UKVI issued it in error, you must send a guidance query to the Quality and Examination Support team (QuESt).
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not supply any of these, we need evidence the EEA national exercised Treaty rights as a self-employed person, at the time they were born (see Qualifying period: customer born on or before 30 September 2004). This is any of the following:

- HM Revenue and Customs (HMRC) SA302 calculations showing declared income
- HMRC tax returns showing declared income
- full tax calculations showing income from self-employed (from HMRC's personal tax account)
- business accounts showing declared income
- invoices or receipts payments for work or services carried out

If a customer needs to ask HMRC for information or evidence, you must allow them enough time to provide it, before you withdraw their application (see withdrawing passport applications).

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a self-employed person at the time the customer was born and the work they were doing was genuine and effective.
2. Check if the EEA national is a retained worker or ceased activity (if they stopped working).
3. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
4. Continue to process the application.

## **Self-employed: customer born on, or after 30 April 2006**

A customer will have a claim if before they were born, their parent was issued with a

- document certifying permanent residence
- permanent residence card (for customers whose parent is the non-EEA national family member of an EEA national)

If you get any of these, you must:

1. Check the UKVI system to make sure the right of permanent residence was granted before the child was born, they are genuine and have not been



revoked. If you have doubts they are genuine or suspect UKVI issued them in error, you must send a guidance query to QuEst.

2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide a document certifying permanent residence or a permanent residence card and the EEA national exercised Treaty rights as a self-employed person during the 5 year qualifying period, we need evidence to show they did. This is any of the following:

- HMRC SA302 calculations showing declared income
- HMRC tax returns showing declared income
- full tax calculations showing income from self-employed (from HMRC's personal tax account)
- business accounts showing declared income
- invoices or receipts showing payments for work or services carried out

If a customer needs to ask HMRC for information or evidence, you must allow them enough time to provide it before you withdraw their application (see withdrawing passport applications).

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a self-employed person and the work they were doing was genuine and effective.
2. Check if the EEA national is a retained worker or ceased activity (if they stopped working).
3. Check if the EEA national exercised Treaty rights other than as a self-employed person during the 5 year qualifying period. If they were and it was as a:
  - worker, you must refer to Treaty rights: worker
  - jobseeker, you must refer to Treaty rights: jobseeker
  - self-sufficient person, you must refer to Treaty rights: self-sufficient person
  - student, you must refer to Treaty rights: student
4. Check if you can count periods of residence before the EEA national's country joined the EEA (see Treaty rights: Ziolkowski ruling).
5. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
6. Refer to Treaty rights: break in residence (if there's a gap in the EEA national's evidence or there's evidence to suggest they have been out of the UK for 2 years).
7. Continue to process the application.

## **Related content**

Contents

# Treaty rights: self-sufficient person

This section tells HM Passport Office operational staff how to deal with passport applications for customers whose nationality claim relies on a European Economic Area (EEA) national who exercised Treaty rights as a self-sufficient person.

How we deal with an application when a European Economic Area (EEA) national who exercised Treaty rights as a self-sufficient person depends on if a customer was born:

- from 1 January 1983 up to and including 30 September 2004 as:
  - the principle law in place at the time was [The Immigration Act 1971](#)
  - [The Immigration \(European Economic Area\) Order 1994](#) explains how someone who exercised Treaty rights would not be subject to immigration control
- on, or after 30 April 2006, as [The Immigration \(European Economic Area\) Regulations 2006](#) was in place at the time (amended by [The Immigration \(European Economic Area\) Regulations 2016](#) and [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#))

## About Treaty rights applications for a self-sufficient person

EEA nationals who exercised Treaty rights as a self-sufficient person only affects customers born on, or after 30 June 1992.

A self-sufficient person is someone who has sufficient resources to cover their (and any family member's) living costs, so they do not become a burden on the UK social assistance system.

## Self-sufficient: comprehensive sickness insurance

EEA nationals who exercised Treaty rights as a self-sufficient person (and any family members) had to be covered by comprehensive sickness insurance (CSI).

As long as an EEA national provides evidence to show they exercised Treaty rights as a self-sufficient person (in line with this guidance):

- you do not need any evidence to show they (and any family members) were covered by CSI
- they (and any family members) will automatically be covered by CSI

This is because at the time the EEA national was a self-sufficient person, they will have been considered ordinarily (lawfully) resident in the UK and would have been able to access the National Health Service, which we can accept as CSI.

You do not need to check if the EEA national had access to the NHS by checking if they were registered with a GP, doctors surgery or an NHS Trust.

## Self-sufficient: charity workers

An EEA national who is a charity worker may qualify as self-sufficient if they can show:

- they have sufficient resources to support themselves
- the charity is meeting their living costs

An EEA national doing charity work may be considered a worker, if their work involves taking part in the commercial activities of the charity for which they receive payment in the form of living expenses or accommodation (see Treaty rights: Worker).

## Self-sufficient: retired

An EEA national who was working or self-employed may have retired. If they have, we may still consider them to have exercised Treaty rights as a worker or self-employed person (see Worker or self-employed person who has ceased activity).

If an EEA national retired and you cannot consider them to have exercised Treaty rights as a worker or self-employed person who ceased activity, they may qualify as self-sufficient. This is providing they can show they have sufficient resources (such as pensions or investments) to cover their living costs (so they do not become a burden on the UK social assistance system).

UK Pension Credit and contributions based UK state pension on their own are not acceptable forms of pensions.

## Self-sufficient: customer born on, or before 30 September 2004

A customer born from 1 January 1983 up to and including 1 October 2000 in England, Northern Ireland, Scotland or Wales (or 1 October 1994 up to and including 1 October 2000 in the Isle of Man, 1 August 1993 up to and including 30 September 2004 in Guernsey, 1 January 1983 up to and including 8 February 2004 in Jersey) will have a claim if at the time of their birth, the EEA national who the nationality claim relies on, was issued with a:

- Home Office letter confirming they were living in the UK in line with the Immigration (European Economic Area) Order 1994 or the immigration rules that were in place at that time

If a customer supplies any of these, you must:

1. Check the UK Visas and Immigration systems (UKVI) to make sure it is genuine and has not been revoked (cancelled). If you have doubts it is genuine or suspect UKVI issued it in error, you must send a guidance query to the Quality and Examination Support team (QuEST).

2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide any of these, we need evidence the EEA national exercised Treaty rights as a self-sufficient person at the time they were born (see Qualifying period: customer born on or before 30 September 2004). This is all of the following:

- evidence they (and any family members) had sufficient resources – this can be any of the following:
  - bank statements showing income received
  - statements showing income received from pensions or investments
- evidence of any social assistance funds (also known as public funds or benefits) they received, or evidence they did not receive any

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a self-sufficient person at the time the customer was born.
2. Check the EEA national (and any family members) had sufficient resources at the time the customer was born.
3. Accept the EEA national (and their family members) was covered by CSI (if you have sufficient evidence to show the EEA national exercised Treaty rights as a self-sufficient person).
4. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
5. Continue to process the application.

## **Self-sufficient: customer born on, or after 30 April 2006**

A customer will have a claim if before they were born, their parent was issued with a

- document certifying permanent residence
- permanent residence card (for customers whose parent is the non-EEA national family member of an EEA national)

If you get any of these, you must:

1. Check the UKVI system to make sure the right of permanent residence was granted before the child was born, they are genuine and have not been revoked. If you have doubts they are genuine or suspect UKVI issued them in error, you must send a guidance query to QuEst.
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide a document certifying permanent residence or a permanent resident card and the EEA national exercised Treaty rights as a self-sufficient person during the 5 year qualifying period, we need evidence to show they were. We need all of the following:

- evidence they (and any family members) had sufficient resources – this can be any of the following:
  - bank statements showing income received
  - statements showing income received from pensions or investments
- evidence of any social assistance funds they received, or evidence they did not receive any

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a self-sufficient person.
2. Check the EEA national (and any family members) had sufficient resources while they exercised Treaty rights as a self-sufficient person.
3. Accept the EEA national (and their family members) was covered by CSI (if you have sufficient evidence to show the EEA national exercised Treaty rights as a self-sufficient person).
4. Check if the EEA national exercised Treaty rights other than as a self-sufficient person as part of the 5 year qualifying period. If they were and it was as, a:
  - worker, you must refer to Treaty rights: worker
  - jobseeker, you must refer to Treaty rights: jobseeker
  - self-employed person, you must refer to Treaty rights: self-employed person
  - student, you must refer to Treaty rights: student
5. Check if you can count periods of residence before the EEA national's country joined the EEA (see Treaty rights: Ziolkowski ruling).
6. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
7. Refer to Treaty rights: break in residence (if there's a gap in the EEA national's evidence or evidence to suggest they have been out of the UK for 2 years).
8. Continue to process the application.

## **Related content**

Contents

# Treaty rights: student

This section tells HM Passport Office operational staff how to deal with passport applications for customers whose nationality claim relies on a European Economic Area (EEA) national who exercised Treaty rights as a student.

How we deal with an application when a European Economic Area (EEA) national who exercised Treaty rights as a student depends on if a customer was born:

- from 1 January 1983 up to and including 30 September 2004 as:
  - the principle law in place at the time was [The Immigration Act 1971](#)
  - [The Immigration \(European Economic Area\) Order 1994](#) explains how someone who exercised Treaty rights would not be subject to immigration control
- on, or after 30 April 2006, as [The Immigration \(European Economic Area\) Regulations 2006](#) was in place at the time (amended by [The Immigration \(European Economic Area\) Regulations 2016](#) and [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#))

## About Treaty rights applications for a student

EEA nationals who exercised Treaty rights as a student only affects customers born on, or after 30 June 1992.

A student is someone who was enrolled at a public or private establishment (recognised by Secretary of State for Education) for the main purpose of study, including vocational training.

If an EEA national is working, you must consider if they exercised Treaty rights as a worker.

EEA nationals who exercised Treaty rights as a student must:

- show they (and any family members) have sufficient resources to cover their (and any family members) living costs so they do not become a burden on the UK social assistance system
- have been studying at a recognised establishment

## Student: comprehensive sickness insurance

Unless they were issued with an EEA Registration Certificate on the basis of being a student on or before 8 July 2010, EEA nationals who exercised Treaty rights as a student (and any family members from 22 June 2015) had to be covered by comprehensive sickness insurance (CSI).

As long as an EEA national provides evidence to show they exercised Treaty rights as a student (in line with this guidance):

- you do not need any evidence to show they (and any family members) were covered by CSI
- they (and any family members) will automatically be covered by CSI

This is because at the time the EEA national was a student, they will have been considered ordinarily (lawfully) resident in the UK and would have been able to access the National Health Service (NHS), which we can accept as CSI.

You do not need to check if the EEA national had access to the NHS by checking if they were registered with a doctors surgery or an NHS Trust.

## Studying at recognised educational establishment

You must check if the EEA national who exercised Treaty rights as a student was studying at a recognised educational establishment.

If the EEA national's place of study is on the [register of sponsors](#), you can accept they were studying at a recognised educational establishment.

If the EEA national's place of study is not on the register of sponsors, you must ask for evidence to show either of the following:

- their place of study was publicly funded
- their place of study was accredited

An education establishment will be publicly funded if it is:

- an establishment or further education provider maintained by a local education authority
- an establishment in the higher education sector which received financial support by a higher education funding council (in line with the [Further and Higher Education Act 1992](#))
- any establishment receiving grants, loans or other payments from the Higher Education Funding Council for England

An educational establishment is accredited if it holds a valid and satisfactory full institutional inspection, review, or audit by a body with a formal role in the statutory regulation of education in the UK. These are:

- Quality Assurance Agency for Higher Education
- Ofsted
- Education Scotland
- Estyn
- Education and Training Inspectorate
- Independent Schools Inspectorate
- Bridge Schools Inspectorate
- School Inspection Service

If an:

- EEA national's place of study is not on the register of sponsors, and you do not get evidence to show it was publicly funded or accredited, you must not accept they exercised Treaty rights as student
- EEA national gives you evidence to show their place of study was publicly funded or accredited but you are not sure if it is, you must send a guidance query to the Quality and Examination Support team (QuEST)

## **Student: customer born on, or before 30 September 2004**

A customer born from 1 January 1983 up to and including 1 October 2000 in England, Northern Ireland, Scotland or Wales (or 1 October 1994 up to and including 1 October 2000 in the Isle of Man, 1 August 1993 up to and including 30 September 2004 in Guernsey, 1 January 1983 up to and including 8 February 2004 in Jersey) will have a claim if at the time of their birth, the EEA national who the nationality claim relies on, was issued with a:

- Home Office letter confirming they were living in the UK in line with the Immigration (European Economic Area) Order 1994 or the immigration rules that were in place at that time

If a customer supplies any of these, you must:

1. Check the UK Visas and Immigration systems (UKVI), to make sure it is genuine and has not been revoked (cancelled). If you have doubts it is genuine or suspect UKVI issued it in error, you must send a guidance query to QuEST.
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide any of these, we need evidence the EEA national exercised Treaty rights as a student at the time they were born (see Qualifying period: customer born on or before 30 September 2004). We need all of the following:

- evidence they were a student – this can be any of the following:
  - enrolment letters from schools or colleges confirming attendance
  - a letter from a college or university confirming attendance
  - a statement showing course fees were paid
- evidence of any social assistance funds (also known as public funds or benefits) they received, or confirmation they did not receive any
- evidence they (and any family members) had sufficient resources – this can be any of the following:
  - bank statements showing income received
  - statements showing income received from pensions or investments

When you get the evidence, you must:



1. Check the evidence shows the EEA national exercised Treaty rights as a student at a recognised educational establishment at the time the customer was born.
2. Check the EEA national (and any family members) had sufficient resources at the time the customer was born.
3. Accept the EEA national (and their family members) was covered by CSI (if you have sufficient evidence to show the EEA national exercised Treaty rights as a student).
4. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
5. Continue to process the application.

## **Student: customer born on, or after 30 April 2006**

A customer will have a claim if before they were born, their parent was issued with a

- document certifying permanent residence
- permanent residence card (for customers whose parent is the non-EEA national family member of an EEA national)

If you get any of these, you must:

1. Check the UKVI system to make sure the right of permanent residence was granted before the child was born, they are genuine and have not been revoked. If you have doubts they are genuine or suspect UKVI issued them in error, you must send a guidance query to QuEst.
2. Not ask for any further Treaty rights evidence.
3. Continue to process the application.

If a customer does not provide a document certifying permanent residence or a permanent residence card and the EEA national exercised Treaty rights as a student during the 5 year qualifying period, we need evidence to show they did. This is all of the following:

- evidence they were a student – this can be any of the following:
  - enrolment letters from schools or colleges confirming attendance
  - a letter from a college or university confirming attendance
  - a statement showing course fees were paid
- evidence of any social assistance funds (also known as public funds or benefits) they received, or confirmation they did not receive any
- evidence they (and any family members) had sufficient resources – this can be any of the following:
  - bank statements showing income received
  - statements showing income received from pensions or investments

When you get the evidence, you must:

1. Check the evidence shows the EEA national exercised Treaty rights as a student at a recognised educational establishment.

2. Check the EEA national (and any family members) had sufficient resources while they exercised Treaty rights as a student.
3. Accept the EEA national (and their family members) was covered by CSI (if you have sufficient evidence to show the EEA national exercised Treaty rights as a student).
4. Check if the EEA national exercised Treaty rights other than as a student during the 5 year qualifying period. If they were and it was as, a:
  - worker, you must refer to Treaty rights: worker)
  - jobseeker, you must refer to Treaty rights: jobseeker
  - self-employed person, you must refer to Treaty rights: self-employed person
  - self-sufficient person, you must refer to Treaty rights: self-sufficient person
5. Check if you can count periods of residence before the EEA national's country joined the EEA (see Treaty rights: Ziolkowski ruling).
6. Refer to Treaty rights: Jersey, Guernsey and Isle of Man (if there's a connection to Guernsey, Jersey or the Isle of Man).
7. Refer to Treaty rights: break in residence (if there's a gap in the EEA national's evidence or there's evidence to suggest they have been out of the UK for 2 years).
8. Continue to process the application.

## **Related content**

Contents

# Treaty rights: family members

This section tells HM Passport Office operational staff how to deal with Treaty rights passport applications when a customer's nationality claim is through a parent who is the family member of a European Economic Area (EEA) national.

In some cases, a customer can have a claim to a British passport if their parent is the family member of a European Economic Area (EEA) national and the EEA national was exercising Treaty rights. The family member will either be a direct family member or an extended family member.

There are differences between a direct family member and an extended family member. These are set out in:

- [The Immigration \(European Economic Area\) Order 1994](#)
- [The Immigration \(European Economic Area\) Regulations 2006](#) (amended by [The Immigration \(European Economic Area\) Regulations 2016](#) and [The Immigration \(European Economic Area\) \(Amendment\) Regulations 2019](#))

## Who are direct family members

The direct family member of an EEA national, are:

- the spouse or civil partner of an EEA national
- the direct descendant of an EEA national (or the EEA national's spouse or civil partner) who is either:
  - under the age of 21
  - aged 21 or over and dependent on the EEA national (or the EEA national's spouse or civil partner)
- the dependent direct relatives in the ascending line (parent or grandparent) of an EEA national or the EEA national's spouse or civil partner

A direct family member does not have to be an EEA national.

Until they gain their own right of residence, the direct family member of an EEA national can live in the UK, while both of the following apply:

- they were the family member of the EEA national
- the EEA national exercised Treaty rights or had a right of permanent residence

If the family member of an EEA national is not a direct family member, they may be an extended family member.

## Treaty rights applications from direct family members

Direct family members apply to passport applications for customers born on, or before 1 October 2000 or born on, or after 30 April 2006.

For customers born on, or before 1 October 2000 whose claim is through the family member of an EEA national who exercised their Treaty rights as a student, the family member can only be their spouse, civil partner or dependent child.

A customer born on, or before 1 October 2000 or on, or after 30 April 2006 will have a claim, if for the qualifying period, we get the following evidence:

1. Evidence of the direct family member's identity.
2. Evidence of the relationship between the direct family member and the EEA national (for example, marriage certificate, civil partnership certificate, birth certificate or adoption certificate)
3. Evidence the direct family member was resident in the UK.
4. Evidence the EEA national exercised Treaty rights. This will be either be for:
  - the time the customer was born (if the customer was born on, or before 1 October 2000)
  - for a consecutive 5 year period before the customer was born (if the customer was born on, or after 30 April 2006)
5. Evidence the direct family member was dependent on the EEA national. This only applies if the direct family member is either of the following:
  - the direct descendant of the EEA national (or the EEA national's spouse or civil partner) aged 21 or over
  - the direct relatives in the ascending line (parent or grandparent) of the EEA national (or the EEA national's spouse or civil partner)

You can find more information about direct family members and the evidence you can accept to show they are a direct family member in Free Movement Rights: direct family members of European Economic Area (EEA) nationals.

## Direct family members: evidence of dependency

You must be satisfied the direct family member is dependent on the EEA national if they are a direct:

- descendant of an EEA national (or the EEA national's spouse or civil partner) and aged 21 or over
- relative in the ascending line (parent or grandparent) of the EEA national (or the EEA national's spouse or civil partner)

You must consider the direct family member is dependent on the EEA national (or the EEA national's spouse or civil partner) if they:

- get financial support from the EEA national (or the EEA national's spouse or civil partner) to meet some of their essential needs (for example, accommodation, utilities and food)
- have little or no financial income themselves and rely on living in the same household as the EEA national (or EEA national's spouse or civil partner)

Evidence you can accept that shows the direct family member is dependent on the EEA national (or their spouse or civil partner) includes:

- bank statements
- evidence of money being transferred
- evidence of living in the same household

## Direct family members of an EEA national who ceased activity

In some cases, the direct family member does not have to have been in the UK for the full 5 year qualifying period for their child to still have a claim. This is when the EEA national exercised Treaty rights as worker or self-employed person who then ceased activity.

For more information, see Free Movement Rights: direct family members of European Economic Area (EEA) nationals and worker or self-employed person who has ceased activity).

## Who are extended family members

The extended family member of an EEA national are those who are not direct family members but are any of the following:

- a relative of an EEA national who is living in a country other than the UK and is dependent on the EEA national
- a relative of an EEA national who is a member of their household and:
  - is joining the EEA national in the UK (or wants to join them)
  - has joined the EEA national in the UK and is dependent on them or is part of their household
- a relative of an EEA national who, because of a serious health issue, needs the day to day personal care of the EEA national in order to do physical or mental functions
- the partner (other than a civil partner) of an EEA national (they and the EEA national must be in a stable relationship)
- someone who is subject to a non-adoptive legal guardianship order with the EEA national that is legally recognised in the country it is from – the person name in the order must:
  - be under the age of 18
  - have lived with the EEA national since the order started
  - have created a life with the EEA national
  - be dependent on the EEA national and the EEA national is legally and financially responsible for them

A relative of an EEA national includes:

- brothers and sisters
- aunts and uncles (including great aunts and great uncles)
- cousins (including second cousins)
- nieces and nephews (including great nieces and nephews)

- anyone related by marriage to the EEA national – you must be aware, since 11 February 2016, relatives related by marriage are not considered extended family members unless they were previously issued with an EEA family permit

There is no limit on the distance of the relationship between the EEA national and the extended family member (as long we get evidence to confirm there is a relationship between the extended family member and the EEA national).

From the 1 February 2017, the rights of extended family members only apply to relatives of an EEA national and not the relatives of an EEA national's spouse or civil partner. This means an extended family member can no longer rely on their relationship to an EEA national's spouse or civil partner and instead they must show they are a relative of an EEA national.

An extended family member of an EEA national:

- has the same residency rights as a direct family member, as long as they have residence document to confirm it, for example:
  - an EEA family permit
  - a registration certificate (for EEA national extended family members)
  - a residence card (for non-EEA national extended family members)
- does not have to be an EEA national

## Treaty rights applications from extended family members

Extended family members only apply to applications for customers born on, or after 30 April 2006.

A customer born on, or after 30 April 2006 will have a claim if for the qualifying period, we get the following evidence:

1. Evidence of the extended family member's identity.
2. Evidence of the relationship between the extended family member and the EEA national (for example, marriage certificates, civil partnership certificates or birth certificates). The number of documents you need will depend on the distance between the relationship (as you will need to see a connection between the relatives).
3. Evidence the extended family member was resident in the UK.
4. Evidence the EEA national exercised Treaty rights.
5. Evidence the extended family member either:
  - was living in the same household as the EEA national or was financially dependent on them
  - had a medical condition (such as a medical report) that includes the type and level of care needed (if the extended family member needed the personal care of the EEA national on serious health grounds)

Evidence of living in the same household includes:

- joint tenancy agreements
- a letter from the local council

- utility bills
- joint bank statements
- being financially dependent includes bank statements that show money transfers

You can find more information about extended family members and the evidence you can accept to show they are an extended family member in Free Movement Rights: extended family members of EEA nationals.

## Family member who also exercised Treaty rights

A customer may have a claim through Treaty rights if, during the 5 year qualifying period their parent was both of the following:

- a qualifying direct or extended family member of an EEA national during part of the 5 year period
- an EEA national themselves who exercised Treaty rights for the remainder of the 5 year period

For example, a child will have a claim if the 5 year qualifying period was made up as follows:

- for the first 3 years, their parent was a qualifying direct or extended family member of an EEA national who exercised Treaty rights
- for the remaining 2 years, their parent was an EEA national who exercised Treaty rights themselves

## Family member of different EEA nationals

A customer may have a claim through Treaty rights if, during the 5 year qualifying period, their parent was the direct or extended family member of different EEA nationals who exercised Treaty rights.

For example, a customer will have a claim if the 5 year qualifying period was made up as follows:

- for the first 3 years, the customer's mother qualified as a direct family member because her mother (the customer's grandmother) was an EEA national who exercised Treaty rights as a worker
- for the remaining 2 years, the customer's mother qualified as a direct family member because her father (the customer's grandfather) was an EEA national who exercised Treaty rights as a self-sufficient person

## Family members and domestic violence

A direct or extended family member may not be able to provide the evidence you need, about the EEA national who exercised Treaty rights if the relationship between them broke down because of domestic violence. You must:

1. Deal with applications:
  - on a cases by case by basis
  - sensitively
2. Ask the family member for any evidence they can get, providing it will not put them or anyone else at risk of harm.
3. Ask the family member for as much information as possible about the EEA national, for example:
  - the EEA national's nationality
  - when and where the EEA national worked or studied (if they exercised Treaty rights as a worker or student)
4. Consider other options that may allow you to confirm information about the EEA national, for example:
  - asking for alternative evidence (you must make sure you do not ask the family member to do something that would put them (or anyone else) at risk)
  - checking the EEA national's identity, nationality or proof of relationship on UK Visas and Immigration systems
  - contacting the EEA national's employer or education establishment for information about the EEA national (if the EEA national exercised Treaty rights as a worker or student and the family provided you with the details of where they worked or studied) – you must not mention domestic violence to the employer or education establishment
5. Ask an operational team leader to use all of the information you have to make a decision using a balance of probability.

## **Related content**

Contents



# Treaty rights: assessing sufficient resources

This section tells HM Passport Office operational staff how to assess if a European Economic Area (EEA) national who exercised Treaty rights as a student or self-sufficient person has sufficient resources.

Under regulation [6 of the Immigration \(European Economic Area \(EEA\)\) Regulations 2016](#), EEA nationals who exercised Treaty rights as a self-sufficient person or student must have sufficient resources to meet their (and any family members) living costs. This is in addition to any other requirements they must meet (see Treaty rights: self-sufficient person and Treaty rights: students).

EEA nationals who exercised Treaty rights as a worker, self-employed person or jobseeker do not need to show they are self-sufficient.

When deciding if an EEA national (and their family members) had sufficient resources, we will check if they got UK social assistance payments (often referred to as public funds or benefits) in order to meet their living costs. If an EEA national did not get UK social assistance payments in order to meet their living costs, we will accept they have sufficient resources.

There is no threshold for what sufficient resources is. However, it must be enough so the EEA national (and any family members) was not a burden on the UK social assistance system.

## Students and self-declaration

Regulation [4\(1\)\(d\)\(iii\) of the Immigration \(European Economic Area\) Regulations 2016](#) allows students to provide a declaration that confirms they have sufficient resources not to become a burden on the UK social assistance system.

You must accept a student has sufficient funds if they provide a written and signed statement to confirm at the time of being a student, they (and any family members) had sufficient resources not to become a burden on the UK social assistance system.

You must scan the declaration on to the system so you have a permanent record of it.

## How to check if an EEA national has sufficient resources

When deciding if an EEA national (and any family members) had sufficient resources, you must:

- deal with each the application separately

- check if the:
  - EEA national is a student who provided a declaration to confirm they meet the requirements of having sufficient resources
  - EEA national's income evidence shows they received UK social assistance payments to help meet their living costs or if it shows they had enough resources so as to not rely on UK social assistance payments (unless they are a student who provided a self-declaration)

You must accept the EEA national had sufficient resources and continue to process the passport application if they:

- provide evidence to show they had sufficient resources, so they did not need to claim UK social assistance payments
- are a student who provided a declaration to confirm they met the requirements of having sufficient resources

If the EEA national's income evidence shows they received UK social assistance payments or they may not have enough resources, you must:

- ask for their living costs – this includes but is not limited to:
  - rent or mortgage costs
  - utility costs
  - loans, credit card and other personal debt costs
  - travel costs
  - food costs
- consider each application on its own
- decide if the EEA national's own income meets their living costs (you must discuss the application with QuEST or an operational team leader if you are unsure)

If you decide the EEA:

- national has sufficient resources to meet their living costs, you must accept they have sufficient resources and continue to process the passport application
- does not have sufficient resources or mostly relies on UK social assistance payments to meet their living costs, you must accept they do not have sufficient resources and continue to process the passport application (this may mean you need to refuse the application)

## UK social assistance payments

EEA nationals have a right to claim social assistance payments in the UK. They include (but are not limited to) the following:

- His Majesty's Revenue and Customs:
  - Child Benefit
  - Child Tax Credits
  - Working Tax Credits
  - Working Families Tax Credits (including other forms of Tax Credits)

- the Department for Work and Pensions:
  - Attendance Allowance
  - Carers Allowance
  - Disability Living Allowance
  - Jobseekers Allowance
  - Income Support
  - Personal Independent Payments
  - Severe Disablement Allowance
  - Social Fund Payment (or discretionary support payment which replaces the Social Fund)
  - Universal Credit
- the Local Authority:
  - Council Tax Reduction
  - Housing and Council Tax Benefit
  - Housing and Homeless Assistance

## Cannot provide DWP evidence showing no social assistance received

If we need evidence to show the customer did not receive social assistance payments and they cannot provide information from the Department for Work and Pensions (DWP) or other government departments, you can accept their bank statements as evidence.

### Related content

Contents

# Treaty rights: Ziolkowski ruling

This section tells HM Passport Office operational staff about the Ziolkowski ruling and how it affects Treaty rights passport applications.

The Ziolkowski ruling:

- was made in the case 'Tomasz Ziolkowski (C-424/10) and Barbara Szeja and Others (C-425/10) v Land Berlin'
- only affects:
  - EU2 and EU8 nationals
  - Maltese nationals
  - Cypriot nationals
  - Croatian nationals

Under the Ziolkowski ruling, we can accept an EU2, EU8 or Croatian national's period residence in the UK before their country joined the European Union (EU), if both of the following apply:

- they were legally in the UK (in line with UK legislation)
- they would have met article 7 of [Directive 2004/38/EC](#) had it of been in force at the time (in other words, the exercised Treaty rights as a worker, self-employed person, job-seeker self-sufficient person or student in the UK before their country joined the EU)

## How the Ziolkowski ruling affects passport applications

If an EU8, EU2, Maltese, Cypriot or Croatian national was living in the UK before their country joined the EEA, you can accept it as part of their 5 year qualifying period, if they would have met article 7 of [Directive 2004/38/EC](#) (had it of been in force at the time). For example, in the case of:

- an EU8, Maltese or Cypriot national (whose country joined the European Union (EU) on 1 May 2004) who continuously lived in the UK as worker (in line with UK law) from 1 June 2000 to 1 June 2005:
  - they will gain the right of permanent residence on 30 April 2006 (when Directive 2004/38/EC came into effect)
  - their child will only have a claim if they were born on, or after 30 April 2006 (as the EU8 national could only gain a right of permanent residence when Directive 2004/38/EC came in to effect)
- an EU2 national (whose country joined the EU on 1 January 2007) who continuously lived in the UK as a student (in line with UK law) from 1 June 2000 to 1 June 2005:
  - they will gain a right of permanent residence on 1 January 2007 (when their country joined the EU)

- their child will only have a claim, if they were born on, or after 1 January 2007 (as the EU2 national could only gain a right of permanent residence when their country joined the EU)
- a Croatian national (whose country joined the EU on 1 July 2013) who continuously lived in the UK as a self-employed person (in line with UK law) from 1 January 2007 to 1 January 2012:
  - they will gain a right of permanent residence on 1 July 2013 (when Croatia joined the EU)
  - their child will only have a claim, if they were born on, or after 1 July 2013 (as the Croatian national could only gain a right of permanent residence when Croatia joined the EU)

You must be aware:

- you must only accept an EU8, EU2, Maltese, Cypriot or Croatian national's period of residence in the UK before the date their country joined the EEA, if you have evidence they met the conditions of their leave in the UK - this may be shown in the passport they first used to enter the UK
- an EU8, EU2 or Croatian national working in the UK before the date their country joined the EEA, may have been exempt from needing permission to work in the UK (see Treaty rights: authorisation to work)
- EU8, EU2, Maltese, Cypriot and Croatian nationals must still meet all other Treaty rights conditions (in line with this guidance)

## **Related content**

Contents

# Treaty rights: Jersey, Guernsey and Isle of Man

This section tells HM Passport Office operational staff what to consider when dealing with a Treaty rights passport application that has a connection to Guernsey, Jersey or the Isle of Man.

While EEA nationals were able to exercise Treaty rights in England, Northern Ireland, Scotland and Wales between 1 January 1983 and 1 October 2000 and between 30 April 2006 and 30 June 2021, EEA nationals were able to exercise Treaty rights in:

- the Isle of Man between:
  - 1 October 1994 and 1 October 2000
  - 30 April 2006 and 30 June 2021
- Guernsey between:
  - 1 August 1993 and 30 September 2004
  - 30 April 2006 and 30 June 2021
- Jersey between:
  - 1 January 1983 and 8 February 2004
  - 30 April 2006 and 30 June 2021

This means a customer born in the UK from:

- 1 January 1983 up to and including 30 September 2004 will have a claim to British nationality if at the time of their birth, the EEA national who the nationality claim relies on, exercised Treaty rights in:
  - England, Northern Ireland, Scotland and Wales (for customers born in the UK from 1 January 1983 up to and including 1 October 2000)
  - the Isle of Man (for customers born in the UK from 1 October 1994 up to and including 1 October 2000)
  - Guernsey (for customers born in the UK from 1 August 1993 up to and including 30 September 2004)
  - Jersey (for customers born in the UK from 1 January 1983 up to and including 8 February 2004)
- 30 April 2006 up to and including 30 June 2021 will have a claim to British nationality if for 5 consecutive years before the customer was born, the EEA who the nationality claim relies on, exercised Treaty rights in the UK

## Part residence in Jersey, Guernsey or the Isle of Man

During the 5 year qualifying period, EEA nationals must have exercised their Treaty rights wholly in the UK or Jersey, Guernsey or the Isle of Man. For example, a customer will not have a claim if the EEA national who the nationality claim relies on, exercised Treaty rights for the first 2 years in Wales and the remaining 3 years in the Isle of Man.

## Jersey, Guernsey and Isle of Man observations

You may see a passport we issued to a customer with a connection with Jersey, Guernsey or the Isle of Man with an observation that says:

### **THE HOLDER IS NOT ENTITLED TO BENEFIT FROM EU PROVISIONS RELATING TO EMPLOYMENT OR ESTABLISHMENT**

This is because the Treaty of Accession confirmed a person who gets British citizenship through a connection with Guernsey, Jersey or the Isle of Man does not benefit from European Union (EU) provisions, unless they:

- and 1 of their parents (or grandparents) was born, adopted, naturalised or registered in the UK
- have been living in the UK for a continuous period of 5 years

As the UK left the EU on 31 December 2020, we no longer add this observation to British passports from 1 January 2021.

#### **Related content**

Contents

# Treaty rights: break in residence

This section tells HM Passport Office operational staff dealing with Treaty rights passport applications what will (and will not) affect a European Economic Area (EEA) national's period of residence in the UK. It also tells them what to do if there are gaps in an EEA national's evidence, they give us to show they exercised Treaty rights.

When dealing with a Treaty rights passport application for a child born on, or after 30 April 2006, you may find:

- a European Economic Area (EEA) national was absent from the UK
- there are gaps in an EEA national's evidence they give us to show they exercised Treaty rights

## Treaty rights: break in residency

For an EEA national to have exercised Treaty rights, they need to have 5 years continuous residence in the UK. There are some circumstances that can break a period of residency and some that will not.

## Circumstances that will not affect a period of residency

An EEA national's period of residence in the UK is not broken if they spent time out of the UK for 6 months or less, in any 12 month period.

Providing the EEA national gives us evidence to show it, the following absence will also not break their period of residence in the UK:

- time spent outside the UK on compulsory military service
- any single period of time spent outside the UK of 12 months or less that was for an important reason, including:
  - pregnancy
  - childbirth
  - parental leave
  - serious illness
  - caring for a sick relative
  - study
  - vocational training
  - an overseas posting
  - court proceedings

This list is not exhaustive and you must consider other important reasons why the customer was out of the UK.

Although an absence for one of these reasons does not break residence, it could affect an EU8, EU2 or Croatian national's period of employment on the relevant



worker authorisation scheme. For example, there will be a gap in employment if they were not working because they were out of the UK.

As EEA nationals can travel in and out of the UK without restrictions, you may not know if they have been absent from the UK. Therefore, you must accept they were in the UK unless there's clear evidence they were not.

## Circumstances that will affect a period of residency

Some circumstances will break an EEA national's period of residence.

### Break in residence: imprisonment

An EEA national's period of residence in the UK will be broken if they serve a prison sentence.

EEA nationals cannot add the time they spent exercising Treaty rights before and after serving a sentence together, to make up the 5 year qualifying period.

When an EEA national is released from prison, their initial 3 month right of residence does not apply and they had to immediately start to exercise a Treaty right.

### Break in residence: removed from the UK

An EEA national's period of residence in the UK will be broken if they were:

- removed from the UK
- given a deportation or exclusion order

## Treaty rights: break between permission to be in the UK

There may be occasions when there is a break between an EEA national's permission to be in the UK (such as limited leave to remain) from the date it expired and the date it was renewed. This could affect an EEA national's qualifying period if it includes a period of time before that country joined the EEA (see Ziolkowski ruling).

You can disregard the break if the EEA national applied to renew their permission within 28 days of when it expired.

## Treaty rights: gap in 5 year qualifying period evidence

If there is a gap in the evidence an EEA national uses to show they exercised Treaty rights for 5 continuous years, you must consider if it is because, they:

- were absent from the UK (taking into account there are some circumstances that mean their period of residence will not be broken)
- they were in the UK but did not exercise Treaty rights

If an EEA national was not absent from the UK (or there's no evidence to suggest they were), we expect them to provide evidence to show they exercised Treaty rights throughout the qualifying period. If they cannot, you must:

1. Not immediately refuse the application.
2. Discuss the application with an operational team leader (OTL).

You, the OTL, must:

1. Check how long the period is that we do not have evidence for, as:
  - o you must be satisfied the EEA national exercised Treaty rights
  - o it is unlikely the EEA national exercised Treaty rights if they cannot provide the evidence that covers a long period of time (for example, 12 months or more).
2. Consider what other evidence the EEA national can provide to show they exercised Treaty rights (in line with supporting documents not available).
3. Make a decision using a balance of probability using all of the evidence you have.

## Absent from the UK for 2 or more years

If an EEA national is absent from the UK for 2 consecutive years, they will lose:

- any rights given to them, by:
  - o no time limit
  - o indefinite leave to remain (unless they got it through the EU Settlement Scheme (EUSS))
  - o indefinite leave to enter
- any rights of permanent residence, this includes any rights that existed by someone who:
  - o was exercising Treaty rights, who does not have a document certifying permanent residence
  - o has a document certifying permanent residence card or a permanent residence card

If an EEA national was given indefinite leave to remain through the EUSS, they can be absent from the UK for up to 5 consecutive years, before they lose any rights.

As EEA nationals can travel in and out of the UK without restrictions, you must accept they were in the UK, unless there's clear evidence they were not.

### Related content

Contents

# Treaty rights: born between 2 October 2000 and 29 April 2006

This section tells HM Passport Office operational staff how to deal with passport applications for a customer who was born in the UK from 2 October 2000 up to (and including) 29 April 2006 to a European Economic Area national parent.

The only situations when a customer born in the UK from 2 October 2000 up to and including 29 April 2006 can have a claim to British nationality through a European Economic Area (EEA) national who exercised Treaty rights, is when one of the following apply:

- the customer was born in the UK from 2 October 2000 up to and including 8 February 2004 and the EEA national who the claim is through, exercised Treaty rights in Jersey at the time of the customer's birth
- the customer was born in the UK from 2 October 2000 up to and including 30 September 2009 and the EEA national who the claim is through, exercised Treaty rights in Guernsey
- before the customer was born in the UK, the EEA national was a worker or self-employed person who had ceased activity and benefitted from a right of permanent residence in the UK by meeting the relevant criteria

In all other cases, customers born in the UK from 2 October 2000 up to an including 29 April 2006 cannot have a claim to British nationality through an EEA national who exercised Treaty rights. Instead, they must have a claim to British nationality through another route, for example, through:

- naturalisation or registration as a British citizen
- a parent who was granted indefinite leave to remain, indefinite leave to enter or no time limit before they were born

For example, a customer born in:

- England on 1 February 2003 will have a claim to British nationality, if their EEA parent exercised Treaty rights in Jersey at the time they were born
- Wales on 29 September 2004 will have a claim to British nationality, if their EEA parent exercised Treaty rights in Guernsey at the time they were born
- Scotland on 15 June 2001 will not have a claim to British nationality, if their EEA parent exercised Treaty rights in Scotland at the time they were born

## Related content

Contents

# Comprehensive sickness insurance: refunds and compensation requests

This section tells HM Passport Office operational staff what to do when a customer requests a refund or compensation because we previously refused a passport application because the intended passport holder's parent did not have comprehensive sickness insurance.

Until August 2022, our guidance confirmed someone who exercised Treaty rights as a self-sufficient person or student had to be covered by comprehensive sickness insurance (CSI) to gain a right of residence. It also confirmed they were only covered by CSI if they had any of the following:

- a comprehensive private medical insurance policy document
- a valid European Health Insurance Card (EHIC) or E111 issued by any EEA country other than the UK
- a form S1 (or form E109 or E121, issued before the introduction of form S1)
- a form S2 (or form E112, issued before the introduction of form S2)
- a form S3

In August 2022, we updated our guidance to confirm someone is covered by CSI if they supplied evidence they exercised Treaty rights as a student or self-sufficient person. This is because they would have been ordinarily living in the UK and had access to the NHS (National Health Service).

This means we may have refused or withdrawn a passport application before August 2022 because the person who exercised Treaty rights did not provide evidence of CSI that was previously listed in our guidance.

If a customer requests a refund or compensation because we previously refused or withdrew their passport application as they did not have CSI, you must send a guidance query to the Quality and Examination Support team (QuEst).

QuEst will check with Passport policy what action to take on a case by case basis.

## **Related content**

Contents