

IMMIGRATION DIRECTORATES' INSTRUCTIONS

CHAPTER 7 SECTION 3

EEA NATIONALS & THEIR FAMILY MEMBERS

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1. Background to free movement and the EEA Regulations

European Community law bestows on all European Union (EU) citizens and their family members the right to move freely and reside within the EU. The primary aim of free movement within the EU is to support the internal market and to encourage social integration. Community law in this area therefore aims to keep obstacles to free movement to an absolute minimum. However, because the right to free movement still has to be established when entering a Member State and because there are circumstances in which it is appropriate to limit free movement rights, checks on arrival are necessary.

Free movement rights are governed by Free Movement Directive 2004/38/EC, which all EU Member States are obliged to transpose into domestic legislation. In the UK this takes the form of the **Immigration (European Economic Area) Regulations 2006** (henceforth the EEA Regulations). A copy of the EEA Regulations and the Directive are available as annex A and annex B of Chapter 1 of the European Casework Instructions (ECIs), which can be found on the Knowledge Base and on the IND external website.

The application of free movement rights is also subject to judgements by the European Court of Justice (ECJ). Court cases may arise after a Member State has been challenged by the European Commission over its implementation of free movement legislation or after a Member State has submitted a question about implementation for ECJ consideration. The resulting Caselaw from ECJ judgements is binding on all Member States.

The penalty for failure by the UK to comply with any aspect of the Directive or ECJ caselaw is infraction proceedings. This process involves the UK being challenged in the ECJ, is cumbersome, costly and requires the involvement of a wide range of government departments. The outcome is an obligation to change systems to achieve compliance with the Directive and can include very heavy financial penalties.

Persons coming to the UK who are entitled to free movement do not require leave to enter or remain. All EU, European Economic Area (EEA) and Swiss nationals and their family members encountered at UK ports of entry should be dealt with as persons seeking admission in accordance with the EEA Regulations and *not* as persons seeking leave in accordance with the immigration rules.

2. Member States of the EEA

Nationals of the following countries are EEA nationals:

Austria	Hungary ¹	Norway ²
Belgium	Iceland ²	Poland ¹
Czech Republic ¹	Ireland	Portugal
Cyprus	Italy	Slovakia ¹
Denmark	Latvia ¹	Slovenia ¹
Estonia ¹	Liechtenstein ²	Spain
Finland	Lithuania ¹	Sweden
France	Luxembourg	
Germany	Malta	
Greece	Netherlands	

¹ A8 countries

² Iceland, Liechtenstein and Norway are not Member States of the European Union, but do form part of the EEA. Their nationals enjoy the same free movement rights as EU nationals.

2.1. A8 countries

Nationals of the ten new Member States who joined the European Union on 1 May 2004 have the right to travel freely across the European Union allowing them to visit, live and study in any other Member State. The Treaty also allows current Member States to restrict the freedom to work for nationals of eight of the ten new Member States for a transitional period of up to five years (Cyprus and Malta are exempt from the transitional period).

The UK allows A8 nationals to undertake paid employment or to work part-time whilst studying, but requires these workers to register under the Worker Registration Scheme. This right to work is implemented into national legislation via The Accession (Immigration and Worker Registration) Regulations 2004.

2.2. Status of British nationals

The UK is also a member of the EEA; however, a British national cannot exercise a Treaty right in the UK because by definition a Treaty right is something that is exercised by an EU national when in another Member State. A British national, and his/her third country national family members, can only benefit from free movement rights if they meet the criteria established in the ECJ case of SURINDER SINGH. Please refer to paragraph 5.8.

2.3. Switzerland

2.3.1 Swiss nationals to be treated as EEA nationals

On 1 June 2002 the Agreement between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons came into force. Although the Agreement did not mean that Switzerland became part of the EEA or that Swiss nationals became EEA nationals, the Immigration (Swiss Free Movement of Persons) Regulations 2002 which incorporated the Agreement into UK domestic legislation, provided that the EEA Regulations 2000 applied to Swiss nationals and their family members as if the Swiss national were an EEA national.

The Swiss Regulations 2002 have now been revoked (save for the paragraphs relating to posted workers – see paragraph 2.3.2) and Swiss nationals are now considered under the EEA Regulations, wherein the definition of EEA nationals includes Swiss nationals. Their family members are considered as if they were family members of EEA nationals.

In practice therefore the instructions in this section will apply to Swiss nationals and their family members.

2.3.2. Swiss posted workers (and Vander Elst cases)

Although *not* related to free movement rights, staff will wish to be aware of the provisions for Swiss posted workers and for third country nationals to whom the Vander Elst ECJ judgment

applies.

Full details on Swiss posted workers are available in Chapter 11 of the ECIs, which can be found on IND Horizon under 'Guidance/Manuals'. Under the Swiss Regulations, a posted worker authorisation, issued by a British mission overseas is mandatory. This authorisation allows the posted worker to reside in the United Kingdom for 90 days in any calendar year, either in one block, or in shorter periods totalling 90 days. The time limit will be indicated on the vignette and the passport should be endorsed with an open date stamp. There is no provision in the Swiss Regulations for a posted worker to be accompanied by their family members.

The Vander Elst concession derives from a 1994 European Court of Justice ruling relating to the right of an EU Company to provide services across the EU without the need to obtain additional work permits. The Vander Elst ruling provides for any non-EU employees who have been working in the EU for a service provider to be admitted as Vander Elst cases. The purpose is for contract work with the employer only and leave to enter is currently granted for a period of 6 months or the length of the contract. The majority of these cases involves visa nationals, but the Entry Clearance requirement is currently imposed on all beneficiaries, including non-visa nationals. The current requirements for Vander Elst cases are as follows:

- is lawfully resident in the EU Member State in which the employer is established
- is lawfully and habitually employed by an employer who is temporarily providing a service in the UK
- does not intend to take any other employment
- intends to leave the UK at the end of the period during which his employer is providing the service.

2.4. Isle of Man and the Channel Islands

The Channel Islands and the Isle of Man are not part of the EEA although Section 7 (Persons exercising Community rights and nationals of member States) of the Immigration Act 1988 does extend to the Islands in a modified form and provides for EEA nationals and their families seeking to enter or remain in the Islands to be dealt with in the same way as they would be if seeking admission to the UK under the EEA Regulations. In practice therefore the instructions in this section will apply to such persons in transit to the Islands.

However, an EEA national undertaking an activity in the Isle of Man or Channel Islands that would constitute exercising a Treaty right under Community law is not considered to be exercising a Treaty right by virtue of the Islands not being part of the EU or the EEA.

2.5. Andorra, Monaco & San Marino

Andorra, Monaco & San Marino are not part of the EU or the EEA. A person who presents an Andorran, Monaco or San Marino passport does not benefit from free movement rights and cannot exercise Treaty rights in other Member States.

2.6. Gibraltar

For immigration purposes Gibraltar is part of the EU. Gibraltarians should be admitted as EU nationals. Please also refer to IDIs Chapter 37 Section 2.

3. Schedule 2 powers in the EEA Regulations

Regulations 22(2) and 23(2) have the effect in relation to persons seeking admission under the EEA Regulations of allowing immigration officers to exercise powers conferred in the following paragraphs of Schedule 2 of the 1971 Act; 2 (power of examination), 3 (embarkation checks), 4 (the provision of information and documents including baggage searches), 7 (medical examination), 16-18 (power to detain) and 21-24 (temporary admission). In addition the powers conferred in paragraphs 8 10, 11 and 19 (powers to remove) can be used when a person is refused admission.

However, this does not mean that immigration officers should routinely conduct enquiries which are as thorough as those conducted on passengers seeking entry under domestic immigration legislation, nor should cases be assessed on a credibility basis. The use of these powers under the EEA Regulations is derived from Regulations 22 and 23 and should only be used to establish that a passenger is entitled to admission under the EEA Regulations.

The provisions in paragraph 6(2) of Schedule 2 which allow an immigration officer to withdraw leave to enter within 24 hours of granting that leave may not be applied to EEA nationals or their family members, since they are granted admission in accordance with Regulation 11, and not leave to enter in accordance with the immigration rules. The practical effect of this is that an EEA national or a family member who has passed through the control is considered to have been admitted to the UK and any necessary further action at port would be the responsibility of other enforcement agencies such as Customs or the Police. Further immigration involvement at port would only result if the person became removable on grounds of public policy, public health or public security.

4. EEA nationals

4.1 Admission and refusal of EEA nationals

In accordance with Regulation 11(1) all EEA nationals must be admitted to the UK on production of a valid national ID card or passport issued by an EEA state, subject to considerations of public policy, health and security.

An EEA national can only be refused admission and removed on grounds of public policy, public health or public security (see paragraph 7). This includes EEA nationals who are being deported or who are subject to an extant deportation order on arrival (please refer to paragraph 7.4 for full guidance on deportation).

4.2 Examination of EEA nationals

Pursuant to Schedule 2 powers transposed into the EEA Regulations (see paragraph 3) it is appropriate for immigration officers to establish that a person seeking admission as an EEA national is in possession of a valid national ID card or passport issued by an EEA state.

However, beyond this an EEA national should only be questioned where there is *strong* reason to believe that there may be reasons to refuse admission on grounds of public policy, public health or public security, including when the EEA national is subject to an extant

deportation order. Otherwise strict limits have been placed on the immigration officer's examination of EEA nationals; as a result of judgments in the ECJ an immigration officer may *not* require an EEA national to answer questions regarding the purpose and duration of his journey or the financial means available to him (unless such information is relevant to the right of admission of any non-EEA family members).

It is normally the case that the only way in which an EEA national is identified as a person who is subject to an extant deportation order or other information which may lead to a public policy, public health or public security refusal is when his/her document is checked against WICU. Ideally all EEA documents should therefore be checked against WICU but where this is not possible checks should never fall below standards set out in current swiping instructions.

When an EEA national is identified as the subject of a WICU entry it is appropriate to issue form IS81 whilst the nature of the entry is established. However, if the entry does not provide information that may justify or lead to a justification to refuse admission on grounds of public policy, public health or public security the passenger should be allowed to proceed without further delay.

4.3. Passengers seeking entry as EEA nationals who are unable or unwilling to produce a valid ID card or passport

4.3.1. Unable to produce (including those who present a driving licence)

Regulation 11(4) states that when an EEA national does not produce on arrival a valid ID card or passport he should be given "every reasonable opportunity" to prove by other means that he is an EEA national. In other words a person claiming to be an EEA national should not automatically be refused admission as a result of being unable to produce a valid ID card or passport.

In such circumstances an assessment needs to be made of whether or not the passenger is likely to be an EEA national. Passengers who have forgotten or lost their documents or who mistakenly believed that they did not need them will usually be willing to produce other documents or information to substantiate their claim, and observation and a short conversation are usually enough to make a reasonable judgement.

A driving licence issued in an EEA State should *not* be accepted in place of an ID card or a passport. Again in such instances where the passenger does not have an ID card or passport in his possession other documents or information should be requested to substantiate their claim, and observation and a short conversation are usually enough to come to a reasonable judgement.

4.3.2. Unwilling to produce

Some passengers may try to pass through the control without showing a document in order to make a point, or as a stunt. Officers should avoid being provoked into rigid and bureaucratic attitudes; this may be exactly what the passenger is seeking to achieve. Where a passenger is unwilling to produce a document the immigration officer should make an assessment of whether or not he is likely to be an EEA national. Such a passenger should

not be allowed to proceed until such time as the immigration officer is satisfied that he is a genuine EEA national.

4.3.3. Passengers presenting forged or counterfeit EEA documents

Passengers who are only able to present a forged or counterfeit EEA passport or ID card in support of their application for admission under the EEA Regulations should be considered under the relevant part(s) of the immigration rules, such as paragraph 320(3). Although such a person should be given an opportunity to produce *on arrival* other evidence of being an EEA national as claimed they do not fall within the remit of regulation 11(4) detailed in paragraph 4.3.1.

4.4. Duty of care for EEA national minors

Section 5.2 of “Guidance – Children Arriving in the UK” (formally known as Unaccompanied Minors Best Practice) refers.

The EEA Regulations bestow free movement on anyone exercising their Treaty rights once they have satisfactorily established their nationality and identity. However, where there are concerns over the safety and protection of any child presenting a valid EEA ID card or passport, it is appropriate for an immigration officer to establish that the child is travelling with or going to join a legitimate guardian before allowing them to leave the immigration control. This does not impede free movement rights, which have already been established and accepted, but is a fulfilment of our duty of care.

Where an immigration officer has concerns about an EEA national minor referral should be made to the relevant Police contacts locally, for example the Child Protection Officer and / or Social Services, as soon as possible. Immigration officers should ensure that vulnerable children do not leave the immigration control without the approval of these agencies. Full minutes should be made in the port incident log on referrals made to the Police or Social Services about any EEA minor.

4.5. Right of residence for EEA nationals

For the first three months of any time spent in the UK an EEA national is considered to be resident by virtue of his nationality and does not need to be a “qualified person” (see 4.5.1). His non-EEA family members also have an automatic right of residence during this period. After this period he is only considered to be resident if he is a qualified person or has a right of permanent residence.

The benefit to an EEA national of proving that he is a qualified person is that it entitles his non-EEA family members to a right of residence. An EEA national cannot be refused admission and removed because he is not a qualified person (an EEA national can only be refused admission on grounds of public policy, public health or public security in accordance with the EEA Regulations –see paragraph 7).

4.5.1 “Qualified person”

A qualified person is an EEA national exercising a Treaty right(s) (so called because the designated activities are set out in the EC Treaty) and is defined in Regulation 6 of the EEA

Regulations as follows:

- (a) a jobseeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.

A “jobseeker” means a person who enters the UK in order to seek employment and who can provide evidence that he is seeking employment and has a genuine chance of employment.

A “worker” is someone who is in either full-time or part-time employment. A worker will not cease to be so defined if he cannot work due to

- accident
- illness
- being involuntarily unemployed (provided the person has registered as a jobseeker with the relevant employment office and was employed for one year or more, has been unemployed for no more than 6 months or can provide evidence that he is seeking employment and has a genuine chance of being employed)
- being involuntarily unemployed if he has embarked on vocational training
- voluntarily ceasing work in order to embark on vocational training which is related to his previous employment.

A “self-employed person” is someone who establishes him/herself in the UK in order to pursue activity as a self-employed person.

A “self-sufficient person” is someone who has:

- a) sufficient resources not to become a burden on the social assistance system of the United Kingdom during his period of residence; and
- b) comprehensive sickness insurance cover in the United Kingdom.

A *retired* person would qualify as self-sufficient if they can demonstrate that they are in receipt of a pension or have sufficient funds (or income from investments) not to become a burden on the social assistance system of the UK. A person who is a *minister of religion* may not be receiving a wage but will qualify as self-sufficient if his/her living costs are being met by the religious institution employing them.

It is anticipated that an EEA national *visitor/tourist* will benefit from the three months initial right of residence provision (see paragraph 6.1). Any visitor/tourist staying longer than three months and who claims a right of residence must be able to show that they are self-sufficient.

A “student” is a person who is enrolled at a private or public educational establishment for the purposes of following a course of study, including vocational training.

4.5.2. EEA nationals in prison

An EEA national in prison is not a qualified person on the grounds that he cannot exercise a Treaty right. Once he is in a position to exercise a Treaty right and does so he is to be regarded as a qualified person.

5. Non-EEA family members of EEA nationals

5.1. Admission and refusal of non-EEA family members of EEA nationals

In accordance with Regulation 11(2) all non-EEA family members of EEA nationals (see paragraph 5.5 for definitions) must be admitted to the UK on production of a valid passport and either a family permit, a residence card or a permanent residence card.

A family member can be refused admission in accordance with Regulation 19(1) & (2) on grounds of public policy, public health or public security OR if he is not accompanying or joining an EEA national who has a right to reside under the EEA Regulations.

5.2. Examination of non-EEA family members of EEA nationals

Pursuant to Schedule 2 powers transposed into the EEA Regulations (see paragraph 3) it is appropriate for immigration officers to establish that a person seeking admission as the family member of an EEA national has a right of admission and residence under the EEA Regulations. In the majority of cases this will involve passengers who have already been issued with an EEA family permit or residence card.

5.2.1. Landing cards for non-EEA family members

As a family member has a right to admission and residence simply by virtue of proving that he/she is, or has been, the family member of an EEA national with a right to reside it is considered unduly onerous to require holders of family permits and residence cards to submit any form of additional documentation, including a landing card.

However, this does not apply when a person's claim to be a family member is assessed and accepted for the first time at port and the person is admitted on a Code 1A (see paragraph 5.3). This is because we do not otherwise have a record of the person.

5.2.2. EEA family permit holders

An EEA family permit is a form of evidence that the holder is the family member of an EEA national and acts only to confirm the right of admission that the person has by virtue of being the family member of an EEA national. Although issued on a UK vignette family permits do not confer leave and are not subject to any domestic legislation governing entry clearance. Examination should establish that the passenger is the rightful holder of the document and that he/she is still the family member of an EEA national who has a right to reside under the EEA Regulations.

Family permits should be issued with one of the following endorsements; "accompanying [name of EEA national]" or "joining [name of EEA national]" and therefore give an indication of where the EEA national is expected to be located. If the family member is accompanying the EEA national examination should be kept to a minimum.

If they are joining the EEA national *the onus is on the passenger* to prove that the EEA national is in the UK and it is expected that officers will need more time to be satisfied that

this is the case. See paragraph 5.2.8 for further guidance.

Regulation 20 gives the power to revoke family permits on grounds of public policy, public health or public security OR if the person is no longer the family member of an EEA national with a right to reside under the EEA Regulations or the family member is refused admission because he is not accompanying or joining an EEA national who has a right to reside under the EEA Regulations.

However, as such persons are entitled to an in country right of appeal ports should not physically cancel the permit until all appeal rights are exhausted or the passenger signs a disclaimer.

5.2.3. EEA family permit holder is not accompanying or joining an EEA national

If an EEA family permit holder is not accompanying or joining an EEA national for genuine compassionate reasons or because there has been a genuine mistake, ports should consider, where possible, granting leave to enter under the rules. In all other cases the person should be refused admission.

5.2.4. Visa national EEA family permit holders who seek admission as visitors

In a limited number of circumstances it will be appropriate to treat under the immigration rules an EEA family permit holder who is a visa national and who is neither accompanying or joining the EEA national. This would only be when the person makes no reference to his rights as the family member of an EEA national and seeks entry in another capacity, usually as a visitor. Refusal in these circumstances would be for lack of entry clearance and would not attract a right of appeal.

However, if any reference at all is made by the passenger to the EEA family permit or to his rights as a family member the case must be refused under the EEA Regulations with an in country right of appeal.

5.2.5. Residence card holders

A residence card is a form of evidence that the holder is, or has been, the family member of an EEA national and acts only to confirm the right of admission and residence that the person has by virtue of being, or of having been, the family member of an EEA national. Although issued in-country by IND caseworkers, residence cards do not confer leave and are not subject to any domestic legislation governing returning residents.

There are two grounds on which a person can hold a residence card and it is appropriate for officers to establish on which ground the card was issued:

- because he/she is the family member of an EEA national who is a qualified person (or who has a permanent right of residence). Examination should be to establish that the passenger is the rightful holder of the document and that he/she is still the family member of the EEA national who is a qualified person. If the person is accompanied by the EEA national examination should be kept to a minimum.

If he/she is joining the EEA national *the onus is on the passenger* to prove that the

EEA national is in the UK and it is expected that officers will need more time to be satisfied that this is the case. See paragraph 5.2.8 for further guidance.

In addition, if the person qualifies as a family member under the extended family member provisions it is appropriate for immigration officers to establish that they continue to meet the relevant criteria set out in paragraph 5.5.2.

- because he/she is a person who has retained the right of residence (see paragraph 5.6). If it is established that the person has retained the right of residence there is no requirement for the EEA national to be in the UK. Examination should be kept to a minimum and should be to establish that the passenger is the rightful holder of the document.

A residence card can be revoked if the holder of the card is no longer the family member of a qualified person or an EEA national with a right of permanent residence and has not retained the right of residence or acquired permanent residence. If the family member is refused on grounds of public policy, health or security the residence card cannot be revoked by an immigration officer unless the family member is *in addition* no longer the family member of a qualified person or an EEA national with a right of permanent residence and has not retained the right of residence or acquired permanent residence.

However, as such persons are entitled to an in country right of appeal ports should not physically cancel the card until all appeal rights are exhausted or the passenger signs a disclaimer.

5.2.6. Endorsing the passports of residence card holders

Regulation 11(3) states that an immigration officer may *not* place a stamp in the passport of a person who holds a residence card when he/she is admitted to the UK.

5.2.7. Permanent residence card holders

A family member acquires a permanent right of residence if they have been resident in the UK in accordance with the EEA Regulations for five consecutive years (or less in certain circumstances - see regulation 15 of the EEA Regulations). Once permanent residence has been acquired there is no requirement for the EEA national to be in the UK in order for the family member to be admitted and to reside. Examination should be to establish that the passenger is the rightful holder of the document and that he/she has not been absent from the UK for more than 2 years.

However, if the person has been absent for more than 2 years and does not hold an EEA family permit refusal should not be automatic. His/her permanent residence card should be revoked but readmissibility under the EEA Regulations should be assessed and if he/she still qualifies for admission as the family member he/she should be admitted for 6 months on a Code 1A.

5.2.8. No evidence that EEA national is in the UK

When a family member's right to admission and residence is dependant on the EEA national being in the UK but the family member is unable to immediately provide evidence that the

EEA national is in the UK a judgement will have to be made on how long the person is given to provide this evidence. *The onus is on the passenger to provide this evidence.*

As a guide, it is reasonable to expect the family member to be able to provide evidence on the day of arrival but if not, one further interview represents adequate further opportunity. Unless the particular circumstances of the case merit longer term inquiries ports should consider refusing admission after this.

NB when considering the location of the EEA national ports must take account of the fact that an EEA national can be absent from the UK in the circumstances set out in paragraph 6.5 without his/her family member's right of residence being affected.

5.3. Procedures when no EEA family permit or residence card is held

5.3.1. Non-EEA nationals seeking admission as family members of EEA nationals who are unable to produce a valid passport, family permit, or residence card

On occasions when a third country national seeks admission at port as the family member of an EEA national but does not hold a valid passport or an EEA family permit or a residence card ports will need to assess whether or not they qualify for admission under the EEA Regulations.

Family members are defined in paragraph 5.5 and family members who have retained the right of residence in paragraph 5.6.

Ports should take particular note of the guidance on those who seek admission under the extended family member provisions as dependant relatives and as a family member of an EEA national with whom they have a "durable relationship" (unmarried partner); the relative criteria in part 8 of the immigration rules (excluding the requirement for entry clearance) should be used to make a decision on whether or not to admit under the EEA Regulations. Unlike immediate family members the EEA Regulations allow for an "extensive examination of the personal circumstances" of those who fall within the extended family member provisions.

Ports should also take note of the initial right of residence that EEA nationals and their family members have during the first three months of their time in the UK. Please refer to paragraphs 4.5 and 6.1.

5.3.2. Seeking admission at port

EEA applicants at port should be treated as persons seeking admission unless explicit reference is made to applying for a residence card, in which case please refer to paragraph 5.3.3. Admission cases will fall into one of the following categories:

- i) produces satisfactory evidence on arrival

The person arrives to accompany or join an EEA national and is carrying satisfactory evidence of his/her identity and that he/she is the family member of the EEA national and that the EEA national has a right to reside in the UK. The person should be admitted for 6 months on a Code 1A. Complete landing card.

ii) is unable to produce satisfactory evidence on arrival

Regulation 11(4) states that when a non-EEA family member does not produce on arrival a valid passport along with an EEA family permit or residence card or permanent residence card he should be given “every reasonable opportunity” to prove by other means that he is the family member of an EEA national, a family member who has retained the right of residence or a person with a permanent right of residence. In other words a person claiming to have a right of admission under the EEA Regulations should not automatically be refused admission as a result of being unable to produce a valid passport and either a family permit, a residence card or permanent residence card.

In such circumstances a judgement will have to be made on how long the person is given to provide evidence, taking into account the person’s circumstances. As a guide, it is reasonable to expect a person making a credible claim to be a family member to be able to provide evidence and for port to be able to make a decision on the case within *one week* of first arriving. Ports should consider refusing admission after this unless the particular circumstances of the case merit longer term inquiries. If it is decided that port will grant admission the person should be admitted for 6 months on a Code 1A. Complete landing card.

iii) submits an application for admission post arrival

The person has arrived seeking entry in another capacity and whilst on TA seeks admission under the EEA Regulations. In such circumstances the same guidance as in ii) above should be followed except that a decision within one week of the application under the EEA Regulations is a reasonable expectation.

If the person has been on TA for more than 3 months any decision to refuse will attract an in-country right of appeal (see paragraph 8.1).

5.3.3 Passenger applies for a residence card

When a person on TA applies for a residence card, either directly to port or to European Casework it is strongly advisable for European Casework to deal with the application. When European Casework receives an application from an identified port case they should notify port immediately as well as notifying port of the final outcome of the application. Ports can request that they deal with an application but should be aware of the following:

- A decision on any EEA application for a residence card *must* be made within 6 months of the date that the application is submitted. This is a specified requirement in the Directive and failure to comply may entitle the applicant to compensation and could also trigger infraction proceedings (please see paragraph 1).
- Ports cannot grant residence cards (normally valid for 5 years), they can only grant admission for 6 months. This may lead to challenges from persons who have actually applied for a residence card.
- If port has decided to handle a case any compensation claims, JR challenges or other legal challenges that arise will also have to be handled by port.
- If port make a decision on the EEA application within 3 months of the person being

granted TA the resulting right of appeal will be from abroad. However, a person who has been on TA for more than 3 months is entitled to an in-country right of appeal (see paragraph 8.1).

- If a residence card application has been made and is accompanied by a registration certificate application by the principal EEA national ports should note that a Registration certificate application can only be considered by European Casework and it is therefore expected that European Casework will handle all such joint applications.

If it is decided that it is appropriate for port to grant admission the person should be admitted for 6 months on a Code 1A. Complete landing card.

5.3.4. Seeks admission but presents forged or counterfeit documentation

Passengers who are only able to present a forged or counterfeit passport, family permit, residence card or permanent residence card in support of their application for admission under the EEA Regulations should be considered under the relevant part(s) of the immigration rules, such as paragraph 320(3). Although such a person should be given an opportunity *on arrival* to produce other evidence of being a family member as claimed they do not fall within the remit of regulation 11(4) detailed in paragraph 5.3.2 ii).

5.3.5. Carriers liability

For the purposes of satisfying a requirement to produce a visa under section 40(1)(b) of the 1999 Act (charges in respect of passenger without proper documents), “a visa of the required kind” includes an EEA family permit, a residence card or a permanent residence card required for admission as a visa national under Regulation 11(2).

5.4. Marriages

5.4.1. Marriages where the couple do not live together

Officers should be aware of the ECJ judgement in the case of Diatta which looked at EEA nationals and their family members who do not share accommodation.

This judgement determined that the right to free movement should be based on an objective requirement to be married and should not be subject to a requirement to live together. The court determined that attitudes to marriage vary according to individuals and also that it is not for the immigration authorities to decide whether or not reconciliation is possible.

The court further determined that a marital relationship cannot be regarded as dissolved as long as it has not been terminated by the competent authorities. Only divorce by absolute decree provides grounds to justify refusing admission to a family member on the basis that he/she is no longer legally a family member.

5.4.2. Marriages and civil partnerships of convenience

Regulation 2 states that “spouse” and “civil partner” do not include someone who is party to a marriage or civil partnership of convenience. The criteria for proving a marriage or civil partnership of convenience, set out in the European Casework Instructions (ECIs) Chapter 5, are strict, *must* be met and apply to the circumstances *at the time* of the marriage or civil partnership ceremony and related EEA application. Given that most cases at port involve family members who already hold an EEA family permit or residence card - meaning that initial consideration has already taken place - the number of cases at port will be very low.

Where there are concerns about a marriage or civil partnership it must be noted that the only grounds on which a family member can be refused admission because of the state of his marriage or civil partnership, other than if divorce/termination by absolute decree has occurred, is if the criteria for proving a marriage or civil partnership of convenience are met.

Immigration Officers should **not** assess the credibility of the marriage or civil partnership as though it were a marriage or civil partnership to which part 8 (Spouses and civil partners) of the immigration rules applies.

5.5. Definition of a family member

The definitions of family member below can relate to both EEA and non-EEA family members. However, an EEA national family member (for example, a minor under 21) has a right of admission on production of a valid EEA passport or ID card. Only non-EEA family members need to establish that they have a right of admission by falling within one of the definitions below.

5.5.1. Family member

Regulation 7 of the EEA Regulations defines "family member" as:

- the EEA national’s spouse or civil partner
- direct descendants of the EEA national or of his spouse or civil partner who are under the age of 21 OR are their dependants
- dependant direct relatives in the ascending line of the EEA national or of his spouse or civil partner.

This definition includes EEA nationals who are students in the UK for less than three months. For periods of residence extending beyond 3 months family members of an EEA national who is a student (unless he is additionally exercising another Treaty right) are defined as his spouse or civil partner and his dependant children or the dependant children of his spouse or civil partner.

The right to admission and residence is automatic once such a family relationship has been established.

5.5.2. Extended family member

Regulation 8 further defines extended family members. In accordance with Regulation 7(3) extended family members are only to be treated as family members for the purposes of the EEA Regulations if they have been issued, as a matter of discretion, with an EEA family permit or a registration certificate or residence card. The EEA Regulations allow for an

“extensive examination of the personal circumstances” of a person applying under these provisions. The following persons are extended family members:

- A relative of an EEA national or of his/her spouse or civil partner who is residing in an EEA state in which the EEA national also resides and is dependant on the EEA national or is a member of his household AND is either accompanying or joining the EEA national OR has joined the EEA national and *continues to be* dependant or a member of the EEA national's household
- A relative of an EEA national or of his/her spouse or civil partner who strictly requires personal care from the EEA national or his spouse or civil partner on serious health grounds
- A relative of an EEA national or of his/her spouse or civil partner who would meet the requirements in part 8 of the immigration rules (other than those relating to entry clearance) for indefinite leave to enter or remain in the United Kingdom as a *dependent relative* of the EEA national or his spouse or his civil partner were the EEA national or his spouse or his civil partner a person present and settled in the United Kingdom.
- A person who is the partner of an EEA national (other than a civil partner) who can show that he/she is in a “durable relationship” with the EEA national. When assessing whether a relationship is durable officers should satisfy themselves fully that the person meets the leave to enter requirements of an unmarried partner as set out in part 8 of the immigration rules (other than those relating to entry clearance).

5.6. Retained right of residence

In relation to non-EEA family members who have already obtained a right of residence, Regulation 10 defines persons who retain the right of residence following the death of, departure of or termination of marriage/civil partnership with an EEA national qualified person. The family member must, as though he were an EEA national, fall within the definition of worker, self-employed person or self-sufficient person or be the family member of a person who falls within one of the definitions.

- EEA national qualified person has died but the family member has lived in the UK in accordance with the EEA Regulations for at least a year prior to the death.
- EEA national qualified person has died or left the UK but his/her spouse or civil partner was attending an educational course in the UK immediately prior to the death or departure and continues to attend such a course OR is a parent who has actual custody over a child who meets these requirements.
- If termination of the marriage or civil partnership has occurred but the family member was living in the UK at the time of the termination AND either;
 - i) the marriage/partnership had lasted for at least three years prior to the initiation of termination proceedings and the parties have lived in the UK for at least one year at any time during the duration of the marriage or;
 - ii) the family member has custody of a child of an EEA national or;
 - iii) the family member has right of access to a child of an EEA national where access in the UK has been court ordered or;

iv) continuity of residence is warranted by particularly difficult circumstances such as domestic violence.

5.7. Chen cases

Following the ECJ judgement in the case of CHEN, family members (father, mother and siblings under the age of 18) of an EEA national *minor* can apply for leave to enter on the basis that the EEA national minor is in the UK exercising a Treaty right.

Under the Free Movement Directive the relatives of EEA national minors will generally not derive a right of residence from the minor because they do not fall within any of the definitions of “family member” (set out in paragraphs 5.5.1 and 5.5.2). However, the ECJ decided that the free movement rights of a minor who is an EEA national would be hindered if their non-EEA family members were not allowed to remain with them.

As a result of not deriving a right of residence in the UK within the terms of the EEA Regulations such relatives are granted leave under the immigration rules. The requirements to be met are set out in Paragraph 257C of the rules.

5.8. Step, adopted and foster children

Decisions on accepting children seeking admission under the EEA Regulations as family members who are stepchildren, adopted children or foster children should be no more favourable than under the relevant parts of the immigration rules. In practice this means that all stepchildren are acceptable but adopted and foster children need to meet the requirements of the relevant paragraphs of part 8 of the immigration rules (other than those relating to entry clearance).

5.9. Status of family members of British nationals

In certain circumstances British nationals can bring their third country national family members to the UK in exercise of free movement rights. These circumstances are set out in the ECJ judgement in the case of SURINDER SINGH.

The case of Surinder Singh states that nationals of a Member State who live with their non-EEA family members in another Member State and where the Member State national exercises a Treaty right in an economic capacity (i.e. as a worker or self-employed person) will, on return to their home state, be entitled to bring their non-EEA family members to join them under EC law. (For example, a British national who has been working in Germany with his non-EEA national spouse/children who returns to the UK).

The Surinder Singh judgement is incorporated into the EEA Regulations in Regulation 9. For further information please refer to ECIs Ch1 paragraph 1.3.

6. Rights of residence and residence documentation

6.1. Initial Right of Residence

For the first three months of any time spent in the UK an EEA national is considered to be resident by virtue of his nationality and does not need to be a qualified person. His non-EEA family members also have an automatic right of residence during this period. This is referred to as an 'initial right of residence'. However, this right shall cease if the EEA national or family member become an unreasonable burden on the social assistance system.

6.2. Registration certificates for EEA nationals

Registration certificates are issued by the European Casework Group (IND) and will be issued on request to an EEA national who can prove that he is a qualified person (see paragraph 4.5.1). However, EEA nationals may remain in the United Kingdom for as long as they wish without a registration certificate provided that they are exercising a Treaty right. Registration certificates are not time limited.

6.3. Residence cards for non-EEA family members

Residence cards are issued by the European Casework Group (IND) and will be issued on request to family members who can prove that they have a right to reside as the family member of a qualified person or an EEA national with a right of permanent residence or that they have retained a right of residence (see paragraph 5.6). However, family members of EEA nationals may remain in the United Kingdom without holding a residence card provided that the EEA principal from whom their rights of residence derive continues to reside in the United Kingdom exercising a Treaty right or if the family member has retained a right of residence. However, if the family member chooses not to obtain a residence card he must be able to prove his right of admission and residence by other means when re-entering the UK.

6.4. The Family Member Residence Stamp

Accession state nationals who are required to register under the Worker Registration Scheme are not eligible for registration certificates and their non-EEA national family members are not eligible for residence cards. Non-EEA national family members of Accession State nationals who have registered under the Worker Registration Scheme can obtain a Family Member Residence Stamp confirming that they have a right of residence in the UK. This is issued in accordance with the Accession (Immigration and Worker Registration) Regulations 2004.

6.5. Continuity of Residence

Continuity of residence under the EEA Regulations for the family member of a qualified person is not affected by the EEA national being absent from the UK for periods which do not exceed six months in any year, periods of absence on military service or any one

absence not exceeding twelve months for an important reason such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting.

Unless there is reason to believe that the EEA national has permanently left the UK the non-EEA family member should be admitted if it appears that the EEA national is absent in one of the above circumstances.

6.6. Permanent Right of Residence

The EEA Regulations confer a permanent right of residence on EEA nationals and their family members which is generally acquired after five years of continuous residence in the UK (see regulation 15 of the EEA Regulations).

Permanent residence shall be lost if the individual is absent from the UK for two or more years. However, please also refer to paragraph 5.2.7.

7. Refusal of admission on grounds of public policy, public health and public security

A person is not entitled to be admitted or reside under the EEA Regulations if their exclusion is justified on grounds of public policy, public health or public security.

7.1. Public Policy & Public Security

Decisions taken on grounds of public policy and public security must take account of the following set out in regulation 21 of the EEA Regulations:

- Decisions shall comply with the principle of proportionality (see paragraph 7.2) and shall be based exclusively on the personal conduct of the individual concerned.
- Previous criminal convictions shall not in themselves constitute grounds for taking such measures.
- The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.
- Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted

The phrase 'genuine, present and sufficiently serious threat' is concerned with an existing or perceived threat by an individual to members of the public in a Member State. Whether or not such a threat exists is a matter for judgement in the individual circumstances of each case. However, the following points should be taken into account:

- The phrase 'fundamental interests of society' is assumed to mean the values and moral set up of society and takes account of those who wish to overturn society, such as neo-Nazis and Islamic fundamentalists, and those who commit serious or persistent crimes.
- Previous criminal convictions for particularly serious crimes (e.g. rape, murder, class A

drug smuggling) which mean the person is considered to represent a genuine, *present* and sufficiently serious threat to one the fundamental interests of society may justify a public policy or public security decision.

- In order to determine which crimes *may* fall within the scope of grounds of public policy, reference can be made to The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004. However do not assume that a crime listed in this Order automatically warrants a public policy or public security decision.
- If it is likely that a person convicted of a crime will reoffend this may justify a public policy or public security decision but refusal simply to repunish a person for a previous conviction for which sentence has been completed is not appropriate
- Persons charged with *minor* Customs or other criminal offences should not be refused admission on this basis alone.
- Facilitation of illegal entry *may* in itself be sufficient grounds to refuse admission to EEA nationals, particularly if the person is involved in persistent or large scale facilitation.
- *National* security can fall under public policy or public security.
- Public security does not necessarily equate with national security. Public security may also be a matter of personal security within society. Certain medical conditions (for example drug addiction or profound mental disturbance) may mean the person poses a threat to public policy or public security. These conditions might provide reasons for exclusion on public policy or public security grounds but not on public health grounds.

7.2. Principle of Proportionality

Before taking a decision to refuse on grounds of public policy or public security in relation to a person who resides in the United Kingdom immigration officers must take account of considerations such as the age, state of health, family and economic situation of the person in respect of whom the decision is taken, the person's length of residence in the United Kingdom, the person's social and cultural integration into the United Kingdom and the extent of the person's links with his country of origin and decide whether it is proportionate to refuse admission to the person.

Those with permanent residence under the EEA Regulations may only be refused admission on serious grounds of public policy or public security. Those who have resided in the UK for more than 10 years or who are under 18 years of age may only be refused admission on imperative grounds of public security grounds.

7.3. Serious and imperative grounds

An EEA national or family member with a permanent right of residence should not be refused admission on public policy or public security grounds except on *serious* grounds of public policy or public security.

Decisions on *imperative* grounds are defined as decisions taken to prevent terrorism (as defined in section 1 of the Terrorism Act 2000) or other serious risks to the public or decisions taken in the interests of the relationship between the UK and another country.

EEA nationals who fall into the following categories should not be refused admission on public policy or security grounds except on imperative grounds of public *security*: a person who has resided in the United Kingdom for a continuous period of at least ten years prior to the relevant decision; or a person who is under the age of 18 (unless the decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989).

7.4. Deportation of EEA nationals and family members

Because an EEA national can only be removed from the UK on grounds of public policy, public health or public security deportation orders (DOs) made against EEA nationals have to be made on one of these grounds. Most commonly this will be on grounds of public policy or public security. Deportation action against the non-EEA family members of EEA nationals must also be made on one of these grounds.

Deportation cases are normally handled by Criminal Casework Team or European Casework but ports may be required to serve final decision notices. An EEA national who is served with a notice of a “decision to make a deportation order” has a right of appeal against this decision. Whilst any such appeal can be brought or is pending the DO itself cannot be made.

7.4.1. EEA cases which become subject to a criminal conviction before being admitted

This relates to persons who are stopped on the control normally because they are of interest to another border agency, such as customs or the police, and as a result the person is convicted of a criminal offence. Under the EEA Regulations there is currently no provision to make a DO against a person in these circumstances. Instead ports will need to decide whether or not the criminal conviction justifies a decision to refuse admission on grounds of public policy or public security.

This does *not* apply to persons who have already acquired a right to reside in the UK in accordance with the EEA Regulations (normally in possession of a registration certificate or residence card) OR to persons who are stopped by another border agency *after* they have passed through immigration control (e.g. by customs in the customs hall). Such persons are deemed to have been admitted for the purposes of the EEA Regulations and can be removed on a DO (without the need for port to make a decision to refuse admission as well).

7.4.2. Port EEA cases subject to extant deportation orders

Where an EEA national or family member of an EEA national seeks admission despite being the subject of an extant deportation order he should be *removed* on the basis of the existing deportation order (provided that the original decision to deport was made on public policy or public security grounds in accordance with the EEA Regulations - if this is not the case please refer to paragraph 7.4.3).

This is because the original DO is considered to be a decision taken on grounds of public policy or public security *that still has effect* (DOs remain extant until such time as they are revoked, which will only occur following a successful application by the deportee from abroad). Therefore, a decision to remove as a person unlawfully *seeking to enter* in breach of a deportation order (as defined in section 33 of the 1971 Act and in accordance with

regulation 24(4)) should be served.

The decision to remove such a person should be based on the extant DO and ideally a copy of the original DO will be included when serving the decision. Please also refer to paragraph 9.2.3.

NB This does *not* apply to persons encountered at juxtaposed controls who by definition cannot be removed from the UK. In such circumstances an EEA decision is not required and the person should be advised to apply to a British mission overseas for the DO to be revoked.

7.4.3. Deportation orders made on other grounds (including those made pre-accession against nationals of the new Member States)

It may be the case that a person was previously deported on grounds other than public policy or public security, at a time when he was neither an EEA national nor the family member of an EEA national, but he has since acquired a right of admission and residence in the United Kingdom under EC law. This is particularly relevant to nationals of the ten new Member States who were deported pre-accession.

Examples of reasons for deportation on non public policy or non public security grounds could include the following rules-based offences:-

- Overstaying
- Failure to observe a condition attached to the limited leave
- Obtaining leave to remain by deception
- Under section 3(5)(b) of the 1971 Act on the basis of being the family member of a person who was deported.

Persons who are subject to DOs that were made on one of the above grounds should *not* be refused admission on the basis of this DO if they have subsequently acquired a right of admission and residence in the United Kingdom under EC law.

It might also be the case that a person's deportation prior to acquiring rights under EC law was deemed to be conducive to the public good (section 3(5)(a) of the 1971 Act) e.g. for criminal activity. In such circumstances it will be important to review the reasons for which the extant deportation order was originally made and enforced. If the reasons satisfy the public policy and public security criteria in the EEA Regulations it is appropriate to remove the person on the basis of the extant DO. If they do not port should consider admitting the person.

7.5. Public Health

Decisions on public health grounds may not be taken on the basis of diseases that were contracted after 3 months of the person being admitted to the UK.

The only diseases that can constitute grounds for refusal in this category are those with epidemic potential (currently those listed in the International Health Regulations (2005) of the World Health Organisation and those to which section 38 of the Public Health (Control of Disease) Act 1984 apply).

In practice, however, under Department of Health instructions, Port Medical Inspectors will

only authorise exclusion if an individual poses a serious threat to public health. It follows that they will only come to this conclusion in the most exceptional of cases. HIV infected persons will not normally fall into this category on the basis of that infection alone.

8. Appeals under the EEA Regulations

In order to benefit from a right of appeal under the EEA Regulations a person who claims to be an EEA national must produce a valid ID card or passport issued by an EEA state and a person who claims to be the family member of an EEA national must produce a family permit, residence card or other proof that he is related as claimed. If they do not the case should be dealt with under the appropriate part(s) of the immigration rules.

All decisions under the EEA Regulations attract a right of appeal. The right of appeal will be from abroad except in the circumstances listed in paragraph 8.1.

A person may not rely on a ground in an appeal under the EEA Regulations if an immigration officer certifies that the ground was considered in a previous appeal brought by that person under these Regulations or under section 82(1) of the 2002 Act.

An appeal shall not lapse solely because the appellant has left the UK.

8.1. In country appeals

A refusal to admit a person under the EEA Regulations will only attract an in-country right of appeal if one of the following circumstances applies:

- when the passenger holds a valid registration certificate, document certifying permanent residence, EEA family permit, residence card or permanent residence card
- when the passenger has been on temporary admission for 3 months or more
- when the passenger is in the UK and makes a human rights or asylum claim and the claim is not certified by the Secretary of State as being clearly unfounded

A removal under the EEA Regulations because a person is subject to an extant deportation order (see paragraph 7.4.2) will only attract an in country right of appeal when the passenger is in the UK and makes a human rights or asylum claim and the claim is not certified by the Secretary of State as being clearly unfounded.

8.2. Appeals at juxtaposed controls

All EEA decisions made at juxtaposed controls will attract an appeal from abroad. This is because the exemptions listed in paragraph 8.1 are all dependant on the person being in the UK.

8.3. No right of appeal against the cancellation of the family member residence stamp

There is *no* right of appeal against the cancellation of the family member residence stamp (see paragraph 6.4). This is because stamping passports for these purposes is not covered in the EEA Regulations or the Accession (Immigration and Worker Registration) Regulations 2004, and neither the EEA Regulations or the Accession Regulations make any provision for a right of appeal against the cancellation of such a stamp.

9. EEA Regulations on IS-CID and refusal forms and wordings

9.1. IS-CID

9.1.1. Case Types

EEA cases should be entered on to IS-CID using one of the following Case Types:

- EU/EEA – Seek Admission
- EEA National Family Member

9.1.2. Case Outcomes

Case Outcomes should be recorded using one of the following:

- Granted Admission – EEA Regs
- Refused Admission – EEA Regs

9.1.3. Refusal Code

In all refused cases the refusal code will be L1

9.2. IS82 (EEA)s

There are three separate forms for use when serving a decision on an EEA national or the family member of an EEA national. There is a variation of the IS82A (EEA) for use at juxtaposed locations which only confers a right of appeal from abroad and should be accompanied by an AIT-3.

9.2.1. IS82A (EEA) – appeal from abroad

The IS82A (EEA) should be issued when the right of appeal is from abroad (see paragraph 8) and should be accompanied by an AIT-3.

9.2.2. IS82B (EEA) – in country appeal

The IS82B (EEA) should be issued when the right of appeal is in-country (see paragraph 8) and should be accompanied by an AIT-1 and One Stop forms (IS75&76 and IS69).

9.2.3. IS82C (EEA) – removal only

The IS82C (EEA) is only for use when a person is being *removed* because they are subject to an extant deportation order (see paragraph 7.4.2). It gives a right of appeal from abroad, unless the person makes a human rights or asylum claim, and should be accompanied by an AIT-3.

9.3. Refusal wordings

Refusal wordings as follows are available on IS-CID. Square brackets denote wording that needs to be amended according to the specifics of the case.

9.3.1. EEA Nationals – no registration certificate

001 EEA National – no certificate – public policy / health / security

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a national. However I am satisfied that your exclusion is justified on [serious] [imperative] grounds of public policy/health/security for[reason where appropriate].

002 EEA National – no certificate – facilitation public policy

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a national. However, on[date] [by your own admission] you attempted to facilitate the illegal entry to the United Kingdom of I have considered the circumstances of your case and am satisfied that you would pose a threat to the requirements of public policy if you were allowed admission to the United Kingdom. I have therefore decided that your exclusion is justified on [serious] grounds of public policy.

9.3.2. EEA nationals – with registration certificate

003 EEA National – with certificate – public policy / health / security

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a national. You hold a registration certificate / document certifying permanent residence issued by the Home Office on[date]. However I am satisfied that your exclusion is justified on [serious] [imperative] grounds of public policy/health/security for[reason where appropriate].

004 EEA National – with certificate – facilitation public policy

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a national. You hold a registration certificate issued by the Home Office on[date]. However, on[date] [by your own admission] you attempted to facilitate the illegal entry to the United Kingdom of I have

considered the circumstances of your case and am satisfied that you would pose a threat to the requirements of public policy if you were allowed admission to the United Kingdom. I have therefore decided that your exclusion is justified on [serious] grounds of public policy.

9.3.3. Family Members of EEA nationals – no EEA family permit/ residence card

005 Family member – no permit / residence card – EEA national not in the UK

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. However I am satisfied that is not currently in the United Kingdom, that you are not therefore seeking to join an EEA national in the United Kingdom who has a right to reside there under those Regulations, and that you do not therefore have a right to be admitted under regulation 11.

006 Family member – no permit / residence card – EEA national not qualified person

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national and a qualified person with a right to reside in the United Kingdom under those Regulations. However I am satisfied that is not a qualified person in accordance with regulation 6 and that you are not the family member of an EEA national with a to reside in the United Kingdom under those Regulations and that you do not therefore have a right to be admitted under regulation 11.

007 Family member – no permit / residence card – divorced from EEA national

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. However I am satisfied that you were divorced from (on[date]) and that you are not therefore the family member of an EEA national who has a right to reside in the United Kingdom.

008 Family member – no permit / (permanent) residence card – public policy / health / security

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. However I am satisfied that your exclusion is justified on [serious] [imperative] grounds of public policy/health/security for[reason where appropriate].

009 Family member – no permit / residence card – retained right of residence

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a family member who has retained the right of residence. However, I am satisfied that you do not meet the requirements of regulation 10 and that you have not retained the right of residence.

010 Family member – no permit / residence card – marriage of convenience

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. However I am satisfied that your marriage is one of convenience only and that you are not therefore the family member of an EEA national who has a right to reside in the United Kingdom.

9.3.4. Family Members of EEA nationals – with EEA family permit/ residence card

011 Family member – with permit / residence card – EEA national not in the UK

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. You hold a residence card issued by the Home Office on[date]/an EEA family permit issued in[place] on[date]. However I am satisfied that is not currently in the United Kingdom, that you are not therefore seeking to join an EEA national in the United Kingdom who has a right to reside there under those Regulations, and that you do not therefore have a right to be admitted under regulation 11

012 Family member – with permit / residence card – EEA national not qualified person

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national and a qualified person with a right to reside in the United Kingdom under those Regulations. However I am satisfied that is not a qualified person in accordance with regulation 6 and that you are not the family member of an EEA national with a right to reside in the United Kingdom under those Regulations and that you do not therefore have a right to be admitted under regulation 11.

013 Family member – with permit / residence card – divorced from EEA national

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. You hold a residence card issued by the Home Office on[date]/an EEA family permit issued in[place] on[date]. However I am satisfied that you were divorced from(on[date]) and that you are not therefore the family member of an EEA national who has a right to reside in the United Kingdom.

014 Family member – with permit / (permanent) residence card – public policy / health / security

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. You hold a [permanent] residence card issued by the Home Office on[date]/an EEA family permit issued in[place] on[date]. However I am satisfied that your exclusion is justified on [serious] [imperative] grounds of public policy/health/security for

.....[reason where appropriate].

015 Family member – with permit / residence card – marriage of convenience

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. You hold a residence card issued by the Home Office on[date]/an EEA family permit issued in[place] on[date]. However I am satisfied that your marriage is one of convenience only and that you are not therefore the family member of an EEA national who has a right to reside in the United Kingdom.

9.3.5 EEA national or family member subject to an extant deportation order

016 EEA national – subject to extant deportation order

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are a national. However, on.....[date] you were served with a notice of a decision to make a deportation order and on.....[date] the deportation order was made. That deportation order has not been revoked. I am therefore satisfied that you are a person unlawfully seeking to enter the United Kingdom in breach of a deportation order and that the deportation order was made on grounds of public policy / security which satisfy the public policy / security criteria in regulation 21 of the Immigration (European Economic Area) Regulations 2006 and that these grounds still apply to you.

017 Family member – subject to extant deportation order

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are the family member of, a national. However, on.....[date] you were served with a notice of a decision to make a deportation order and on.....[date] the deportation order was made. That deportation order has not been revoked. I am therefore satisfied that you are a person unlawfully seeking to enter the United Kingdom in breach of a deportation order and that the deportation order was made on grounds of public policy / security which satisfy the public policy / security criteria in regulation 21 of the Immigration (European Economic Area) Regulations 2006 and that these grounds still apply to you.

018 Extended family member – durable relationship

You have sought admission to the United Kingdom under EC law in accordance with regulation 11 of the Immigration (European Economic Area) Regulations 2006 on the ground that you are in a durable relationship with....., a national. In order to be admitted on this basis you need to prove that you are in a durable relationship withOn the basis of the information that you have presented I am not satisfied that you are in a durable relationship because[reasons].