

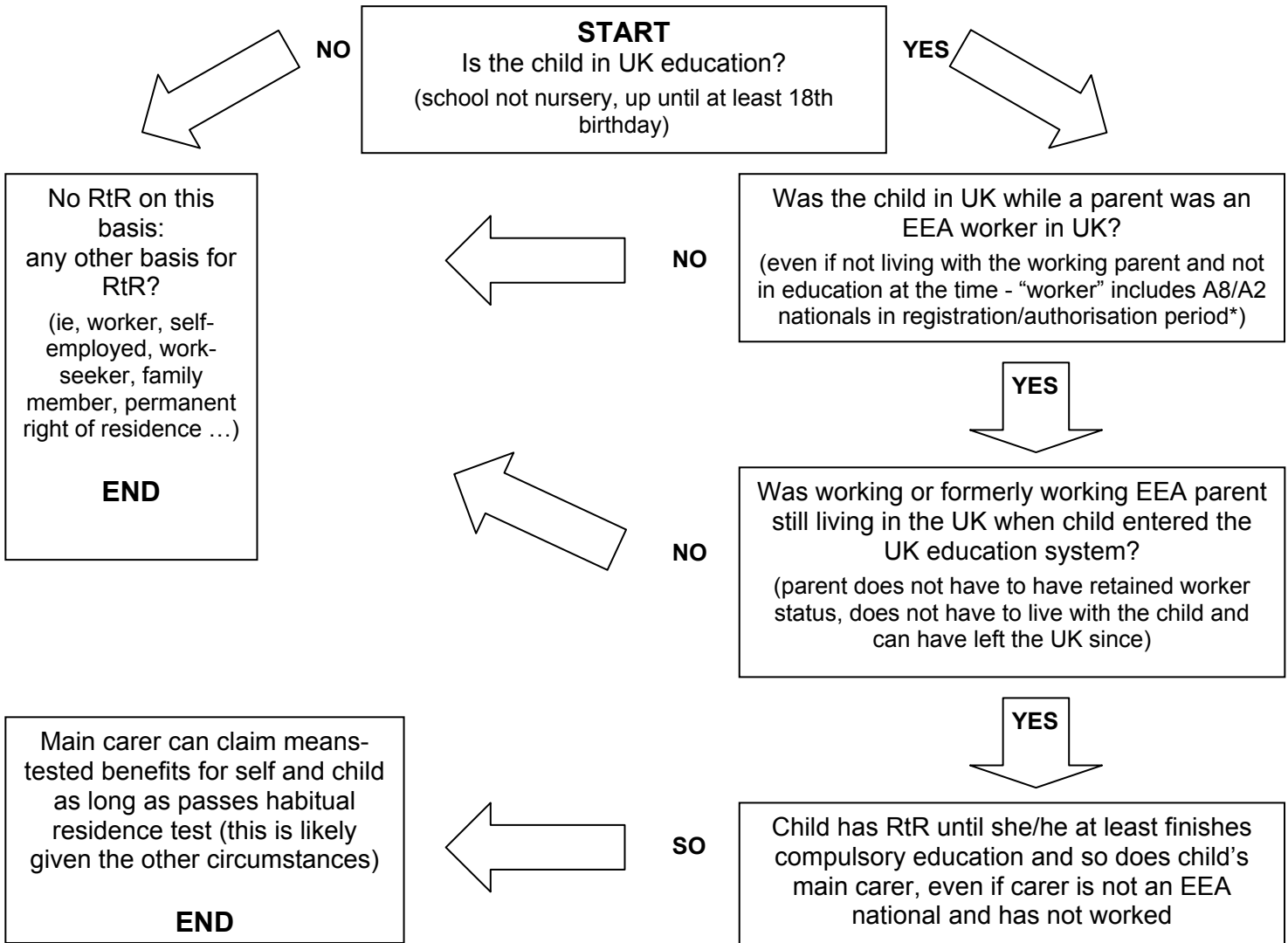
# Right to reside – parent or carer of a child in education

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In order to claim means-tested benefits, child tax credits and child benefit, it is necessary to have a right to reside (RtR) in the UK. This means that economically inactive EEA<sup>1</sup> nationals might not be able to claim these benefits in their own right.

However, following a number of European Court of Justice rulings<sup>2</sup>, it has been established that where children of EEA national workers, or former workers, are in the UK education system, they and their main carer (who might or might not be their parent) have a RtR in the UK for the purposes of homelessness assistance. These rulings apply to the RtR test for benefits and tax credits and the principles have since been applied and clarified by domestic court and tribunal rulings.

This diagram is a guide to how these rights work:



The DWP and HMRC have issued guidance<sup>3</sup> to their decision makers regarding RtR in these circumstances. However, the DWP's guidance is not entirely accurate, arguably misinterpreting the caselaw on the important point of whether the parent's work and child's education have to coincide; this is not the case with the HMRC's guidance. There is also an outstanding question still before the Upper Tribunal<sup>4</sup> as to whether these rights apply to those who are or have been self-employed – CPAG has taken this on as a test case (see website for updates).

For further advice and information regarding these rights or any other questions regarding benefits or tax credits contact CPAG in Scotland Advice line on 0141 552 0552 or email [advice@cpagscotland.org.uk](mailto:advice@cpagscotland.org.uk).

<sup>1</sup> EEA nationals are those from all the EU countries, including the A8 and A2 accession states, plus Iceland, Liechtenstein and Norway

<sup>2</sup> Primarily the Baumbast (C-413/99), Ibrahim (C-310/08) and Teixeira (C-480/08) cases

<sup>3</sup> DWP Memo DMG 30/10 and TCTM02089 of the Tax Credit Technical Manual, available on the DWP and HMRC websites

<sup>4</sup> CIS/2357/2009 – now referred to the European Court of Justice

\* CIS/0647/2009 has confirmed that "worker" includes accession state nationals who are registered even if they do not complete 12 months on the scheme and according to the Zalewska case could also include the first month of unauthorised work