

## **29/20: Right to Reside - The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 20 - UC**

| <b>Contents</b>  | <b>Paragraphs</b> |
|--|-------------------|
| Introduction   | 1 - 3             |
| Background   | 4 - 7             |
| The Home Office Consequential SI   | 8 - 9             |
| EEA citizens who are resident in the UK before the end of the transition period  | 10                |
| Amendment to the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ("the Grace Period SI") | 11                |
| EEA citizens and their family members who come to the UK after the end of the transition period                                      | 12                |
| The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 ("the Frontier Workers SI")                                       | 13                |
| Amendments and savings to primary and secondary legislation  | 14 - 17           |
| Access to benefits and services  | 18 - 22           |
| Amendments to benefit legislation  | 23                |
| Universal Credit Regulations 2013  | 24 - 30           |
| Social Fund Maternity and Funeral Expenses (General) Regulations 2005  | 31 - 34           |
| Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000                                  | 35                |
| ECSMA & ESC  | 36 - 41           |
| Savings provisions in connection with the Imm (EEA) Regs 2016 - Part 6 (reg 82) & Schedule 3   | 42 - 43           |
| Deportation and exclusion orders   | 44 - 46           |
| Pending applications for documentation under the Imm (EEA) Regs 2016   | 47                |
| Existing appeal rights and appeals   | 48                |

|  |         |
|--|---------|
| Schedule 3 – paragraphs 6 and 7  | 49      |
| General interpretation   | 50      |
| Continuity of residence  | 51      |
| Worker”, “self-employed person”, “self-sufficient person” and “student         | 52      |
| Worker or self-employed person who has ceased activity                         | 53      |
| Qualified person   | 54 - 57 |
| Family member  | 58      |
| Extended family member   | 59      |
| Family members and extended family members of British citizens                 | 60 - 63 |
| Dual national: national of an EEA State who acquires British citizenship       | 64      |
| Family member who has retained the right of residence                          | 65 - 66 |
| Right of admission to the UK   | 67      |
| Procedure for applications for documentation                                   | 68      |
| Verification of a right of residence   | 69      |
| Exclusion and removal from the UK  | 70      |
| Refusal to issue or renew and revocation of residence documentation            | 71      |
| Decisions taken on grounds of public policy, public security and public health | 72      |
| Application of Part 4 to a person with a derivative right to reside            | 73      |
| Person subject to removal  | 74      |
| Human rights considerations and interim orders to suspend removal              | 75      |
| Interpretation of Part 6   | 76      |
| Appeal rights  | 77      |
| Out of country appeals   | 78      |
| Appeals to the Commission  | 79      |
| National security – EEA decisions  | 80      |
| Effect of appeals to the First-tier Tribunal or Upper Tribunal                 | 81      |

|   |           |
|---|-----------|
| Temporary admission to submit case in person  | 82        |
| Alternative evidence of identity and nationality  | 83        |
| Considerations of public policy, public security and the fundamental interests of society | 84        |
| Appeals to the First-tier Tribunal  | 85        |
| Nationality, Immigration and Asylum Act 2016 - saving in relation to appeals              | 86        |
| Savings provision in relation to access to benefits – Schedule 4                          | 87 - 91   |
| General interpretation  | 92        |
| Continuity of residence   | 93        |
| Worker”, “self-employed person”, “self-sufficient person” and “student                    | 94        |
| Worker or self-employed person who has ceased activity                                    | 95        |
| Qualified person  | 96 – 99   |
| Family member   | 100       |
| Extended family member  | 101       |
| Family members and extended family members of British citizens                            | 102 - 105 |
| Dual national: national of an EEA State who acquires British citizenship                  | 106       |
| Family member who has retained the right of residence                                     | 107 - 108 |
| Initial right of residence  | 109       |
| Extended right of residence   | 110       |
| Right of permanent residence  | 111 - 112 |
| Derivative right to reside  | 113 - 114 |
| Irish citizens  | 115       |
| Transitional and transitory provisions  |           |
| Transitional provisions in relation to the immigration status of Irish citizens           | 116       |
| Transitory provisions in relation to the British Nationality Act 1981                     | 117- 120  |
| Summary   | 121 - 122 |
| Appendix 1 - Amendment and savings of primary legislation                                 |           |
| Appendix 2 - Amendment and savings of secondary legislation                               |           |

|  |  |
|--|--|
|  |  |
| Appendix 3 - Revocation of secondary legislation |  |
| Appendix 4                                       |  |
| Amendment of primary nationality legislation     |  |
| Amendment of secondary nationality legislation   |  |
| Annotations                                      |  |
| Contacts   |  |

## 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 Act<sup>1</sup> 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 2020](#) (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 31.12.20<sup>2</sup>. 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 & Memo ADM – The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020), also comes into force immediately before the Imm (EEA) Regs 2018 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 is needed to repeal retained EU law relating to free movement. The ISSC Act is being introduced to do this, with the intention of ending free movement at the end of the transition period (11pm on 31.12.20), which paves the way for the new points-based immigration system to be rolled out, which 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 movement<sup>2</sup> 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 legislation<sup>1</sup> in the same way that non-EEA citizens do now **and**

2. protects the status of Irish citizens<sup>3</sup> in the UK, confirming 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 coordination<sup>4</sup>, 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 Act<sup>1</sup> 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 services<sup>1</sup>**and**

3.2 permitting EEA citizens to be provided with assistance for voluntary departure from the UK in appropriate circumstances<sup>2</sup>**and**

- 3.3** bringing newly arriving EEA citizens in scope of the sham marriage and civil partnership referral and investigation scheme<sup>3</sup>**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 citizens<sup>4</sup>**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 1955<sup>5</sup>**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 legislation<sup>6</sup>, continue to have their appeal considered under that legislation<sup>7</sup>**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 residence<sup>8</sup>**and**
- 6.** reflects the ISSC Act that protects<sup>9</sup> the rights of 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 1971<sup>10</sup>.

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, s 1(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 Agreement<sup>1</sup>, 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 amendment<sup>1</sup> is made to the Grace period SI<sup>2</sup> 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 2005<sup>3</sup> 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.** Amendment<sup>1</sup> is made to the Frontier Workers SI<sup>2</sup> to insert the following new paragraph which exempts Irish citizen frontier workers from becoming a PSIC, unless they are subject to a deportation order<sup>3</sup>, exclusion order<sup>4</sup> or international travel ban<sup>5</sup>

### **"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 & 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 SI<sup>1</sup> makes changes to legislation governing access to UC. 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 as non-EEA citizens currently 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 ([ADM C1870 – C1875](#)). 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.** The Home Office Consequential SI makes amendments<sup>1</sup> to specified legislation<sup>2</sup> 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

## **AMENDMENT TO BENEFIT LEGISLATION**

**23.** For the purposes of determining whether a person meets the basic condition to be in Great Britain<sup>1</sup>, except where a person falls within a specified category<sup>2</sup>, a person is to be treated as not being in Great Britain if the person is not habitually resident in the Common Travel Area ("CTA"). A person must not be treated as habitually resident in the CTA unless that person has a right to reside in the CTA<sup>3</sup> ([ADM C1225](#)). Such a person is treated as not being in GB and therefore not entitled to UC. However certain rights to reside are specifically excluded<sup>4</sup> by benefit regulations ([ADM C1851 et seq](#)). Thus, if a person only has an excluded right to reside, they cannot be treated as habitually resident in the CTA ([ADM](#)

[C1862](#)). Guidance at paragraphs 25 - 31 details the amendments to UC legislation.

1 UC Regs 2013, reg 9(1); 2 reg 9(4); 3 reg 9(2); 4 reg 9(3)

## Universal Credit Regulations 2013

### Interpretation

**24.** At the end of the definition<sup>1</sup> of “EEA Regulations” insert<sup>2</sup> “and references to the EEA Regulations 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) 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 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, reg 75(2)

### Initial right of residence

**25.** In line with guidance at paragraph 23 above, the excluded right<sup>1</sup> which exists by virtue of, an initial right of residence<sup>2</sup> is amended to omit<sup>3</sup> “or Article 6 of Council Directive No. 2004/38/EC”.

1 UC Regs 2013, reg 9(3)(a); 2 Imm (EEA) Regs 2016, reg 13; 3 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 75(3)(a)(i)

**26.** From 1.1.21 [ADM guidance at C1853](#) should be read as

"C1853 Persons who have a right to reside<sup>1</sup> solely on the basis of the initial three-month residence<sup>2</sup> right referred to in C1852, do not satisfy the right to reside requirement of the habitual residence test. They are to be treated as not in GB<sup>1</sup> and therefore do not satisfy the basic conditions for entitlement to UC."

1 UC Regs, reg 9(3)(a); 2 Imm (EEA) Regs 2016, reg 13

### Derivative right to reside

**27.** The excluded right which exists by virtue of a derivative right to reside (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European citizen – the Zambrano right)<sup>1</sup> (ADM C1864), is amended to omit<sup>2</sup> “or article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European

citizen)".

1 UC Regs 2013, reg 9(3)(b); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 75(3)(a)(ii)

**28.** From 1.1.21, guidance at [ADM C1864](#) should be read that a right to reside does not include a right to reside which exists by virtue of, or in accordance with<sup>1</sup> a derivative right to reside<sup>2</sup>, but only in cases where the right exists because the person satisfies the criteria<sup>3</sup> that

- 1.** the person is the primary carer of a British citizen ("BC") **and**
- 2.** the BC is residing in the UK **and**
- 3.** the BC would be unable to reside in the UK or an EEA state if the primary carer left the UK for an indefinite period.

1 UC Regs 2013, reg 9(3)(b); 2 Imm (EEA) Regs 2016, reg 16; 3 Reg 16(5)

**29.** A person claiming UC whose sole right to reside is the right described above will not satisfy the right to reside condition of the habitual residence test. Such a person will therefore be treated as not being in GB, so will not satisfy the basic conditions of entitlement to UC<sup>1</sup>.

1 UC Regs 2013, reg 9(3)(b)

### **Frontier workers**

**30.** In order to allow frontier workers (and their family members who have been granted EUSS leave) to have access to UC, where they meet the relevant conditions, the following provisions are inserted<sup>1</sup> into legislation<sup>2</sup> after paragraph (4)(ca)

- "(cb) a frontier worker within the meaning of regulation 3 of the Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020;
- (cc) a family member of a person referred to in sub-paragraph (cb), 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](#) – The 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 75(3)(b); 2 UC Regs 2013, reg 9(4)

## **SOCIAL FUND MATERNITY AND FUNERAL EXPENSES (GENERAL) REGULATIONS 2005**

**31.** [ADM guidance at L3101 – L3108](#) lists the conditions<sup>1</sup> of entitlement which must be satisfied for a social fund funeral payment to be made. The sixth condition<sup>2</sup> ([L3107](#)) is that the funeral takes place

**4.** in a case where paragraph (10) applies, in a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland **or**

**5.** in any other case, in the UK.

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

**32.** The Home Office Consequential SI amends<sup>1</sup> sub-paragraph (10)<sup>2</sup>, 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 worker<sup>3</sup> ([ADM C1290 – C1299](#)) or self-employed person<sup>4</sup> ([ADM C1311 – C1317](#)) **or**

**2.** a person who retains the status<sup>5</sup> ([ADM C1300 – C1321](#)) of worker or self-employed person **or**

**3.** a person who is a family member<sup>6</sup> ([ADM C1346](#)) 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**

**3.4** a person who has a right to reside permanently<sup>7</sup> in the UK ([see ADM C1751](#)) **or**

**3.5** a person granted indefinite leave to enter or remain in the UK<sup>8</sup> under EUSS<sup>9</sup>”.

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

**33.** From 1.1.21, [ADM guidance at L3107 2.1 – 2.5](#) should be read as if referring to the Imm (EEA) Regs 2016, rather than the Citizenship Directive 2004/38/EC<sup>1</sup>. Furthermore, an additional provision is added (shown at paragraph 32 **5.** above) to include a person who has been granted indefinite leave to enter or remain in the UK, under the EUSS<sup>2</sup>.

**34.** A provision<sup>1</sup> is also inserted<sup>2</sup> 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) 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**

**35.** 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 amendment<sup>1</sup> 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, 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**

**36.** 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.

**37.** 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).

**38.** 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](#)).

**39.** [ADM guidance at C1060](#) **3.** advises that for the purposes of UC, a person<sup>1</sup> 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 PSIC<sup>2</sup>, provided they are lawfully present in the UK<sup>3</sup>.

**Note:** Caselaw<sup>4</sup> has clarified that the "lawfully present" requirement means that claimants must still demonstrate that they are exercising a relevant right to reside.

2 SS (I&A) CqI 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 415; Abdirahman v SSWP [2007] EWCA Civ 657

**40.** 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 regulations<sup>1</sup> (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 have 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) CqI 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 415; Abdirahman v SSWP [2007] EWCA Civ 657

**41.** As a result of the paragraph above, amendments<sup>1</sup> 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 Schedule<sup>2</sup> 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 Schedule<sup>3</sup> 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 Benefit<sup>4</sup> 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 Regulation<sup>4</sup>.

**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 SPC<sup>5</sup>.

1 The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020, reg 2;

2 SS (I&A) CqI 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**

**42.** Part 6 and Schedule 3 of this SI make savings provisions in relation to the Imm (EEA) Res 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.

**43.** “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,

## DEPORTATION AND EXCLUSION ORDERS

**44.** 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 revoked<sup>1</sup>.

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)

**45.** 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 revoked<sup>1</sup>.

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)

**46.** The provisions<sup>1</sup> for the revocation of deportation and 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 specified legislation<sup>2</sup> is to be read as if after “exclusion order” there were inserted<sup>3</sup> “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 reg 34(3); 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 2(5)

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

**47.** 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

48. Certain provisions<sup>1</sup> of the Imm (EEA) Regs 2016 continue to apply<sup>2</sup> where

1. any appeal which has been brought under the Imm (EEA) Regs 2006 or 2016 and has not been finally determined by 11pm on 31.12.20 **or**
2. any EEA decision taken before 11pm on 31.12.20 **or**
3. 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 abandoned<sup>3</sup>. An appeal is not to be treated as abandoned solely because the appellant leaves the UK<sup>4</sup>.

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 5(2)(a); 4 Sch. 3, para 5(2)(b)

## Schedule 3 – paragraphs 6 and 7

49. The modifications<sup>1</sup> within paragraphs 50 – 86 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

50. This provision<sup>1</sup> continues to have effect with the following modifications<sup>2</sup>

1. as if all instances of the words “or any other right conferred by the EU Treaties”<sup>3</sup>
  - 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”<sup>4</sup>

**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”<sup>5</sup>**or**

**4.** as if, in the definition of “EEA State”, the words “, other than the UK” were omitted<sup>6</sup>**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”<sup>7</sup>.

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**

**51.** This provision<sup>1</sup> continues to have effect, but is modified<sup>2</sup> to include reference to the Immigration Acts. From 11pm on 31.12.20, [ADM guidance at C1773](#) 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 Acts<sup>3</sup>.

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**

**52.** This provision<sup>1</sup> continues to have effect<sup>2</sup>, but the definition of “self-employed person” is modified to read that a self-employed person means<sup>3</sup> a person who is established in the UK in order to pursue

activity as a self-employed person within the meaning of specified legislation<sup>4</sup>.

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**

**53.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**54.** Modifications are made to this provision<sup>1</sup> to reflect the UT judgement of KH<sup>2</sup>. Although the modifications within this memo take effect from 11pm on 31.12.20, DMs should be reminded that current revised ADM guidance relating to the KH judgment, can be found within [Memo DMG 27/20](#) & [Memo ADM 31/20](#).

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

**55.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the words “and having a genuine chance of being engaged” are omitted. [ADM guidance at C1478](#) should now be read that condition E is that the person provides evidence of seeking employment or self-employment. However, please see paragraph 54 regarding current KH<sup>3</sup> 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)

**56.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the words “, when determining whether the person is a jobseeker” are inserted after the words “employment and”. [ADM guidance at C1405](#) 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 54 above regarding current revised ADM 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,

**57.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the words “, where that person is a jobseeker” are inserted after the words “continuing to seek employment and”. [ADM guidance at C1408, C1409, & C1807](#) 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 54 above regarding current revised ADM guidance relating to the KH<sup>3</sup> 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**

**58.** This provision<sup>1</sup> continues to have effect with no modifications<sup>2</sup>.

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**

**59.** This provision<sup>1</sup> continues to have effect with no modifications<sup>2</sup>.

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**

**60.** Modifications are made to this provision<sup>1</sup> to reflect the UT judgement of HK<sup>2</sup> (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 ADM 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)

**61.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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.

ADM guidance at [C1597](#) 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. [ADM guidance at C1597](#) should now be read as including the inserted wording. Although, see paragraph 60 above regarding current guidance on HK<sup>3</sup>.

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)

**62.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the specified sub-paragraph<sup>3</sup> is to be omitted. [ADM guidance at C1600](#) advises on factors that are relevant to determining whether residence in an EEA State (other than the UK) is or was genuine. [ADM guidance at C1600 1.](#) should now be disregarded. Although, see paragraph 60 above regarding current guidance on HK<sup>4</sup>.

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)

**63.** From 11pm on 31.12.20, this provision<sup>1</sup> is omitted<sup>2</sup>. [ADM C1602](#) provides advice for the purposes of determining whether, when treating the British citizen as an EEA national, the British citizen would be a qualified person<sup>1</sup>. Guidance at [C1602](#) should be disregarded. Although see paragraph 60 above regarding current guidance on HK<sup>3</sup>.

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**

**64.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**65.** This provision<sup>1</sup> continues to have effect. However, one of the conditions<sup>2</sup> 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 modified<sup>3</sup>. Guidance at [ADM C1778](#) sets out that condition and from 11pm on 31.12.20, guidance at [ADM C1778 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)

**66.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**67.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**68.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**69.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**70.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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,

### **Refusal to issue or renew and revocation of residence documentation**

**71.** This provision<sup>1</sup> continues to have effect<sup>2</sup>, with the modification that within specified subparagraphs<sup>3</sup>, 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**

**72.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**73.** This provision<sup>1</sup> continues to have effect<sup>2</sup>, in so far as it applies to a person who has applied for a derivative residence card<sup>3</sup>.

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**

**74.** This provision<sup>1</sup> continues to have effect<sup>2</sup>, with the modification that in the specified paragraph<sup>3</sup>, 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,

## **Human rights considerations and interim orders to suspend removal**

**75.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**76.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**77.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**78.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**79.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**80.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**81.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**82.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**83.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**84.** This provision<sup>1</sup> continues in effect<sup>2</sup> 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**

**85.** This provision<sup>1</sup> continues in effect<sup>2</sup> 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**

**86.** 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 affect<sup>1</sup>

**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**

**87.** 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 89). 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.

**88.** “EEA Regulations 2016” means<sup>1</sup> 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) Regulations 2020, Sch. 4, para 1

**89.** “Member of the post-transition period group” means<sup>1</sup> a person who has EUSS limited leave to enter or remain (pre-settled status) in the UK.

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

**90.** Paragraphs 92 to 114 below, specify the provisions of the Imm (EEA) Regs 2016 that continue to apply<sup>1</sup> (in relation to a person who is a member of the post-transition period group,) to the benefits listed (amongst others) at paragraph 91 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 on 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

**91.** The benefits<sup>1</sup> referred to within paragraph 90 above are (amongst others)

**1.** regulation 7 (funeral payments: entitlement) of the Social Fund Maternity and Funeral Expenses (General) Regulations 2005 **and**

**2.** regulations 2 (interpretation) and 9 (persons treated as not being in Great Britain) of the Universal Credit Regulations 2013.

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**

**92.** This provision<sup>1</sup> continues to have effect with the following modifications<sup>2</sup> as if

**1.** all instances of the words “or any other right conferred by the EU Treaties”<sup>3</sup>

**1.1** in so far as they relate to things done on or after exit day but before IP completion day, 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 IP completion day, were omitted **or**

**2.** all instances of the words “or the EU Treaties”<sup>4</sup>

**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 IP completion day, were omitted **or**

**3.** at the end of the definition of “deportation order”, there were inserted “or under section 5(1) of the Immigration Act 1971”<sup>5</sup>**or**

**4.** in the definition of “EEA State”, the words “, other than the UK” were omitted so far as relevant to things done after exit day<sup>6</sup>**or**

**5.** at the end of the definition of “exclusion order”, there were inserted “or directions issued by the Secretary of State that a person is not to be given entry to the UK”<sup>7</sup>.

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(v)

### **Continuity of residence**

**93.** This provision<sup>1</sup> continues to have effect, but is modified<sup>2</sup> to include reference to the Immigration Acts. From 11pm on 31.12.20, [ADM guidance at C1773](#) 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 Acts<sup>3</sup>.

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**

**94.** This provision<sup>1</sup> continues to have effect<sup>2</sup>, but the definition of “self-employed person” is modified to read that a self-employed person means<sup>3</sup> a person who is established in the UK in order to pursue activity as a self-employed person within the meaning of specified legislation<sup>4</sup>.

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**

**95.** This provision<sup>1</sup> 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**

**96.** Modifications are made to this provision<sup>1</sup> to reflect the UT judgement of KH<sup>2</sup>. Although the modifications within this memo take effect from 11pm on 31.12.20, DMs should be reminded that current revised ADM guidance relating to the KH judgment, can be found within [Memo DMG 27/20](#) & [Memo ADM 31/20](#).

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

**97.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the words “and having a genuine chance of being engaged” are omitted. [ADM guidance at C1478](#) should now be read that condition E is that the person provides evidence of seeking employment or self-employment. However, please see paragraph 96 regarding current KH<sup>3</sup> 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)

**98.** A person who is no longer working must continue to be treated as a worker, provided that certain conditions are met<sup>1</sup> ([see ADM C1407 & C1408](#)). One of those conditions is that the person satisfies condition B. Condition B<sup>2</sup> is amended<sup>3</sup> to insert the words, “, when determining whether the person is a jobseeker.”. [ADM guidance at C1405 2., C1407 3. and C1408 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 96 above regarding current revised ADM 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)

**99.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the words “, where that person is a jobseeker” are inserted after the words “continuing to seek employment and”. ADM guidance at [C1408](#), [C1409](#) & [C1807](#) 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 96 above regarding current revised ADM guidance relating to the KH<sup>3</sup> 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**

**100.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with no modifications.

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**

**101.** This provision<sup>1</sup> continues to have effect. However, it is modified to read that where an extensive examination of the personal circumstances of the claimant is required<sup>2</sup>, the criteria<sup>3</sup>, of whether an EEA national would be deterred from exercising their free movement rights if the application was refused, is omitted<sup>3</sup> from the examination.

1 Imm (EEA) Regs 2016, reg 8; 2 reg 8(8); reg 8(8)(c); 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**

**102.** Modifications are made to this provision<sup>1</sup> to reflect the UT judgement of HK<sup>2</sup> (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 ADM 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)

**103.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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. [ADM guidance at C1597](#) 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. [ADM guidance at C1597](#) should now be read as including the inserted wording. Although, see paragraph 102 above regarding current guidance on HK<sup>3</sup>.

1 Imm (EEA) Regs 2016, reg 9; 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)

**104.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that the specified sub-paragraph<sup>3</sup> is to be omitted. ADM guidance at [C1600](#) advises on factors that are relevant to determining whether residence in an EEA State (other than the UK) is or was genuine. ADM guidance at [C1600 1.](#) should now be disregarded. Although, see paragraph 102 above regarding current guidance on HK<sup>4</sup>.

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)

**105.** From 11pm on 31.12.20, this provision<sup>1</sup> is omitted<sup>2</sup>. [ADM C1602](#) provides advice for the purposes of determining whether, when treating the British citizen as an EEA national, the British citizen would be a qualified person<sup>1</sup>. Guidance at [C1602](#) should now be disregarded. DMs should have regard to [Memo DMG 21/20](#) and [Memo ADM 24/20](#) for current guidance on HK<sup>3</sup>.

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**

**106.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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,

### **Family member who has retained the right of residence**

**107.** This provision<sup>1</sup> continues to have effect. However, one of the conditions<sup>2</sup> 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 modified<sup>3</sup>. Guidance at [ADM C1778](#) sets out that condition and from 11pm on 31.12.20, [C1778 2](#). is modified to read as

“**2.** have resided in the UK lawfully i.e. exercised a qualifying right to reside, for at least the year before the death of the qualified person or the 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)

**108.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**109.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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**

**110.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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 effect<sup>3</sup>.

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(l); 3 Imm (EEA) Regs 2016, reg 14(4)

## Right of permanent residence

**111.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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”<sup>3</sup>. 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)

**112.** The provision<sup>1</sup> that determines when a person is not entitled to a right of permanent residence in the UK is modified<sup>2</sup> to apply 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 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)(ii)

## Derivative right to reside

**113.** This provision<sup>1</sup> continues to have effect<sup>2</sup> with the modification that, in the conditions for the primary carer of a British citizen, the word “another” is substituted with the word “an”. [ADM guidance at C1861 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)

**114.** This provision<sup>1</sup> continues to have effect<sup>2</sup> 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 effect<sup>3</sup>.

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

**115.** 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 citizens<sup>1</sup>, by inserting new legislation<sup>2</sup> 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 order<sup>3</sup>, exclusion order<sup>4</sup> or international travel ban<sup>5</sup>. 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 this 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**

**116.** 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 legislation<sup>1</sup> introduced by the ISSC Act. This new legislation clarifies that subject to certain exceptions<sup>2</sup>, 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**

**117.** 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.

**118.** 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.

**119.** Guidance in paragraph 120 below applies<sup>1</sup> in respect of an Irish citizen who,

1. immediately before commencement day, was (or was treated as) subject to an exclusion order<sup>2</sup>
2. is subject to an exclusion order<sup>3</sup> as they are continued in effect by the Grace Period SI<sup>4</sup>.

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

**120.** Unless the Secretary of State directs otherwise<sup>1</sup>, the Irish citizen is to be treated for the purposes of specified legislation<sup>1</sup> as a person to whom sub-paragraph (3) of that legislation applies<sup>2</sup>.

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

**121.** Temporary protections for those lawfully resident in the UK i.e. those who are in scope of the Withdrawal Agreement and who have a 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).

**122.** Unless an Irish citizen is subject to a deportation order<sup>1</sup>, exclusion order<sup>2</sup> or international travel ban<sup>3</sup>, their right to enter and remain in the UK without permission will continue when free movement rights end<sup>4</sup>, 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 (29/20) against ADM paragraphs:

[C1061](#), [C1062](#), [C1225 \(Heading\)](#); [C1405](#); [C1408](#); [C1409](#); [C1478](#); [C1597](#); [C1600](#); [C1773](#); [C1778](#); [C1807](#); [C1851 \(Main Heading\)](#); [C1853](#); [C1862](#); [C1864](#); [C1870 \(Main heading\)](#); [L3107](#)

## 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**

## APPENDIX 1

### 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<br>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<br>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<br>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                              |

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

| <b>Home Office<br/>Consequential SI Reg<br/>No.</b> | <b>Secondary Legislation</b>  | <b>Amendment / Saving</b> |
|---|---|---------------------------|
| 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<br>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<br>Schedule  |
| 38  | First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011              | Article 5                 |
| 39  | Tribunal Procedure (First-tier Tribunal)  | Rules 1, 16 & 23          |

|    |   |  |
|----|---|--|
|    | (Immigration and Asylum Chamber) Rules 2014   |  |
| 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.<br><br>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<br>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<br>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<br>No. | Secondary legislation                          | Amendment                                |
|---|--|--|
| 80                                      | British Nationality (General) Regulations 2003 | Regulations 2, 7E & 7G<br><br>Schedule 2 |

