

## **CHAPTER 1**

### **RIGHTS OF MOVEMENT – EUROPEAN ECONOMIC AREA (EEA) NATIONALS**

#### **CONTENTS**

##### **1. Introduction**

- 1.1 Member States of the EEA
- 1.2 Switzerland
- 1.3 Status of British nationals in relation to exercising Treaty rights
- 1.4 A8 countries
- 1.5 Gibraltar

##### **2. Territories geographically part of Europe but not part of the EEA**

- 2.1 Andorra, Monaco and San Marino
- 2.2 Isle of Man and the Channel Islands

##### **3. Treaty rights**

- 3.1 Employment
  - 3.1.1 Jobseeker
- 3.2 Self-Employment
- 3.3 Study
- 3.4 Self-Sufficiency

##### **4. Registration certificates**

##### **5. Refusal of request to issue a registration certificate**

##### **6. Appeal rights**

##### **7. Revocation of a registration certificate**

##### **8. Exercise of Treaty rights by EEA national minor children and the rights of their non-EEA national family members**

- 8.1 Issue of a registration certificate to an EEA child
  - 8.1.1 Assessing sufficient resources

##### **9. EEA nationals who are family members of an EEA national exercising a Treaty right in the UK**

Annex A – **Immigration (EEA) Regulations 2006**

Annex B – **Free Movement of Persons Directive (2004/38/EC)**

## 1. Introduction

The **Immigration (European Economic Area) Regulations 2006** (hereafter referred to as the 2006 Regulations) transpose the UK's obligations under European Community law (via the Free Movement Directive 2004/38 EC) into domestic legislation.

All European Economic Area (EEA) nationals enjoy free movement rights in the EEA. This means that they are not subject to the Immigration Rules and may come to the UK and reside here in accordance with the 2006 Regulations. They do not require permission from the Immigration and Nationality Directorate to enter or remain, nor do they require a document confirming their free movement status.

However, if an EEA national is exercising Treaty rights in the UK then s/he may request that s/he is issued with a registration certificate or a document certifying permanent residence as confirmation of his/her right of residence under EC law.

### 1.1 Member States of the EEA

**Nationals of the following countries are EEA nationals:**

Austria  
Belgium  
Bulgaria \*\*\*  
Czech Republic \*  
Cyprus  
Denmark  
Estonia \*  
France  
Finland  
Germany  
Greece  
Hungary \*  
Iceland \*\*  
Ireland  
Italy  
Latvia \*  
Lichtenstein \*\*  
Lithuania \*  
Luxembourg  
Malta  
Netherlands  
Norway \*\*  
Poland \*  
Portugal  
Romania \*\*\*  
Slovakia \*  
Slovenia \*  
Spain  
Sweden

\* A8 countries (see section 1.4)

\*\* 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.

\*\*\* A2 countries (see Chapter 7 )

## 1.2 Switzerland

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. In general terms, the Agreement conferred on Swiss nationals and their family members the same free movement rights as those enjoyed by EEA nationals and their family members. The 2006 Regulations have replaced The Immigration (Swiss Free Movement of Persons) (No.3) Regulations 2002 save for the paragraphs on posted workers. Under the 2006 Regulations Swiss nationals are included in the definition of “EEA nationals”.

*For more information concerning Swiss nationals and the rights of their family members see Chapter 11.*

## 1.3 Status of British nationals in relation to exercising Treaty rights

The UK is also a member the European Economic Area; however, a British National cannot exercise a Treaty Right in the UK. A British National, and their third country national family members, can only benefit from European law if they meet the criteria established in the case of SURINDER SINGH.

The ECJ case of SURINDER SINGH states that nationals of a Member State who go with their non-EEA family members to another Member State to exercise a Treaty right in an economic capacity, 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 lived and worked in Germany with his/her non-EEA national spouse/children and is now returning to the UK with his/her family).

The SURINDER SINGH judgement is incorporated into the 2006 Regulations in regulation 9, and:

- is confined to those cases where a British national has worked or been self established in an EEA State.

*Please see section 2.5.1 for more information on family members of British nationals.*

## 1.4 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 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). *Please refer to section 1.1 for the full list of Accession States.*

For the purposes of these instructions nationals of these eight “Accession” countries are referred to as A8 nationals.

The UK allows A8 nationals to undertake paid employment, but require 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**.

*Information relating to A8 nationals, and details of exemptions from the requirement to register, is provided in Chapter 7.*

## 1.5 Gibraltar

Since the British Overseas Territories Act 2002 all Gibraltarians automatically gain British national status and have to renounce this status if they do not want it.

Gibraltar is within the European Community by virtue of Article 299(4) of the Treaty establishing the European Community. However, under the UK's Act of Accession to the EC Gibraltar is excluded from four areas of Community policy:

- the Community Customs Territory and Common Commercial Policy (and thus Community rules on the free movement of goods, do not apply),
- the Common Agricultural Policy,
- the Common Fisheries Policy,
- and the requirement to levy VAT.

Gibraltarians have rights of free movement within the EU. While the UK Government is ultimately responsible under the Treaty for the Implementation of Community Law in Gibraltar, EC measures are usually implemented within the territory by means of local legislation enacted by the Gibraltar legislature.

## 2. **Territories geographically part of Europe but not part of the EEA**

### 2.1 Andorra, Monaco and San Marino

Andorra, Monaco and San Marino are not part of the European Union or the European Economic Area. A person who presents a passport from Andorra, Monaco or San Marino does not benefit from Free Movement rights and cannot exercise Treaty rights in other Member States.

### 2.2 Isle of Man and the Channel Islands

Article 2 of the Treaty of Accession 1972 states that Manxmen and Channel Islanders shall not benefit from Community provisions relating to the free movement of persons. This is indicated by an endorsement in their passports which states:

*“Holder is not entitled to benefit from EC provisions relating to employment or establishment”.*

Therefore someone from the Isle of Man or Channel Islands who holds such a passport cannot exercise Treaty rights in other Member States. Furthermore, an EEA national undertaking economic activity or study in the Isle of Man or Channel Islands is *not* exercising a Treaty right in the UK.

## 3. **Treaty rights**

The term ‘Treaty Rights’ refers to any of the following (these terms are defined in regulation 4(1) of the 2006 Regulations):

### 3.1 Worker

A “worker” is someone who is in either full-time or part-time employment.

A person who is doing *vocational* work, and does not receive a wage, may qualify as self-sufficient if (for instance) they have funds to support themselves, or if a charity is meeting their living costs.

A person who is a *minister of religion* may not be receiving a wage but will qualify as self-sufficient if their living costs are being met by the religious institution employing them.

### 3.1.1 Jobseeker

A “qualified person” may also be a *jobseeker*, although the EEA national must be able to show evidence that s/he is seeking employment and is also able to show a genuine chance of being engaged in employment.

We would generally expect a jobseeker to obtain employment within 6 months of beginning his/her search. It is highly likely that an individual claiming a right of residence as a jobseeker will also be exercising Treaty rights as a self-sufficient person. Jobseekers have no entitlement to access social assistance of the host member state (Article 24(2) of the Directive refers), although they may in certain circumstances be able to import benefits from their home country, which would then be paid to them in the UK by DWP.

### 3.2 Self-Employed person

A “self-employed person” is someone who has established her/himself in the UK in order to pursue activity as a self-employed person.

### 3.3 Student

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.

*Please refer to chapter 4 for more information on accepted educational establishments.*

### 3.4 Self-sufficient 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; 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 and/or have sufficient funds (or income from investments) not to become a burden on the social assistance system of the UK.

We cannot apply a set amount of money that is required by an EEA national in order to be considered self-sufficient. Applications should be assessed on a case-by-case basis and should take into account such factors as income vs. outgoings. *Further information can be found in Chapter 4.*

## 4. **Registration certificates**

Regulation 16 of the 2006 Regulations requires that a registration certificate be issued to a 'qualified person' (i.e. an EEA national who is exercising a Treaty right) immediately upon application. Registration certificates are issued free of charge.

To satisfy the criteria that determine whether the EEA national is a qualified person s/he would need to produce the following:

1. Evidence of EEA nationality (i.e. a valid passport or national identity card<sup>1</sup>);  
and
2. Evidence that s/he is a qualified person (exercising a Treaty right<sup>2</sup>).

An EEA national who is the family member of a qualified person (e.g. spouse or civil partner) is also entitled to a registration certificate.

In addition, under regulation 10 of the 2006 Regulations, an EEA national who was the family member of a qualified person who has since died/left the UK may retain the right of residence under certain circumstances. *Section 6 of chapter 2 covers these circumstances in more detail.*

*<sup>1</sup>In the case of nationals of the Republic of Ireland, a birth certificate may be accepted in place of a passport provided that the applicant was born before 1 January 2005. Anyone born on the island of Ireland before 1 January 2005 (in the Republic of Ireland or Northern Ireland) is an Irish national by birth.*

*Following a change in the Irish Republic's nationality laws (from 1 January 2005) this is no longer the case. Anyone born on or after this date is not necessarily an Irish national and we cannot therefore rely on a birth certificate as proof of nationality. It is therefore essential that we ask the applicant to provide an Irish passport.*

*<sup>2</sup>In the case of a worker, confirmation of the worker's engagement from his/her employer or a certificate of employment is sufficient proof.*

Applications for registration certificates can be made on an EEA1 form; however, this is not a compulsory requirement. *Further information on the issue of registration certificates can be found in Chapter 4.*

## **5. Refusal of request to issue a registration certificate**

A request for a registration certificate may be refused in the event of one or more of the following:

- Evidence of EEA nationality is not supplied,
- Evidence of EEA nationality is forged / counterfeit,
- Evidence of the exercise of Treaty rights is not supplied, or
- Enquiries reveal evidence that:
  - the claim to be exercising Treaty rights is false,
  - the EEA national has left the UK, or
  - the EEA national has ceased to exercise Treaty rights.<sup>1</sup>

*<sup>1</sup>A worker does not cease to be a qualified person if they are temporarily unable to work due to illness or accident or if they have become involuntarily unemployed and are seeking work (Regulation 6(2) of the 2006 Regulations refers).*

Furthermore, an EEA national will qualify on the basis of self-sufficiency if his/her spouse, civil partner, or partner is able to support him/her financially through his/her

legal employment / self-employment. Similarly an EEA national will qualify on the basis of self-sufficiency if the spouse, civil partner, or partner has sufficient financial resources to support them both, without the need to undertake employment or self-employment.

## **6. Appeal rights**

A refusal to issue a registration certificate on the grounds that an EEA national is not exercising a Treaty right attracts a full 'in-country' right of appeal under regulation 26(1) of the 2006 Regulations. S/he would need to supply either an EEA passport or national identity card as evidence that s/he is an EEA national before qualifying for a right of appeal under the regulations. *If no evidence of EEA nationality has been supplied then there is no right of appeal under EC law.*

*For more information on the appeals process please see Chapter 9.*

## **7. Revocation of registration certificates**

Regulation 20(1) of the 2006 Regulations makes provision for the revocation of a registration certificate on the grounds of public policy, public security or public health.

*For more information concerning Public Policy, Public Security, and Public Health please see Chapter 8.*

Regulation 20(2) of the 2006 Regulations makes provision for the revocation of a registration certificate if:

“The holder of the [registration certificate] has ceased to have a right to reside under the [2006 Regulations]”

*For guidance on Appeal rights in revocation cases please see Chapter 9.*

## **8. Exercise of Treaty rights by EEA national minor children and the rights of their non-EEA national family members**

### **Children's Duty**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;

- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

### **The case of CHEN**

In the European Court of Justice (ECJ) case of CHEN (ECJ C-200/02) it was recognised that EEA national minor children are able to exercise Treaty rights.

In the case of CHEN, the ECJ ruled that an EEA national child who holds sickness insurance would have a right to reside in the UK with his/her non-EEA national parents provided that there were sufficient resources to ensure that the child did not become a burden on public funds.

The ruling did not state that the EEA national child's parent(s)/primary carer would have a right to reside as a "family member" as defined under EC law. Furthermore, we do not consider that a parent can be 'dependent' on a child. The parent(s)/primary carer of an EEA child are/is therefore entitled to reside in a Member State with the self-sufficient EEA national child solely to facilitate the child in exercising his/her Treaty rights.

An EEA national child may qualify for a registration certificate on the basis of being self-sufficient. The child must be self-sufficient without relying on funds earned by a non-EEA parent/primary carer in the UK, unless this comes from legal employment or self-employment (for example, if the parent/primary carer is in the UK on a work permit).

Paragraph 257C of the Immigration Rules allows for non-EEA parent(s)/primary carer, and other close relatives, of self-sufficient EEA children to be granted leave to enter or remain in the UK. The leave granted does not allow the parents/primary carer, or other relatives, the right to work or be self-employed in the UK.

#### **8.1 Issue of a registration certificate to an EEA national child**

An EEA national child will qualify for a registration certificate on the basis of having a right of residence in the UK as a self-sufficient person provided that we have been supplied with:

- Evidence of the child's EEA nationality; and
- Evidence that there are sufficient resources available to ensure that the EEA national child does not become a burden on public funds.

##### **8.1.1 Assessing sufficient resources**

When assessing whether there are sufficient resources to ensure that the child does not become a burden on public funds we should take account of:

- Financial support for relatives: any relatives who are residing in the UK with the child. For instance, if the child is living in the UK with two parents we should be satisfied that there are sufficient resources available for the child *and* both parents.

- Intended length of residence: the funds should be sufficient for the intended period of residence. We should be satisfied that the financial resources are sufficient to ensure that the child and any relatives will not become a burden on public funds.
- Relatives' requirement to work: any non-EEA national relatives who are granted leave to enter or remain on the basis of their relationship to an EEA national child will *not* have access to the UK labour market. If there is sufficient evidence to suggest that the child's non-EEA national relatives would need to work in the UK in order to support the child, the application should be refused.
- Illegal working: if family members are *illegally* working in the UK the EEA national child is not self-sufficient and the application should be refused.
- In receipt of public funds: if the EEA national child or any of his/her family members, who are seeking to remain in the UK on the basis of the EEA national child, are in receipt of public funds the application should be refused.

*Guidance on dealing with applications from third country national parent(s)/primary carer of EEA national children are provided in Chapter 2.*

## **9. EEA nationals who are family members of an EEA national exercising a Treaty right in the UK**

There may be circumstances in which an EEA national is not the person exercising a Treaty right in the UK. For example, family members of a French national worker who are also French.

In these circumstances the family members should be issued with a registration certificate in line with regulation 16(3).