

UKCOSA GUIDANCE NOTE FOR STUDENTS

This Guidance Note explains the immigration and social security regulations which apply to you if you are a national of a European Economic Area country and studying at a publicly funded institution or a private college included in the UK Department of Education and Skills' Register of Education and Training Providers in the UK (see www.dfes.gov.uk/providers/register).

For information about your eligibility for 'home' fee status see the UKCOSA Guidance Note: *Tuition fees: will I pay the 'home' or 'overseas' rate?*

For information about eligibility for student loans see UKCOSA Guidance Note: *Student Support: am I eligible for financial support?*

WHICH COUNTRIES ARE IN THE EEA?

The EEA consists of the European Union (EU) countries, (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (UK)), plus Iceland, Liechtenstein and Norway.

Switzerland is not a member of the EEA and Swiss nationals are not citizens of the EU. However since 1 June 2002, under the terms of a bilateral agreement, Swiss nationals have had rights, which are similar to those of nationals of EEA countries. The information in this Guidance Note applies also to Swiss nationals.

WHAT IS MY IMMIGRATION STATUS? DO I NEED A REGISTRATION CERTIFICATE?

If you are an EEA national you are entitled to enter the UK freely and have an automatic right of residence for up to three months without needing to demonstrate that you are exercising a right of free movement, for example, to study or work, and once you have been accepted on a course of study, you have the right of residence for the duration of your course.

The UK Home Office can issue you with a registration certificate confirming your right of residence as a student

and this will be particularly relevant if you are married to, or in a recognised registered partnership (for example, civil partnership) with, a non-EEA national or have non-EEA national children who are dependent on you and wish to live with you in the UK. If you hold a registration certificate, this may make it easier for them to apply for an EEA family permit or residence card (see "Can my family come to the UK?" below). Registration certificates are issued free of charge and are valid indefinitely. You can apply for a registration certificate using a Home Office EEA1 form unless you are a Bulgarian or Romanian national and will need to apply on form BR1 (see address list for details about obtaining the form) enclosing the following with your application:

- your passport or national identity card;
- evidence of your studies (e.g. a current letter from your institution confirming your enrolment on a course and the completion date of the course);
- evidence that you can support yourself financially - while both the EEA1 and the BR1 form (for Romanian and Bulgarian nationals) request that you provide a bank statement or evidence of a grant or scholarship, European law only requires that you provide a written signed statement confirming that you can support yourself. In practice your application may be dealt with more quickly if you provide the additional documentation;
- two passport photographs of yourself.

Registration certificates can be issued immediately if an application is made in person at the Home Office's Public Enquiry Office in Croydon (please note that an appointment needs to be booked by telephone - see address list for details) alternatively an application can be submitted by post and should not take longer than six months to process, although they are usually dealt with sooner but it is best to allow plenty of time. You can ask the Home Office to return your passport if you need to travel, but make sure that you allow plenty of time (at least two weeks) for the passport to be located and sent back to you before your trip.

CAN MY FAMILY COME TO THE UK?

If your family are EEA nationals

EEA nationals are free to enter the UK and therefore your EEA national family members can come and live with you.

If your family are not EEA nationals

If you are studying in the UK your spouse, recognised registered partner and dependent children have the right to join you in the UK.

Other family members are considered 'extended family members' and do not have the right to join you*, however the UK authorities will consider admitting the following:

- **unmarried partners:** the UK authorities will consider allowing the admission of your unmarried partner if they believe '..it is appropriate in all circumstances to do so'. While European law requires that the authorities undertake 'an extensive examination of the personal circumstances and shall justify any denial of entry or residence to these people' in practice the UK authorities will consider whether the relationship is durable by reference to the requirements in the UK immigration rules for the admission of unmarried partners, which require you to 'have been living in a relationship akin to marriage which has subsisted for two years or more' (para 295A(1)(a)) HC395). The UK interpretation may not be compliant with European law, which takes precedence if there is any conflict with domestic UK law. If you are in a relationship, which does not meet the above criteria you should consider seeking specialist legal advice.
- **any other relative in the ascending line** for example, your parents or the parents of your spouse, recognised registered partner or unmarried partner (if accepted by the UK authorities as a durable relationship, see above), who is also:
 - dependent on you or your spouse, recognised registered partner or unmarried partner (if accepted by the UK authorities as a durable relationship, see above); or
 - living as part of your household outside the UK, or was living there before you came to the UK

* unless you are exercising free movement rights as a worker or as a self-employed person or are financially self-sufficient and have comprehensive sickness insurance, when your extended family members may be able to join you in the UK as of right.

The UK authorities' position is that the admission of your extended family members beyond an initial three month period is discretionary. Your extended family members are not, therefore, recognised as having free movement rights as family members unless they have been issued with either an EEA family permit before they come to the UK or are issued with a UK residence card after entry.

For further information about how the Home Office interpret European law and the UK regulations implementing European law see <www.ind.homeoffice.gov.uk/documents/ecis>.

- **a family member who, on serious health grounds, requires the personal care of the student or their spouse, recognised registered partner or unmarried partner.**

HOW SHOULD MY FAMILY MEMBER APPLY FOR AN EEA FAMILY PERMIT?

Your family members should apply at the British Embassy or High Commission in the country where they are living for an EEA family permit before travelling. This is issued free of charge for the purpose of allowing non-EEA national dependants of an EEA national to travel to the UK. If your dependants are living outside of the EEA it may be easier for them to apply to join you first in the EEA Member State where you normally reside and apply to the British Embassy there (if they apply from outside of the European Economic Area the UK authorities may only be willing to consider the application under the more restrictive UK domestic immigration regulations. If an application needs to be made in these circumstances, you should seek further advice from an International Student Adviser at your institution or UKCOSA).

Your family member will have to present evidence of their relationship to you (for example, marriage certificate) and evidence that you are studying or working in the UK (for example, a registration certificate or a letter from your institution confirming that you are a student).

CAN MY NON-EEA NON-VISA NATIONAL FAMILY MEMBERS COME TO VISIT ME IN THE UK? WHAT IF THEY WOULD LIKE TO STAY WITH ME IN THE UK FOR LONGER?

If your spouse, recognised registered partner or unmarried partner or child is a 'visa national' (that is,

they are a national of a country on the 'visa national' list – see <www.ukvisas.org.uk> and click on 'Do I need a UK visa?'), please see the answer to the question 'How should my family member apply for an EEA family permit?' immediately above and seek further advice if necessary.

If your spouse, recognised registered partner or unmarried partner or child is not a 'visa national', they will be able to visit you for up to six months without applying for an EEA family permit. However, they **should** apply for an EEA family permit if they are planning to stay for a longer period.

Once your non-EEA family members (see above for information about 'extended family members') have joined you in the UK, they should apply by post for a registration card evidencing their right of residence on Form EEA2 and will be required to provide similar evidence to that required for an EEA family permit above. Note that non-EEA family members of Bulgarian and Romanian national students should apply for a residence card on Form BR5 once the student has obtained their registration certificate.

For further information go to: <www.ind.homeoffice.gov.uk/applying/eeaeunationals>.

CAN MY FAMILY AND I QUALIFY FOR PERMANENT RESIDENCE IN THE UK?

Students and their family members (see above for extended family members) can now qualify for permanent residence in the UK where they have been lawfully in the UK for 5 years. This right is provided for in *European Directive 2004/38/EC* on the rights of citizens of the Union and their family members to move and reside freely within the European Union. However the UK government (*Immigration (European Economic Area) Regulations 2006*) which came into force on 30 April 2006, and which implement this Directive into UK law, require you to have exercised rights under the Directive for five years (eg as a student or as a worker) before you are eligible for permanent residence. This more restricted interpretation would mean that if you have recently become an EU citizen you will not be able to count any period of lawful residence in the UK before becoming an EU national towards the five year qualifying period. The UK interpretation appears to conflict with the European Directive. It is the European Directive that takes precedence if there is any conflict. If this situation applies to you, you should seek advice from an immigration specialist.

While there is no need for you to apply for confirmation of the right, in practice it may be useful to have confirmation of the right from the Home Office in order to demonstrate your entitlement. EEA nationals can apply in person (see above) using Form EEA 3. Non-EEA family members can apply on Form EEA 4, however they have to make their applications by post.

CAN I WORK WHILE I STUDY?

If you are a national of the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia or Slovenia ('A8' countries)

From 1 May 2004 if you are in the UK, for example, exercising your right of free movement as a student and you want to work, you are required to register as a worker under the Accession State 'Worker Registration Scheme' unless you are exempt (see next paragraph below) from the requirement to register. There is a one-off fee of £70 to register.

Once you have been working legally in the UK for 12 months (provided any periods when not working, excluding paid holidays, do not in total exceed 30 days) you will have full rights of free movement as a worker. This means that you will no longer have to register your work and can then apply to the Home Office for an EEA registration certificate on Form EEA1 confirming your status as a worker.

Further details about the Scheme, including exemptions and the position for family members, are available on the Home Office website:

<www.workingintheuk.gov.uk> (click on 'Schemes and Programmes' and then scroll down to 'Worker Registration Scheme' in the bottom left hand corner).

If you are a national of Bulgaria or Romania ('A2' countries)

From 1 January 2007 if you are in the UK (that is, "exercising your right of free movement as a student") and you want to work, you have to obtain work authorisation. To obtain this, you must apply to the Home Office on Form BR1 for a registration certificate. This certificate will confirm that you are studying at an educational institution on the DfES Register (see above). You will not need to do this if you are exempt from the requirement to obtain worker authorisation (see below).

From 16 March 2007, all registration certificates issued to students should state that:

- you can work not more than 20 hours a week during term time, and

- you can work unlimited hours if you are following a course of vocational training and are working as part of that training, and
- you can work unlimited hours if you are working during your vacation.

At the end of your studies, you will be able to continue working on this basis for a further four months, as long as you have such a registration certificate which was issued before the end of your course.

Certificates issued before 16 March 2007 confirm only that you can work for up to 20 hours per week. If you have such a certificate, you should be treated as a student who holds a certificate issued on or after 16 March, that is, you can work more than 20 hours a week on work placements and during your vacation periods.

You will be exempt from the requirement to obtain work authorisation:

- if you have immigration permission to be in the UK under the Immigration Act 1971 which does not place any restriction on your ability to work eg dependant of a work permit holder or dependant of a student
- once you have been working in the UK with permission for 12 months ending on or after 31 December 2006 (including part-time work as a student but excluding work under the seasonal agricultural worker scheme) provided any periods when not working, excluding paid holidays, do not in total exceed 30 days
- if you are the family member of an EEA national exercising rights in the UK as a worker, self-employed person or a student (other than the family member of a Bulgarian or Romanian national who requires an 'accession worker authorisation document') or the spouse or civil partner of a British citizen or person who is settled in the UK
- if you are a posted worker(ie providing services in the UK on behalf of an employer established elsewhere in the European Economic Area)
- if you are self-employed

If you are exempt because you fall into one of these categories, you will be able to apply for a registration certificate on Form BR1 confirming that there are no restrictions on your right to work in the UK (unless you are a posted worker or self-employed in which case the certificate will confirm your right to carry out these activities only).

You will also be exempt from the requirement to obtain

an 'accession worker authorisation document' if you can qualify as highly skilled by meeting the requirements of either:

- the Science and Engineering Graduate Scheme (this includes Masters Degree and PhD students in any field irrespective of the start date of the course) or
- the Highly Skilled Migrant Programme (you will not need to satisfy any English language requirement) or
- the Fresh Talent: Working in Scotland Scheme

If you are exempt because you fall into one of these categories, you will be able to apply to the Home Office for a registration certificate on Form BR2 confirming that there are no restrictions on your right to work in the UK.

Do I need an 'accession worker card'?

- If you are a student and are not exempt (see above) and you wish to work for **more than** 20 hours during term time, (see below if you are the family member of a student), you will require an 'accession worker card' unless you have a document issued **before** 1 January 2007 that grants you leave to enter or remain in the UK and authorises you to undertake the work that you are doing, for example a work permit.

An 'accession worker card' can be issued if the work you wish to undertake comes within an 'authorised category of employment' and prior approval of the employment has been obtained by the employer if necessary. 'Authorised categories of employment' can be divided into two categories:

1. *Authorised categories of employment requiring a letter of approval under the work permit arrangements*

Where the work meets the requirements of the work permit arrangements including work permits for skilled workers and work permits for lower skilled work within the food processing industry under the 'Sectors Based Scheme', an employer will first need to apply to the Home Office for a 'letter of approval' to employ you and you will then need to apply for an 'accession worker card' on Form BR3 before you can start work.

2. *Other authorised categories of employment*

This includes au pair placements, work as postgraduate doctors and dentists and trainee general

practitioners, overseas qualified nurses undertaking supervised practice. See Home Office Guidance below for a full list of all categories.

You can apply for an 'accession worker card' on Form BR3 enclosing the offer of employment. You can only start work once the 'accession worker card' is issued.

Note: An 'accession worker card' is only valid for one particular employment and has no time limit attached to it. Therefore if you change employment you will need to apply for a new card (unless you become exempt in the meantime eg working for one year continuously).

Family members of 'A2' nationals

If you have obtained a registration certificate as a student, your 'A2' national family members including spouse, civil partner or dependant child under 18 are eligible to apply for an 'accession worker card' as an 'authorised family member'. 'Authorised family members' can accept an offer of employment at any skill level and can apply to the Home Office for an 'accession worker card' authorising that offer of employment on Form BR4.

Your non-EEA national family members should apply for a residence card on Form BR5 once you have a registration certificate as a student and will be entitled to take any employment without requiring any additional authorisation.

For further information and copies of all BR application forms and Home Office guidance go to <www.workingintheuk.gov.uk> go to 'all forms' go to 'Bulgarian and Romanian application forms and guidance notes' in the top left hand corner and 'Bulgarian and Romanian Guidance - non-work permit' and 'Bulgarian and Romanian Guidance - work permit'.

If you are a national of any other EEA country and/or Switzerland

All other EEA nationals are free to take employment without having to register or seek any kind of permission to work. If your family members are EEA nationals, or if they arrived in the UK with an EEA family permit, they will also be free to work.

If your dependants are non-EEA nationals who arrived without an EEA family permit, for example, if they arrived as visitors instead, they should still be able to work if they are planning to stay with you in the UK.

BULGARIANS, ROMANIANS, AND THEIR FAMILY MEMBERS: KEY TERMS AND DOCUMENTS

Accession worker card

A document issued by the Home Office to an 'A2' national authorising the holder to start working with a specified employer. Only particular categories of employment are allowed (unless you are applying as an authorised family member in which case any kind of employment can be authorised).

Applicants can apply directly to the Home Office if the employment fits into a specified category of employment or with a 'letter of approval' obtained by the employer if prior authorisation of the employment is required.

Application forms

Form BR 1: Home Office application form for a registration certificate confirming that:

- you are a student, or
- you are self-employed, or
- you are exempt from the requirement to obtain a work authorisation document

Form BR 2: Home Office application form for a registration certificate confirming that you are exempt from the requirement to obtain worker authorisation because you are highly skilled.

Form BR3: Home Office application form for an 'accession worker card' (unless you are an authorised family member (see below))

Form BR4: Home Office application for an 'accession worker card' as an authorised family member

Form BR5: Home Office application for a residence card for non-EEA family members of the holder of a registration certificate

Form BR6: Home Office application for a family member residence stamp for non-EEA family members of the holder of an 'accession worker card'

Form BR7: Home Office application for a residence certificate for the Romanian or Bulgarian family members of an A8 national registered under the Worker Registration Scheme (see above).

Authorised category of employment

A specified category of employment for which an 'accession worker card' may be issued and which will in some cases require the employer to obtain prior approval of the employment. See 'Do I need an 'accession worker card' above.

Registration Certificate

A certificate issued to an EEA national as proof of their right of residence in the UK as at the date of issue

Residence Card

A document issued to a non-EEA national family member of an EEA national confirming their right of residence in the UK as at the date of issue

However, they may find it difficult to prove that they have the right to work and so should apply to the Home Office for a residence card. Once they make their application, they will receive a 'certificate of application for the residence card' immediately allowing them to prove their status until their application for a residence card is decided.

CAN I CLAIM STATE BENEFITS?

For most benefits, this depends on whether you are a national of an 'A2' or an 'A8' country (see above).

Nationals of non- 'A2' and non- 'A8' countries":

nationals of Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland.

Full time students are not normally eligible for certain state benefits whatever their nationality. An EEA national full time student who makes an application for any of the following benefits is likely to be refused:

- Jobseeker's Allowance (income-based) and Income Support
- Housing Benefit
- Council Tax Benefit

There are certain exceptions, for example, if you are a single parent you may qualify for some of these benefits. If you are married or in a recognised registered partnership and your spouse/recognised registered partner is looking for work or has become unemployed, she or he may be able to claim state benefits. Some part

time students may also be able to claim benefits.

Child Tax Credit (CTC) and Working Tax Credit (WTC)

CTC is paid to low and middle income parents who have responsibility for a child, whether or not they are working. WTC is paid to low and middle income adults who work 16 or more hours a week and who either have responsibility for a child or have a disability or who are (or whose partners are) over 25 years old and working 30 hours or more a week.

However unless EEA and Swiss national claimants can show that they are either working in the UK or seeking work, they are unlikely to be eligible unless they fall into one of the excepted categories, for example, single parents.

See box on this page about getting further advice state benefits.

Contributions-based benefits

To qualify for contributions-based benefits, the claimant must have been making National Insurance contributions for a certain period. National Insurance is a form of taxation usually deducted from workers' earnings and used to fund certain state benefits.

If your dependent spouse or child has worked in the UK for sufficient time, and then becomes unemployed, they can claim 'Jobseeker's Allowance' (contributions based). Maternity benefits are also contributions-based, and payable to a woman expecting a child, provided she has worked in the UK or another EU country for the qualifying period. If you are a part time student and you have been working in the UK for sufficient time, you may be able to claim contributions-based benefits in your own right.

See box below about getting further advice on benefits.

GETTING FURTHER ADVICE ON BENEFITS

The UK's state benefit system is very complex. Please seek further advice if you think you may qualify for any of the benefits mentioned above. Further information can be obtained from your local Benefits Agency. For independent advice, contact your local Citizens Advice Bureau or the welfare or advice service at your institution or Students' Union.

Child Benefit

Child Benefit is paid for each child in your care who is under 16 years of age (or under 19, if still in full time, non-advanced education). You can claim this benefit after you, your spouse or civil partner or your child have been in the UK for six months, or sooner if your country has a reciprocal arrangement with the UK. If you or your spouse or civil partner begin work and pay National Insurance contributions you can claim child benefit immediately.

Nationals of 'A2' and 'A8' Countries

Students from 'A2' and 'A8' Countries' will not normally be entitled to benefits unless they are lawfully working in the UK or are self-employed, in which case they may be eligible for CTC, WTC and child benefit.

If they are on a low income they can also claim Housing Benefit and Council Tax Benefit. If they stop working within the first 12 months they will lose their rights to these benefits. If they start working again a new 12 month qualifying period will start.

All EEA Nationals

Disability Benefits - All EEA nationals (including 'A2' and 'A8' nationals) can apply for Disability Living Allowance if they have been living in the UK for 6 months and have the relevant care/mobility needs.

DO I QUALIFY FOR STATE HEALTH CARE?

EEA nationals can receive National Health Service (NHS) care while in the UK.

If you are here for six months or more you and your family can receive free treatment from NHS hospitals and doctors.

If your stay is for less than six months and you hold a European Health Insurance Card (EHIC), you can receive NHS treatment free of charge. The European Health Insurance Card is available from the health authority in your own country and must be issued before you leave your country.

If your stay is for less than six months and you do not hold an EHIC, you could be charged for treatment from a doctor, or treatment at a hospital.

Leaflets explaining your rights to NHS health care are available from Social Security offices, hospitals, doctors, dentists and opticians, and from the Department of Health website: <www.dh.gov.uk>.

ADDRESS LIST

Home Office Forms EEA1-4 and FMRS

(for non-EEA family members of 'A8' nationals subject to the Worker Registration Scheme)

Available from:

Application Forms Unit
Immigration and Nationality Directorate
Tel: 0870 241 0645
or download from the Internet at:
www.ind.homeoffice.gov.uk.

Completed form to be sent to:

European Applications
Immigration and Nationality Directorate
Lunar House
40 Wellesley Road
Croydon CR9 2BY

To use the 'in-person' service to apply for a registration certificate on Form EEA1 you will need to make an appointment:

Tel: 0870 6067766 8am-4pm Monday to Friday (excluding public holidays). This service is not available for applications for residence cards from non-EEA nationals.

The Home Office's Public Enquiry Office is located at Lunar House (see above)

Worker Registration Scheme Application Form

Available from:

Work Permits UK
Tel: 08705 210 224
or download from the internet at:
www.workingintheuk.gov.uk

Completed forms to be sent to:

Worker Registration Team
Home Office
PO Box 492
Durham DH99 1WU

Bulgarian and Romanian Application Forms BR1-BR7

Available from:

Work Permits UK
Tel: 08705 210 224
or download from the internet at:
www.workingintheuk.gov.uk

Completed forms to be sent to:

Immigration and Nationality Directorate

Bulgarian and Romanian Application Forms
PO Box 4160
Sheffield S1 9DZ

British Council

For all enquiries contact the British Council Information Centre
Telephone
+44 (0) 161 957 7755
Fax
+44 (0) 161 957 7762
Email
general.enquiries@britishcouncil.org
Web: www.britishcouncil.org

British Council offices are also located in major cities around Europe and provide information on British education.

AIRE Centre

(Advice on Individual Rights in Europe)
17 Red Lion Square
London WC1R 4QH
Tel: 020 7831 3850
(Telephone advice line open Tuesday and Thursday
14.00-17.00 – for advisers only)
Web: www.airecentre.org

Note: the AIRE centre does not have the facilities to see callers at its offices.

UKCOSA The Council for International Education

9-17 St Albans Place
London N1 0NX, UK
Tel: 020 7107 9922
(Telephone advice line open
Mon-Fri 13.00-16.00 UK time)
Web: www.ukcosa.org.uk

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9-17 St Albans Place
London N1 0NX, UK

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