



Home Office

Free Movement Rights: direct family members of European Economic Area (EEA) nationals

Version 5.0

Contents

Contents.....	2
About this guidance.....	5
Contacts	5
Clearance and publication	5
Changes from last version of this guidance	5
Direct family members.....	6
Extended residence: qualifying conditions	8
Qualifying conditions: stage 1	8
Evidence of identity	8
Right of appeal.....	8
Qualifying conditions: stage 2.....	8
Proof of relationship	8
Legal guardianships	9
Marriage or civil partnerships	9
Right of appeal.....	9
Qualifying conditions: stage 3.....	10
Status of EEA national sponsor	10
Public policy, public security and public health	10
Right of appeal.....	10
Qualifying conditions: stage 4.....	10
Dependency.....	10
Essential needs.....	11
Proof of dependency	11
No valid proof of dependency provided.....	11
Refusing for public policy, public security or public health reasons.....	12
Example scenarios of the qualifying conditions 4 stage test.....	12
Scenario 1	12
Scenario 2.....	12
Scenario 3.....	13
Permanent rights of residence	14
Permanent rights of residence: assessing the application.....	15
Continuous residence in the UK for 5 years	15
Public policy, public security or public health.....	15

Permanent rights of residence scenario 1	15
Permanent rights of residence scenario 2	16
Permanent rights of residence scenario 3	16
Permanent rights of residence scenario 4	17
Permanent rights of residence scenario 5	18
Domestic violence	19
Permanent residence.....	19
Enquiries to make in cases of domestic violence	19
Non-EEA national family members of dual EEA and British citizens	22
Transitional arrangements	22
Persons residing in the UK on 16 July 2012	22
Persons who had applied for an EEA family permit before 16 July 2012.....	22
Validity of marriages.....	24
Polygamous marriages	24
Children of polygamous marriages.....	24
Polygamous relationships	24
Applicants applying as a spouse or civil partner of an EEA national.....	25
Applicants applying as the durable partner of an EEA national.....	25
Child marriages.....	26
Marriages of convenience.....	27
Burden of proof	27
Standard of proof	27
Marriages of convenience test: stage 1	28
Factors which may indicate a marriage or civil partnership of convenience	28
Marriages of convenience test: stage 2	29
Factors leading to referral to senior caseworker	29
Marriages of convenience test: stage 3	30
Referring the case to a senior caseworker to recommend conducting a marriage interview	30
Marriages of convenience test: stage 4	31
Making a decision following an interview	31
Valid evidence provided that the marriage is genuine.....	32
Failure to attend the interview	32
Marriage interviewing.....	33
The marriage interview.....	Error! Bookmark not defined.
Office interviews.....	33
Marriage interview home visits	34

Validity of marriages: example scenarios	34
Validity of marriages: scenario 1	34
Children of polygamous marriages	35
Validity of marriages: scenario 2	35
Validity of marriages: scenario 3	36
Validity of marriages: scenario 4	36

About this guidance

This guidance applies and interprets the [Immigration \(European Economic Area\) regulations 2016](#), which transpose the Free Movement Directive 2004/38/EC into national law.

Contacts

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

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

Clearance and publication

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

- version **5.0**
- published for Home Office staff on **21 April 2017**

Changes from last version of this guidance

- Reformatted in line with new processes
- Changes to reflect that the Immigration (European Economic Area) Regulations 2016 have revoked and replaced the Immigration (European Economic Area) Regulations 2006

Related content

[Contents](#)

Related external links

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

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

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

Direct family members

This section tells you how to consider whether a person is the direct family member of a European Economic Area (EEA) national.

Family members who come under regulation [7\(1\)\(a\), \(b\) and \(c\) of the Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) are often called 'direct' family members.

The following can be considered as direct family members:

- spouse or civil partner
- direct descendants of the EEA national or their spouse or civil partner who are:
 - under the age of 21
 - dependants of the EEA national or their spouse or civil partner
- dependent direct relatives in the ascending line of the EEA national or their spouse or civil partner

Where the EEA national sponsor is a student and has resided in the UK for more than 3 months, a family member will only have a right to reside if they are either:

- the dependent child of the EEA national or the EEA national's spouse or civil partner
- a qualified person in their own right

Any other applicant should be considered under the provisions relating to extended family members. For guidance on extended family members, see: [Extended family members of EEA nationals](#).

Direct family members have an automatic right of residence in the UK for as long as they remain the family member of that EEA national and that person is either:

- entitled to reside in the UK for an initial period of 3 months
- a qualified person
- has a right of permanent residence

For guidance on how to assess an application, see: [Extended residence: qualifying conditions](#).

Article 23 of [Directive 2004/38/EC](#) (the Free Movement Directive) allows the family members of EEA nationals who have the right of residence in the UK to work or become self employed.

Direct family members of an EEA national sponsor may not automatically lose the right of residence if their relationship ends. For guidance on how a direct family member can keep the right of residence in the UK, see: [Family members of EEA nationals who have retained the right of residence](#).

You must use the 4 stage test to consider applications from people claiming to be direct family members of an EEA national. For more information on each stage of the test, see: [Extended residence: qualifying conditions](#).

If the applicant says they cannot provide evidence about their EEA sponsor because their relationship broke down due to domestic violence you must take a pragmatic approach. For more information, see: [Domestic violence](#).

For guidance on family members of British citizens, see: Free movement rights: Family members of British citizens.

Related content

[Contents](#)

Procedures – applications forms

Policy and procedures – identification document requirements

Procedures – fees

Biometric information: introduction

Related external links

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

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

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

Extended residence: qualifying conditions

This section tells you about the 4 stage consideration process for applications from direct family members of European Economic Area (EEA) nationals.

You must follow these stages when you are assessing if a direct family member of an EEA national can be issued a document confirming their right of residence in the UK in line with the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

Qualifying conditions: stage 1

The first stage of the process for assessing a registration certificate or residence card application from a direct family member of an EEA national assesses the identity and nationality of the family member and the EEA national sponsor.

Evidence of identity

They must provide evidence of identity and nationality for themselves and their EEA sponsor in the form of a:

- valid passport (or alternatively a valid EEA national identity card if they themselves are an EEA national)
- valid EEA passport or valid EEA national identity card for their EEA national sponsor

For information on how to consider this evidence see: [Processes and procedures - alternative evidence of identity](#).

If the applicant provides sufficient evidence you can go to [stage 2](#).

If they don't provide enough evidence of identity or nationality, you must reject the application.

Right of appeal

A non-EEA national does not have a right of appeal if they do not produce a valid passport or evidence to show they are the family member of an EEA national.

An EEA national who claims to be the family member of another EEA national will have a right of appeal even if they do not produce evidence of relationship, as long as they have produced evidence to show they are an EEA national.

Qualifying conditions: stage 2

You must not start this test until you have considered the application under [stage 1](#).

Proof of relationship

The applicant must provide evidence of their relationship to the EEA national sponsor as follows. This can include, as follows, for:

- a spouse – a marriage certificate:
 - if a UK issued marriage certificate is missing, you can assess if the other evidence provided sufficiently evidences the spousal relationship
- a civil partner – civil partnership certificate:
 - if a UK issued civil partnership certificate is missing, you can assess if the other evidence provided sufficiently evidences the partnership
- a child or stepchild – documents which name the EEA national sponsor or their spouse as the parent, for example a full birth certificate:
 - a short birth certificate can be accepted if you are satisfied that the other evidence corroborates it and that you have no concerns about the child's relationship to the sponsor
- an adopted child – a legal adoption document
- a relative in the ascending - documents to show the full ascending line, for example:
 - a father or mother must produce their child's birth certificate naming them as the parent
 - a grandfather or grandmother must produce their child's birth certificate naming them as the parent, and their grandchild's birth certificate, which names their parent

Legal guardianships

A child who has an EEA national as their legal guardian is not considered to be a 'direct descendant' (a term which suggests a blood relationship) and so they cannot be considered as a direct family member.

Instead, if the legal guardian is also a relative of the child, you must consider if the requirements of an extended family member are met. See: Extended family members of EEA nationals.

If the legal guardian is not also a relative of the child, then the child will not have a right to reside under European Union (EU) law and will need to meet the requirements of the Immigration Rules to remain in the UK.

Marriage or civil partnerships

You must decide if marriages or civil partnerships are legally valid and are not marriages of convenience before going to [stage 3](#) of the consideration process. For guidance on the marriages or civil partnerships of convenience test, see: [Marriages of convenience](#).

Right of appeal

A non-EEA national does not have a right of appeal if they do not produce evidence to show they are the family member of an EEA national.

An EEA national who claims to be the family member of another EEA national will have a right of appeal even if they do not produce evidence of relationship, as long as they have produced evidence to show they are an EEA national.

Qualifying conditions: stage 3

You must have considered [stage 1](#) and [stage 2](#) of this test before moving on to stage 3.

Status of EEA national sponsor

The applicant must provide proof the EEA national is either:

- living in the UK and exercising a free movement right
- has a permanent right of residence in the UK

For further guidance on assessing whether an EEA national is a qualified person or has permanent residence, see: [European Economic Area nationals qualified persons](#).

Unless there are public policy, public security or public health grounds which would justify a refusal, and the EEA national sponsor provides evidence they are a qualified person, you must issue a:

- registration certificate (if the applicant is an EEA national)
- residence card (if the applicant is a non-EEA national)

You must refuse the application if:

- evidence has not been provided to show the EEA national's status as a qualified person or a person with permanent residence status

Public policy, public security and public health

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

You must refuse the application if:

- refusal is justified on public policy, public security or public health grounds

Right of appeal

Under regulation 36 of the 2016 regulations, a family member of an EEA national has a right of appeal against a refusal of an application for a registration certificate or residence card.

Qualifying conditions: stage 4

You must have considered [stage 1](#), [stage 2](#) and [stage 3](#) of this test before moving on to stage 4.

Dependency

A child aged 21 or over and any relatives in the ascending family line must prove they are dependent on the EEA national sponsor or their spouse or civil partner.

Where dependency is necessary, the family member does not need to be living or have lived in an EEA state where the EEA national sponsor also lives or has lived. Their dependency on the EEA national sponsor does not need to have existed before they came to the UK.

This follows from the Court of Appeal judgment in *Pedro v Secretary of State for Work and Pensions* [2009] EWCA Civ 1358 (14 December 2009).

Essential needs

You must consider the following:

- does the applicant need financial support to meet their essential needs from the EEA national, their spouse or civil partner
- if the applicant cannot meet their essential living needs without the financial support of the EEA national, they must be considered dependent even if they also receive financial support or income somewhere else

You do not need to consider the reasons why the applicant needs the financial support or whether they are able to support themselves by working.

Essential needs include accommodation, utilities and food. Dependency will normally be shown by financial documents that show money being sent by the sponsor to the applicant.

If the applicant is receiving financial support from the EEA national as well as others, they must show that the support from the EEA national is supporting their essential needs.

The applicant does not need to be dependent on the relevant EEA national to meet all or most of their essential needs. For example an applicant can still be considered dependent if they receive a pension to cover half of their essential needs and money from the relevant EEA national to cover the other half.

Proof of dependency

The applicant must provide proof of their dependency. This can include:

- bank or building society statements
- evidence of money transfers
- evidence of living in the same household if applicable
- other evidence to show their EEA national sponsor has enough money to support them and the applicant is reliant on them for this

These are illustrative examples and other documentation may be provided which satisfies this requirement.

No valid proof of dependency provided

If they cannot provide valid proof to show they are currently dependent on their EEA national sponsor, or the sponsor's spouse or civil partner, you must check the

guidance for extended family members to see if they satisfy the conditions of [regulation 8\(2\) of the 2016 regulations](#). For more information, see: Extended family members of EEA nationals.

For examples of how to apply the 4 stage test see: [Example scenarios of the qualifying conditions 4 stage test](#).

Refusing for public policy, public security or public health reasons

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

Example scenarios of the qualifying conditions 4 stage test

Example scenarios of how to apply the 4 stage test for assessing whether a person qualifies as direct family members of a European Economic Area (EEA) national worker.

Scenario 1

Mrs A, a French national, entered the UK with her son, aged 7, using their French passports. She came to the UK to join her husband who is also a French national. He is in full time employment in the UK.

Three months after arriving in the UK, Mrs A applies for documents to confirm the right of residence for herself and her son. Mr A has not applied for his own registration certificate.

In support of her application Mrs A sends in her:

- own, her husband's and her son's French passports
- marriage certificate
- son's birth certificate
- husband's last 3 months wage slips, and a letter from his employer

You consider the 4 stage test and find Mrs A has provided proof of her own, her husband's and her son's identity. She has provided proof that her husband is a qualified person and she is related as claimed. You can issue a registration certificate to Mrs A and her son.

Scenario 2

Mrs B, an Italian national, enters the UK using her Italian passport. She has come to the UK to join her Italian national daughter who she claims is a self-sufficient person in the UK.

Three months after arriving in the UK Mrs B applies for a document to confirm her right of residence. In support of her application Mrs B sends in her:

- own and her daughter's Italian passports
- daughter's birth certificate
- own and her daughter's bank statements for the last year, showing that her only income is provided by her daughter

You consider the 4 stage test and find Mrs B has provided proof of her own and her daughter's identity.

She has also provided proof that she is related to her daughter as claimed. However, she has not provided proof that her daughter has comprehensive sickness insurance.

You also consider whether Mrs B is dependent on her daughter in order to produce a comprehensive refusal letter. You find that Mrs B is dependent on her daughter, but you refuse the application with a right of appeal because Mrs B's daughter is not a qualified person as she does not hold comprehensive sickness insurance.

Scenario 3

Mr C, a Brazilian national, enters the UK to join his Portuguese national daughter who is in full-time employment in the UK. Before coming to the UK, Mr C lived in Brazil in the same town as his son.

Three months after arriving in the UK Mr C applies for a document to confirm his right of residence. In support of his application he sends in his:

- own Brazilian passport
- daughter's birth certificate and Portuguese passport
- daughter's last three months wage slips and a letter from her employer
- own and his daughter's bank statements for the last 18 months which show Mr C receives a monthly pension in Brazil, there are also occasional deposits from both his son and daughter, the last deposit from his daughter was 8 months before he came to the UK

You consider the 4 stage test and find that Mr C has provided proof of his own and his daughter's identity. He has also provided proof that his daughter is a qualified person and they are related as claimed.

However, you refuse the application with a right of appeal because Mr C is not financially dependent on his daughter, as his bank statements show his pension covers his monthly outgoings and he is able to support himself.

Related content

[Contents](#)

Related external links

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

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

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

Permanent rights of residence

This section tells you the circumstances in which European Economic Area (EEA) nationals and their family members may live in the UK on a permanent basis.

If they have lived in the UK lawfully for a continuous period of 5 years, direct family members of an EEA national sponsor are allowed to live in the UK on a permanent basis.

They must meet all the conditions of regulation 15(1)(a) or (b) of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

In certain circumstances, direct family members of an EEA national are not required to complete 5 years continuous residence and can get permanent residence before this. If the EEA national is a:

- worker or self-employed person who has ceased activity (in line with regulation 5)
- worker or self-employed person who has died:
 - the family member must have resided with the worker or self-employed person continuously in the UK for 2 years immediately before their death
 - the death was as a result of an accident at work or an occupational disease

For more information on workers who have ceased activity, see: the workers section in the Qualified persons guidance.

Related content

[Contents](#)

Related external links

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

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

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

Permanent rights of residence: assessing the application

This section tells you about assessing an application from a direct family member of a European Economic Area (EEA) national for a document confirming their right of permanent residence.

You must consider if a person meets the requirements showing they are a direct family member of an EEA national. See: [Extended residence: qualifying conditions](#).

Continuous residence in the UK for 5 years

You must make sure the applicant, their EEA national sponsor and any family members included in the application have been resident in the UK for a continuous period of 5 years. You should note that EEA nationals and their family members who are claiming a right of permanent residence on the basis that the EEA national is a worker or self-employed person who has ceased activity are not required to have completed 5 years residence in the UK.

For information on calculating the continuous residence period, see: the assessing continuous residence section in the Qualified persons guidance.

Public policy, public security or public health

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

For examples of permanent residence applications see:

- [permanent rights of residence scenario 1](#)
- [permanent rights of residence scenario 2](#)
- [permanent rights of residence scenario 3](#)
- [permanent rights of residence scenario 4](#)
- [permanent rights of residence scenario 5](#)

Permanent rights of residence scenario 1

This is an example scenario of how to apply the permanent right of residence test for direct family members of a self-employed European Economic Area (EEA) national.

Mr A and his 18 year old son, Norwegian nationals, live in the UK with Mrs A, a Swedish national. Mrs A is a self-employed caterer working in the UK.

Five years after arriving in the UK, Mr A applies for a document to confirm his own and his son's right of residence. He and his wife have not previously applied for any documentation under the [Immigration \(European Economic Area\) Regulations 2006](#) or the [Immigration \(European Economic Area\) Regulations 2016](#).

In support of his application Mr A sends in:

- his own and his son's Norwegian passports and his wife's Swedish passport
- his marriage certificate and his son's birth certificate
- his wife's business accounts and tax returns for the last 5 years, along with the leases on the premises she has used to conduct her business for the last 5 years
- utility bills covering the last 5 years in joint names with his wife
- a covering letter with details of absences that the family has had from the UK - this includes an absence of 9 months in the previous year when he and his son went travelling

You consider the 5 stage test and accept that Mr A has provided proof of his and his family's identities and that his wife has been a qualified person continuously for the last 5 years. You also accept that he and his family are related as claimed.

However, you refuse the applications with a right of appeal because Mr A and his son have had an absence from the UK of more than 6 months that cannot be regarded as being for an important reason. Therefore they have not been continuously resident in the UK for 5 years.

Permanent rights of residence scenario 2

This is an example scenario of how to apply the permanent right of residence test for direct family members of a European Economic Area (EEA) national worker.

Mrs B, a Jamaican national, lives in the UK with her husband, a German national, who works full time in the UK. Five years after entering the UK, Mrs B applies for a document to confirm her right of residence. Mrs B was granted a residence card 4 and a half years ago.

In support of her application Mrs B sends in:

- her own Jamaican passport
- her husband's German passport
- their marriage certificate
- her husband's P60's for the last 5 years and a letter from his employer
- utility bills and bank statements in joint names covering the last 5 years

You accept that Mrs B has provided proof of her own and her husband's identity. You also accept they are related as claimed and that Mrs B's husband has been a qualified person for the last 5 years.

You also accept that Mrs B and her husband have been continuously resident in the UK for 5 years. Therefore you issue a permanent residence card to Mrs B.

Permanent rights of residence scenario 3

An example scenario of how to apply the permanent right of residence test for direct family members of a European Economic Area (EEA) national worker.

Mr C and Mrs C, Belgian nationals, live in the UK. Mrs C is currently working full time in the UK. Five years after entering the UK, Mr C applies for a document to confirm his right of residence. Mr C was granted a registration certificate 4 years ago.

In support of his application Mr C sends in:

- his own and his wife's Belgian passport
- their marriage certificate
- his wife's P60s and a letter from her employers showing that she had a break in her employment in the third year that they were resident in the UK - the break lasted 11 months after she was made redundant
- bank statements and utility bills for the last 5 years

You accept that Mr C has provided proof of his own and his wife's identities.

However, you refuse the application because Mr C has not shown that his wife was a qualified person throughout the 5 year period. This is because Mr C has not provided proof of his wife being a qualified person for the 11 month period that she was out of work.

Also they could not be considered to be self-sufficient during this time, as they did not have comprehensive sickness insurance.

Permanent rights of residence scenario 4

This is an example scenario of how to apply the permanent right of residence test for direct family members of a European Economic Area (EEA) national worker.

This example involves a period of residence completed before 30 April 2006.

Mr D and his civil partner Mr E, German nationals, came to the UK in January 2000. Mr D has been working full time continuously since arriving in the UK. Mr E applies for a document to confirm his permanent right of residence.

In support of his application Mr E sends in:

- his own and Mr D's German passports
- their civil partnership certificate
- Mr D's P60s and a letter from his employers, showing that he has been continuously employed
- bank statements and utility bills, dating back to when they entered the UK
- a covering letter, which states that Mr E returned to Germany for a 9 month period from March 2005 to December 2005

You accept Mr E has provided proof of his own and Mr D's identities and that Mr D has been a qualified person since he came to the UK.

You also accept Mr E completed a continuous period of 5 years residence in the UK in January 2005 in line with the regulations that were in force at that time.

Therefore, on the basis of the Court of Justice of the European Union (CJEU) judgment in Lassal (C-162/09), he acquired the right of permanent residence on 30 April 2006, when the [Immigration \(European Economic Area\) Regulations 2006](#) came into force.

Although you can see from the bank statements he had a 9 month absence in 2005, it does not affect his application because only absences exceeding 2 years lead to the right to acquire permanent residence on 30 April 2006 being lost.

You issue a document certifying permanent residence to Mr E.

Permanent rights of residence scenario 5

This is an example scenario of how to apply the permanent right of residence test for direct family members of European Economic Area (EEA) national who have ceased activity.

Mrs F, an American national, came to the UK with her Belgian national husband 3 years ago. Mr F worked full-time in the UK from the time he entered the UK until 3 months ago, when he injured his back in a car accident.

Mrs F applies for a document to confirm her right of residence. In support of her application Mrs F sends in:

- her own American passport
- her husband's Belgian passport
- their marriage certificate
- a letter from her husband's ex-employer confirming the period he was working for them
- a report from her husband's hospital consultant showing that he will no longer be able to work
- her husband's document certifying permanent residence

You consider the 4 stage process; public security, public policy and public health considerations; and their period of continuous residence, and find that Mrs F has provided proof of her own and her husband's identity and they are related as claimed.

You find that Mrs F has provided proof that her husband has the right of permanent residence as a worker who has ceased activity. Therefore Mrs F automatically has the right of permanent residence and you issue a permanent residence card to Mrs F.

Related content

[Contents](#)

Related external links

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

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

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

Domestic violence

This section tells you how to deal with applications from family members of European Economic Area (EEA) nationals who are victims of domestic violence.

The relevant parts of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) are:

- [regulation 10](#) – retained rights
- [regulation 15](#) – permanent residence

If there has been a breakdown in the relationship between the applicant and their EEA national sponsor, it may not always be possible for them to get the documents needed to support their application.

For example, proof of the EEA national sponsor's nationality and evidence they are exercising free movement rights.

You must take a pragmatic approach if the applicant provides proof to show they were the victim of domestic violence and cannot provide evidence relating to their EEA national sponsor's nationality or free movement rights. Asking them to do so in these circumstances could put the applicant at risk.

The pragmatic approach does not apply if there has been a breakdown in the relationship but there is no element of domestic violence involved.

For further information on what evidence must be presented to accept cases involving domestic violence, see: [Victims of domestic violence](#).

Permanent residence

Applicants may have difficulty providing evidence to cover a continuous 5 year period when they are applying for a document confirming a permanent right of residence.

If there are periods of time that the applicant cannot provide documents for or where checks with Her Majesty's Revenue & Customs (HMRC) do not cover the full 5 year period you must discuss the case with your senior caseworker.

They will decide whether you can apply discretion based on the individual circumstances of the case.

The senior caseworker must look at the amount of information provided by the applicant along with the level of evidence that has been gathered.

For more information to help you consider the application, see: [Enquiries to make in cases of domestic violence](#).

Enquiries to make in cases of domestic violence

There are a number of enquiries you can make if you receive an application for a registration certificate or residence card from family members of European Economic Area (EEA) nationals who suffer domestic violence.

If it is agreed by your senior caseworker that you can make additional enquiries, the applicant must give you as much detail as they can about the EEA national sponsor:

- if they cannot provide proof of the EEA national sponsor's identity, nationality or proof of relationship, then you must check existing records on CID to see if their identity has been established in any previous applications
- if known, you can contact the employer or educational establishment to enquire if the EEA national sponsor is working or studying there.
- the decision to contact the employer or educational establishment must be made according to the facts of the individual case and along with a senior caseworker and you must not mention the domestic violence to the employer or educational establishment
- if the decision is made not to get information directly from the EEA national's employer or educational establishment, you must make enquiries with Her Majesty's Revenue & Customs (HMRC) to try and gather the necessary information, for example because:
 - of the exceptional circumstances of the case
 - the EEA national is self-employed

Official – sensitive: Start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: End of section

It will not be possible to make enquiries on behalf of the applicant if the EEA national sponsor:

- is exercising free movement rights as a self-sufficient person
- is studying but the applicant cannot state where
- needs to have comprehensive sickness insurance, but no previous application has been made for a registration certificate and the applicant is unable to provide evidence of comprehensive sickness insurance for themselves and the EEA national

In such cases, and where any enquiries you have made on behalf of the applicant have not given you the information needed, you must discuss the case with your senior caseworker.

They will then decide if you can apply discretion based on the particular circumstances of the case.

If they decide that you cannot apply discretion then you must refuse the application.

Related content

[Contents](#)

Related external links

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

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

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

Non-EEA national family members of dual EEA and British citizens

This section tells you about family members of 'dual nationals', British citizens who are also nationals of other European Economic Area (EEA) member states.

British citizens who are also nationals of other EEA member states are not considered to be 'EEA nationals' for the purposes of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations). This applies whether or not the dual national has always resided in the UK.

A family member of a dual national does not have a right of residence under the regulations on the basis of their relationship to the dual national.

If they do not have a right of residence on any other basis under the 2016 regulations, they will need leave to enter or remain in the UK under the [Immigration Rules](#).

Transitional arrangements

Transitional arrangements were put in place following amendments to the regulations in July 2012, which allowed family members of dual nationals who had already relied upon a right of residence as the family member of that dual national to continue to enjoy a right of residence where the conditions set out below were met.

Persons residing in the UK on 16 July 2012

Persons already residing in the UK on 16 July 2012 as family members of dual nationals, and who held a valid registration certificate or residence card confirming this right on 16 October 2012 will continue to be treated as the family member of an EEA national for as long as they continue to be the family member of that dual national.

This arrangement also applies where a person had a right of residence on this basis on 16 July 2012 and had submitted an application for a document confirming this right on or before 16 October 2012. Such persons will continue to have a right where a document was subsequently issued on the basis of this application.

Persons who had applied for an EEA family permit before 16 July 2012

A person who submitted an application for an EEA family permit as the family member of a dual national before 16 July 2012 will continue to be treated as the family member of an EEA national if both:

- the application resulted in an EEA family permit being issued (including where this document was issued following a successful appeal)
- the applicant travelled to the UK within the 6 month validity period of that EEA family permit

If the family member of a dual British citizen and EEA national meets the conditions above, they will continue to be treated as the family member of an EEA national for as long as they continue to be the family member of that dual national.

Anyone who falls within the transitional arrangements on the basis of an EEA family permit application does not need to apply for further confirmation of a right of residence in the UK.

For further information, see the Court of Justice of the European Union (CJEU) judgment in McCarthy (C-434/09).

Related content

[Contents](#)

Related external links

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

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

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

Validity of marriages

This section tells you how to assess the validity of a marriage or civil partnership involving direct family members of European Economic Area (EEA) nationals.

Whether a marriage is valid depends on a number of factors. For guidance on assessing the validity of a marriage, see: [Immigration Directorate Instructions – Chapter 8, Section FM 1.3 – Recognition of Marriage and Divorce](#).

Polygamous marriages

Polygamy is different from bigamy. The laws of certain countries allow people to be married to more than one person at the same time. A polygamous marriage may be accepted as valid but a bigamous marriage is never accepted as valid.

To decide if a marriage is regarded as polygamous you must first find out where the marriage was celebrated. You will usually be able to assess this from the marriage certificate.

If the law of the country where the marriage takes place is the same as English law and does not allow polygamy, then all marriages celebrated in that country must be monogamous, even if a party to such a marriage is permitted to practise polygamy in their country of domicile.

Someone from a country which allows polygamy can still contract a valid marriage in the UK, as long as they are not already married, either here or abroad. Any further marriage contracted in the UK would be invalid as it would be bigamous.

If a person from a country which allows polygamy, then marries in another country which also allows polygamy the marriages are considered valid. However although the marriage is valid it does not automatically allow the polygamous spouses of an EEA national to have the right to reside in the UK.

The European Commission, under community law, allows member states not to recognise a polygamous marriage if it conflicts with their own legal system.

This is in line with [Article 8 of the European Convention on Human Rights](#).

Children of polygamous marriages

When considering the rights of children from polygamous marriages, you must always give due consideration to the best interests of the child.

For guidance on processing an application involving polygamous marriages, see: Immigration Directorate Instructions Chapter 8 Appendix FM: 1.4 Polygamous and potentially polygamous marriages.

Polygamous relationships

[Regulation 2 of the 2016 regulations](#) prevents parties to a marriage, civil partnership or a durable relationship from asserting free movement rights as the family members

of an EEA national in cases where the EEA national or family member already has a spouse, civil partner or durable partner in the UK.

Applicants applying as a spouse or civil partner of an EEA national

Where a person (person A) is applying for documentation as a spouse or civil partner of an EEA national you must refuse the application if the applicant or EEA national is married to, or the civil partner of, another person (person B) who is present in the UK. This is regardless of whether the relationship with person B is subsisting at the date of application.

This means that the free movement rights of person A as the civil partner or spouse of an EEA national will not be recognised until such time as person B is either:

- outside of the UK
- no longer in that legal relationship with the EEA national

Where person B is not in the UK, you can issue a document to person A where you are satisfied that the marriage is valid and genuine and all other requirements of the regulations have been met. If person B were to subsequently apply for a document on the basis of their marriage to the EEA national, this must be refused under [regulation 2](#) as the EEA national is already sponsoring person A in the UK.

You must also refuse documentation to someone applying on the basis of a marriage or a civil partnership where the applicant or the EEA national is in a subsisting durable partnership with another person in the UK.

Applicants applying as the durable partner of an EEA national

Where a person (person A) is applying for documentation as a durable partner of an EEA national and that person or the EEA national already has a spouse, civil partner or durable partner (person B) in the UK then person A will only be refused if their or the EEA national's relationship to person B is still subsisting.

This approach ensures that an application from a durable partner will not be refused on the basis that they are already legally married or in a civil partnership to another person but that the relationship has permanently broken down and is no longer subsisting. This is necessary to ensure that persons in the process of dissolving their relationships with another person (including where necessary by divorce) are able to do so without negative impact on any new durable partnership they may have formed.

You must ask the applicant for evidence that the previous relationship in the UK is no longer subsisting. This may include:

- initiation of divorce proceedings (if married)
- severance of joint financial commitments
- custody agreements for any children

There may be other evidence, other than that listed above which may also be acceptable. Each case must be considered on its individual merits.

Where you are satisfied that the relationship in the UK has permanently broken down, then you must also consider whether any existing right to reside in the UK for that person has also ceased and if so whether documentation should be revoked on that basis.

For example, person A applies for a residence card on the basis that they are the durable partner of an EEA national. That EEA national has also sponsored another non-EEA durable partner (person B) in the UK but has since claimed that the relationship with person B has permanently broken down. In this instance, it would be appropriate to consider revoking person B's residence card as they no longer have any right to reside in the UK.

If person B had already gained permanent residence, or have a right to reside on another basis, then revocation of documentation would not be appropriate in these circumstances.

You must refer the case to a senior caseworker if it is not clear whether the relationship in the UK is subsisting.

For further information on assessing applications from durable partners, see: Free Movement Rights: Extended family members of EEA nationals.

Child marriages

A marriage between two partners where one or both are under the age of 16 is not allowed to take place in the UK.

However, the law of a number of countries allows children under the age of 16 to enter into a valid marriage.

A marriage contracted when one or both parties are under the age of 16 is recognised under English law if both of the following apply:

- the marriage was valid in the country in which it took place
- both parties to the marriage had the legal capacity under the law of their domicile to marry each other

You must be aware that the minimum age for marriage is below 16 in a number of countries. It is also not uncommon for countries to have a different minimum age for marriage depending on the sex of the spouse.

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For guidance on processing an application involving child marriages, see: Immigration Directorate Instructions – Chapter 8, Section FM 1.3 – Recognition of Marriage and Divorce.

Marriages of convenience

When processing an application for documents under the 2016 regulations from direct family members of EEA national sponsors, you must follow a stage-by-stage test. For more information, see:

- [Extended rights of residence qualifying conditions](#)
- [Permanent rights of residence: assessing the application](#)

If you conclude that a marriage, civil partnership or durable partnership is one of convenience, you must refer the EEA national to the relevant Immigration, Compliance and Enforcement team to consider whether there are grounds of public policy justifying deportation. For further information, see: EEA decisions on grounds of public policy and public security.

Under the regulations a spouse and civil partner are defined as a person who is not a party to a marriage or civil partnership of convenience.

Recital 28 of [Directive 2004/38/EC](#) (the Free Movement Directive) defines a marriage of convenience as a relationship contracted for the sole purpose of enjoying the right of free movement and residence.

If you suspect a marriage or civil partnership is one of convenience, it is open to the Secretary of State to investigate individual cases.

This may include:

- asking the applicant and EEA sponsor for further information
- inviting the applicant and EEA sponsor for interview
- arranging a home visit by the Immigration Compliance and Enforcement (ICE) team

Burden of proof

An applicant must show they are the family member of an EEA national. This would usually come from a valid marriage certificate. If you suspect the marriage or civil partnership is one of convenience, it is for the Secretary of State to prove this.

The national courts must verify the existence of abuse in individual cases if there is an appeal.

Standard of proof

Any evidence must meet civil law standard, which is the balance of probabilities. Unlike in criminal cases you do not need to prove beyond all reasonable doubt before you refuse an application.

You must consider the balance of probabilities, and after looking at all the evidence decide if it is more likely than not the marriage or civil partnership is one of convenience.

Only once you have done this is a refusal to issue documentation to the spouse or civil partner of a qualified EEA national justified. This is because they do not meet the definition in [regulation 2 of the 2016 regulations](#).

You must refuse the application if there has been a criminal investigation into the marriage or civil partnership that resulted in a conviction for any of the parties involved. Because of this compelling evidence the marriage or civil partnership can be considered invalid.

If no convictions have been brought against the parties involved but you suspect the marriage or civil partnership is one of convenience you must apply the 4 stage test.

For the different stages of the test, see:

- [marriages of convenience test: stage 1](#)
- [marriages of convenience test: stage 2](#)
- [marriages of convenience test: stage 3](#)
- [marriages of convenience test: stage 4](#)

Marriages of convenience test: stage 1

This is the first stage of the marriages of convenience test to determine if a marriage or civil partnership involving applicants claiming to be direct family members of a European Economic Area (EEA) national is genuine.

Factors which may indicate a marriage or civil partnership of convenience

The [factors](#) are grounds for doubting the reasons for entering into a marriage or civil partnership and give you cause to make further investigations.

However without further evidence, they are not, in themselves, proof the marriage or civil partnership is one of convenience.

Even if the factors are present, later enquiries may show the marriage to be genuine.

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If none of the factors exist then you must accept the marriage or civil partnership is not one of convenience and the direct family member is related to the EEA national sponsor as claimed.

If any of the factors exist then you must proceed to [stage 2](#) of the marriages of convenience test.

Marriages of convenience test: stage 2

This is the second stage of the marriages of convenience test to determine if a marriage or civil partnership involving applicants claiming to be direct family members of a European Economic Area (EEA) national is genuine.

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

Factors leading to referral to senior caseworker

Some evidence may make it difficult to prove the marriage or civil partnership is one of convenience. You must refer any cases to your senior caseworker if any of the following factors exist:

- there is a child of the relationship – children from previous relationships must be excluded
- there appears, for any other reason, little prospect of sustaining a refusal at appeal when all the evidence on file is considered

It is possible evidence may come to light, following a residence document being issued, which indicates the marriage or civil partnership was one of convenience and

there was never an intention to live as husband and wife or as civil partners. This evidence may not come to light until permanent residence is sought.

However you must still consider each case on its merits. If you have doubts about the authenticity of the documents provided you must continue to [stage 3](#) of the marriages of convenience test.

If you accept the marriage or civil partnership is not one of convenience you must return to the 4 stage test for direct family members at [stage 2](#).

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For more information, see: [Extended rights of residence qualifying conditions – stage 2](#).

If none of the above criteria apply to the case, you must proceed to [stage 3](#) of the marriages of convenience test.

Marriages of convenience test: stage 3

This is the third stage of the marriages of convenience test to determine if a marriage or civil partnership involving applicants claiming to be direct family members of a European Economic Area (EEA) national is genuine.

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

Referring the case to a senior caseworker to recommend conducting a marriage interview

To arrange a marriage interview you must complete the marriage interview referral form.

All requests for a marriage interview must be approved by a senior caseworker.

If you are unable to refer the case for a marriage interview, but consider that further information is needed in order to make a decision, you should consider sending out a marriage questionnaire to the applicant to gather this information.

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You must also note on any referral form whether a registrar's report exists.

The form submitted to the senior caseworker must:

- set out why you consider an interview is needed
- state the evidence submitted in support of the application
- list any particular areas of questioning you want the applicant to be asked

The senior caseworker will consider the evidence and decide if it is appropriate for a marriage interview to be arranged. If there is insufficient evidence they will return the case to you. You must then make a decision without a marriage interview.

If the senior caseworker agrees to recommend a marriage interview, the case will be allocated to a caseworker on the Permanent Migration Interviewing team (PMINT) who is trained to conduct marriage interviews.

Once PMINT have finished all the interviews the case will be referred back to you to make a decision. See: [Marriages of convenience test – stage 4](#).

Marriages of convenience test: stage 4

This is the fourth stage of the marriages of convenience test to determine if a marriage or civil partnership involving applicants claiming to be direct family members of a European Economic Area (EEA) national is legitimate.

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

Making a decision following an interview

After the interview is completed the case will be returned to you, along with the interview record, to consider.

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If the applicant attends the marriage interview, you must consider:

- the answers they gave during their interviews
- the evidence that led to doubts about the reasons for entering into the marriage or civil partnership
- any other documentary evidence they have provided

You must assess where discrepancies occurred and consider if these outweigh the questions where their answers matched. This must not be based purely on the number of discrepancies.

You must take into account the personal circumstances of the relationship. For example, it may be reasonable for someone not to be able to answer detailed questions about their spouse's parents if they have never met them but it would be reasonable to expect them to be able to answer basic questions about them.

Valid evidence provided that the marriage is genuine

If the applicants attended the interview and a significant number of their answers were the same and they were able to show an in-depth knowledge of each other, this would outweigh evidence that led to doubts about the relationship.

You must accept the marriage or civil partnership is not one of convenience and that the direct family member is related to the EEA national sponsor as claimed.

Failure to attend the interview

In line with regulation 22(4), the Secretary of State may draw any factual inferences about a person's entitlement to a right to reside if, without good reason, a person fails to:

- provide the additional information requested
- attend an interview on at least two occasions, if so invited

This means that if there is other evidence to suggest that the person does not have a right to reside, then combined with the failure by that person to provide evidence to substantiate their claim, it can be considered on the balance of probabilities, that the person does not have, or ceased to have, a right to reside under the regulations.

Caseworkers must not decide that a person does not have, or ceased to have, a right to reside on the basis that the person failed to comply with this regulation alone. There must be additional grounds to suggest there is no right to reside; in practice these will usually be the grounds which prompted the request for additional information or attendance at interview.

As this is a substantive refusal there is a right of appeal if the relevant provisions of regulation 36 are met, and it is open to the applicant to appeal this decision.

In any case where the applicant's appeal against the decision to refuse is unsuccessful, any further application made on the same grounds can be refused and

certified under regulation 36(7). For further information on certifying a case for refusal see: [Rights of appeal and certification](#).

Marriage interviewing

Marriage interviews are carried out by the PMINT. The purpose of the marriage interview is to gather the facts relating to the relationship between the applicants and compare their knowledge of each other.

Office interviews

The interview must be conducted objectively and impartially to allow you to make a well reasoned and fair decision on the application.

You must make sure you review the evidence before the interview. You must not use a set list of questions in every marriage interview that you carry out. You must base your questions on the evidence available.

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You must interview the EEA and non-EEA nationals separately and ask them both the same questions so you can compare their answers.

You must ask open questions wherever possible. These are questions that cannot be answered with a 'yes' or 'no' answer.

Closed questions can be used to get a clear answer to a question.

Marriage interview home visits

Home visits are only requested if the application cannot be resolved any other way. In these cases you must ask Immigration Compliance and Enforcement (ICE) staff to carry out the home visit.

Validity of marriages: example scenarios

These are example scenarios relating to applications from direct family members of European Economic Area (EEA) nationals for a document confirming their right of residence where overseas marriages or marriages of convenience are involved.

Validity of marriages: scenario 1

This is an example scenario of an application from a direct family member of a European Economic Area (EEA) national for a document confirming their right of residence when a polygamous marriage is involved.

Mr A was born in Senegal to French parents and so has dual nationality. He is currently in the UK exercising his free movement rights as a self-employed EEA national. Before coming to the UK he married three women in Senegal. Since his arrival in the UK his wives have joined him.

Mrs A1, also a dual French and Senegalese national, arrived 6 months ago and is exercising her free movement rights as a worker in the UK and so is a qualified person in her own right.

Mrs A2, also a dual French and Senegalese national, arrived 4 months ago and is not a qualified person in her own right but was exercising her right of residence in the UK for 3 months following her entry into the UK.

Mrs A3, a Senegalese national, arrived on an EEA family permit 3 months ago

All 3 wives apply at the same time for documents to confirm their right of residence. You must first decide if the marriages are valid.

You can see that polygamy is recognised in Senegal where the marriages took place and they took place in line with the laws of Senegal. You can also see there was nothing in the laws of Senegal to prevent any party from freely entering into the marriages. Therefore, although the marriages are polygamous, they are accepted as valid.

Mrs A1 is immediately issued a registration certificate, as she has her own right of residence as a qualified person due to her French nationality.

Mrs A2 is not a qualified person in her own right and so is applying on the basis of being the spouse of an EEA national sponsor, as her right to reside for 3 months as an EEA national has now expired.

Mrs A3 is a non-EEA national so is also applying on the basis of being the spouse of an EEA national sponsor.

Only one spouse has the right of residence on this basis. Therefore you must establish which wife was the first to live in the UK on the basis of being the spouse of an EEA national sponsor.

You find that Mrs A1 is not residing in the UK on the basis of being married to Mr A as she has been a qualified person in her own right since she entered the UK.

You find that although Mrs A2 arrived one month before Mrs A3, she was initially resident in the UK on the basis of exercising her own right of residence as an EEA national for 3 months. Whereas Mrs A3 was residing in the UK on the basis of being the spouse of an EEA national a sponsor from the point of her entry in the UK.

Therefore you issue a residence card to Mrs A3 the non-EEA national and refuse the application from Mrs A2.

Children of polygamous marriages

If the wives mentioned above each had a child and Mr A was the father of all three children you would issue a registration certificate or residence card to all of the children. Because Mr A is their father they are recognised as family members in line with [regulation 7](#) of the 2016 regulations.

However if Mr A was not the father of any of those children, you would need to consider whether they qualify for a right of residence.

In this scenario, you would issue a registration certificate or residence card to the child of Mrs A1 as they are the child of someone who is a qualified person in their own right.

You would refuse to issue a registration certificate or residence card to Mrs A2's child as Mrs A2 does not have the right of residence as stated in scenario one as she is not recognised as a family member in line with [regulation 7](#).

You would issue a registration certificate or residence card to Mrs A3's child as Mrs A3 has the right to reside as the spouse of Mr A.

Validity of marriages: scenario 2

This is an example scenario of an application from a direct family member of a European Economic Area (EEA) national for a document confirming their right of residence when a proxy marriage is involved.

Mr B, an EEA national, is married to an American national. He is exercising his free movement rights as a worker in the UK. Their marriage took place in the state of Colorado, USA.

However due to military service Mr B was unable to attend the wedding and he had to remain in the UK. A proxy stood in for Mr B at the wedding ceremony.

Mr B submits a valid marriage certificate and evidence from the registrar's office that proves the marriage was registered in accordance with the law. As marriage by proxy is legal in the state of Colorado you accept that this marriage is valid.

Therefore when Mrs B joined her husband and applied for a document confirming her right of residence you apply the extended rights of residence 4 stage test and at [stage 2](#) you find that she is related to Mr B as claimed.

Validity of marriages: scenario 3

This is an example of an application from a direct family member of a European Economic Area (EEA) national for a document confirming their right of residence, when a proxy marriage is involved.

Mr C, a Nigerian national, is married to Miss D, a Portuguese national. Neither person was present at their marriage ceremony in Nigeria, with Mr C living in Ghana and Miss D living in Brazil at the time.

The couple have now arrived in the UK, where Miss D is exercising her free movement rights as a self-employed person. Mr C has applied for a document to confirm his right of residence as a direct family member.

You consider the validity of the marriage, and note that because the marriage was contracted in a country which permits proxy marriages, that form of marriage is acceptable. However, you note that the certificate submitted does not appear to have been issued by an authority which has the power to issue such a document. You therefore find that Mr C has not provided adequate evidence that his marriage to Miss D is valid, and consequently you also find that Mr C has not provided evidence that he is related as claimed to Miss D.

Validity of marriages: scenario 4

This is an example of an application from a direct family member of a European Economic Area (EEA) national for a document confirming their right of residence, when a telephone marriage is involved.

Miss E, an Indian national, claims to be married to Mr F, a Spanish national. The marriage took place over the telephone while Miss E was resident in India and Mr F was resident in the UK exercising his free movement rights as a worker.

Miss E has now joined Mr F in the UK and has applied for a document to confirm her right of residence.

You consider the validity of their marriage and find that, although telephone marriages are considered legal in India, their marriage is not valid.

This is because Mr C was in the UK at the time and the UK does not allow telephone marriages.

However you must consider whether or not Miss F qualifies as an extended family member of an EEA national sponsor.

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[Contents](#)

Related external links

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

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

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

[EU document Communication from the Commission to the European Parliament and the Council](#)