

CHAPTER 6

PERMANENT RESIDENCE

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1. General information

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.

Applications received pre 30 April 2006

Under paragraph 255 of the Immigration Rules (HC 395(as amended by Cm 4851)) an EEA national (other than a student) and non-EEA family members may have been eligible to apply for permanent residence. This was not provided for in EC law, only in the United Kingdom immigration rules. To qualify under paragraph 255 a person had to have been issued with a residence permit or a residence document valid for 5 years, to have remained in the UK in accordance with the 2000 EEA Regulations for 4 years and to continue to do so. .

Applications made before 30 April, but decided upon after 30 April will be subject to transitional measures. Please refer to Chapter 13 for more information.

Applications received after 30 April 2006

Chapter IV of Directive 2004/38 and Regulation 15 of the Immigration (EEA) Regulations 2006 provide for the right of permanent residence for EEA nationals and their family members under European Law.

EEA nationals and their family members who have resided in the UK in accordance with the 2006 Regulations for a continuous period of 5 years acquire the right of permanent residence. In certain circumstances a right of permanent residence is acquired in less than 5 years.

Continuity of residence is not affected by temporary absences (generally not exceeding 6 months per year).

Once an EEA national (or their family member) has acquired permanent residence in the UK it can only be lost if they leave the UK for more than 2 consecutive years. This right is subject to Regulation 19(b) concerning Public Policy, Public Security and Public Health.

2. Eligibility for permanent residence

The following are eligible under Regulation 15 of the Immigration (EEA) Regulations 2006:

- EEA nationals who have resided in the UK (in accordance with the Regulations) for a continuous period of 5 years;
- Non-EEA national family members who have resided in the UK (in accordance with the Regulations) for a continuous period of 5 years;
- A worker or self-employed person who has *ceased activity*;
- The family member of a worker or self-employed person who has ceased activity;
- A person who was the family member of a worker or self-employed person, where:
 - The worker or self-employed person has *died*;
 - The family member resided with him/her immediately before his death; and
 - The worker or self-employed person had resided continuously in the UK for at least the two years immediately before his/her death or the death was the result of an accident at work or occupational disease;
- A person who:
 - Has resided in the UK (in accordance with the Regulations) for a continuous period of 5 years; and
 - Was, at the end of the period, a family member who has *retained the right of residence*.

N.B. We sometimes get applications from people who have lived in the Channel Islands or the Isle of Man prior to coming to the UK. Time spent in the Channel Islands/Isle of Man does not count towards the 5-year qualifying period.

2.1 A worker or self-employed person who has ceased activity

“A worker or self-employed person who has ceased activity” means an EEA national who satisfies the conditions below (regulation 5 of the 2006 Regulations refers).

A person satisfies the conditions if s/he:

- terminates his/her activity as a worker or self-employed person and:
 - has reached the age at which s/he is entitled to a state pension on the date on which s/he terminates his/her activity; or
 - in the case of a worker, ceases working to take early retirement;
 - pursued his/her activity as a worker or self-employed person in the United Kingdom for at least twelve months prior to the termination; and
 - resided in the United Kingdom continuously for **more than three years** prior to the termination.
- terminates his/her activity in the United Kingdom as a worker or self-employed person as a result of a **permanent incapacity to work**; and either:

- s/he resided in the United Kingdom continuously for **more than two years** prior to the termination; or
 - the incapacity is **the result of an accident at work** or an occupational disease that entitles him/her to a pension payable in full or in part by an institution in the United Kingdom.
- s/he is active as a worker or self-employed person in an EEA State but retains his/her place of residence in the United Kingdom, to which s/he returns as a rule at least once a week; and
 - prior to becoming so active in that EEA State, he had been continuously resident and continuously active as a worker or self-employed person in the United Kingdom **for at least three years**.

(Please refer to regulation 5(4) for more information on EEA nationals working in another EEA State)

The conditions as to length of residence and activity as a worker or self-employed person shall not apply in relation to a person whose spouse or civil partner is a **United Kingdom national**.

For the purposes of this category:

- periods of inactivity for reasons not of the person's own making;
- periods of inactivity due to illness or accident; and
- in the case of a worker, periods of involuntary unemployment duly recorded by the relevant employment office,

shall be treated as periods of activity as a worker or self-employed person, as the case may be.

3. General policy on the issue of a document certifying permanent residence and permanent residence cards

Documents Certifying Permanent Residence and Permanent Residence Cards are both issued *free of charge*.

3.1 EEA nationals

Under Regulation 18(1) and Article 19 of Directive 2004/38, EEA nationals who are entitled to reside in the UK permanently must be issued with a Document Certifying Permanent Residence *as soon as possible* after the application (plus the proof of entitlement) has been received.

3.2 Non-EEA nationals

Under Regulation 18(2) and Article 20 of 2004/38, Non-EEA national family members who are entitled to reside in the UK permanently must be issued with a Permanent Residence Card *no later than 6 months* after the application (plus the proof of entitlement) has been received.

4. Validity of documents certifying permanent residence and permanent residence cards

A Document Certifying Permanent Residence does not have a date of expiry. However, a Permanent Residence Card is valid for 10 years from the date of issue and must be renewed upon application. This is subject to Regulation 20(3) concerning the loss of the right of permanent residence.

A Document Certifying Permanent Residence and a Permanent Residence Card will cease to be valid if the holder ceases to have a right of permanent residence under Regulation 15(2).

5. Right of appeal

Before the implementation of Directive 2004/38, EEA nationals and their family members applied for permanent residence in the UK under domestic legislation. Any refusals to grant the right of permanent residence did not attract a right of appeal, as only applicants who would lose a right to reside (i.e. would no longer have leave to remain) were able to appeal.

As EEA nationals and their family members can now acquire permanent residence under European Law, any refusal to issue a Document Certifying Permanent Residence or Permanent Residence Card will attract a full 'in country' right of appeal under Regulation 28. This is based on Article 31(1) of Directive 2004/38.

However, if we have not previously seen evidence of nationality in the form of a passport / ID card confirming the EEA national's identity, and none has been provided, the application is refused without a right of appeal.

If no evidence of the non-EEA national's identity / relationship to the EEA national is provided the application is refused without a right of appeal. An amended version of form ECD.3117 is appropriate. The applicant must provide some form of evidence of his/her own identity and relationship to the EEA before s/he can benefit from a right of appeal under EC law.

6. Issue of documents certifying permanent residence and permanent residence cards

6.1 Application forms

An application form, EEA3, is available for use when an EEA national applies for a document certifying permanent residence.

An application form, EEA4, is available for use when a non-EEA national family member of an EEA national applies for a permanent residence card.

In contrast to the policy governing applications made under the Immigration Rules an application cannot be rejected because the form has not been used or has not been fully completed.

6.2 Qualifying for a document certifying permanent residence or a permanent residence card

Completion of 5 years residency

The following documents must be supplied by an EEA national who is applying for a document certifying permanent residence under regulation 15(1)(a) of the 2006 Regulations having completed 5 years residency:

- A valid passport or ID card as evidence of his/her EEA Nationality,
- Documentation confirming that s/he has completed 5 years residence in accordance with the 2006 Regulations..

The following documents must be supplied by a non-EEA national family member of an EEA national who is applying for a permanent residence card under regulation 15(1)(b) of the 2006 Regulations having completed 5 years residency:

- A valid passport
- Proof that s/he was a family member of an EEA national during the 5 year period
- Documentation confirming that s/he has resided in the UK with the EEA national in accordance with the 2006 Regulations for a continuous period of 5 years; this requires confirmation that during this period the EEA national was residing in the UK in accordance with the Regulations .

Completion of 5 years residency after having retained the right of residence

The following documents must be supplied by a non-EEA national family member who has retained the right of residence and who is applying for a Permanent Residence Card under regulation 15(1)(f) having completed 5 years residency:

- A valid passport
- Documentation confirming that s/he has completed 5 years residency in accordance with the 2006 Regulations as the family member of an EEA national exercising Treaty rights / as a person who has retained the right of residence.

EEA national has retired / is permanently incapacitated

The following documents must be supplied by an **EEA national** applying under regulation 15(1)(c) on the basis that s/he is a worker or self-employed person who has ceased activity:

- A valid passport or ID card
- Documentation confirming that s/he was employed / self-employed prior to retirement or becoming permanently incapacitated along with documentation confirming permanent incapacity when appropriate.

The following documents must be supplied by an EEA national / non-EEA national **family member** who has applied under regulation 15(1)(d) on the basis that his/her EEA national family member is a worker or self-employed person who has ceased activity:

- A valid passport

- Passport or ID card of the EEA national
- Evidence confirming relationship
- Documentation confirming that the EEA was employed / self-employed prior to retirement or becoming permanently incapacitated along with documentation confirming permanent incapacity when appropriate.

Applying following the death of the EEA

The following documents must be supplied by an EEA national / non-EEA national family member who has applied under regulation 15(1)(e) on the basis that his/her EEA national family member has died:

- A valid passport
- Passport or ID card of the EEA national
- Death certificate of the EEA national
- Evidence confirming relationship
- Evidence that the EEA national had resided continuously in the UK for at least two years prior to death or evidence that the death was as the result of an accident at work or occupational disease
- Evidence that s/he was residing in the UK with the EEA national immediately before the EEA national's death

6.3 Checks that must be conducted before a document certifying permanent residence or a permanent residence card can be issued.

Prior to reaching a decision we must be satisfied that an EEA national (or his/her non-EEA national family member) has completed 5 years residence. For the non-EEA national this may be as either the family member of an EEA or as someone who has retained the right of residence.

6.4 Issuing a document certifying permanent residence or a permanent residence card

Permanent residence cards are valid for 10 years from the date of issue.

- For an EEA national a document certifying permanent residence takes the form of a vignette placed in a free standing document.
- For a Swiss national a Swiss document certifying permanent residence takes the form of a vignette placed in a free standing document.
- For a family member of an EEA national a permanent residence card takes the form of a vignette placed in his/her passport or on an immigration status document if no passport is available.

- For a family member of a Swiss national a Swiss Family Member permanent residence card takes the form of a vignette placed in his/her passport or on an immigration status document if no passport is available.

The appropriate information leaflet relating to permanent residence for an EEA national is the ECD.3113. For a non-EEA family member the appropriate information leaflet is the ECD.3114. For a family member who qualifies for permanent residence having retained the right of residence the appropriate information leaflet is the ECD.3115.

6.5 Refusing document certifying permanent residence and permanent residence card applications

If an applicant does not qualify for permanent residence the application should be refused. We can check whether the applicant qualifies for a registration certificate or a residence card.

Cases involving Public Policy, Public Health or Public Security are rare but an EEA national, a non-EEA national family member, or a non-EEA national who retains a right of residence may be convicted of a crime. If Criminal Casework Team are taking deportation action, or are intending to take deportation action, against the individual then it will be appropriate to refuse permanent residence on the basis of Public Policy. *Please see chapter 8 for more information on public policy, public security and public health.*

6.6 Regulations to quote on the refusal forms and the Reason For Refusal Letter (RFRL):

Refuse document certifying permanent residence - EEA national has not completed 5 years residence:

Regulation 15 (1) (a) of EEA Regulations 2006

ECD.3129 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are an EEA national who has resided in the UK in accordance with the Immigration (European Economic Area) Regulations 2006 for a continuous period of 5 years. However, you have not provided evidence that you have resided in the United Kingdom in accordance with those Regulations for a continuous period of 5 years."

Refuse document certifying permanent residence - EEA national does not qualify on the basis of ceasing activity due to retirement / permanent incapacity:

Regulation 15 (1) (c) of EEA Regulations 2006

ECD.3129 is the appropriate refusal template.

"You have applied for Permanent Residence on the basis that you are a worker or self-employed person who has ceased activity, as defined in the Immigration (European Economic Area) Regulations 2006, . However, you have not supplied

evidence that you are a worker or self employed person who has ceased activity as defined. ."

Refuse document certifying permanent residence - Evidence of EEA national is Forged / Counterfeit:

Regulation 6 and Regulation 15 (1) (a) of EEA Regulations 2006

ECD.3129 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are an EEA national who has resided in the United Kingdom in accordance with the Immigration (European Economic Area) Regulations 2006 for a continuous period of 5 years. However, the passport / ID card that you have submitted as evidence of your EEA nationality has been found to be forged / counterfeit."

Refuse document certifying permanent residence - Public Policy, Public Health or Public Security:

Regulation 20 (1) of EEA Regulations 2006

Wording:

" You have applied for Permanent Residence on the basis that you are an EEA national who has resided in the UK in accordance with the Immigration (European Economic Area) Regulations 2006 for a continuous period of 5 years. However, the Secretary of State is satisfied that you would pose a threat to the requirements of public policy if allowed to remain in the United Kingdom."

Refuse Permanent Residence Card – Non-EEA national's EEA family member has not completed 5 years residence:

Regulation 15 (1) (b) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are the family member of an EEA national and that you have resided in the United Kingdom with that EEA national in accordance with the Immigration (European Economic Area) Regulations for a continuous period of 5 years. However, you have not provided evidence that that EEA national resided in the UK in accordance with those Regulations during that 5 year period. "

Refuse Permanent Residence Card - non-EEA national has not completed 5 years residence:

Regulation 15 (1) (b) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are the family member of an EEA national and that you have resided in the United Kingdom with that EEA national in accordance with the Immigration (European Economic Area) Regulations for a continuous period of 5 years. However, you have not resided in the United Kingdom with your EEA family member for 5 years."

Refuse Permanent Residence Card - non-EEA national does not qualify on the basis that the EEA national has ceased activity due to retirement / permanent incapacity:

Regulation 15 (1) (d) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are the family member of an EEA national who is a worker or self-employed person who has ceased activity, as defined in the 2006 Regulations. However, your EEA family member is not a worker or self-employed person who has ceased activity, as so defined."

Refuse Permanent Residence Card – non-EEA national does not qualify on the basis that the EEA has died, as the EEA national had not resided in the UK for at least one year prior to death / death was not the result of work related accident:

Regulation 15 (1) (e) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are the family member of an EEA national who has died. However, your EEA family member was not a worker or self-employed person who had resided in the United Kingdom for at least two years prior to death [or their death was not the result of an accident at work or an occupational disease]."

Refuse Permanent Residence Card - Evidence of EEA national Family Member's nationality is Forged / Counterfeit:

Regulation 6 and Regulation 15 (1) (b) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template.

Wording:

"You have applied for Permanent Residence on the basis that you are the family member of an EEA national and that you have resided in the United Kingdom with that EEA national in accordance with the Immigration (European Economic Area) Regulations for a continuous period of 5 years. However, the passport / ID card that has been submitted as evidence of your EEA family member's nationality has been found to be forged / counterfeit."

Refuse Permanent Residence Card - Public Policy, Public Health or Public Security:

Regulation 20 (1) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template

Wording:

“You have applied for Permanent Residence on the basis that you are the family member of an EEA national and that you have resided in the United Kingdom with that EEA national in accordance with the Immigration (European Economic Area) Regulations for a continuous period of 5 years . However, the Secretary of State is satisfied that you would pose a threat to the requirements of public policy if allowed to remain in the United Kingdom.”

Refuse Permanent Residence Card - non-EEA national who has retained a right of residence but who has not completed 5 years residence:

Regulation 15 (1) (f) of EEA Regulations 2006

ECD.3130 is the appropriate refusal template.

Wording:

“You have applied for Permanent Residence on the basis that have resided in the UK in accordance with the 2006 Regulations for a continuous period of 5 years. However, you have not completed 5 years residency in the United Kingdom in accordance with those Regulations...”

6.7 Revoking a document certifying permanent residence or permanent residence card

Permanent Residence can be revoked on the basis of Public Policy, Public Health, or Public Security or if the EEA national and/or non-EEA national family member has been away from the UK for more than 2 consecutive years.

Regulation to quote on the revocation form and the Reason For Revocation Letter (RFRL):

Regulation 20(1) of the EEA Regulations 2006

ECD.0030 is the appropriate refusal template [CW to check]

“On you were issued with a document certifying permanent residence/permanent residence card as confirmation that you have a right of permanent residence in the United Kingdom on the basis of European law. However, you would pose a threat to the requirements of public policy if allowed to remain in the United Kingdom. As a result a decision has been made to revoke your document certifying permanent residence/permanent residence card.