



Croatian nationals' rights to live and work in the UK after joining the EU

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Croatia joined the EU on 1 July 2013. Croatian nationals can now exercise 'free movement' rights under European law to travel to and live in the UK.

However, as with the previous two rounds of EU enlargement, Croatia's EU accession treaty permits Member States to impose transitional restrictions on Croatian workers' free movement rights for up to seven years, in order to guard against disruption of labour markets. Transitional restrictions cannot be applied against Croatian nationals exercising free movement rights in other capacities (such as 'self-sufficient' or 'self-employed' persons).

The UK has decided to apply transitional restrictions. They are set out in the *Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013*. Put briefly, the regulations require Croatian nationals to obtain permission from UK Visas and Immigration before they can work in the UK (unless they come under one of the exemptions). Generally speaking, only the highly skilled, or skilled workers with a job offer will be eligible to work in the UK.

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1 EU citizenship and free movement rights

EU citizenship grants the right of free movement within the EU.¹ EU nationals do not require an entry clearance (visa) to enter another Member State, and no time limit may be placed on their stay.

Although all EU nationals can exercise free movement rights, only certain categories will have, under European law, certain guaranteed rights attached to their residence in the host country. This is what is meant by EU nationals having a “right to reside”. European Directive 2004/38/EC sets out who has a right to reside when moving within the EU, and the circumstances in which Member States can restrict those rights.² This Directive is often referred to as the ‘Free Movement of Persons’, ‘Citizens’ or ‘Rights of Residence’ Directive.

EU directives specify certain end results that must be achieved in every Member State. Member States must adapt their laws to meet those goals, but are free to decide how to do so. Directive 2004/38/EC was transposed into UK legislation by the *Immigration (European Economic Area) Regulations 2006* (‘the 2006 Regulations’).³

Put briefly, EU citizens’ rights to live and work in another Member State are as follows:

Right to move and right of residence for up to three months

An EU citizen who produces a valid passport or national identity card must be admitted by another Member State unless exclusion is justified on the grounds of public policy, public security or public health.

An EU citizen has an initial right to reside in another Member State for up to three months, regardless of the purpose of the visit, as long as they do not become an “unreasonable burden” on the social assistance system of the Member State. People who have a right to reside solely on the basis of the three-month right of residence will not satisfy the UK’s benefits eligibility requirements.

Right of residence for longer than three months, subject to conditions

Those wishing to stay for longer than three months must fit into one of the following categories in order to have a right to reside in the host Member State:

- a worker or self-employed person⁴
- a job-seeker (a person who is seeking employment and has a genuine chance of being employed)
- a self-sufficient person (a person who has sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State, and has comprehensive sickness insurance cover)
- a student (a person who is enrolled on a course of study at a private or public establishment, has comprehensive sickness insurance cover and assures the

¹ [Treaty on the Functioning of the European Union](#). Swiss and European Economic Area (EEA) nationals (Iceland, Liechtenstein and Norway) enjoy similar rights due to agreements with the EU.

² [Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#)

³ SI 2006/1003 (as amended)

⁴ In certain circumstances, a person who is no longer working can retain “worker” or “self-employed” status - for example, if temporarily unable to work due to illness or accident, or due to involuntary unemployment: [Directive 2004/38/EC](#), Article 7(3)

relevant national authority that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State)

- a family member accompanying or joining an EU national who satisfies one of the above criteria.⁵

EU nationals and their family members continue to have a right of residence whilst they meet the conditions specified in the Free Movement Directive, and can apply for residence documentation as proof of their right to reside. Member States may investigate in specific cases where there is a reasonable doubt as to whether an EU national or his/her family members satisfies the conditions for having a right to reside, but cannot carry out such checks “systematically”.

Right of permanent residence after five years

A “right of permanent residence” is acquired after five continuous years’ residence in the host Member State (or sooner in certain specified circumstances, such as a worker who reaches retirement age or becomes permanently incapacitated).⁶

Some determinations made by the Court of Justice of the EU have extended the circumstances in which a person may be able to claim a right to reside under European law.⁷ The UK Border Agency website provides [a brief summary](#). The UK Government’s position is that rights of residence acquired on the basis of such judgments do not have to be recognised as equal to those stemming directly from the Free Movement Directive, and consequently, do not confer the same rights on holders. It has therefore amended the 2006 Regulations to create a new category of “derivative right of residence” in order to accommodate these cases.⁸ Under the amended 2006 Regulations, persons with a derivative right of residence do not have the same entitlements as those with a right to reside in terms of eligibility for permanent residence or sponsoring family members to come to the UK.⁹ Nor do they have access many types of welfare benefits.¹⁰

1.1 Transitional restrictions in Croatia’s EU accession treaty

As with the previous two rounds of EU enlargement, Croatia’s EU accession treaty permits Member States to impose transitional restrictions on Croatian workers’ free movement rights for up to seven years following accession, in order to guard against disruption of their labour markets.¹¹ Transitional restrictions cannot be applied against Croatian nationals exercising free movement rights in other capacities (such as ‘self-sufficient’ or ‘self-employed’ persons).

The seven year transitional period is split into three phases:

- Member States can apply national measures to regulate Croatian workers’ labour market access for the first two years after accession (July 2013 - end June 2015).

⁵ A more limited range of relatives are eligible for a right of residence as the family member of a “student” than for the other categories: [Directive 2004/38/EC](#), Article 2(2), Article 7(4)

⁶ [Directive 2004/38/EC](#), Article 17

⁷ See, for example, [Chen \(C-200/02\)](#), [Ibrahim \(C-310/08\)](#), [Teixeira \(C-480/08\)](#)

⁸ [SI 2006/1003](#) as amended by [SI 2012/1547](#) and [SI 2012/2560](#)

⁹ UKBA update, ‘[Changes to the Immigration \(European Economic Area\) Regulations 2006](#)’, 13 July 2012

¹⁰ [The Social Security \(Habitual Residence\) \(Amendment\) Regulations 2012](#), [SI 2012/2587](#)

¹¹ [Accession Treaty: Treaty concerning the accession of the Republic of Croatia](#), 14409/11, 7 November 2011, Annex V part 2

Conditions for access cannot be more restrictive than those in place at the time when the accession treaty was signed (9 December 2011).

- Member States can continue to apply national measures for a further three years (July 2015 - end June 2018), but must notify the European Commission of their intention to do so before the end of the initial two year period.
- Member States can apply restrictions for two more years (July 2018 - end June 2020) if they are experiencing or anticipating “serious disturbances” in their labour market, and inform the European Commission.

Member States can lift their transitional restrictions at any stage during the seven year period, or choose not to apply any restrictions.

The treaty contains a ‘safeguard’ clause which allows a Member State to re-introduce previously lifted restrictions during the seven year transitional period, in the event of a serious disturbance in the labour market. However, the accession treaty does not include emergency provisions which allow transitional restrictions to continue for longer than seven years.

The European Commission has published a [summary table](#) of the EU-27 Member States’ use of transitional restrictions for Croatian workers.¹² Countries that had decided to apply transitional restrictions (as at 4 July 2013) included Belgium, Germany, Greece, Spain, France, the Netherlands, Austria, Slovenia and the UK. Countries that had decided to give Croatian workers free access to their labour markets included Denmark, Ireland, Italy, Poland, Portugal, Finland and Sweden.

2 Croatian nationals’ rights to come to the UK after 1 July 2013

Before 1 July 2013, Croatian citizens were required to meet the conditions specified in the UK’s Immigration Rules in order to be eligible for permission to enter or remain in the UK.¹³ Opportunities to work in the UK, for example, were generally restricted to skilled workers eligible for a visa under the points-based system.

Since 1 July 2013 Croatian nationals’ rights to travel to, live and work in the UK have been based on EU law and the transitional restrictions for workers, rather than the Immigration Rules.

A Home Office *news update* summarises Croatian nationals’ rights post-1 July 2013:

Croatian nationals can enter and live in the UK without permission under our immigration rules. However, they will need permission to work in the UK unless they are exempt.

Students wanting to study in the UK do not need to be sponsored under Tier 4, but if they want or need to work, they must obtain an accession worker authorisation document unless they are exempt.

A Croatian national working without permission is committing a criminal offence under the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013.

¹² European Commission, Employment , Social Affairs & Inclusion, ‘[Enlargement - transitional provisions](#)’ (accessed on 4 July 2013)

¹³ [HC 395 of 1993-4 \(as amended\)](#)

This could lead to a fine and/or imprisonment for both the Croatian national and their employer.¹⁴

Croatian nationals (and their family members) can apply to UK Visas and Immigration for documentation confirming their status and entitlements in the UK.¹⁵

2.1 Workers and job-seekers

Croatian nationals do not have an automatic right to work in the UK.

The UK's transitional restrictions are set out in the *Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013*.¹⁶ The regulations establish a 'worker authorisation scheme' restricting Croatian nationals' access to the UK labour market during the 'accession period' (1 July 2013 - 30 June 2018).

Put briefly, the regulations require Croatian nationals to obtain permission from UK Visas and Immigration ('worker authorisation') before they can work in the UK, unless they fall into one of the categories of persons who are exempt from the requirement to obtain authorisation. Worker authorisation takes the form of an "accession worker authorisation certificate" (also referred to as a "purple registration certificate"). The certificate states the job or type of employment that the worker is restricted to.¹⁷

Croatian nationals subject to worker authorisation only have a right to reside as a worker whilst they have an accession worker authorisation document and are working in accordance with its conditions. They lose worker status if they stop working, and cannot claim a right to reside as a job-seeker.

After legally working without interruption for 12 months, the worker ceases to be subject to the worker authorisation requirement, and has the same right to work as other EU citizens not subject to transitional restrictions. They can apply for a "blue registration document" confirming their right to live and work in the UK (but do not have to).

Qualifying for worker authorisation

Generally speaking, only skilled workers will be eligible for authorisation to work in the UK.

In most cases before being able to apply for worker authorisation the worker will need to have a job offer and 'certificate of sponsorship' from an employer who has a Home Office license to employ foreign workers. The job offer must be in accordance with the requirements for Tier 2 or Tier 5 of the points-based system, or certain non-points-based system categories. The '[Statement of relevant requirements](#)' sets out the applicable requirements. Subject to minor modifications, these reflect the conditions that applied on 9 December 2011 (i.e. the date Croatia's accession treaty was signed).

The requirements for Tier 2 include that the job is skilled to NQF level 4 (or equivalent in Scotland) or above. Employers may be required to demonstrate that they have been unable to recruit from within the resident labour market, and that the salary meets specified minimum rates of pay for the occupation. Tier 5 covers temporary jobs skilled to NQF level 3 or above.

¹⁴ UKBA, update, '[Croatia becomes a member of the EU](#)', 30 June 2013

¹⁵ UK Visas and Immigration is one of the Home Office directorates that replaced the UK Border Agency.

¹⁶ [SI 2013/1460](#)

¹⁷ In certain circumstances the worker may be required to apply for a new certificate if they change jobs.

Once the worker has been offered a job from a licensed employer and been issued with a certificate of sponsorship under Tier 2 or Tier 5, they must apply to UK Visas and Immigration for a purple registration certificate. They cannot start to lawfully work until they have been issued with the certificate.

Employment as a representative of an overseas business, postgraduate doctor or dentist, or domestic worker in a private household is also allowed. These categories do not fall within the points-based system. Instead of issuing a certificate of sponsorship, employers must provide the prospective worker with written confirmation of the job offer, so that they can submit this in support of the purple registration certificate application.

Croatian nationals who are exempt from the worker authorisation requirement

Certain categories of Croatian national are exempt from the requirement to have worker authorisation - for example, those who on 30 June 2013, had leave to enter or remain in the UK without restrictions on taking employment, those who are a family member of an EEA national with a right to reside in the UK, those who are the spouse or partner of a British citizen or person settled in the UK, and those who are the spouse or partner of a non-EEA person who has permission to live and work in the UK.¹⁸

Highly skilled Croatian workers are also exempt from worker authorisation, however they must apply for a "blue registration certificate". Blue certificates will be issued to persons who have been endorsed by a designated competent body in accordance with the Tier 1 (Exceptional Talent) immigration category, or who have been awarded one of certain specified qualifications (e.g. a bachelor, masters or doctoral degree) within 12 months of applying for the certificate.

Penalties for non-compliant workers

It is an offence for Croatian nationals who are subject to worker authorisation to work in the UK during the accession period without a valid accession worker document.¹⁹ They are liable to three months' imprisonment or a fine up to level 5 on the standard scale, or both. Alternatively liability to conviction can be discharged by paying a fixed penalty of £1000.

It is an offence for a person to obtain or seek to obtain a worker authorisation registration certificate by deception. Those found guilty are liable to up to three months' imprisonment or a fine up to level 5 on the standard scale, or both.²⁰

Penalties for non-compliant employers

Employers are liable for a penalty fine of up to £5,000 if they employ a Croatian accession state national who is subject to worker authorisation but does not have a valid accession worker authorisation document or is breaching the conditions attached to that document by working.²¹ There is a process though which an employer can object to or appeal against a penalty notice.²²

It is an offence for an employer knowingly to employ a Croatian accession State national subject to worker authorisation in breach of the regulations.²³ An employer found guilty is

¹⁸ SI 2013/1460, r2

¹⁹ SI 2013/1460, r16

²⁰ SI 2013/1460, r17

²¹ SI 2013/1460, r11

²² SI 2013/1460, r12, r13

²³ SI 2013/1460, r15

liable to up to 51 weeks' imprisonment in England and Wales (or six months in Scotland or Northern Ireland) or a fine up to level 5 on the standard scale, or both.

2.2 Students

Croatian nationals who wish to claim a right to reside as a student must meet the relevant requirements as set out in the EEA Regulations, including holding comprehensive medical insurance.

Croatian students are allowed to work up to 20 hours per week during term-time and full-time during vacations. If they wish to work but do not already have permission to do so, they must first apply for a "yellow registration certificate". This will indicate that they have restricted access to the labour market. Students who do not wish to work are not required to apply for a yellow registration certificate, but can apply for confirmation of their right to reside in the UK if they wish.

2.3 Self-employed or self-sufficient persons

Self-employed or self-sufficient Croatian nationals do not have to apply for documentation confirming their status, but can do so if they wish (by applying for a "yellow registration certificate"). In support of the application they must provide evidence that they are genuinely self-employed. Those claiming a right to reside as a self-sufficient person must also have sufficient resources to be able to maintain themselves and their family without recourse to public funds, including comprehensive medical insurance.

2.4 Estimates of likely Croatian immigration flows

Lord Taylor of Holbeach confirmed that the Government has not prepared any estimates of future Croatian immigration to the UK:

The Government have not made an estimate of the number of Croatians who may migrate to the United Kingdom. Given the variables, including the economic situation and the decisions of other member states, a reliable forecast is not possible. Croatia is a small country and not traditionally a source of migrants to the United Kingdom. There is little reason to expect a large influx after 1 July. However, in the light of previous experience, it would be rash not to take the precaution of applying restrictions, particularly if other member states do so.²⁴

He went on to say that the transitional restrictions are "as restrictive as the terms of Croatia's accession to the EU permit them to be" and pointed out that only 90 Croatian nationals were admitted to the UK for the purpose of work under the points-based system in 2012.

Library Research Paper 12/64 *European Union (Croatian Accession and Irish Protocol) Bill* includes discussion of the potential impact of Croatia's EU accession on the UK (including immigration levels).

3 Practical guidance sources for Croatian nationals and employers

The UKBA website section for [Croatian nationals](#) contains detailed guidance about the rights that they and their family members have to live and work in the UK and how to apply for documents confirming their rights and status in the UK.

There is a separate [guidance booklet for employers](#). It includes the following summary of the different types of documentation issued to Croatian nationals in the UK:

²⁴ [HL Deb 4 June 2013 cGC182-3](#)

Documents issued to a Croatian national and what it allows them to do.

Blue registration certificates These certificates indicate that the holder has full access to Treaty rights and that their access to the UK labour market is not restricted. This group includes highly skilled migrants, the Croatian national spouse or civil partner of a UK national or a person settled in the UK, and the other categories exempt from requiring work authorisation.

Yellow registration certificates These certificates indicate that the holder does not have full access to the labour market. This certificate will state the manner in which the holder is exercising a treaty right. This will normally cover those Croatian nationals who are exercising Treaty rights other than as a worker, for example, as a student.

Purple registration certificates These are issued to those Croatian nationals who must have permission to work in the UK. The work that the holder is allowed to do will be stated on the purple registration certificate.²⁵

²⁵ Home Office, *Employing a Croatian national in the UK*, p.12 (undated; accessed 8 July 2013)