

## **RIGHT TO RESIDE - EU SETTLEMENT SCHEME (EUSS) – IS, JSA, ESA & SPC**

| <b>Contents</b>                              | <b>Paragraphs</b> |
|--|-------------------|
| Introduction                                 | 1 - 4             |
| EU Settlement Scheme                         | 5 - 6             |
| Settled Status – Indefinite Leave to Remain  | 7                 |
| Pre-settled Status – Limited Leave to Remain | 8 - 11            |
| EUSS Couple Claims                           | 12 - 13           |

### **Introduction**

- 1 This memo provides guidance on the amendments to IS (Gen) Regs, JSA Regs, ESA Regs and SPC Regs 2002 which come into force from 7.5.19<sup>1</sup>.

*1 Social Security (Income-related benefits)(Updating and Amendment)(EU Exit) Regulations 2019, reg 1 (SI 2019 No. 872)*

- 2 A new right to reside has been created for EEA nationals in [Appendix EU to the Immigration Rules](#) made under the Immigration Act 1971. Applicants to the EU Settlement Scheme (EUSS) can be granted either Indefinite Leave to Enter (ILE)/Indefinite Leave to Remain (ILR)(“Settled Status”) or Limited Leave to Enter (LLE)/Limited Leave to Remain (LLR)(“Pre-settled Status”) by the Home Office (HO). These amendments insert specified legislation<sup>1</sup>, which provides that this new right to reside for those with LLE/LLR is not a relevant right to reside for the purposes of establishing habitual residence.

**Note:** All further references to ILR and LLR within this memo should be read as also including ILE and LLE respectively.

*1 IS (Gen) Regs, reg 21AA(3A); ESA Regs, reg 70(3A); JSA Regs, reg 85A(3A); SPC Regs, reg 2(3A)*

- 3 These amendments also reflect the change that enables a non-EEA national carer of a British Citizen<sup>1</sup> (Zambrano carer), to be granted LLR under Appendix EU. This

continues to be a right to reside that is not relevant for the purposes of establishing habitual residence<sup>2</sup>.

**Note:** From 1.5.19, applications can be made under the EUSS by a person with a Zambrano right to reside. Applicants will be granted ILR where they have completed a 5 year qualifying period<sup>3</sup>, and consequently will satisfy the right to reside element of the Habitual Residence Test for the purposes of claiming IS, JSA, ESA or SPC.

*1 Imm (EEA) Regs, reg 16(5); 2 IS (Gen) Regs, reg 21AA(3)(bb) & (3A)(b); JSA Regs, reg 85A(3)(aa) & (3A)(b);  
ESA Regs, reg 70(3)(bb) & (3A)(b); SPC Regs, reg 2(3)(bb) & (3A)(b);  
3 Appendix EU, Immigration Rule 11, condition 3*

- 4 These amendments also update specified legislation<sup>1</sup> that currently refers to Imm (EEA) Regs 2006, so that they refer to Imm (EEA) Regs 2016. This is because the 2016 Regulations revoked the 2006 Regulations<sup>2</sup>.

*1 IS (Gen) Regs, reg 21AA(3)(a) & (4)(za); JSA Regs, reg 85A(3)(a) & (4)(za); ESA Regs, reg 70(3)(a) & (4)(za); SPC  
Regs, reg 2(3)(a) & (4)(za); 2 Imm (EEA) Regs 2016, Sch 4, Part 1, para 1*

## EU Settlement Scheme

- 5 The HO rolled out the EUSS nationally from 30.3.19. From September 2018, the HO started testing the introduction of the EUSS for EU citizens and family members of EU citizens to apply to the EUSS, if they wish to continue to live in the UK after the specified date.
- 6 The HO has started issuing Settled Status notifications, which claimants can print off from their online HO account. These notifications are not proof of Settled Status or Pre-settled Status on their own, as they do not contain biometric information. These notifications should be accepted from the claimant as supporting evidence, which can be verified through HO services, using the existing HO Evidence and Enquiry stencil.

## Settled Status – Indefinite Leave to Remain

- 7 Where a claimant has been granted ILR i.e. Settled Status under the EUSS, they will satisfy the right to reside element of the Habitual Residence Test for the purposes of claiming IS, JSA, ESA or SPC.

**Note:** It is not necessary for DMs to apply the Imm (EEA) Regs 2016 where the claimant has been granted ILR, as the claimant does not need a qualifying right to reside.

## Pre-settled Status – Limited Leave to Remain

- 8 Where a claimant has been granted LLR i.e. Pre-settled Status under the EUSS, they will not automatically have a right to reside which is relevant for the purposes of claiming IS, JSA, ESA or SPC. The claimant is still required to demonstrate that they are exercising a qualifying right to reside under the Imm (EEA) Regs 2016, such as worker status, self-employed status or permanent residence.
- 9 HRT DMs must continue to apply the Imm (EEA) Regs 2016 for claims from EEA nationals and their family members who have been granted LLR or have yet to apply for Settled Status.
- 10 IS (Gen) Regs, JSA Regs, ESA Regs<sup>1</sup> provide that a person is a person from abroad (or a person not in Great Britain for the purposes of SPC Regs<sup>1</sup>), if that person is not habitually resident in the CTA (UK, Channel Islands, Isle of Man or Republic of Ireland). No person shall be treated as habitually resident without having a relevant right to reside in the place where that person is living<sup>2</sup>. Those rights to reside do not include (amongst others<sup>3</sup>) a right which exists by having been granted limited leave to enter or remain in the UK by virtue of

1. Appendix EU to the Immigration Rules<sup>4</sup> **or**
2. being a person with a Zambrano right to reside as defined in Annex 1 of Appendix EU to the Immigration Rules<sup>5</sup>.

*1 IS (Gen)Regs, reg 21AA(1); JSA Regs, reg 85A(1); ESA Regs, reg 70(1); SPC Regs, reg 2(1); 2 IS (Gen)Regs, reg 21AA(2); JSA Regs, reg 85A(2); ESA Regs, reg 70(2); SPC Regs, reg 2(2); 3 IS (Gen)Regs, reg 21AA(3); JSA Regs, reg 85A(3); ESA Regs, reg 70(3); SPC Regs, reg 2(3); 4 IS (Gen)Regs, reg 21AA(3A)(a); JSA Regs, reg 85A(3A)(a); ESA Regs, reg 70(3A)(a); SPC Regs, reg 2(3A)(a); 5 IS (Gen)Regs, reg 21AA(3A)(b); JSA Regs, reg 85A(3A)(b); ESA Regs, reg 70(3A)(b); SPC Regs, reg 2(3A)(b)*

- 11 The effect of the amendment at paragraph 10 above, is that this new right to reside is not a relevant right to reside for the purposes of establishing habitual residence.

**Note:** Although the claimant has been granted LLR (which is not a right to reside that allows access to income-related benefits) they may still be able to exercise a qualifying right to reside under the Imm (EEA) Regs 2016 (see paragraphs 8 and 9 above).

## EUSS Couple Claims

- 12 A family member of an EEA national will not be able to derive rights from that person's status under the EUSS. This is because Settled Status is granted under UK Immigration Rules which do not provide for derived or derivative rights. The family



member may be eligible for Settled Status or Pre-settled Status under the EUSS in their own right.

- 13 The EEA national will need to exercise a qualifying right to reside under the Imm (EEA) Regs 2016 for a family member to derive rights. While the UK remains in the EU (and until the Imm (EEA) Regs 2016 are revoked), DMs should still apply the Imm (EEA) Regs 2016 to someone who has been granted ILR & LLR in order to check whether a family member can derive a right to reside from them under the Imm (EEA) Regs 2016. Where an EEA national has been granted ILR or LLR, that does not mean that they cannot still rely on the Imm (EEA) Regs 2016<sup>1</sup>.

*1 Imm (EEA) Regs 2016, reg 43 & Sch 3*

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E19, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 04/19](#) - Obtaining legal advice and guidance on the Law.

**DMA Leeds: May 2019**

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**