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## EEA Nationals

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An EEA national is a person who is a citizen of an EEA country (not someone who simply has permission to live there.). The various free movement provisions also cover EEA nationals' family members, whether nationals or not.

EEA nationals are **not subject to immigration control** if they have rights to reside under EU regulations. They and their family members have specific rights in housing and benefit law and regulations as a result of EU regulations and directives.

The European Union is based on a series of multilateral Treaties between member states, signed and ratified in accordance with their own constitutional procedures. The UK is a member of the European Union (EU) and the European Economic Area (EEA).

The EEA includes all the EU countries, plus some additional countries whose citizens largely enjoy the same freedom of movement and other privileges in the UK as EU citizens.

All members of the EU are automatically members of the EEA, but EEA countries are not automatically members of the EU. The distinction between EU and EEA nationals is becoming less significant in EU law and the **Immigration (EEA) Regulations 2006** apply the same rights of residence to citizens of all EU and EEA countries and Switzerland while they are in the UK.

Eu members prior to 1 May 2004	Countries joining EU on 1 May 2004	Countries joining EU on 1 Jan 2007	Countries joining EU on 1 Jul 2013	Countries which are NOT members of EU but are members of EEA	The other one
Austria Belgium Denmark Finland France Germany Greece Ireland Italy Luxembourg Netherlands Portugal Spain Sweden UK	Cyprus (Greek Cyprus only) Malta Czech Republic Estonia Hungary Latvia Lithuania Poland Slovakia Slovenia	Bulgaria Romania	Croatia	Iceland Lichtenstein Norway	Switzerland

EEA members

- o All members of the EU
- o Iceland
- o Liechtenstein
- o Norway

Despite not being a member of the EEA, Switzerland has agreements with other EEA members which give its citizens equivalent free movement and other rights in most EEA countries.

**Countries Joining the EU on 1st May 2004**

On 1st May 2004, ten new countries joined the EU. Of these ten, two countries, Cyprus and Malta, because of their small size and relative economic stability immediately had full EU rights. Both of these countries also had pre-existing ‘association agreements’ with the UK which gave their citizens rights of free movement in the UK.

The remaining eight countries, known as the ‘**Accession 8**’ or ‘**A8**’ countries, were granted lesser rights than existing EEA countries. The citizens of the A8 countries were given freedom of movement within the EEA, but each original EEA country was given some freedom in deciding to what extent A8 nationals would be able to access

employment, welfare provision and housing within their countries.

These restrictions on full EU/EEA lapsed on 1st May 2011. As of that date citizens of the A8 countries have the same rights and entitlements as the citizens of other EU/EEA member states

## **Countries joining the EU on 1st January 2007**

On 1st January 2007, Bulgaria and Romania also joined the EU. In keeping with the terminology for the countries who joined in 2004, we commonly call Bulgaria and Romania the **Accession 2** or **A2** countries. Their citizens were also subject to severe transitional restrictions on their rights throughout the EU.

The UK government restricted the access of A2 nationals to access employment, welfare benefits and social housing. Those restrictions ended on 31st December 2013. From that point citizens of the A2 countries have full EU/EEA rights.

## **Croatia**

Croatia joined the EU on 1st July 2013. The restrictions placed on Croatian nationals in the UK are essentially the same as those which were previously placed on Romanians and Bulgarians. This means that Croatians do not have free access to employment in the UK but can work as self-employed people. They will largely not be entitled to out of work benefits unless they can meet certain rigorous criteria.

As these restrictions can potentially remain in place for up to seven years after the country first joins the EU this would mean that Croatians may be subject to such sanctions up to 30 June 2020.

## **Freedom of Movement**

One of the founding principles of the EU was the free movement of workers. All EEA nationals have freedom of movement throughout the EEA. This means that they can enter any EEA country upon production of valid identity documents.

## **Right to Reside**

The right to move throughout the EEA does not automatically give a person the right to reside in an EEA country. The right to reside is governed by the **Immigration (European Economic Area) Regulations 2006**, commonly known as the **EEA Regs 2006**. The Regs give the following rights:

- A right of three months initial residence in any EEA country for an EEA national and their family member(s) even if they are not exercising an EU Treaty right.
- An extended right to reside for a 'qualified person' and their family members. These are workers, self-employed people, jobseekers, self-sufficient students or

self sufficient people.

- A permanent right to reside after five years of being a qualified person or family member of a qualified person.

In theory this means that the UK government has the right to remove any EEA national who is not working or able to support themselves after they have been in the UK for three months. This has generally not happened. However, in some limited cases the Department of Communities and Local Government have worked with the police and Immigration Enforcement to remove some EEA nationals who were not exercising treaty rights and who were street homeless and displaying anti-social or problematic behaviour.

Aside from those who are self-supporting (which may include someone retired with a pension or a wealthy person who has no need to work), the continued right to reside under EEA law depends on a person falling into one of the categories below:

- Worker. This can be part-time or temporary employment. The work can be as little as 10 hours per week
- Work seeker who is able to support self
- Self-employed
- Student
- Family member of one of the above

## **Family Members**

Workers and self-employed EEA nationals have a complete and unlimited right to have their family members with them when they move around the EU. This right applies even if the family members are not EEA nationals themselves. In EU law non EEA family members are known as ‘third country nationals’.

The definition of a family member in EU law include the qualified persons:

- Spouse / civil partner
- Direct descendants or those of their spouse / civil partner who are under 21 or are dependants of the person or their spouse / civil partner. This could include an older adult disabled child;
- Dependent direct relatives in their ascending lines, or that of their spouse / civil partner.

EEA students studying in the UK also have the right to have their family members with them, but in this case family members can only include spouse / civil partner and dependent children.

Dependence does not mean total dependence and includes non-financial forms of dependence.

A UK national who has not left the UK and is simply working in the UK will not have

exercised any EU law right and will not fall within any of the above categories.

## **Other cases where people may fall within the remit of EEA/EU law**

### **Retained Rights**

In some cases, for example where a person has been married to an EEA national exercising treaty rights and the EEA national has died or the relationship has broken down, a non-EEA national may retain some rights in EEA law. Any person who may be in such a position should seek specialist advice.

### **Other Derivative Rights**

When a person who is not themselves an EEA national gains rights in EEA law to reside in a country because of their continuing connection with an EEA national exercising treaty rights, we say that the non-EEA citizen has a 'derivative right', that is a right deriving from their relationship with the EEA national. There are some unusual cases involving children where third country nationals have been held to derive rights as the sole carer of an EEA national child (including British children residing in Britain) or the carer of a child who, although not themselves an EEA national, was at one point a child in the household of an EEA national exercising treaty rights, which enable them to stay in the UK. These rights, sometimes called after the cases they are based on (the Ruiz Zambrano case and the Ibrahim case), are complex and may not give the bearer of those rights full access to services (see below).

Anyone who believes that they may have a derivative right of residence under EEA law should seek expert advice.

### **Non EEA/EU carers of EEA/EU children**

LBC Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department

Ms Ibrahim was a non EEA national whose EEA national spouse had lost his right to reside as a worker and left the UK. The children of the marriage were in school in the UK and Ms Ibrahim was their primary carer. She herself was not and had never been employed in the UK. The ECJ held that:

- the primary carer of a child of a EEA worker/former EEA worker, derives a right to reside where necessary for that child to complete his or her education
- there is no requirement for such a primary carer to be self-sufficient

In this case that meant that the local authority were obliged to provide Ms Ibrahim with homelessness assistance.

## Ruiz Zambrano

A March 2011 judgement in the European court - Gerardo Ruiz Zambrano v Office national de l'emploi (ONEM) Case C34 - 09 - opens up new possibilities for regularisation for the parents of British children. A child is British automatically if either parent is British or settled, and for these purposes, parent is defined as the mother, adoptive parent, or father if married to the mother, on the child's birth certificate (since 2006) or proven by the courts to be the child's father. So the child of, for example, an undocumented mother and a British father who has put himself on to the birth certificate is British.

The Ruiz Zambrano case concluded that:

“Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.”

In other words, a British child has a right to live in the UK, because s/he is also a European citizen, and so the parents with care of the child also have to be given a right to reside and associated rights in order to enable the child to enjoy those rights.

However, the rights and entitlements of those exercising a right to stay in the UK due to a Zambrano type claim has been severely curtailed. See further information below.

## **Housing and Benefits for Europeans**

Council housing, emergency council accommodation for homeless people and most welfare benefits are subject to a Habitual Residence Test (HRT). The test is in two parts

1. Does the person have the right to reside in the UK?
2. If the person has the right to reside, are they actually habitually resident?

In the case of an EEA national, an EEA national is habitually resident if either they have permanent residence in the UK or if they are a qualified person.

Permanent residence in the UK through EU law can be gained in the following ways:

- Residing in the UK exercising treaty rights for five years. This includes working either as an employed or self-employed person, seeking work, studying, self-sufficiency, or being the family member of a person exercising these rights. A period in prison does not count as exercising treaty rights and so cannot be

counted towards the 5 years.

- Retiring in the UK at retirement age, having been economically active here, or if taking early retirement, having worked in the UK for at least 3 years including the 12 months immediately before retirement.
- Having worked in the UK (employed or self-employed) for at least 2 years and stopped work due to permanent incapacity, or have worked in the UK less than 2 years, have become permanently incapacitated as a result of an accident at work or an occupational disease
- Being the family member of an EEA national who has died having either worked in the UK (employed or self-employed) for over 2 years or who has died as the result of an accident at work or because of an occupational disease.

A qualified person, as specified above, is a worker, work-seeker, self-employed person, student, a self-sufficient person (though by definition, they would cease to be a self-sufficient person if they claimed income based benefits) or a family member of a qualified person.

If a right to reside is established then the test moves on to ‘actual habitual residence’. To ascertain this a benefit or housing officer may look at

- Whether the UK is the ‘main centre of interest’, e.g. do they maintain a house or interests in any other country?
- The length and continuity of stay in the UK
- The length of and reason for any absences from the UK
- Future intent

This element of the test can apply equally to a British citizen returning from abroad.

## **Recent changes to benefit eligibility**

From January 2014, the minister for the Department of Work and Pensions has introduced further changes to benefits for EEA nationals. Essentially, these are:

- EEA nationals will not be entitled to claim income based Jobseekers Allowance or Housing Benefit, unless they have been resident in the UK for at least three months (in practice, most EEA nationals were usually unable to claim JSA or HB until they had been resident for at least three months).
- After three months, if the EEA national applies for Jobseekers Allowance they will be subjected to a ‘stronger, more robust Habitual Residence Test’. It is not yet clear how this will differ from the current HRT.
- If the EEA national passes this HRT and is able to claim Jobseekers Allowance, after claiming for six months they will need to show ‘compelling evidence that they have a genuine chance of finding work’ if they are to continue to qualify for benefits. Again, there is as yet no detail as to how this evidence will differ from the usual evidence that all jobseekers must show to evidence that they are actively seeking work.

## **Croatian nationals and eligibility for housing and benefits**

Croatia joined the EU on the 1st July 2013. The UK has chosen to apply transitional arrangements to Croatian citizens in the UK, which they can potentially keep in place for up to seven years from the date of joining (so to the end of June 2020).

The restrictions on access to employment for Croatians are outlined below, but in terms of benefits, essentially Croatians will only be 'qualified persons' if they are employed, self-employed, students or self-sufficient persons. What that means is that a Croatian who is a job seeker is NOT a qualified person; they are therefore NOT entitled to benefits if they are a jobseeker.

So, for example, a Croatian who is a self-employed person in the UK (and would need to evidence that self-employment) could claim relevant 'in-work' benefits, for example Child Benefit or Tax Credits, but if they became unemployed they would cease to be entitled to any benefits.

A Croatian national who has been in continuous legal employment in the UK for 12 months can become entitled to out of work benefits.

## **Zambrano residence and eligibility for housing and benefits**

In November 2012, the government amended the Habitual Residence Test to state that any person who has the right to reside in the UK on Zambrano grounds (because they are a third country national who is the sole carer of a British or other EEA citizen child), they would be deemed not to satisfy the conditions of the Habitual Residence Test. This effectively bars Zambrano carers from claiming benefits or housing. This places Zambrano carers in a very difficult situation. Essentially, they are entitled to be in the UK and entitled to take up employment or work as self-employed people but have no recourse to benefits.

A Zambrano carer who is unable to support themselves and their dependants through employment is advised to seek assistance from social services under s17 of the Children Act 1989 (see section on Foreign Nationals with no Immigration Status for further information [link to relevant section]).

## **Health Care**

An EEA national who has permanent residency or who is a qualified person is generally entitled to healthcare in the same way as an equivalent UK national.

An EEA national who does not fit into one of those categories is subject to the NHS rules on the treatment of overseas visitors. For more guidance on the rules please see the section on Foreign Nationals with no Immigration Status. [link to relevant



section]

## **Employment, education and training**

By and large an EEA citizen, or the family member of an EEA citizen in the UK, is entitled to take up employment, education and training in the same way as an equivalent UK citizen. The exception to this is for Croatian citizens.

### **Croatian Citizens and the right to take up employment**

As part of the transitional arrangements for Croatia joining the EU (mentioned above in relation to benefit entitlement), Croatian citizens have very limited rights to take up employment in the UK and will need to evidence their right to work in the UK.

Most Croatian nationals will only be able to work as employed people in the UK if they can:

- Get an accession worker work authorisation document, commonly known as a 'purple registration certificate'. There are a limited number of authorisation certificates and they are given to people who are offered work by selected sponsor employers in a limited number of industries, largely crop picking and food processing.
- Meet the criteria to work in the UK as a 'highly skilled migrant'. This means meeting the requirements of a complicated points based system, details of which can be found on the Home Office website. Those Croatians who can qualify under this system can apply for a 'blue registration certificate' which means that they can take up any employment in the UK.
- Be exempt from the restrictions for some other reason, largely because they have either completed 12 months of legal employment in the UK, were already working legally in the UK on the date that Croatia joined the EU, or are the family member of another EEA citizen exercising treaty rights in the UK (so, for example, the Croatian husband of a Polish woman working in the UK would be exempt from the employment restrictions). A full list of exemptions is available on the Home Office website.
- Work as a self-employed person as the UK.
- If they are a student, a Croatian national can work up to 20 hours a week during term time and unlimited hours during holiday time. They will need to apply for a 'yellow registration certificate' in order to exercise this entitlement.

### **Resources for working with EEA nationals**

Homeless Link have a number of briefings and resources on their website on working with EEA nationals. They can be found at <http://homeless.org.uk/connect/blogs/team/migrant-benefit-changes-guidance>.

There are also a number of organisations who specialise in work with EEA nationals. A few such organisations are listed below.

**The AIRE Centre**

[www.airecentre.org](http://www.airecentre.org)

Third Floor, 17 Red Lion Square, London WC1R 4QH

Tel: 020 7831 4276

Fax: 020 7404 7760

[info@airecentre.org](mailto:info@airecentre.org)

A specialist charity whose mission is to promote awareness of European law rights and to assist marginalised individuals and those in vulnerable circumstances to assert those rights.

**Barka UK**

<http://barkauk.org/>

Tel: 020 7275 7768 / 0800 171 2926

Fax: 020 7275 7768

Charity who are supporting Central and Eastern European migrants in the UK.

**Eastern European Advice Centre**

[www.eeac.org.uk](http://www.eeac.org.uk)

Room 18, 238-246 King Street, London W6 ORF

Tel: 020 8741 1288

Fax: 020 8741 8388

Charity providing advice and support to people from Eastern Europe.

**Europia**

[www.europia.org.uk](http://www.europia.org.uk)

Ada House, 77 Thompson Street, Manchester M4 5FY

Tel: 0161 833 8823

[hello@europia.org.uk](mailto:hello@europia.org.uk)

Charity providing information and practical support to European migrants in the Greater Manchester area.

**The Upper Room**

[www.theupperroom.org.uk](http://www.theupperroom.org.uk)

St Saviour Wendell Park Church, Cobbold Road, London W12 9LN

Tel: 020 8740 5688

Charity working with economic migrants, homeless and ex-offenders. The charity has developed a number of services aimed at European migrants.