

RIGHT TO RESIDE – THE IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) ACT 2020 (CONSEQUENTIAL, SAVING, TRANSITIONAL AND TRANSITORY PROVISIONS) (EU EXIT) REGULATIONS 2020– IS, JSA, ESA & SPC

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Introduction

- 1 Following Royal Assent of Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (“the ISSC Act”) which ended Free Movement, the ISSC Act¹ makes the provisions in this statutory instrument (“SI”). The Regulations within this SI amend legislation in the areas of immigration and nationality, as well as in the areas of benefits and services and devolved matters where



changes are required for an immigration purpose to reflect the end of free movement. These changes are introduced by the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020² (commonly referred to as “the HO Consequential SI”). The majority of the changes come into force at the end of the transition period, at 11pm on 31.12.20³. However, see paragraph 3 below for the exceptions.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, s.5 & s.8(5); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 2020 No. 1309); 3. reg 1(2)

- 2 The instrument makes changes for the following four purposes
 1. to align the treatment of EEA citizens who are not protected by the EU Withdrawal Agreement, the EEA European Free Trade Association Separation Agreement and the Swiss Citizens’ Rights Agreement (“the Withdrawal Agreements”) and the UK’s implementation of those agreements, with non-EEA citizens in the immigration system from 1.1.21 (referred to throughout this memo as “newly arriving EEA citizens”) **and**
 2. to make some savings and transitional provisions, including for those with status under the EUSS (in addition to those made by and under the Withdrawal Agreement Act 2020) **and**
 3. to amend provisions relating to retained EU law **and**
 4. to reflect the Act’s provisions to protect the rights of Irish citizens.
- 3 The majority of the provisions will take effect when the Immigration (European Economic Area) Regulations 2016 (“the Imm (EEA) Regs 2016”) are revoked (i.e. 11pm on 31.12.20), with the following exceptions
 1. regulations 47 and 48 will come into force immediately before the Imm (EEA) Regs 2016 are revoked **and**
 2. regulation 49, which amends the Grace Period SI (see Memo DMG 26/20 & Memo ADM 30/20 - The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020), also comes into force immediately before the Imm (EEA) Regs 2016 are revoked, so that the Grace Period SI comes into force as amended **and**
 3. regulations 20(7) and (8) will come into force on 1.12.20. These provisions bring EEA citizens into scope of the immigration skills charge



and commence when the skilled worker route opens under the points-based immigration system for those EEA citizens who arrive in the UK from 1.1.21 **and**

4. all the provisions that bring EEA citizens within the scope of the sham marriage and civil partnership referral and investigation scheme will come into force on 1.7.21, after the end of the grace period and the deadline for applications to the EUSS.

Background

- 4 Currently, EU law provides for the free movement to the UK, of EU, EEA EFTA (Iceland, Norway, Lichtenstein) and Swiss citizens (referred to collectively as “EEA citizens”). Free movement is predominantly governed by the EU Free Movement Directive 2004/38/EC, which is primarily implemented in UK law through the Imm (EEA) Regs 2016. The Imm (EEA) Regs 2016 have been retained in UK law by the EU (Withdrawal) Act 2018.
- 5 The Government has committed to ending free movement to the UK and introducing a new points-based immigration system. This means that there will no longer be separate arrangements for EEA citizens. Instead, there will be one new points-based immigration system. To implement this new immigration system, primary legislation will repeal EU law implemented into domestic legislation and then retain other EU law to ensure operation of this. The ISSC Act does this, with the intention of ending free movement at the end of the transition period (at 11pm on 31.12.20), paving the way for the new points-based immigration system to be rolled out. The points-based immigration system will apply to EEA and non-EEA citizens from 1.1.21 and will be set out within the Immigration Rules.
- 6 The ISSC Act
 1. ends freedom of movement² to the UK and make newly arriving EEA citizens and their family members subject to UK immigration controls. They will therefore require leave to enter and remain in the UK under immigration legislation¹ in the same way that non-EEA citizens do now **and**
 2. protects the status of Irish citizens³ in the UK, confirming that their right to enter and remain in the UK without permission when their free movement right ends **and**



3. contains powers to amend, by regulations, retained EU law governing social security coordination⁴, enabling policy changes to be delivered after the end of the transition period.

1. The Immigration Act 1971; 2. The ISSC Act, s.1; 3. s.2; 4. s.6

- 7 These alignment provisions may impact families as a result of the need for individuals to meet the eligibility criteria under the appropriate immigration route, rather than being able to move to the UK under free movement rules as now. However, the changes will not impact those who are resident in the UK by the end of the transition period and who are entitled to apply under the EU Settlement Scheme (“EUSS”), which includes provision for holders of EUSS status to be joined by their qualifying family members (i.e. those family members where the relationship has been established by the end of the transition period).

The Home Office Consequential SI

- 8 The ISSC Act¹ creates a substantial change to immigration law. There are references to free movement and related matters across the UK’s statute book in both primary and secondary legislation. The ISSC Act provides a delegated power to the Secretary of State to deal with amendments, savings and modifications required as a consequence of, or in connection with the ISSC Act.

1. The ISSC Act, Part 1

- 9 Making changes to a wide range of domestic primary and secondary legislation, to reflect the end of free movement by removing references to EU law and ensuring the coherence of UK legislation, the Home Office Consequential SI

1. amends legislation in the areas of immigration and nationality **and**
2. amends legislation on access to benefits and services and devolved matters where changes are required to ensure that the regulations are updated and reflect the ending of free movement **and**
3. aligns EEA citizens, other than those protected by the Withdrawal Agreement, with non-EEA citizens in the immigration system from 1.1.21 by
 - 3.1 specifying that EEA citizens will be person’s subject to immigration control (“PSIC”) for the purpose of accessing benefits and services¹ **and**



- 3.2 permitting EEA citizens to be provided with assistance for voluntary departure from the UK in appropriate circumstances² **and**
- 3.3 bringing newly arriving EEA citizens in scope of the sham marriage and civil partnership referral and investigation scheme³ **and**
- 3.4 permitting EEA citizens to apply to the Special Immigration Appeals Commission to set aside an exclusion direction in the same way as non-EEA citizens⁴ **and**
- 3.5 applying the same civil service nationality rules to newly arriving EEA citizens and their family members, as non-EEA citizens by amending the Aliens Employment Act 1955⁵ **and**
- 4. makes savings and transitional provisions by ensuring that people who have a right of appeal pending under the Imm (EEA) Regs 2016 when the ISSC Act repeals the governing legislation⁶, continue to have their appeal considered under that legislation⁷ **and**
- 5. amends provisions relating to retained EU law by removing provisions setting out the requirements for the submission of biometrics for documentation evidencing an EU right of residence⁸ **and**
- 6. reflects the ISSC Act that protects⁹ the rights of all Irish citizens to make clear that they continue to have a right to enter or remain irrespective of the ending of free movement. Furthermore, it makes changes to clarify that individuals who have been excluded where it is conducive to the public good will not benefit from the ability to enter the UK without requiring leave under the Immigration Act 1971¹⁰.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 12(7); 2. Reg 13; 3. Reg 20; 4. Reg 11 & Sch. 4; 5. Reg 4; 6. Nationality, Immigration and Asylum Act 2002, s.109; 7. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 33, 35, 38, 39 & Sch. 3; 8. Regs 32, 34 & 80; 9. Reg 78; 10. The Immigration Act 1971, s1(3)

EEA citizens who are resident in the UK before the end of the transition period

- 10 EEA citizens who are resident in the UK before the end of the transition period will be eligible to apply for immigration status under the EUSS. The rights of those with EUSS status will broadly allow them to continue living, working and accessing benefits and services in the UK, as they do now. In line with the Withdrawal Agreement and similar agreements reached with the EU, EEA EFTA States and Switzerland, there will be a six-month grace period from the



end of the transition period i.e. until 30.6.21. This will provide time for those who arrive before the end of the transition period to make their application for EUSS leave. For further guidance relating to the grace period, please see Memo DMG 26/20 & Memo ADM 30/20 – The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (“the Grace Period SI”). The effect of the Grace Period SI is to prevent the changes impacting those who are eligible to apply to the EUSS but have not yet done so, provided they do so by the end of the deadline for applications of 30.6.21.

Note: As required by the Withdrawal Agreement¹, the Government has committed to accepting late applications from those with reasonable grounds for missing the 30.6.21 application deadline for applying for EUSS leave to enter or remain. If a late application is made for EUSS leave, the Home Office will consider whether there were reasonable grounds for making a late application.

1. Withdrawal Agreement, Art. 18(d)

Amendment to the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (“the Grace Period SI”)

- 11 An amendment¹ is made to the Grace period SI² which provides that the Imm (EEA) Regs 2016 continue to apply, with the specified modifications, for the purposes connected to the provision of certain benefits. The Social Fund Maternity and Funeral Expenses (General) Regulations 2005³ are added to that list.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 49; 2. The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 11; 3. SFMFE (Gen) Regs, reg 7(3)

EEA citizens and their family members who come to the UK after the end of the transition period

- 12 The changes introduced by the HO Consequential SI are made as a result of the end of free movement, which will be replaced by a new points-based immigration system in which EEA and non-EEA citizens enter and remain in the UK on the same basis. The rights of those with EUSS status will broadly allow them to continue living, working and accessing benefits and services in the UK as they do now. However, the changes made by the Home Office Consequential SI, aligning EEA citizens with non-EEA citizens, will impact EEA citizens and their family members who come to the UK after the end of the transition period i.e. from 1.1.21, and who are not eligible for the EUSS.



The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 ("the Frontier Workers SI")

- 13 Amendment¹ is made to the Frontier Workers SI² to insert the following new paragraph which exempts Irish citizen frontier workers from becoming a PSIC, unless they are subject to a deportation order³, exclusion order⁴ or international travel ban⁵

"Exemption for Irish citizens

21A. Regulations 7 and 13 to 20 do not apply to a frontier worker who is an Irish citizen unless any of paragraphs (2) to (4) of section 3ZA of the Immigration Act 1971 also apply to that citizen."

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 50; 2. The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020, reg 21A; 3. Immigration Act 1971, s. 3ZA(2); 4. s. 3ZA(3); 5. s. 3ZA(4)

Amendment and savings of primary and secondary legislation

- 14 The table at **Appendix 1** details amendments and savings to primary legislation.
- 15 The table at **Appendix 2** details amendments and savings to secondary legislation.
- 16 The table at **Appendix 3** details the revocation of secondary legislation.
- 17 The table at **Appendix 4** details amendment of primary and secondary nationality legislation.

Access to benefits and services

- 18 Part 3 of this instrument contains amendments to legislation governing access to benefits and services, to reflect that an EEA citizen will be a PSIC for these purposes as a result of changes to section 115 of the Immigration and Asylum Act 1999. This includes, where necessary, changes to devolved legislation which are required to reflect immigration changes. Relevant legislation is amended to remove references to EU legislation which will no longer have effect in the UK, and to make provision, where required, to ensure continued access to benefits and housing as now, for those with status under the EUSS and frontier workers protected under the Withdrawal Agreements.



- 19 The Home Office Consequential SI¹ makes changes to legislation governing access to IS, JSA, ESA & SPC. Ordinarily, entitlements to benefits are predicated on an individual's immigration status. Currently, EEA citizens have entitlements under EU law. These Home Office Consequential SI changes have the effect of treating newly arriving EEA citizens in the same way that non-EEA citizens are currently treated, in terms of their eligibility for housing and benefits. This means that EEA citizens and their family members arriving in the UK on or after 1.1.21 and who are subject to the new points-based immigration system will generally have no access to non-contributory benefits, until they have been granted indefinite leave to remain by the Home Office.

Note: Access to contributory benefits and State Pension remain unchanged.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Part 3

- 20 Those residing in the UK before the end of the transition period who have been granted indefinite leave to enter or remain (settled status) or limited leave to enter or remain (pre-settled status) under the EUSS will continue to be able to access benefits and services as they do now (DMG 073490 – 073495). The Home Office Consequential SI therefore saves part of the Imm (EEA) Regs 2016 to ensure that the current eligibility tests for access to benefits and services continue to apply to that cohort as they do now.

Note: The Grace Period SI (see Memo ADM 30/20 & Memo DMG 26/20 - The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020) makes temporary savings for those who are residing lawfully in the UK by the end of the transition period but have not made an application to the EUSS by then, until their application is finally determined (providing their application is made by 30.6.21). However, see Note to paragraph 10 above concerning Home Office acceptance of late applications.

- 21 Those who are in scope of the Withdrawal Agreement and who have had a right to reside under EU law at the end of the transition period, but who have not applied to the EUSS by the application deadline date of 30.6.21 will lose their temporary protection. Unless they make their application by the deadline, the changes to align EEA citizens with non-EEA citizens would impact them, including their access to benefits and services. Obtaining status under the EUSS would resolve their immigration status and associated rights and entitlements. Where DMs come across such claimants, they should be signposted to the Home Office.



- 22 This Home Office Consequential SI makes amendments¹ to specified legislation² to ensure those with EUSS limited leave to enter or remain (pre-settled status) do not become chargeable for secondary health services (sometimes referred to as 'hospital and community care'). This change is required since those with EUSS limited leave to enter or remain (pre-settled status) would not currently be deemed to be 'ordinarily resident' and would therefore be chargeable for NHS healthcare. The amendment specifies that those granted EUSS limited leave to enter or remain are not defined as an "overseas visitor". This means that they will not be prohibited by their immigration status from accessing NHS healthcare without charge. Instead, they will be subject to the same test of ordinary residence as those granted EUSS indefinite leave to enter or remain (settled status) or other immigration rules for non-EEA migrants.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 20(4); 2. Immigration Act 2014, s.39

Amendments to benefit legislation

- 23 A person cannot be treated as habitually resident in the Common Travel Area ("CTA") unless they have a right to reside in the CTA¹ (DMG 072771). However certain rights to reside are specifically excluded by benefit regulations² (DMG 073450 et seq). Thus, if a person only has an excluded right to reside, they cannot be treated as habitually resident in the CTA. They are therefore a person from abroad/person not in GB and not entitled to IS, JSA(IB), ESA(IR) or SPC. Guidance below, detail the amendments to benefit legislation which, from 1.1.21, omits the benefit exclusions provided for under EU law.

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

Income Support (General) Regulations 1987

- 24 In line with the guidance at paragraph 23 above, specified benefit legislation¹ specifically excludes certain rights to reside for IS. This Home Office Consequential SI amends that provision, to omit² the excluded rights to reside which reference EU law³.

1. IS (Gen) Regs, reg 21AA(3); 2. reg 21AA(3)(c) – (e); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 53(2)(a)



25 In order to allow frontier workers (and their family members who have been granted EUSS leave) to have access to IS, where they meet the relevant conditions, the following provisions are inserted¹ into specified legislation² after paragraph (4)(zd)

“(ze) a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020;

(zf) a family member, of a person referred to in sub-paragraph (ze), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;”

Note: Further guidance can be found in Memo DMG 29/20 & Memo ADM 33/20 - frontier workers and the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 53(2)(b); 2. IS (Gen) Regs, reg 21AA(4)

26 A provision¹ is also inserted² which provides that within this regulation, references to the Imm (EEA) Regs 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. This has been added so that a person reading the legislation knows that references to the Imm (EEA) Regs 2016 are to be read in conjunction with the Home Office Consequential SI, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1. IS (Gen) Regs, reg 21AA(6); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 53(2)(c)

Jobseeker’s Allowance Regulations 1996

27 In line with the guidance at paragraph 23 above, specified benefit legislation¹ specifically excludes certain rights to reside for JSA(IB). The Home Office Consequential SI amends that provision, to omit² the excluded rights to reside which reference EU law³.

1. JSA Regs, reg 85A(3); 2. reg 85A(3)(c) – (e); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 55(2)(a)



28 In order to allow frontier workers (and their family members who have been granted EUSS leave) to have access to JSA(IB), where they meet the relevant conditions, the following provisions are inserted¹ into specified legislation after paragraph (4)(zd)

“(ze) a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020;

(zf) a family member, of a person referred to in sub-paragraph (ze), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;”

Note: Further guidance can be found in Memo DMG 29/20 & Memo ADM 33/20 - frontier workers and the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 55(2)(b); 2. JSA Regs, reg 85A(4)

29 A provision¹ is also inserted² which provides that within this regulation, references to the Imm (EEA) Regs 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. This has been added so that a person reading the legislation knows that references to the Imm (EEA) Regs 2016 are to be read in conjunction with the Home Office Consequential SI, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1. JSA Regs, reg 85A(6); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 55(2)(c)

State Pension Credit Regulations 2002

30 In line with the guidance at paragraph 23 above, specified benefit legislation¹ specifically excludes certain rights to reside for SPC. The Home Office Consequential SI amends that provision, to omit² the excluded rights to reside which reference EU law³.

1. SPC Regs, reg 2(3); 2. reg 2(3)(c) – (e); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 59(2)(a)

31 In order to allow frontier workers (and their family members who have been granted EUSS leave) to have access to SPC, where they meet the relevant



conditions, the following provisions are inserted¹ into legislation² after paragraph (4)(zd)

“(ze) a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020;

(zf) a family member, of a person referred to in sub-paragraph (ze), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;”

Note: Further guidance can be found in Memo DMG 29/20 & Memo ADM 33/20 - frontier workers and the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 59(2)(b); 2. SPC Regs, reg 2(4)

32 A provision¹ is also inserted² which provides that within this regulation, references to the Imm (EEA) Regs 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. This has been added so that a person reading the legislation knows that references to the Imm (EEA) Regs 2016 are to be read in conjunction with the Home Office Consequential SI, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1. SPC Regs, reg 2(6); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 59(2)(c)

Employment and Support Allowance Regulations 2008

33 In line with the guidance at paragraph 23 above, specified benefit¹ legislation specifically excludes certain rights to reside for ESA(IR). The Home Office Consequential SI amends that provision, to omit² the excluded rights to reside which reference EU law³.

1. ESA Regs, reg 70(3); 2. reg 70(3)(c) – (e); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 73(2)(a)

34 In order to allow frontier workers (and their family members who have been granted EUSS leave) to have access to ESA(IR), where they meet the relevant conditions, the following provisions are inserted¹ into legislation² after paragraph (4)(zd)



- “(ze) a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020;
- (zf) a family member, of a person referred to in sub-paragraph (ze), who has been granted limited leave to enter, or remain in, the United Kingdom by virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;”

Note: Further guidance can be found in Memo DMG 29/20 & Memo ADM 33/20 - frontier workers and the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 73(2)(b); 2. ESA Regs, reg 70(4)

- 35 A provision¹ is also inserted² which provides that within this regulation, references to the Imm (EEA) Regs 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. This has been added so that a person reading the legislation knows that references to the Imm (EEA) Regs 2016 are to be read in conjunction with the Home Office Consequential SI, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1. ESA Regs, reg 70(6); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 73(2)(c)

Social Fund Maternity and Funeral Expenses (General) Regulations 2005

- 36 DMG guidance at 39102 lists the conditions¹ of entitlement which must be satisfied for a social fund funeral payment to be made. The sixth condition² is that the funeral takes place
1. in a case where paragraph (10) applies, in a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland **or**
 2. in any other case, in the UK.

1. SFMFE (Gen) Regs, reg 7; 2. Reg 7(9)

- 37 This Home Office Consequential SI amends¹ sub-paragraph (10)², which is substituted with



“(10) This paragraph applies where the responsible person or the responsible person’s partner is

1. a qualified person who is a worker³ (see DMG 072810 – 072817) or self-employed person⁴ (see DMG 072841 – 072864) **or**
2. a person who retains the status⁵ (see DMG 072821 – 072831) of worker or self-employed person **or**
3. a person who is a family member⁶ (see DMG 072900 – 072901) of
 - 3.1 a worker **or**
 - 3.2 a self-employed person **or**
 - 3.3 a person who retains the status of a worker or self-employed person **or**
4. a person who has a right to reside permanently⁷ in the UK (see DMG 073174) **or**
5. a person granted indefinite leave to enter or remain in the UK⁸ under the EUSS⁹.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 62(2)(a); 2. SFMFE (Gen) Regs, reg 7(10); 3. Imm (EEA) Regs 2016, reg 6(1)(b); 4. Reg 6(1)(c); 5. Regs 6(2) or 6(4); 6. Reg 7(1); 7. reg 15(1)(c), (d) or (e); 8. Immigration Act 1971; 9. Immigration Rules, Appendix EU

38 From 1.1.21, DMG guidance at 39102 **5.2.a – 5.2.e** should be read as if referring to the Imm (EEA) Regs 2016, rather than the Citizenship Directive 2004/38/EC¹. Furthermore, an additional provision is added (shown at paragraph 37 **5.** above), to include a person who has been granted indefinite leave to enter or remain in the UK under the EUSS².

1. SFMFE (Gen) Regs, reg 7(10)(a) – 7(10)(d); 2. reg 7(10)(e)

39 A provision¹ is also inserted² which provides that within this regulation, references to the Imm (EEA) Regs 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020. This has been added so that a person reading the legislation knows that references to the Imm (EEA) Regs 2016 are to be read in conjunction with the Home Office Consequential SI, which makes clear they



only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1. SFMFE (Gen) Regs, reg 7(11); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 62(2)(b)

Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000

40 This Home Office Consequential SI makes amendments to legislation governing access to benefits, to reflect that an EEA citizen will be a PSIC for these purposes as a result of changes to section 115 of the Immigration and Asylum Act 1999. This includes an amendment¹ to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 which, for the purposes of AA, SDA, CA, DLA, PIP, Social Fund payments and Health in Pregnancy grants, omits paragraph 1 of Part II of the Schedule (persons not excluded from certain benefits under section 115 of the Immigration and Asylum Act 1999). This omission in effect removes family members who have rights under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (commonly known as the European Economic Agreement), from being exempt from the exclusion of being a PSIC.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 57

ECSMA & ESC

41 Further amendments are made to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, by the regulation 2 of The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020.

42 The European Convention on Social and Medical Assistance (“the ECSMA”) and the European Social Charter (“the 1961 ESC”) are treaties of the Council of Europe. The UK has given effect to its obligations under the ECSMA and the 1961 ESC by providing in domestic regulations (the Social Security (Immigration and Asylum) Consequential Provisions Regulations 2000 (“2000 Regs”) under regulation 2 and Schedule Part I, paragraph 4) that a person who is a national of a country that has ratified the ECSMA or the 1961 ESC and who is “lawfully present” in the UK is not excluded under s.115 of the Immigration and Asylum Act 1999 from certain income-related benefits, including UC (see ADM guidance at paragraph 44 below).



43 At present, under s.115(9) of the Immigration and Asylum Act 1999, PSICs do not currently include EEA nationals, and most signatories of the ECSMA and the 1961 ESC are also members of the EEA, except for Turkey and North Macedonia. This means the ECSMA and the 1961 ESC provisions, as set out in the 2000 Regulations, at present, only impact nationals of Turkey and Macedonia. The 2000 Regs enable nationals of those countries to access UC, and other income related benefits, notwithstanding their PSIC status, provided they are also 'lawfully present' (see C1050 to C1065).

44 ADM guidance at C1060 **3.** advises that for the purposes of UC, a person¹ who is a national of a State which has ratified

1. the European Convention on Social and Medical Assistance (ECSMA) done in Paris on 11.12.1953 **or**
2. the Council of Europe Social Charter (CESC) signed in Turin on 18.10.1961

is exempt from the exclusion of being a PSIC², provided they are lawfully present in the UK³.

Note: Caselaw⁴ has clarified that the "lawfully present" requirement means that claimants must still demonstrate that they are exercising a relevant right to reside.

1. SS (I&A) Cpl Amdts Regs, Sch 1, Part I, para 4; 2. Immigration and Asylum Act 1999, s.115; 3. The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (2000 No. 636), reg 2 & Sch., Part 1, para 4; 4. Yesilov v London Borough of Camden [2009] EWCA Civ 4151; Abdirahman v SSWP [2007] EWCA Civ 657

45 After 11pm on 31.12.20, EEA nationals who seek to reside in the UK as part of the new points-based immigration scheme will be categorised in the same way as current Third Country National PSICs. Once such EEA nationals are given leave to enter and remain in the UK, they will be lawfully present, and may still be able to access UC (and other income-related benefits) under the domestic regulations¹ (subject to meeting specific benefit eligibility criteria). They will effectively be in the same situation as current nationals of Turkey and North Macedonia, notwithstanding their PSIC status or any No Recourse to Public Funds (NRPF) condition to which they are subject.

Note: EEA nationals who are already in the UK, but who do not apply for pre-settled or settled status by the 30.6.21 deadline will become PSICs, but because they are not lawfully present and do not a right to reside (they



effectively require leave to enter or remain in the UK but do not have it), the 2000 regulations would not give them any additional rights to access benefits.

1. SS (I&A) Cql Amdts Regs, Sch 1, Part I, para 4; 2. Immigration and Asylum Act 1999, s.115; 3. The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (2000 No. 636), reg 2 & Sch., Part 1, para 4; 4. Yesilov v London Borough of Camden [2009] EWCA Civ 4151; Abdirahman v SSWP [2007] EWCA Civ 657

46 As a result of the paragraph above, amendments¹ are being made to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 which

1. removes paragraph 4 from within Part 1 of the Schedule² from being relevant to persons making a claim for UC (see note below in relation to JSA(IB), IS, SF, ESA(IR) or SPC) **and**
2. amends paragraph 2 of Part II of the Schedule³ by substituting a new paragraph 2. This substituted paragraph provides that a person, who is lawfully working in GB and who
 - 2.1 made a claim for AA, SDA, CA, DLA, PIP, SF payment, Health in Pregnancy grant or Child Benefit⁴ before 1.1.21 **and**
 - 2.2 is a national of a state with which the EU had, before 1.1.21, concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing in the field of social security for the equal treatment of workers who are nationals of the signatory state and their families **or**
3. who is a national of a state with which the UK has concluded an agreement which replaces, in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union which makes provision in the field of social security for workers who are nationals of the signatory state and their families

is not treated as a PSIC for the purposes of the benefits in the specified Regulation⁴.

Note: for the purposes of 1. above, paragraph 4 of Part I of the Schedule continues to provide that lawfully present nationals of States which have ratified the ECSMA or the 1961 ESC are not subject to immigration control for the purposes of JSA(IB), IS, SF, ESA(IR) or SPC⁵.

1. The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020, reg 2; 2. SS (I&A) Cql Amdts Regs, Sch. Part I; 3. Sch. Part II; 4. Reg 2(2); 5. Reg 2(1)



Savings provisions in connection with the Imm (EEA) Regs 2016 – Schedule 3

- 47 Part 6 and Schedule 3 of this SI make savings provisions in relation to the Imm (EEA) Regs 2016. The provisions continue the effect of deportation and exclusion orders made under the Imm (EEA) Regs 2016 and ensure applications made under the Imm (EEA) Regs 2016, before the end of the transition period, can continue to be processed, including any related appeal.
- 48 “EEA Regulations 2016” within Schedule 3 means the Immigration (EEA) Regulations 2016 and, unless provided otherwise, refers to those regulations as they had effect immediately before they were revoked.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 82 & Sch. 3, para 1

Deportation and exclusion orders

- 49 Any deportation or exclusion order made or treated as having been made under the Imm (EEA) Regs 2016, that was existing immediately before the revocation of the Imm (EEA) Regs 2016, continues to apply for the period specified in the order or until that order is revoked¹.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 2(1) & 2(3)

- 50 Any deportation or exclusion order made under the Imm (EEA) Regs 2016, as they are continued in effect by the Grace Period SI, continues to apply for the period specified in the order or until that order is revoked¹.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 2(2) & 2(4)

- 51 The provisions¹ for the revocation of deportation or exclusion orders continue to apply in respect of any deportation order or exclusion order which continues to apply by virtue of this regulation with the modification that that specified legislation is to be read as if, after “exclusion order” there were inserted² “made on the grounds of public policy, public security or public health in accordance with regulation 27”.

1. Imm (EEA) Regs 2016, reg 34(3)-(6); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 2(5)



Pending applications for documentation under the Imm (EEA) Regs 2016

52 The following Imm (EEA) Regs 2016 continue to apply for the purposes of considering and, where appropriate, granting an application for documentation which was validly made in accordance with the Imm (EEA) Regs 2016 before 1.1.21

1. Reg 12 (issue of EEA family permit) **and**
2. Reg 12 where it is continued in effect by the Grace Period SI **and**
3. Reg 17 (issue of registration certificate) **and**
4. Reg 18 (issue of residence card) **and**
5. Reg 19 (issue of a document certifying permanent residence and a permanent residence card) **and**
6. Reg 20 (issue of a derivative residence card).

Existing appeal rights and appeals

53 Certain provisions¹ of the Imm (EEA) Regs 2016 continue to apply² where

1. any appeal which has been brought under the Imm (EEA) Regs 2006 has not been finally determined by 11pm on 31.12.20 **or**
2. any appeal which has been brought under the Imm (EEA) Regs 2016 has not been finally determined by 11pm on 31.12.20 **or**
3. Any EEA decision taken before 11pm on 31.12.20 **or**
4. any EEA decision that continues in effect by virtue of the Grace Period SI that was taken on or before 11pm on 31.12.20.

Note: An appeal is not to be treated as finally determined while a further appeal may be brought and, if such a further appeal is brought, the original appeal is not to be treated as finally determined until the further appeal is determined, withdrawn or abandoned³. An appeal is not to be treated as abandoned solely because the appellant leaves the UK⁴.

1. Imm (EEA) Regs 2016, regs 35-42 & Sch.2; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 5(1); 3. para 5(2)(a); 4. Sch. 3, para 5(2)(b)



Schedule 3 – paragraphs 6 and 7

54 The modifications¹ within paragraphs 55 – 91 below, ensure that applications for documentation under the Imm (EEA) Regs 2016 that are made before the end of the transition period or an application for a family permit made under the Grace period SI, can continue to be processed, including any appeal stage. The modifications also, with paragraph 7, make provision for savings of pending appeals, those that may still be brought and appeals in relation to EEA decisions that still may be taken e.g. under the Grace Period SI and ensure that the repeal of s109 of the Nationality, Immigration and Asylum Act 2002 does not affect the operation of any regulations made under those powers in relation to saved appeals.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6 & para 7

General interpretation

- 55 This provision¹ continues to have effect with the following modifications²
1. as if all instances of the words “*or any other right conferred by the EU Treaties*”³
 - 1.1 in so far as they relate to things done on or after exit day but before 1.1.21, were a reference to a right conferred by the EU Treaties so far as they were applicable to and in the UK by virtue of Part 4 of the withdrawal agreement **or**
 - 1.2 in so far as they relate to things done on or after 11pm on 31.12.20, were omitted **or**
 2. as if all instances of the words “*or the EU Treaties*”⁴
 - 2.1 in so far as they relate to things done on or after exit day but before IP completion day, were a reference to the EU Treaties so far as they were applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement **or**
 - 2.2 in so far as they relate to things done on or after 11pm on 31.12.20, were omitted **or**
 3. as if at the end of the definition of “deportation order”, there were inserted “or under section 5(1) of the Immigration Act 1971”⁵ **or**



4. as if, in the definition of “EEA State”, the words “, *other than the UK*” were omitted⁶ **or**
5. as if at the end of the definition of “exclusion order”, there were inserted “*or directions issued by the Secretary of State for a person not to be given entry that a person is not to be given entry to the UK on the grounds that the person’s exclusion is conducive to the public good*”⁷.

1. Imm (EEA) Regs 2016, reg 2; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6; 3. Sch. 3, para 6(1)(a)(i); 4. Sch. 3, para 6(1)(a)(ii); 5. Sch. 3, para 6(1)(a)(iii); 6. Sch. 3, para 6(1)(a)(iv); 7. Sch. 3, para 6(1)(a)(v)

Continuity of residence

56 This provision¹ continues to have effect, but is modified² to include reference to the Immigration Acts. From 11pm on 31.12.20, DMG guidance at 073361 reads that continuity of residence is broken when

1. a person serves a sentence of imprisonment **or**
2. a deportation or exclusion order is made in relation to a person **or**
3. a person is removed from the UK under the Imm (EEA) Regs 2016 or the Immigration Acts³.

1. Imm (EEA) Regs 2016, reg 3; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(b); 3. Imm (EEA) Regs 2016, reg 3(3)(c)

“Worker”, “self-employed person”, “self-sufficient person” and “student”

57 This provision¹ continues to have effect², but the definition of “self-employed person” is modified to read that a self-employed person means³ a person who is established in the UK in order to pursue activity as a self-employed person within the meaning of specified legislation⁴.

1. Imm (EEA) Regs 2016, reg 4; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(c) 3. Imm (EEA) Regs 2016, reg 4(1)(b); 4. TFEU, Art. 49

Worker or self-employed person who has ceased activity

58 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs 2016, reg 5; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(d)



Qualified person

59 Modifications are made to this provision¹ to reflect the UT judgement of KH². Although the modifications within this memo take effect from 11pm on 31.12.20, DMs should be reminded that current revised DMG guidance relating to the KH judgment, can be found within Memo DMG 27/20 & Memo ADM 31/20 which are currently being drafted.

1. Imm (EEA) Regs 2016, reg 6; 2. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

60 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. DMG guidance at 072864 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. Please see paragraph 59 above regarding current KH³ guidance.

1. Imm (EEA) Regs 2016, reg 6(4C); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(e)(i);
3. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

61 This provision¹ continues to have effect² with the modification that the words “, *when determining whether the person is a jobseeker*” are inserted after the words “employment and”. DMG guidance at 073084 should now be read “**2.** can provide evidence that they are seeking employment and, when determining whether the person is a jobseeker, have a genuine chance of being engaged.”

Note: Please see paragraph 59 above regarding current revised DMG guidance relating to the KH judgment.

1. Imm (EEA) Regs 2016, reg 6(6); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(e)(ii);
3. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

62 This provision¹ continues to have effect² with the modification that the words “, *where that person is a jobseeker*” are inserted after the words “continuing to seek employment and”. DMG guidance at 073090, 073092, 073145, 073149 & 073428 should all now be read to the effect that a person may not retain the status of worker, self-employed person or jobseeker for longer than the relevant period without providing compelling evidence of continuing to seek employment and, where that person is a jobseeker, having a genuine chance of being engaged.

Note: Please see paragraph 59 above regarding current revised DMG guidance relating to the KH³ judgment.



1. *Imm (EEA) Regs 2016, reg 6(7)*; 2. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(e)(iii)*;
3. *KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)*

Family member

63 This provision¹ continues to have effect with no modifications².

1. *Imm (EEA) Regs 2016, reg 7*; 2. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(f)*

Extended family member

64 This provision¹ continues to have effect with no modifications².

1. *Imm (EEA) Regs 2016, reg 8*; 2. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(g)*

Family members and extended family members of British citizens

65 Modifications are made to this provision¹ to reflect the UT judgement of HK² (to reflect that those who have acquired Surinder Singh rights do not need to exercise treaty rights upon their return to the UK). Although the modifications within this memo take effect from 11pm on 31.12.20, DMs should be reminded that DMG guidance is already revised, relating to the HK judgment, and can be found within Memo DMG 21/20 & Memo ADM 24/20.

1. *Imm (EEA) Regs 2016, reg 9*; 2. *HK v SSWP (PC) [2020] UKUT 73 (AAC)*

66 This provision¹ continues to have effect² with the modification that at the end of that paragraph the words “*and BC is to be treated as satisfying any requirement to be a qualified person*” were inserted. DMG guidance at 073254 advises that, if certain conditions are satisfied, family members of British citizens have the same EU law rights of residence as they would if they were a family member of an EEA national. DMG guidance at 073254 should now be read as including the inserted wording. Although, see paragraph 65 above regarding current guidance on HK³.

1. *Imm (EEA) Regs 2016, reg 9(1)*; 2. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(h)(i)*;
3. *HK v SSWP (PC) [2020] UKUT 73 (AAC)*

67 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. DMG guidance at 073259 advises on factors that are relevant to determining whether residence in an EEA State (other than the UK) is or was genuine. DMG guidance at 073259 1. should now be

disregarded. Although, see paragraph 65 above regarding current guidance on HK⁴.

1. Imm (EEA) Regs 2016, reg 9(3); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(h)(ii);
3. Imm (EEA) Regs 2016, reg 9(3)(a); 4. HK v SSWP (PC) [2020] UKUT 73 (AAC)

68 From 11pm on 31.12.20, this provision¹ is omitted². DMG 073261 provides advice for the purposes of determining whether, when treating the British citizen as an EEA national, the British citizen would be a qualified person¹. Guidance at 073261 should now be disregarded. However, DMs should have regard to Memo DMG 21/20 and Memo ADM 24/20 for current guidance on HK³.

1. Imm (EEA) Regs 2016, reg 9(7); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(h)(iii);
3. HK v SSWP (PC) [2020] UKUT 73 (AAC)

Dual national: national of an EEA State who acquires British citizenship

69 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs 2016, reg 9A; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(i)

Family member who has retained the right of residence

70 This provision¹ continues to have effect. However, one of the conditions² which sets out the circumstances when a family member of an EEA national may retain their right to reside on the death or departure of the EEA national from the UK, is modified³. Guidance at DMG 073300 sets out that condition and from 11pm on 31.12.20, guidance at DMG 073300 **1.2** should be read as

“1.2 have resided in the UK lawfully i.e. had exercised a qualifying right to reside, for at least the year before the death of the qualified person or EEA national with a permanent right to reside and”

1. Imm (EEA) Regs 2016, reg 10; 2. Reg 10(2)(b); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(j)(i)

71 This provision¹ continues to have effect² with the modification that the words **“the initiation of proceedings for”** are omitted.

1. Imm (EEA) Regs 2016, reg 10(5)(a); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(j)(ii)



Right of admission to the UK

72 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs 2016, reg 11; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(k)

Procedure for applications for documentation

73 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs 2016, reg 21; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(l)

Verification of a right of residence

74 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs 2016, reg 22; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(m)

Exclusion and removal from the United Kingdom

75 This provision¹ continues to have effect² with the modification that in each of specified paragraphs, after “regulation 27”, the words “*or on conducive grounds in accordance with regulation 27A or if the person is subject to a deportation order by virtue of section 32 of the UK Borders Act 2007*” are inserted.

1. Imm (EEA) Regs 2016, reg 23; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(n); 3. Imm (EEA) Regs 2016, reg 23(1), 23(5), 23(6)(b) & 23(7)(b)

Refusal to issue or renew and revocation of residence documentation

76 This provision¹ continues to have effect², with the modification that within specified subparagraphs³, references to revocation are omitted.

1. Imm (EEA) Regs 2016, reg 24; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(o); 3. Imm (EEA) Regs 2016, reg 24(1), 24(3), 24(4), 24(6) & 24(7)

Decisions taken on grounds of public policy, public security and public health

77 This provision¹ continues to have effect² with the modification that after regulation 27 there were inserted

“Decisions taken on conducive grounds



27A.— (1) *An EEA decision may be taken on the ground that the decision is conducive to the public good.*

(2) *But a decision may only be taken under this regulation in relation to a person as a result of conduct of that person that took place after IP completion day.”*

1. Imm (EEA) Regs 2016, reg 27; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(p)

Application of Part 4 to a person with a derivative right to reside

78 This provision¹ continues to have effect², in so far as it applies to a person who has applied for a derivative residence card³.

1. Imm (EEA) Regs, reg 28; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(q)

Person subject to removal

79 This provision¹ continues to have effect², with the modification that in the specified paragraph³, after “public health”, the words “*in accordance with regulation 27 or on conducive grounds in accordance with regulation 27A*” were inserted.

1. Imm (EEA) Regs, reg 32; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(r); 3. Imm (EEA) Regs 2016, reg 32(5)

Human rights considerations and interim orders to suspend removal

80 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 33; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(s);

Interpretation of Part 6

81 This provision¹ continues to have effect² in respect of the interpretation of the provisions which continue to apply by virtue of paragraph 4 or 5.

1. Imm (EEA) Regs, reg 35; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(t);



Appeal rights

82 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 36; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(u);

Out of country appeals

83 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 37; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(v)

Appeals to the Commission

84 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 38; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(w)

National security: EEA decisions

85 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 39; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(x)

Effect of appeals to the First-tier Tribunal or Upper Tribunal

86 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 40; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(y)

Temporary admission to submit case in person

87 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 41; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(z)

Alternative evidence of identity and nationality

88 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs, reg 42; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(aa)



Considerations of public policy, public security and the fundamental interests of society

89 This provision¹ continues in effect² with the modification that for paragraph 1 there is substituted

“1. The United Kingdom enjoys considerable discretion, acting within the parameters set by the law, to define its own standards of public policy and public security, for purposes tailored to its individual context from time to time.”

1. Imm (EEA) Regs, sch.1; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(bb)

Appeals to the First-tier Tribunal

90 This provision¹ continues in effect² with the modification that

1. in relation to an appeal within Schedule 2, paragraph 5(1)(a) to (c), in each of paragraphs 1 and 2(4), the words “under the EU Treaties”, in so far as they relate to things done on or after exit day but before commencement day, were a reference to the EU Treaties so far as they were applicable to and in the UK by virtue of Part 4 of the EU withdrawal agreement **and**
2. in relation to an appeal within Schedule 2, paragraph 5(1)(d), in each of paragraphs 1 and 2(4), the words “under the EU Treaties”, were a reference to *“under the Immigration (European Economic Area) Regulations 2016 as they are continued in effect by these Regulations or the Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, or by virtue of the EU withdrawal agreement, the EEA EFTA separation agreement (which has the same meaning as in the European Union (Withdrawal Agreement) Act 2020) or the Swiss citizens’ rights agreement (which has the same meaning as in that Act)”*.

1. Imm (EEA) Regs, sch.2; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 6(1)(cc)

Nationality, Immigration and Asylum Act 2016 - saving in relation to appeals

91 The repeal of section 109 of the Nationality, Immigration and Asylum Act 2002, by paragraph 2(1) of Schedule 1 to the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, does not affect¹



1. the power to make regulations under that section which provide for, or make provision about, an appeal in relation to which provisions of the EEA Regulations 2016 continue to have effect by virtue of these Regulations, the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 or the Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 **or**
2. the operation of any regulations made under that section in so far as they continue to have effect on or after commencement day by virtue of these Regulations or by virtue of any of the other Regulations of 2020 referred to in sub-paragraph 1. above.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 3, para 7

Savings provision in relation to access to benefits – Schedule 4

92 Part 7 and Schedule 4 contain savings provisions in relation to access to benefits and services. These provisions ensure that those with limited leave to enter and remain in the UK (pre-settled status) under the EUSS are treated in the same way after the end of the transition period as they are now for the purposes of accessing benefits and services (post-transition period group – see paragraph 94). They also save relevant provisions of the Immigration Act 1988 and the Asylum and Immigration Act 1996 so that EEA citizens protected by the Withdrawal Agreements continue to be considered as a person not subject to immigration control in the instances where they would previously have been eligible for the allocation of social housing and homelessness assistance.

93 “EEA Regulations 2016” means¹ the Immigration (European Economic Area) Regulations 2016 as they had effect immediately before they were revoked.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 1(a)

94 “Member of the post-transition period group” means a person who has EUSS limited leave to enter or remain (pre-settled status) in the UK¹.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 1(b)

95 Paragraphs 97 to 119 below, specify the provisions of the Imm (EEA) Regs 2016 that continue to apply¹ (in relation to a person who is a member of the post-transition period group,) to the benefits listed at paragraph 96 below,



despite the revocation of the Imm (EEA) Regs 2016. The guidance identifies the modified regulations which ensure that the Imm (EEA) Regs 2016 continue to operate appropriately after the end of the transition period from 11pm on 31.12.20 and reflect a number of judgments as to how those Regulations should be interpreted and applied; for example: the UT judgments of KH (on the unlawful application of GPoW to retained workers) and HK (on allowing Surinder Singh rights to those who've obtained permanent residence in another host State).

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 2

96 The benefits¹ referred to within paragraph 95 above are

1. regulation 21AA (special cases: supplemental–persons from abroad) of the Income Support (General) Regulations 1987 **and**
2. regulation 85A (special cases: supplemental–persons from abroad) of the Jobseeker's Allowance Regulations 1996 **and**
3. regulation 2 (persons not in Great Britain) of the State Pension Credit Regulations 2002 **and**
4. regulation 7 (funeral payments: entitlement) of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 **and**
5. regulation 70 (special cases: supplemental – persons from abroad) of the Employment and Support Allowance Regulations 2008.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 3

General Interpretation

97 This provision¹ continues to have effect², with the modifications that

1. as if all instances of the words “or any other right conferred by the EU Treaties”³
 - 1.1 in so far as they relate to things done on or after exit day but before commencement day, were a reference to a right conferred by the EU Treaties so far as they were applicable to and in the United Kingdom by virtue of Part 4 of the EU withdrawal agreement **and**



- 1.2 in so far as they relate to things done on or after commencement day, were omitted
- 2. as if all instances of the words “or the EU Treaties”⁴
 - 2.1 in so far as they relate to things done on or after exit day but before commencement day, were a reference to the EU Treaties so far as they were applicable to and in the UK by virtue of Part 4 of the Withdrawal Agreement **and**
 - 2.2 in so far as they relate to things done on or after commencement day, were omitted
- 3. as if, at the end of the definition of “deportation order”, there were inserted “*or under section 5(1) of the Immigration Act 1971*”⁵ **and**
- 4. as if, in the definition of “EEA State”, the words “, *other than the United Kingdom*” were omitted⁶ **and**
- 5. as if, at the end of the definition of “exclusion order”, there were inserted “*or directions issued by the Secretary of State for a person not to be given entry to the United Kingdom on the grounds that the person’s exclusion is conducive to the public good*”⁷.

1. Imm (EEA) Regs 2016, reg 2; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch.4; para 4; 3. Sch.4, para 4(a)(i); 4. Sch.4, para 4(a)(ii); 5. Sch.4, para 4(a)(iii); 6. Sch.4, para 4(a)(iv); 7. Sch.4, para 4(a)(v)

Continuity of residence

98 This provision¹ continues to have effect, but is modified² to include reference to the Immigration Acts. From 11pm on 31.12.20, DMG guidance at 073361 reads that continuity of residence is broken when

- 1. a person serves a sentence of imprisonment **or**
- 2. a deportation or exclusion order is made in relation to a person **or**
- 3. a person is removed from the UK under the Imm (EEA) Regs 2016 or the Immigration Acts³.

1. Imm (EEA) Regs 2016, reg 3; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(b); 3. Imm (EEA) Regs 2016, reg 3(3)(c)



“Worker”, “self-employed person”, “self-sufficient person” and “student”

99 This provision¹ continues to have effect², but the definition of “self-employed person” is modified to read that a self-employed person means³ a person who is established in the UK in order to pursue activity as a self-employed person within the meaning of specified legislation⁴.

1. Imm (EEA) Regs 2016, reg 4; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(c) 3. Imm (EEA) Regs 2016, reg 4(1)(b); 4. TFEU, Art. 49

Worker or self-employed person who has ceased activity

100 This provision¹ continues to have effect with no modifications.

1. Imm (EEA) Regs 2016, reg 5; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(d)

Qualified person

101 Modifications are made to this provision¹ to reflect the UT judgement of KH². Although the modifications within this memo take effect from 11pm on 31.12.20, DMs should be reminded that current revised DMG guidance relating to the KH judgment, can be found within Memo DMG 27/20 & Memo ADM 31/20 which are currently being drafted.

1. Imm (EEA) Regs 2016, reg 6; 2. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

102 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. DMG guidance at 072864 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. However, please see paragraph 101 regarding current KH³ guidance.

1. Imm (EEA) Regs 2016, reg 6(4C); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(e)(i); 3. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

103 A person who is no longer working must continue to be treated as a worker, provided that certain conditions are met¹ (see DMG 073086 & 073090). One of those conditions is that the person satisfies condition B. Condition B² is amended³ to insert the words, “, *when determining whether the person is a jobseeker*.”. DMG guidance at 073084 **2.**, 073086 **3.** and 073090 **3.** should now be read as



“can provide evidence that they are seeking employment and when determining whether that person is a jobseeker, has a genuine chance of being engaged.”.

Note: Please see paragraph 101 above regarding current revised DMG guidance relating to the KH judgment.

1. Imm (EEA) Regs 2016, reg 6(2); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(e)(ii); 3. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

104 This provision¹ continues to have effect² with the modification that the words “, where that person is a jobseeker” are inserted after the words “continuing to seek employment and”. DMG guidance at 073090, 073092, 073145, 073149 & 073428 should all now be read to the effect that a person may not retain the status of worker, self-employed person or jobseeker for longer than the relevant period without providing compelling evidence of continuing to seek employment and, where that person is a jobseeker, having a genuine chance of being engaged.

Note: Please see paragraph 101 above regarding current revised DMG guidance relating to the KH³ judgment.

1. Imm (EEA) Regs 2016, reg 6(7); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(e)(iii); 3. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

Family member

105 This provision¹ continues to have effect with no modifications².

1. Imm (EEA) Regs 2016, reg 7; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(f)

Extended family member

106 This provision¹ continues to have effect with the modification that where an extensive examination of the personal circumstances of the claimant is required, the criteria², of whether an EEA national would be deterred from exercising their free movement rights if the application was refused, is omitted³ from the examination.

1. Imm (EEA) Regs 2016, reg 8; 2. Reg 8(8); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(g)



Family members and extended family members of British citizens

107 Modifications are made to this provision¹ to reflect the UT judgement of HK² (to reflect that those who have acquired Surinder Singh rights do not need to exercise treaty rights upon their return to the UK). Although the modifications within this memo take effect from 11pm on 31.12.20, DMs should be reminded that DMG guidance is already revised, relating to the HK judgment, and can be found within Memo DMG 21/20 & Memo ADM 24/20.

1. Imm (EEA) Regs 2016, reg 9; 2. HK v SSWP (PC) [2020] UKUT 73 (AAC)

108 This provision¹ continues to have effect² with the modification that at the end of that paragraph the words “and BC is to be treated as satisfying any requirement to be a qualified person” were inserted. DMG guidance at 073254 advises that, if certain conditions are satisfied, family members of British citizens have the same EU law rights of residence as they would if they were a family member of an EEA national. DMG guidance at 073254 should now be read as including the inserted wording. See paragraph 107 above regarding current guidance on HK³.

1. Imm (EEA) Regs 2016, reg 9(1); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(h)(i); 3. HK v SSWP (PC) [2020] UKUT 73 (AAC)

109 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. DMG guidance at 073259 advises on factors that are relevant to determining whether residence in an EEA State (other than the UK) is or was genuine. DMG guidance at 073259 **1.** should now be disregarded. See paragraph 107 above regarding current guidance on HK⁴.

1. Imm (EEA) Regs 2016, reg 9(3); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(h)(ii); 3. Imm (EEA) Regs 2016, reg 9(3)(a); 4. HK v SSWP (PC) [2020] UKUT 73 (AAC)

110 From 11pm on 31.12.20, this provision¹ is omitted². DMG 073261 provides advice for the purposes of determining whether, when treating the British citizen as an EEA national, the British citizen would be a qualified person¹. Guidance at 073261 should now be disregarded. DMs should have regard to Memo DMG 21/20 and Memo ADM 24/20 for current guidance on HK³.

1. Imm (EEA) Regs 2016, reg 9(7); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(h)(iii); 3. HK v SSWP (PC) [2020] UKUT 73 (AAC)



Dual national: national of an EEA State who acquires British citizenship

111 This provision¹ continues to have effect² with no modifications.

1. Imm (EEA) Regs 2016, reg 9A; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(i)

Family member who has retained the right of residence

112 This provision¹ continues to have effect. However, one of the conditions² which sets out the circumstances when a family member of an EEA national may retain their right to reside on the death or departure of the EEA national from the UK, is modified³. Guidance at DMG 073300 sets out that condition and from 11pm on 31.12.20, guidance at DMG 073300 **1.2** should be read as

“1.2 have resided in the UK lawfully i.e. had exercised a qualifying right to reside, for at least the year before the death of the qualified person or EEA national with a permanent right to reside and”

1. Imm (EEA) Regs 2016, reg 10; 2. Reg 10(2)(b); 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(j)(i)

113 This provision¹ continues to have effect² with the modification that the words *“the initiation of proceedings for”* are omitted.

1. Imm (EEA) Regs 2016, reg 10(5)(a); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(j)(ii)

Initial right of residence

114 This provision¹ continues to have effect² with the modification that, a person who otherwise satisfies this provision, is not entitled to a right to reside under this provision if that person is subject to a deportation order or exclusion order unless that order is set aside, revoked, or otherwise no longer has effect.

1. Imm (EEA) Regs 2016, reg 13(4); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(k)

Extended right of residence

115 This provision¹ continues to have effect² with the modification that a person who otherwise satisfies this provision, is not entitled to a right to reside in the UK under this provision if that person is subject to a deportation order or exclusion order unless that order is set aside, revoked or otherwise no longer has effect³.



1. Imm (EEA) Regs 2016, reg 14; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(1); 3. Imm (EEA) Regs 2016, reg 14(4)

Right of permanent residence

116 This provision¹ continues to have effect² in so far as it applies to residence in the UK after 11pm on 31.12.20, as if the Imm (EEA) Regs 2016 had been in force at all relevant times (with any necessary modifications) and as if the words “in accordance with these regulations” (in each place they occur) were substituted with the word “lawfully”³. This means that, where the DM has to determine whether the person’s residence complied with the Imm (EEA) Regs 2016 prior to the end of the transition period, a person would acquire permanent residence if they had resided lawfully in the UK for 5 years.

1. Imm (EEA) Regs 2016, reg 15; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(m); 3. Sch. 4, para 4(m)(i)

117 The provision¹ that determines when a person is not entitled to a right of permanent residence in the UK is modified² to apply, if that person is subject to a deportation order or exclusion order unless that order is set aside or otherwise no longer has effect.

1. Imm (EEA) Regs 2016, reg 15(4); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(m)(i)

Derivative right to reside

118 This provision¹ continues to have effect² with the modification that, in the conditions for the primary carer of a British citizen, the word “another” is substituted with the word “an”. DMG guidance at 073466 **3**. should read that that particular criteria is that the British citizen would be unable to reside in the UK or in an EEA State.

1. Imm (EEA) Regs 2016, reg 16(5)(c); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(n)(i)

119 This provision¹ continues to have effect² with the modification that a person does not have a derivative right to reside if that person is subject to a deportation order or exclusion order unless that order is set aside or otherwise no longer has effect³.

1. Imm (EEA) Regs 2016, reg 16; 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 4, para 4(n)(ii); 3. Imm (EEA) Regs 2016, reg 16(12)



Irish citizens

120 The UK and Irish Governments made commitments to protect existing CTA arrangements, including the associated rights of British and Irish citizens in the other State. The ISSC Act protects the status of Irish citizens¹, by inserting new legislation² confirming their right to enter and remain in the UK without permission when free movement rights end, irrespective of from where they have entered the UK, unless they are subject to a deportation order³, exclusion order⁴ or international travel ban⁵. This status is consistent with the commitments in the Belfast (Good Friday) Agreement 1998. This means that Irish citizens will continue to have the right to enter, live and work in the UK without requiring permission, and is reflected in the provisions made in the Home Office Consequential SI. This unique relationship, whereby citizens of the UK and Ireland have a status in each other's State, existed long before the UK or Ireland were members of the EU, and supports provisions in the Belfast (Good Friday) Agreement 1998 that the 'people of Northern Ireland' can identify as British or Irish or both. (See Memo ADM 19/20 & Memo DMG 17/20 – Social security (Persons of Northern Ireland – Family Members) (Amendment) Regulations 2020).

1. The ISSC Act, s.2; 2. Immigration Act 1971, s. 3ZA; 3. s. 3ZA(2); 4. s. 3ZA(3); 5. s. 3ZA(4);

Transitional and transitory provisions

Transitional provisions in relation to the immigration status of Irish citizens

121 Part 8 and Schedule 5 of this SI contains transitional and savings provisions, including that, unless the Secretary of State directs otherwise, an Irish citizen who is subject to an exclusion order immediately before the commencement of this SI is to be treated as if the Secretary of State had issued exclusion directions under new legislation¹ introduced by the ISSC Act. This new legislation clarifies that subject to certain exceptions², an Irish national does not require leave to enter or remain in the UK. The exceptions include a person who is subject to a deportation order, exclusion order or international travel ban. Provision is also made for transitional provisions in relation to giving of notice of marriage or civil partnership.

1. Immigration Act 1971, s.3ZA; 2. s.3ZA(2), (3) & (4)

Transitory provision in relation to the British Nationality Act 1981

122 The British Nationality Act 1981 is amended to reflect the immigration status of Irish citizens – see Appendix 4 below. The changes confirm that, for the



purposes of specific elements of nationality law, an Irish citizen is not to be considered as being in the UK in breach of immigration law, but instead has qualifying immigration status by virtue of their rights under clause 3ZA of the Immigration Act 1971.

- 123 The British Nationality (General) Regulations 2003 are amended to reflect that documents confirming permanent residence in the UK under the Imm (EEA) Regs 2016 will no longer be required as part of a citizenship application, given the document relates to an EU right that will no longer exist – see Appendix 4 below. This will not affect applications made before commencement of this instrument.

Note: By virtue of savings in the Grace Period SI, it will also not affect the requirement for those who benefit from those savings to provide the document in an application made during the grace period. After the grace period those who had previously acquired permanent residence under EU law will continue to be able to use it alongside their EUSS status for the purpose of a nationality application, and where it would be beneficial to do so, but with no requirement to provide the document, unless they wish to.

- 124 Guidance in paragraph 125 below applies¹ in respect of an Irish citizen who,
1. immediately before commencement day, was (or was treated as) subject to an exclusion order²
 2. is subject to an exclusion order³ as they are continued in effect by the Grace Period SI⁴.

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 5, Part 1, para 2; 2. Sch. 5, Part 1, para 2(1)(a); 3. Sch.5, Part 1, para 2(1)(b); 4. Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

- 125 Unless the Secretary of State directs otherwise¹, the Irish citizen is to be treated for the purposes of specified legislation¹ as a person to whom sub-paragraph (3) of that legislation applies².

1. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch. 5, Part 1, para 2(2); 2. Immigration Act 1971, s.3ZA; 3. S. 3ZA(3)



Summary

- 126 Temporary protections for those lawfully resident in the UK i.e. those who are in scope of the Withdrawal Agreement and who have had right to reside under EU law at the end of the transition period but who have not yet made their application to the EUSS by the deadline date (30.6.21), would end. Unless they make their application by the deadline date, the changes to align EEA citizens with non-EEA citizens would impact them, including their access to benefits and services. The Government has committed to accepting late applications where the individual has reasonable grounds for missing the deadline (see Note to paragraph 10 above).
- 127 Unless an Irish citizen is subject to a deportation order¹, exclusion order² or international travel ban³, their right to enter and remain in the UK without permission will continue when free movement rights end⁴, irrespective of from where they have entered the UK.

1. Immigration Act 1971, s. 3ZA(2); 2. s. 3ZA(3); 3. s. 3ZA(4); 4. s. 3ZA

ANNOTATIONS

Please annotate the number of this memo (Memo DMG 25/20) against DMG paragraphs:

072770 (Heading); 072864; 073084; 073086; 073090; 073092; 073145; 073149; 073254; 073259; 073261; 073300; 073361; 073428; 073450 (Main Heading); 073490 (Main heading); 39102

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: December 2020

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

**Amendment and savings of primary legislation
(Part 2, Chapter 1 of Home Office Consequential SI)**

Home Office Consequential SI Reg No.	Primary Legislation	Amendment / Saving
3	Marriage Act 1949	Section 78
4	Aliens' Employment Act 1955	Section 1
5	Immigration Act 1971	Sections 9 & 25B Schedule 4
6	Rent Act 1977	Schedule 15
7	Marriage (Scotland) Act 1977	Sections 3 & 26
8	Housing Act 1988	Schedule 2
9	Housing (Northern Ireland) Order 1988	Article 7A
10	Housing Act 1996	Section 185
11	Special Immigration Appeals Commission Act 1997	Section 2C



12	Immigration and Asylum Act 1999	Sections 10, 24, 24A, 82, 115, 119 & 167
13	Nationality, Immigration and Asylum Act 2002	Sections 58 & 126 Schedule 3
14	Marriage (Northern Ireland) Order 2003	Article 2
15	Asylum and Immigration (Treatment of Claimants, etc.) Act 2004	Sections 2 & 19
16	Civil Partnership Act 2004	Sections 9, 30A & 88 Schedule 23
17	UK Borders Act 2007	Section 33 & 56A
18	Criminal Justice and Immigration Act 2008	Section 130
19	Identity Documents Act 2010	Section 7
20	Immigration Act 2014	Sections 21, 27, 39, 49, 62 & 70A
21	Housing (Wales) Act 2014	Schedule 2
22	Specialist Printing Equipment and Materials (Offences) Act 2015	Section 2



23	Immigration Act 2016	Schedule 12
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**Amendment and savings of secondary legislation
(Part 2, Chapter 2 of Home Office Consequential SI)**

Home Office Consequential SI Reg No.	Secondary Legislation	Amendment / Saving
25	Immigration (Control of Entry through Republic of Ireland) Order 1972	Articles 2, 3 & 4
26	Channel Tunnel (International Arrangements) Order 1993	Schedule 4
27	Immigration (Leave to Enter and Remain) Order 2000	Article 13B
28	Immigration (Notices) Regulations 2003	Regulations 2 & 4
29	Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003	Article 11 Schedule 2
30	Immigration and Asylum Act 1999 (Part V Exemption: Relevant Employers) Order 2003	Articles 2 & 3
31	Civil Partnership (Registration Provisions) Regulations 2005	Schedule 3



32	Immigration (Provision of Physical Data) Regulations 2006	Regulations 2, 8 & 10
33	Tribunal Procedure (Upper Tribunal) Rules 2008	Rules 1 & 17A
34	Immigration (Biometric Registration) Regulations 2008	Regulations 3, 9 & 11
35	Appeals (Excluded Decisions) Order 2009	Article 3
36	Immigration (Procedure for Marriage) Regulations 2011	Regulation 2
37	Immigration (Procedure for Formation of Civil Partnerships) Regulations 2011	Regulation 2 Schedule
38	First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011	Article 5
39	Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014	Rules 1, 16 & 23
40	Marriage of Same Sex Couples (Conversion of Civil Partnership) Regulations 2014	Schedule 1



41	Referral of Proposed Marriages and Civil Partnerships Regulations 2015	Schedule 1
42	Registration of Marriage Regulations 2015	Schedule 3
43	Proposed Marriages and Civil Partnerships (Conduct of Investigations, etc.) Regulations 2015	Regulation 18
44	Sham Marriage and Civil Partnership (Scotland and Northern Ireland) (Administrative) Regulations 2015	Schedule 1
45	Immigration and Nationality (Fees) Order 2016	Articles 2 & 6
46	Immigration and Nationality (Fees) Regulations 2018	Schedule 3
47	Immigration (European Economic Area Nationals) (EU Exit) Order 2019	Chapter 1 of Part 2
48	Immigration, Nationality and Asylum (EU Exit) Regulations 2019	Regs 3, 4, 6, 8, 9, 11, 12, 14, 17, 18, 21, 24, 25, 30, 33,34, 42, 43 & 49. Schedule 2



49	Citizens' Rights (Application, Deadline & Temporary Protection) (EU Exit) Regulations 2020	Regulations 7, 11 & 12
50	Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020	Regulation 20

**Revocation of secondary legislation
(Part 2, Chapter 3 of Home Office Consequential SI)**

Home Office Consequential SI reg No.	Legislation
51	The Immigration (European Economic Area) (Amendment) Regulations 2017
52	The Immigration (European Economic Area) (Amendment) Regulations 2018

APPENDIX 4

Amendment of primary nationality legislation

(Part 4, Chapter 1 of Home Office Consequential SI)

Home Office Consequential SI reg No.	Primary legislation	Amendment
78	British Nationality Act 1981	Section 50A
79	Borders, Citizenship and Immigration Act 2009	Sections 39, 40 & 49

Amendment of secondary nationality legislation

(Part 4, Chapter 2 of Home Office Consequential SI)

Home Office Consequential SI reg No.	Secondary legislation	Amendment
80	British Nationality (General) Regulations 2003	Regulations 2, 7E & 7G Schedule 2