

Marriage and Relationships: EEA Regulations

Immigration and marriage, civil partnership, partnership in a durable relationship: European Economic Area (Immigration) Regulations 2006, as amended.

Advice for non-European spouses/civil partners/partners in a durable relationship, of European nationals, on rights of entry to and stay in the UK under European law provisions.

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1. INTRODUCTION

1.1 Law Centre (NI)

The purpose of the Law Centre is to promote social justice and provide specialist legal support to advice giving organisations and disadvantaged individuals.

We deliver legal services to members in community care, employment, housing, immigration, mental health and social security. We support the work of advice agencies through advice, casework, training, information and publications.

We aim to work closely with our membership of independent advice giving agencies and associate members. Associate members include social services, probation offices, solicitors' practices, trade unions and community based organisations.

We work with local, regional and specialist independent advice agencies in partnership with **Advice NI** and **Citizens Advice**.

1.2 Immigration advice

The Law Centre has limited resources in relation to the demand for immigration assistance, and therefore cannot provide representation in straightforward leave to remain or permit applications.

If you need more immigration advice once you have read this document, contact our advice line between 9.30am and 1pm on telephone number 028 9024 4401 or 028 7126 2433.

It is extremely difficult to give precise, general advice on immigration law, but we hope that this information will be useful to you.

1.3 Definition of terms used in this document

- **A2 nationals:** Citizens of Bulgaria and Romania, which joined the European Union in January 2007. On 1 January 2014, transitional arrangements which restricted access to the UK labour market to citizens of Bulgaria and Romania were lifted. The rights of Bulgarian and Romanian citizens are now in line with citizens of other EEA states apart from Croatia who acceded to the EU on 1 July 2013. Croatian nationals have restricted access to the UK labour market and must apply for an accession worker authorisation document from UKVI in order to work legally in the UK.
- **Citizen's Directive:** This EU directive came into effect in April 2006 and seeks to bring together existing regulations, directives and decisions from the European Court of Justice. Its full title is Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the EU and EEA member states.
- **Court of Justice of the European Union (CJEU):** This is the highest court in the European Union which considers matters of EU law referred to it by the individual Member States of the EU. It is the final court of record and aims to interpret EU law while ensuring its equal application across all EU member states.
- **Derivative Residence Card:** this is a document which may be issued to a EEA/ non-EEA national as evidence of her/his derivative right of residence in the UK under European law.
- **EEA:** The European Economic Area (EEA) expanded in May 2004, January 2007 and July 2013.

Currently the EEA Member States are:

Austria	Greece	Netherlands
Belgium	Hungary	Norway
Bulgaria	Iceland	Poland
Croatia	Irish Republic	Portugal
Cyprus	Italy	Romania

Czech Republic	Latvia	Slovakia
Denmark	Liechtenstein	Slovenia
Estonia	Lithuania	Spain
Finland	Luxembourg	Sweden
France	Malta	United Kingdom
Germany		

- **EEA Family Permit:** This is the stamp a non-EEA national may have endorsed in her/his passport if s/he is coming to the UK under EU law as the family member of an EEA national.
- **Immigration (European Economic Area) Regulations 2006:** These Regulations purport to bring the Citizens Directive into domestic UK law. They are referred to in this briefing as the '2006 Regulations'. They were amended in 2012 and 2013. These amendments are referred to as the Amendment Regulations.
- **Partner:** Under EU law, an unmarried relationship is called a 'durable relationship'. In this briefing we use the term 'partner' where appropriate to describe these relationships.
- **Residence Card:** this is the card which may be issued to a non-EEA national residing in the UK as evidence of her/his rights as the family member of an EEA national under EU law.
- **Registration Certificate:** this is the card which may be issued to an EEA citizen residing in the UK as evidence of his/her rights under EU law.
- **Spouse/civil partner:** The term 'spouse' means a husband or wife. The term 'civil partner' means a person who is in a same sex relationship and has registered a civil partnership or equivalent union in another country. It does not matter where the marriage or civil partnership registration takes place, so long as the legal procedure involved is recognised in the country in which it takes place.
- **UKVI:** UKVI is UK Visas and Immigration, the department within the Home Office which processes all applications for permission to remain in the UK. It was formerly known as the Immigration & Nationality Directorate (IND). The UKVI website is <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

1.4 Application forms

The relevant application forms for the categories of persons referred to in this document are as follows:

EEA 1 - for registration certificate applications by EEA nationals and their EEA national family members.

EEA 2 - for residence card applications by non-EEA family members of EEA nationals.

EEA3 - for permanent residence applications by EEA nationals and their EEA national family members.

EEA4 - for permanent residence applications by non-EEA family members of EEA nationals.

DRF1 - for derived residence card applications by non-EEA nationals with a derivative right of residence.

VAF5 - for non-EEA family members of EEA nationals wishing to enter the UK.

1.5 British/Irish citizenship

Entitlement to British citizenship is a complex issue. If you are in doubt about your status, get specialist advice.

Irish citizenship can be acquired via marriage to an Irish citizen or via an Irish parent or grandparent, as long as certain requirements are satisfied.

Entitlement to Irish citizenship for people who are born in Ireland is as follows:

- all persons born before 1 January 2005 anywhere on the island of Ireland (i.e. in the Republic of Ireland or in Northern Ireland) are entitled to Irish citizenship, irrespective of their parents' nationality or immigration status;
- people born on the island of Ireland after 1 January 2005 are only entitled to Irish citizenship if one of their parents was:
 - Irish or settled in Ireland or the UK at the time of their birth; or
 - British; or
 - had been living legally in Ireland for three out of the previous four years at the time of their birth.

Time spent in Ireland as a student or asylum seeker will not be included in calculating this period of residence. This is a complex issue and specialist advice should be sought if there is any doubt. For more information, phone the Immigrant Council of Ireland on 00 353 1 6740 200 or visit the Department of Justice website www.citizensinformation.ie

Many residents of Northern Ireland are entitled to both UK and Irish citizenship and can hold both passports at the same time.

2. PROCEDURAL COMPARISON

A person who is a dual citizen, holding both British citizenship and the citizenship of another EU member state, may be able to choose to support a family member's application to enter or remain in the UK by relying on her/his British passport. In this case, it is essential to also read our other briefing on the rights of family members under the UK Immigration Rules, which is available on our website.

It may also be possible to lodge an application outside the Immigration Rules and the 2006 Regulations. This can be complex and is not covered in this briefing. A person in this case should seek specialist advice.

Before deciding which application is relevant to you, the chart below seeks to summarise and compare the procedures and requirements of applications under the UK Immigration Rules and the 2006 Regulations (as amended). The remainder of this briefing outlines procedures under the 2006 Regulations (as amended) only.

Please note that under EU law, extended family members including an unmarried partner in a durable relationship with the EEA national may have an EU law right to reside in the UK. However, different procedures apply to them and they are not referred to in the comparison chart below. See 4.3, 4.4 and 4.5 for further information on extended family members.

Please note that this briefing does not cover certain related issues, such as the death of the EU citizen. On this and other issues, further specialist advice should be sought.

UK Immigration Rules (Appendix FM)

Application for visa for spouse/civil partner/partner/fiancé of UK citizen or person settled in the UK.

1. Requirements under Appendix FM of the Immigration Rules:

Relationship requirement

- Certain relationship requirements apply such as the applicant's partner must be present and settled in the UK, the applicant and partner must demonstrate that they are in a genuine and subsisting relationship and that there is an intention to live permanently together in the UK.

Financial requirement:

- a financial requirement applies. The sponsor must show that s/he has a minimum gross annual income of £18,600 (with an additional £3,800 for the first child and £2,400 for each additional child sponsored);

a sponsor is exempt from meeting the financial requirement where s/he is in receipt of a disability related benefit. In these circumstances, the sponsor must show that s/he can adequately maintain and accommodate themselves, the applicant and any dependents without recourse to public funds;

2006 Regulations

Application for EEA Family Permit/ Residence card for non EEA spouse/civil partner of EEA national with a right to reside in UK under EU law.

1. Requirement that EEA national is residing in accordance with the EEA Regulations.

No financial or accommodation requirements.

Genuine relationship.

cash savings can be used to supplement any shortfall in earnings or can be relied on in full in order to satisfy the financial requirement.

Suitability requirement:

- the applicant will be subject to suitability requirements amongst which is the requirement that s/he must not have a record of any criminality. Also, if the applicant is already in the UK and is applying for leave to remain, the applicant must not have debts owed to the NHS of £1,000 or more;

English language requirement

- the applicant applying for entry clearance or leave to remain in the UK must have English language speaking and listening skills at level A1 or above, or qualify for an exemption. From 28 October 2013, all applicants for indefinite leave to remain must present a speaking and listening qualification at level B1 or above and pass the life in the UK test.

2. Applications from outside the UK to UK diplomatic post abroad where non-EEA applicant lives. Application is made on a VAF4A form. £885 plus £885 for each dependent child relative. This is a non-refundable fee. VAF4 A Appendix 2 (financial requirement form) must also be completed. Couple may be interviewed. Can be slow.

If successful, granted leave to enter the UK for an initial period not exceeding 33 months with no restriction on working and a condition of no additional recourse to public funds for non-EEA spouse/civil partner/partner once in the UK.

2. Applications from outside the UK to UK diplomatic post abroad where non-EEA spouse/civil partner lives. Application is made on a VAF5 form. No fee. Generally an 'over the counter' speedy procedure. In some cases, applicants may be interviewed and if so it should be expedited.

If successful, granted six months EEA Family Permit. Once in UK, no restriction on access to public funds and non-EEA spouse/civil partner can take employment.

Following the 2012 amendments to the 2006 Regulations, Entry Clearance Officers must issue an EEA family permit to a family member who has retained the right of

residence.

3. Applications from within the UK to UKVI. Applicant must have permission to be in the UK for more than six months (except holders of fiancé or proposed civil partner visas). You cannot obtain spouse/civil partner/partner visa as an overstayer (disregarding any period of overstaying of 28 days or less), visitor or asylum seeker. Applicant must satisfy the same requirements as set out above at 1. The application is made on Form FLR (M). There is a postal fee of £601, plus a separate fee of £601 for each dependent child, or £1001 to have the application dealt with faster via a premium service, plus a separate fee of £1001 for each dependent child. Applicants must provide originals of all accompanying evidence. Couple may be interviewed. Can be slow.

If successful, granted leave to remain in UK for an initial period of 30 months, during which time the non-EEA spouse/civil partner/partner can take employment, but will be restricted from accessing 'public funds'. Applicant will need to reapply prior to the expiry of 30 month period, for further leave to remain before being eligible for settlement after a period of five years. Applicant will have to satisfy the requirements of Appendix FM of the Immigration Rules at each stage.

If unsuccessful, there may be a right of appeal - seek advice immediately.

4. After five years residing in the UK as the spouse/civil partner/partner can apply for Indefinite Leave to Remain ('ILR') on Form SET(M). Postal fee of £1093 plus a separate fee of £1093 for each dependent child, or £1,493 to have the application dealt with faster via a premium service, plus a separate fee of £1,493 for each dependent child. Provide originals of all evidence. Essential to apply before expiry of leave to remain to avoid becoming an overstayer.

From October 2013, applicant must pass *Life in the UK Test*, and fulfill English language requirements of speaking and listening qualification at B1 level or above.

3. Applications from within the UK on Form EEA 1 and 2 for a registration certificate for the EEA national and a residence card for the non-EEA family member. Fee of £55. No interview; no financial requirements. The principle of direct effect in European law creates an automatic entitlement for certain eligible family members; therefore the application is for a document confirming already existing status. Must be processed within six months. A delay beyond six months would be open to challenge. The applicant should be issued with a Certificate of Application shortly after lodging forms EEA 1 and 2 with UKVI. This will acknowledge receipt of the application and set out applicant's rights.

If successful, normally valid for five years during which time no restriction on access to public funds for most applicants. Most non-EEA family members can take employment. Please note that certain EEA nationals may be entitled to permanent residence sooner than five years. If unsuccessful, there may be a right of appeal – seek advice immediately.

4. After five years in the UK as EEA family member, can apply for a Permanent Residence Card using Form EEA3 for EEA nationals or EEA4 for non-EEA nationals.

Fee of £55.

No interview; no financial requirement.

Must establish that the EEA family member has had an EU law right to reside in the UK for the previous five years

5. Children up to the age of eighteen who are not EEA nationals, are not married and are still dependent can apply to accompany their parents under spouse/civil partner/ partner visas.

Requirement that the sponsor parent meets the financial requirement as detailed above for additional child dependents. No recourse to public funds for non-EEA children during probationary period.

Note: There are provisions under Appendix FM of the Immigration Rules for other dependent family members to apply to enter the UK. These are complicated applications and specialist advice should be sought.

6. Relationship breakdown ends entitlement to spouse/civil partner/ unmarried partner status during the 5 year probationary period.

Relationship breakdown is irrelevant after ILR granted.

However, where a couple separate during the probationary period as a result of domestic violence suffered by the non-EEA national spouse/civil partner/partner, ILR can still be applied for. Seek further advice immediately.

5. 'Family members' for EEA permits can include:

- children and grand-children up to the age of 21;
- children and grand-children over the age of 21 if they are still dependent;
- dependent parents, grandparents and great grandparents.

6. Relationship breakdown does *not* necessarily end entitlement to EEA residence card.

Spouses/civil partners retain entitlement under EU law as a family member if they separate, as long as the marriage or civil partnership has not been dissolved (by decree absolute or final dissolution order). If the marriage or civil partnership broke down as a result of domestic violence the non-EEA national may retain the right of residence even where marriage or civil partnership is dissolved, as long as certain other requirements are satisfied. A person in these circumstances should seek immediate specialist legal advice.

Irrelevant after Permanent Residence documents are issued. However, please note that separation does end an EU law right to reside in the UK for a non-EEA national whose relationship breaks down but who was neither married nor a civil partner. In the EEA Regulations this is called a 'durable relationship'.

If the EEA spouse dies, the marriage or civil partnership lasted at least one year, and the non-EEA family member is her/himself a worker or self employed person, the non-EEA family member retains the right to reside in the UK.

Note: There are other circumstances where a non-EEA national retains the right to reside

although the marriage/civil partnership is dissolved. In the event of the dissolution of a relationship in these circumstances, you must seek specialist legal advice.

3. EU LAW: GENERAL CONSIDERATIONS AND PRINCIPLES

3.1 In order to be able to benefit from EU law provisions, the EEA national must normally, amongst other things, be outside of his/her country of citizenship.

The Court of Justice of the European Union (CJEU), in the case of *McCarthy C-343/09*, looked at whether a dual British/Irish citizen who had lived all her life in the UK and had never moved across EU borders, could rely on her Irish citizenship to support her husband's application for a residence card under EU law. The Court decided, amongst other things, that she could not. Following the judgment in *McCarthy* and as introduced in the 2012 amendments to the 2006 Regulations, a person holding dual citizenship must have exercised his/her right of free movement in order to rely on their European citizenship under EU Law to support an application by a non-EEA family member.

A dual citizen who has always resided in the Member State of which s/he is a national cannot benefit from the provisions of Citizen's Directive. It no longer makes any difference that the citizen in question is also a national of a Member State other than that where s/he resides. This means that family members are also unable to derive a right of residence under the Directive on the basis of their relationship to such a national. Therefore, as the law presently stands, a dual British/Irish citizen in Northern Ireland can no longer rely on his/her Irish citizenship to support an application for a non-EEA family member, if that dual British/Irish citizen has lived all of his/her life in the UK.

3.2 Some family members of EEA nationals have EU law rights to enter, remain and work in the UK along with the EEA national, even if they are not EEA nationals themselves. This will depend on whether the EEA national has an EU law right to reside in the UK. An EU law right to reside is established if the EEA national fits into one of the following categories:

- a) a worker;
- b) a work seeker;
- c) some persons who are temporarily incapable of work owing to illness or an accident, following a period of employment;
- d) some persons who are involuntarily unemployed;
- e) a person who is permanently incapable of work owing to industrial disease or injury;
- f) a person who is permanently incapable of work for reasons other than industrial disease or injury and has been resident in the UK for at least two years prior to stopping work;
- g) a self employed person;
- h) a self sufficient person;
- i) certain retired persons;
- j) students;
- k) people who work in another EEA Member State while retaining their place of residence in the UK and return there once a week

Please note that EEA nationals who fall within certain categories above may acquire a permanent right to reside under EU law without having to wait five years as long as they satisfy certain other requirements. A person who falls into any of these categories should seek specialist legal advice.

The **Immigration (European Economic Area) (Amendment) (No. 2) Regulations 2013** introduced the following changes to the definitions of 'jobseeker' and 'worker' in the 2006 Regulations: -

- EEA nationals who wish to seek work in the UK must provide evidence that they are seeking work and have a genuine chance of being engaged;
- EEA nationals may retain the status of 'worker' in circumstances where he/she is involuntarily employed, however, he/she must provide evidence that they are seeking employment and have a genuine chance of being engaged; and
- EEA nationals may not enjoy the status of jobseeker or retained worker for longer than six months unless they provide 'compelling evidence' that they have a genuine chance of being engaged;
- An EEA national who retains status as a worker and who had worked for less than 12 months before becoming involuntarily unemployed can only retain worker status for a maximum of six months.

3.3 There are some exceptions to the general rule that one must be outside one's country of citizenship in order to be able to benefit from EU law provisions (see 3.1). Following the decision of the CJEU in the case of *Surinder Singh* Case C-370/90 and under recently amended Regulation 9 of the Immigration (European Economic Area) Regulations 2006, where a UK citizen has resided in another EEA member state as a worker or self employed person with her/his spouse or civil partner and has transferred the centre of her/his life to that EEA member state, both the British citizen and the non-EEA spouse or civil partner has an EU law right of entry into the UK on their return to the UK. The recent CJEU decision in the case of *O v the Netherlands* case C-456/12 has set important new binding guidance in *Surinder Singh* cases. For example, a residence period of three months in another EEA state is required, the rights in such cases are not limited to UK citizens workers and the self employed but also to students and the self sufficient. In these circumstances, specialist advice should be sought.

3.4 Further to that, the Court decided in the case of *Ruiz-Zambrano*, (Case c-34/009), that the Colombian parents of two Belgian children living in Belgium must be given an EU law right to reside and work in Belgium. The reasoning of the Court is that as EU citizens, the children have an absolute right to reside in the EU and benefit from provisions that EU Member States provide to their citizens, such as education, health etc. As the children are dependent on their parents, if the parents were not permitted to reside in Belgium, the children would have to leave the EU completely to go to Colombia and would be denied the benefits of EU citizenship. Therefore, upon receipt of evidence that a British citizen is a dependent relative of a non-EEA person with no right of residence in the UK, UKVI must issue confirmation that s/he has an EU law right to reside and work in the UK. This has led to the introduction of a new category of residence in the 2012 Amendment Regulations called derivative residence.

3.5 For certain family members (see 4.2 below), if the requirements under EU law are met, by virtue of the EU law Principle of Direct Effect, the EEA and non-EEA family members' entitlement to remain in the UK already exists, irrespective of whether the individuals have documents confirming this. This is also the case irrespective of when the application for a residence document was made and any subsequent delay within UKVI in issuing the relevant documents. The application to the UKVI is simply a request for documents to evidence these EU law rights. Therefore, by virtue of this Principle, prior to the UKVI actually issuing the residence card, the relevant non-EEA family member is entitled to work and access benefits.

However, it may be difficult to prove these rights while the application for the residence card is being processed. In recognition of this, the UKVI issues a letter to applicants while waiting for the actual documents to be issued. It is called a Certificate of Application and can be used by certain family members to prove a right to work.

Please note that the Principle of Direct Effect does not apply to British domestic immigration law applications under the Immigration Rules.

4. IMMEDIATE AND EXTENDED FAMILY MEMBERS

4.1 The Citizens Directive created two different categories of family members, both European and non-European and laid down the rights of those individuals under EU law.

4.2 The term 'family member' is defined as in regulation 7 of the 2006 Regulations as:

- spouse or civil partner;
- sons and daughters, grandsons and grand-daughters of either the EEA national or her/his spouse/civil partner, up to the age of 21, and over 21 if they are still dependent; or
- dependent parents, grandparents and great-grandparents of the EEA national or her/his spouse/civil partner.

These family members are sometimes referred to as 'immediate' family members.

Spouses and civil partners remain entitled to continue to reside in the UK as family members under regulation 7 irrespective of separation, up to the time that the Decree Absolute or Dissolution Order is issued by the family courts, as long as the relevant EEA national still has an EU law to reside in the UK.

The definitions of spouse and civil partner have been amended under regulation 2 in the 2012 amendments, to provide that the definition does not include situations whereby either party already has a spouse, civil partner or durable partner in the UK and/or the marriage or civil partnership is one of convenience.

4.3 Regulation 8 of the 2006 Regulations set out the different categories of people who are defined as 'extended family members'. It includes a person who is in a 'durable relationship' with an EEA national. The UKVI defines a 'durable relationship' as one where the unmarried couple has resided together for two years or more. However, the Immigration Tribunal has decided that while living together for two years is a good rule of thumb, it is only one factor that can be taken into account, and therefore it may be possible to establish a 'durable relationship' even if the couple has been living together for less than two years, for example, where the couple have/ are about to have a child.

4.4 Unlike those who fall into the immediate family member definition, extended family members do not benefit from the principle of direct effect and therefore cannot work or access benefits (see 3.4) until a decision is made by UKVI to issue the residence card.

Instead, the application must be facilitated through a two stage process. The decision maker must first decide whether the application satisfies the specific extended family member definition, for example, whether the couple are in a durable relationship. If it is decided that they are, the decision maker must then consider whether s/he should exercise discretion in the applicant's favour and issue the family permit or residence card to the non-EEA national.

Please note that once the permit or card is issued, the applicant then becomes an immediate family member and can work or access relevant benefits.

This can be a complex application and specialist advice should be sought.

4.5 Unlike a spouse or civil partner, a person in a durable relationship who is issued with a card by UKVI, does not retain an EU law right to reside in the UK if that relationship then breaks down. S/he can therefore be left in a very vulnerable situation and should seek specialist advice immediately.

5. DERIVATIVE RIGHTS OF RESIDENCE

5.1 The 2012 Amendment Regulations (following the judgments made in the cases of Chen (2004) ECJC 200/02, Ibrahim (2012) ECJ C-310/08 and Teixeira (2010) ECJ C-34/09 and Zambrano (2011) ECJ C-34/09) allow for a new category of residence called derivative residence.

5.2 The following categories of people are now provided for under the new Regulation 15A:

- primary carers of self-sufficient EEA national children
- primary carers of British citizens
- children of EEA national workers or former workers where the child is in education in the UK
- primary carers of children of EEA national workers or former workers where that child is in education in the UK, and
- dependent children under the age of eighteen of the primary carers in each of the categories listed above

It should be noted that that under the 2012 Amendment Regulations a primary carer is defined as a direct relative or legal guardian.

5.3 Applications should be made for this category of derivative residence card using a DRF1 form available on the UKVI website.

5.4 It should be noted that as the law stands, this new type of derivative residence will never qualify the family member for permanent residence in the UK (as set out in Regulation 15(1A) of the 2012 Amendment Regulations).

6. APPLYING FOR AN EEA FAMILY PERMIT FROM ABROAD

6.1 Non-EEA family members may have the right to enter and reside in the UK for an initial three month period if travelling with their EEA family member on holiday. However, in our experience airlines can be reluctant to allow non-European nationals onto the airplane without a visa.

Non-EEA family members of relevant EEA citizens who want to come to the UK to reside for periods longer than three months should obtain an EEA family permit to enter the UK. They must apply on a Form VAF5 which is available on the UKVI website. The EEA family permit allows the holder to enter the UK under EU law. It can be issued 'over the counter' at a British diplomatic post abroad without payment of a fee. The Foreign and Commonwealth Office website, www.fco.gov.uk, lists the British diplomatic posts abroad.

6.2 For dual Irish/British citizens living in Northern Ireland, an EEA family permit application for a non-EEA family member, is in certain limited circumstances, based on their Irish citizenship, so they will be required to produce their Irish passport as evidence of that citizenship. Their British passport is not relevant to such an application, unless relying on the circumstances referred to in paragraph 3.3 above. Following the 2012 Amendment Regulations, a person who is a dual British/Irish citizen, must have exercised their right of free movement in another EU Member State in order to rely on their Irish citizenship under EU law for immigration purposes. See 3.1 above.

6.3 Applicants for EEA family permits are required to show the following documents:

- the passports of both spouses/civil partners/partners and any children or other family members included in the applications;
- birth certificates of any children to be included on the family permit;
- marriage or civil partnership certificates;
- or evidence of the couple being an extended family member, for example in a durable relationship;
- evidence of the relationships between any other immediate or extended family members covered by the application;
- evidence that the EEA citizen has an EU law right to reside in the UK (see 3.3 above) for example, wage slips, letter from employer, evidence of self-employment/being a student/retired/self-sufficient/permanently incapable and having resided in the UK for at least two years.

6.4 An EEA family permit is a multiple entry permit. They are usually valid for six months and the holder can travel to and from the UK during this time.

7. APPLYING FOR A RESIDENCE CARD FROM WITHIN THE UK

7.1 Once in the UK, the non-European spouse/civil partner/partner should apply for an EEA residence card. This is evidence of the person's right to be in the UK under EU law as well as her/his right to work and entitlement to benefits, if necessary.

The application can be made on Form EEA2, available from the UKVI website. This application is subject to a fee of £55 for each applicant.

7.2 The completed form should be sent to the UKVI address at the end of the form and a copy of all documents submitted should be kept. They should be sent via special delivery.

The evidence required is the same as that listed above at paragraph 6.3 above, along with passport-size photographs of the applicants. Original documents should be lodged. However, if lodging copies, a covering letter should be sent along with them, explaining when the originals will be made available to UKVI.

7.3 EU law is very clear that the UKVI cannot take more than six months to process an application for a residence card by an immediate family member (see 4.2) once all relevant documents are lodged. The Tribunal has indicated that this means original documents. If all relevant documents have been properly lodged, delays beyond six months can be challenged as being unlawful. Specialist advice should be sought in these cases.

7.4 EEA residence cards are usually valid for five years. However, where the applicant has temporary employment or is a student, they may be issued for shorter periods. Applications for the residence cards can be made immediately upon entry into the UK.

7.5 A refusal of an application for a residence card can only be refused on grounds of public policy, public health or public safety. Generally, EEA law rights can be relied on irrespective of a person's previous immigration status, for example, if s/he was in the UK illegally before marrying or forming a civil partnership with an EEA national.

8. APPLYING FOR A DERIVATIVE RESIDENCE CARD

8.1 The application for a derivative residence card can be made on Form DRF-1, available from the UKVI website. This application is subject to a fee of £55 for each applicant.

Applicants must provide:

- a valid passport
- 2 identical passport-size photographs with your full name written on the back of each side
- evidence that you qualify for the category of derivative rights you are applying for including the following:
 - a) evidence of relationship – for example, birth certificate/adoption certificate
 - b) evidence of dependency – for example, how the child or adult is wholly reliant on the primary carer/s for her/his care

Guidance on the relevant documents to submit with the application can be found in section 11 of the DRF1 form.

The completed form along with the relevant documents should be sent by post to the UKVI address at the end of the form. A copy of all documents submitted should be made. It is advisable to send valuable documents via Recorded or Special Delivery. You should also include a pre-paid self-addressed envelope Special Delivery or Recorded envelope with your application.

Applications are normally processed within 6 months

The period of validity of a derivative residence card is five years from the date of issue.

9. RIGHT TO PERMANENT RESIDENCE IN THE UK

9.1 If, after five years, the EEA spouse/civil partner/partner still has an EU law right to reside in the UK, and the couple have not divorced/ dissolved their civil partnership or the unmarried partnership has not broken down, the non-EEA spouse/civil partner/partner will be able to apply for a document as confirmation of the fact that s/he has acquired a permanent right to reside in the UK under EU law.

However, please note that, if the EU citizen is permanently incapable of work and can demonstrate this, then from that point s/he and her/his non-EU family members (see 3.3) may acquire a permanent right to reside.

9.2 Under EU law, a couple shall remain family members as long as they have not divorced/dissolved the marriage or civil partnership and are both still residing in the UK. Therefore, a non-EEA family member may still be able to obtain permanent residence even though s/he has physically separated from her/his EEA-national spouse/civil partner.

However, please note that when a durable relationship breaks down, the non-EEA national cannot rely on the same protection and s/he is no longer recognized as a family member from that point.

9.3 The application for a permanent residence card is made on Form EEA4 which is available on the UKVI website and is subject to a fee of £55. The applicant must be able to demonstrate that her/his spouse/civil partner/partner has had a right to reside during the previous five year period.

10. RETAINING AN EU LAW RIGHT TO RESIDE IN THE UK

10.1 If a divorce or dissolution of a civil partnership was as a result of the non-EEA national being the victim of domestic abuse, or if other 'particularly difficult circumstances' exist, then the non-EEA national may retain an EU law right of residence in the UK in her/his own right. In this case, specialist advice should be sought immediately.

10.2 In addition, there are other circumstances whereby a person retains a right of residence under EU law and can therefore remain lawfully in the UK even though the marriage/civil partnership has been terminated/dissolved, for example:

- there is a child at school in the UK who is residing with the non-EEA parent or this parent has custody of this child or the court has ordered that this parent must have access to this child; *or*
- the couple were married/in a civil partnership for three years and resided in the UK in this capacity for at least one year; *or*
- the non-EEA family member is widowed/a surviving partner of an EEA national who had a right to reside *and* s/he resided continuously in the United Kingdom for at least one year before the death *and* s/he would be a worker/self employed/ self sufficient person her/himself; *or*
- the non-EEA family member is a student who was the direct descendent of an EEA national who had a right to reside and who has died *or* left the UK *or* was the direct descendant of the spouse of such an EEA national.

These can be very complex applications. We would advise people who fall into any of the categories referred to in this section to seek specialist advice immediately.

11. APPEALS

If an application for a family permit, residence card or permanent residence card is unsuccessful, that decision may attract a right of appeal. Deadlines for lodging grounds of appeal are very short and the grounds may be complex. In the event of an application being refused, please seek legal advice immediately.

12. USEFUL WEBSITES AND ADDRESSES

Law Centre (NI)

124 Donegall Street Belfast BT1 2GY. Telephone 028 9024 4401.

Western Area Office: 9 Clarendon Street, Derry, BT48 7EP. Telephone 028 9023 9938.

Citizenship Section, Department of Justice, Equality and Law Reform (Republic of Ireland), 13/14 Burgh Quay, Dublin 2. Telephone 00 353 1 616 7700.

Websites

Law Centre (NI): www.lawcentreni.org

UK Visas and Immigration: <https://www.gov.uk/government/organisations/uk-visas-and-immigration>

Foreign and Commonwealth Office: www.fco.gov.uk/en/

UK Visas: www.ukvisas.gov.uk/en/

Republic of Ireland Department of Justice: www.justice.ie

13. IMPORTANT NOTE

Although every effort is made to ensure the information on these pages is accurate and up-to date, Law Centre (NI) cannot be held liable for any inaccuracies and their consequences. The information should not be treated as a complete and authoritative statement of the law.

As immigration law changes frequently, it is important not to rely on briefings that are not up-to-date. Always check the date at the end of any article or briefing, check our website for updates (www.lawcentreni.org/EoR) and, if in doubt, contact the Immigration Unit at Law Centre (NI).

It is illegal to provide immigration advice unless a qualified solicitor, barrister or agency accredited by the Office of the Immigration Services Commissioner.

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