



**RIGHT TO RESIDE – THE CITIZENS’ RIGHTS
(APPLICATION DEADLINE AND TEMPORARY
PROTECTION) (EU EXIT) REGULATIONS 2020 – CA, DLA,
AA**

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Introduction

- 1 This SI¹ (commonly known as the Grace Period SI) came into force at the end of the transition period at 11pm on 31.12.20² (defined as “IP completion day”³). The Grace Period SI gives effect to aspects of the Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement⁴ (“the Agreements”) concerning the residence rights of EU, EEA and Swiss citizens (“EEA citizens”) and their family members, namely that “the deadline for submitting the application (to the EU Settlement Scheme (“EUSS”)) shall not be less than 6 months from the end of the transition period, for persons residing in the host State before the end of the transition period.”.



Note: For guidance on EUSS please see paragraphs 7 to 9 below.

1. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (SI 2020 No.1209); 2. Reg 1(1); 3. European Union (Withdrawal Agreement) Act 2020, s.39; 4. Withdrawal Agreement, Art.18(1)(b); EEA EFTA Separation Agreement, Art.17(1)(b); Swiss Citizens' Rights Agreement, Art.16(1)(b)

- 2 For those EEA citizens who are lawfully resident (i.e. exercised **any** right to reside under the Imm (EEA) Regs 2016 (see **Note 1** below) in the UK by virtue of having exercised their right of free movement in the EEA/Switzerland immediately before the end of the transition period, and who have not yet made an application for UK immigration status under the EUSS, and for their relevant family members, the Grace Period SI saves their existing residence rights in the UK for the duration of the Grace Period¹. The deadline by which applications for EUSS leave must be made is the end of 30.6.21² (see **Note 2** below). The Grace Period³ is therefore the period beginning immediately after 11pm on 31.12.20 and ending with the application deadline of the end of 30.6.21.

Note 1: To be “lawfully resident” means more than simply being in the UK. The person must have exercised **any** right to reside under the Imm (EEA) Regs 2016⁴ before the end of the transition period. Where there is uncertainty as to whether the claimant falls within scope of the Withdrawal Agreement and/or the Grace Period SI, those cases may be submitted to DMA Leeds as part of our new escalation process. A revised template for submitting such cases can be found [here](#).

Note 2: See **Note 4** to paragraph 7 relating to late applications. See paragraph 27 for application's yet to be finally determined, or paragraph 28 for where an appeal against an in-time application is pending.

1. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(2); 2. Reg 2; 3. Reg 3(5)(a); 4. Imm (EEA) Regs 2016, reg 4, 5, 6, 7, 8, 9, 9A, 10, 13, 14, 15 & 16

- 3 The Grace Period SI also makes provision to preserve access to benefits and services (subject to eligibility) for the duration of the Grace Period¹. The protections provided for in the Grace Period SI also apply where an individual makes an application to the EUSS before the deadline, but the application has not been finally determined by the deadline² (see paragraphs 27). Also the deadline of the end of 30.6.21 does not apply where an appeal against an in-time application is pending (see paragraph 28). Those rights are protected until the appeal is finally determined, which could be much later than the end of 30.6.21.

1. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3;
2. Reg 4



Background

- 4 As part of the Immigration and Social Security Coordination Act 2020, the Home Office brought free movement for EEA citizens and their family members to an end as of 11pm on 31.12.20 (“IP completion day”, which is more commonly referred to as the end of the transition period). Subsequently, the Imm (EEA) Regs 2016, which transpose the EU Citizens’ Rights Directive 2004/38, were revoked in their entirety on that day. As part of the UK’s departure from the EU, the UK and EU agreed to protect those EEA citizens who are in scope of the Withdrawal Agreement. Accordingly, the EU (Withdrawal) Act 2018 and EU (Withdrawal Agreement) Act 2020 requires that a body of retained EU law is created to protect those that are in scope of the Withdrawal Agreement. Also, as reference to the Imm (EEA) Regs 2016 needs to continue in relation to EEA citizens and their family members who are already in the UK before the end of the transition period, the Home Office drafted secondary legislation to save the Imm (EEA) Regs 2016 so that they continue to apply in certain situations, for certain purposes, and with some modifications.
- 5 The first amendments drafted by the Home Office are within this Grace Period SI (captured within this Memo), which are relevant to EEA citizens and, in certain cases, their family members who, were lawfully resident before the end of the transition period, and have not yet been granted EUSS leave. This may be because they have not yet applied for EUSS leave, or because they have an application pending (see paragraph 27). Consequently, where a claim to CA/DLA/AA is made on or after 11pm on 31.12.20, and the EEA national claimant has not yet applied for EUSS leave, the DM will need to consider whether the claimant has been exercising any right to reside under the Imm (EEA) Regs 2016 (or was deriving a treaty right from a family member) prior to 11pm on 31.12.20, in order to determine whether they fall within scope of the Grace Period SI (see paragraphs 20 – 21 for further guidance).
- 6 The second amendments drafted by the Home Office are made within the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (colloquially referred to as the “Home Office Consequential SI”), which should be read in conjunction with this Grace Period SI. The Home Office Consequential SI saves the Imm (EEA) Regs 2016 and other relevant legislation (with modifications) for the purposes of holders of limited leave to enter or remain under the EUSS (pre-settled status). The Home Office Consequential SI also revokes and makes various consequential amendments to other legislation.

Note: Please see separate ADM & DMG Memo guidance in relation to the “Home Office Consequential SI” for CA, DLA, AA & PIP – Memo DMG 07/21 & Memo ADM 08/21.

EU Settlement Scheme

7 The Government established the EU Settlement Scheme (the EUSS) under Appendix EU to the Immigration Rules. The EUSS provides a basis, consistent with the Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement, for EEA citizens (and their family members), who were lawfully resident in the UK prior to 11pm on 31.12.20, to apply for the UK immigration status which they will need to live and work in the UK after that date. Those Agreements now have effect in UK law through the European Union (Withdrawal Agreement) Act 2020. Consequently, EEA citizens and their family members should apply to the EUSS by 30.6.21, to obtain their UK immigration status if they wish to continue living and working in the UK as they have been, after the end of the transition period. This includes holders of an EEA permanent right of residence. The immigration status granted under the EUSS is either

1. indefinite leave to enter (ILE) (where the application is made outside the UK) or indefinite leave to remain (ILR) (where the application is made within the UK) (also referred to as “settled status”) **or**
2. limited leave to enter (LTE) (where the application is made outside the UK) or limited leave to remain (LTR) (where the application is made within the UK) (also referred to as “pre-settled status”). This cohort also need to be exercising their EU Treaty right.

Note 1: Any EEA citizen (or their family member) who has not yet applied for EUSS leave should be signposted to the Home Office.

Note 2: Newly arriving EEA citizens and their family members who are not protected by the Agreements will be subject to UK immigration control and their treatment aligned with non-EEA citizens in the immigration system.

Note 3: Those who are not exercising any right to reside at 11pm on 31.12.20 are not protected by the Grace Period SI. However, they can continue to apply for EUSS leave until the end of 30.6.21, but the granting of that leave is not retroactive (see paragraph 12).

Note 4: As required by the Withdrawal Agreement, the Government has committed to accepting late applications from those with reasonable grounds for missing the end of 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.

- 8 EEA citizens (and their family members) who resided in the UK by 11pm on 31.12.20 and who have had no serious criminal record may be granted
1. indefinite leave to enter or remain (settled status) where they have lived in the UK for at least five year's continuous residence **or**
 2. limited leave to enter or remain (pre-settled status) where they have lived in the UK for less than five years.

Note: When granting EUSS limited leave to enter or remain (pre-settled status), the Home Office does not apply the condition that the person granted that leave has no recourse to public funds.

EUSS family members

- 9 A family member of an EEA citizen will not be able to derive rights from that EEA citizen's status under the EUSS. This is because EUSS leave is granted under UK Immigration Rules which do not provide for derived or derivative rights. The family member may be eligible for settled status or pre-settled status under the EUSS in their own right.

“Immediately before IP completion day”

- 10 The phrase “immediately before IP completion day” is used within this Grace Period SI. “IP completion day” is defined as 11pm on 31.12.20¹. However, the phrase “immediately before IP completion day” is not defined, and so should be given its ordinary everyday meaning. This has the effect that anyone without EUSS leave and without **any** right to reside under the Imm (EEA) Regs 2016 immediately before 11pm on 31.12.20, becomes a “Person Subject to Immigration Control” pursuant to section 115(9) IAA 1999, because they need leave and do not have it, and because such persons are not within personal scope of the Grace Period SI, and will become out of scope of DMs being able to apply the Imm (EEA) Regs 2016 or any other savings under the Grace Period SI, such as the exception for EEA nationals from being a PSIC at s115(9) IAA 1999, to those persons. This is so, even if that person has previously been in the UK lawfully under EU law. Effectively, it is their status “immediately” before IP completion day that should be taken into account.

Note: Where there is uncertainty as to whether the claimant falls within scope of the Withdrawal Agreement and/or the Grace Period SI, those cases may be submitted to

DMA Leeds as part of our new escalation process. A revised template for submitting such cases can be found [here](#).

1. *European Union (Withdrawal Agreement) Act 2020, s.39*

Example 1

Marco is an Italian national who claimed CA from 17.3.21. At that time, he had been living in the UK for 3 years but has not yet applied to the EUSS.

The DM must first establish whether Marco is protected by the Grace Period SI – was he lawfully resident immediately before 11pm on 31.12.20? The DM considers whether Marco was exercising any right to reside as defined by the Imm (EEA) Regs 2016 and is able to establish that Marco was in genuine and effective work that started 1.6.19 and ended on 31.3.20. He claimed UC shortly afterwards and was deemed to retain worker status but ceased claiming in early January.

It is clear that Marco would only have been able to retain worker status for 6 months in normal circumstances. However, due to COVID-19 UC didn't carry out a review of his HRT, nor is it possible to show from the information available that Marco has established another right to reside. Records show that Marco has continued to look for work so has maintained a link with the labour market.

The DM determines that in the circumstances Marco can be treated as having been lawfully resident in the UK immediately before 11pm on 31.12.20 and is protected by the Grace Period SI until the end of 30.6.21. This is because Marco had a clear right to reside in the UK until shortly before the end of the transition period and although it would normally have ended, exceptional conditions have meant that no review action has been taken. In addition, Marco continued to maintain his link with the UK labour market while claiming UC.

Marco is not a PSIC but will still need to satisfy the remaining elements of the residence and presence test.

Example 2

Nils is a Norwegian national who has recently started part-time work in February 2021. He came to the UK for the first time in May 2020. He has made a claim to CA from February 2021 but has not yet applied to the EUSS.

The DM must first establish whether Nils is protected by the Grace Period SI – was he lawfully resident immediately before 11pm on 31.12.20? The DM considers whether Nils was exercising any right to reside as defined by the Imm (EEA) Regs 2016 and is able to establish that Nils had an Initial Right to Reside from May to August 2020.



However, since that time it has not been possible to show that Nils has been exercising any right to reside as defined by the Imm (EEA) Regs 2016. He clearly stated that he has not been actively seeking genuine and effective work before the end of the transition period, so had not gained jobseeker status. He has never previously worked in the UK. The DM has considered the conditions of being treated as a self-sufficient person, but the information and evidence provided by Nils does not indicate that he should be treated as having been self-sufficient. He is not a student. He has been staying with friends but has no family in the UK.

The DM determines that Nils should not be treated as having been lawfully resident immediately before 11pm on 31.12.20. Nils is not protected by the Grace Period SI, so is a PSIC until granted status by the Home Office.

Example 3

Carlotta is a Maltese national who has lived in the UK for 4 years but has not yet applied to EUSS. She made a claim to CA in April 2021. The DM must first establish whether Carlotta is protected by the Grace Period SI – was she lawfully resident immediately before 11pm on 31.12.20? The DM considers whether Carlotta was exercising any right to reside as defined by the Imm (EEA) Regs 2016 and is able to establish that Carlotta previously claimed Income Support and passed the HRT for Income Support on the basis that she retained worker status under the St Prix rules. She retained worker status because she was in the late stages of pregnancy or had recently given birth, and had reported that she intended returning to work.

Worker status can only be retained in this way for the reasonable period of 52 weeks, following the cessation of work. Under normal circumstances Carlotta would have been required to show a different right to reside from the end of the 52 weeks, in her case 31.10.20. However, IS have not carried out any review of the HRT between 31.10.20 and the change of address in April 2021.

The DM establishes that Carlotta has been actively seeking genuine and effective work but has been unsuccessful due to the lockdown.

The DM determines that in the circumstances Carlotta can be treated as having been lawfully resident in the UK immediately before 11pm on 31.12.20 and is protected by the Grace Period SI until the end of 30.6.21. This is because she had a clear right to reside in the UK until shortly before the end of the transition period and although it would normally have ended, exceptional conditions have meant that no review action has been taken. In addition, Carlotta has continued to maintain her link with the UK labour market so the balance of probabilities is that she could be deemed to continue to retain worker status while looking for work.



Carlotta is not a PSIC but will still need to satisfy the remaining elements of the residence and presence test.

- 11 This means that those eligible for EUSS leave and present in the UK before 11pm on 31.12.20, but without EUSS leave and not exercising any right to reside immediately before 11pm on 31.12.20, would not be covered by the savings during the Grace Period. Consequently, they would be ineligible for CA/DLA/AA because they are a PSIC (see paragraphs 16 and 20). Therefore, to ascertain whether these saving apply, the DM will need to determine whether the claimant was exercising any right to reside immediately before 11pm on 31.12.20.
- 12 Similarly, those who are not exercising any right to reside immediately before 11pm on 31.12.20, and have made an EUSS application, but that application is pending¹would also not be covered by the savings during the Grace Period. This is regardless of any Home Office delay in processing their EUSS application, or if the application is being appealed because of a mistake made by Home Office. Once indefinite leave to remain (settled status) or limited leave to remain (pre-settled status) is obtained, that status is not retroactive. This means that claims for benefits cannot be back-dated and paid during the time the person did not have EUSS leave.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 4*

Residence and presence conditions

- 13 For the purposes of CA, DLA & AA, a claimant must satisfy prescribed conditions of residence and presence in GB on any day included in the claim¹. A claimant must²
1. be habitually resident in the CTA **and**
 2. not be a person subject to immigration control ("PSIC")(see DMG 070831 to 070834) or a person who is exempt from the exclusion of persons subject to immigration control for the purposes of AA, DLA and CA (see DMG 070836) **and**
 3. be present in GB **and**
 4. subject to special rules relating to young children (see DMG 071718 to 071720), have been present in GB for a period of (or periods totalling) not less than 104 weeks in the previous 156 weeks. (See also *TS v SSWP*; *EK v SSWP*: [2020] UKUT284 (AAC))

1. *SS CB Act 92, s.64 (1),s.70(4), & s.71(6)*; 2. *SS (AA) Regs, reg 2(1)*; *SS (DLA) Regs, reg 2(1)*; *SS (ICA) Regs, reg 9(1)*



Person subject to immigration control – EEA national

- 14 A PSIC is not entitled to (amongst other benefits) CA, DLA & AA¹. Within paragraph 13 above, sub-paragraph 2. provides that one of the conditions of residence and presence that must be satisfied is that on any day of the claim, the claimant must not be a PSIC.

PSIC meaning - prior to the end of the transition period

- 15 Prior to the end of the transition period (11pm on 31.12.20), the opening words within the definition of a PSIC¹ were that the definition related to a person “who is not a national of an EEA state”. Consequently, as EEA nationals were excluded² within the definition of someone who was a PSIC, an EEA national could not have fallen to be a PSIC.

1. Immigration and Asylum Act 1999, s.115(9); 2. s.115(1);

PSIC meaning - after the end of the transition period

- 16 As of 11pm on 31.12.20, the definition¹ of “PSIC” has been amended² so that the reference to an EEA national has been removed from that definition. This means that EEA nationals can now fall within the definition of being a PSIC, until they are granted EUSS leave or another type of leave to remain in the UK, by the Home Office. This has the effect, that with CA/DLA/AA claims made on or after 11pm on 31.12.20, DMs must now determine whether an EEA national is now a PSIC. The following paragraphs may help the DM to make that determination.

Note: Where the issue of a “backdating” request arises, the DM must consider the claimant’s position “in respect of any day” that the person is claiming for. Consequently, this means that when assessing a claim, the DM will need to look at whether any of the days that the claimant is applying for, fell before the end of the transition period. If they did, then the DM will need to apply the relevant legislation (i.e. no Grace Period SI) for those days, then for any days for which the claimant is claiming from the end of transition period onwards, the DM will need to check whether the claimant is in scope of the Grace Period SI.

1. Immigration and Asylum Act 1999, s.115(9); 2. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020, reg 12(7)

Example 1

Erika is a Swiss citizen. She arrived in Cardiff on 15.3.21 and has not lived in the UK before. She joined her daughter Edith who is also Swiss and came to live in the UK on 5.1.21. Erika makes a claim to benefit in June 2021.



Switzerland is not a part of the EEA but has a long standing agreement, meaning it's citizens have the same rights as EEA citizens. This is confirmed in the Swiss citizens' rights agreement.

The DM confirms that as although Erika is here to join a family member of a Swiss national, she does not have an EEA Family Member entry clearance stamp in her passport as she came on a visa waiver. The DM considers whether Erika is a family member of an EEA/Swiss citizen who is protected by the Withdrawal Agreement and currently exercising a right to reside.

As Edith first came to the UK after 1.1.21 she falls under the new points-based immigration system. There are no records of any earlier periods of residence in the UK on any departmental systems. Erika would be unable to derive a right through Edith.

The DM asks Erika whether she has been granted leave to remain by the Home Office. An evidence and enquiry form can be emailed to HO if necessary, where the information is not available from the Get Home Office Data function on Searchlight.

Because they both fall under the new points-based Immigration System, Erika will be a PSIC unless granted status by the HO.

Example 2

Adele is a German national who first came to the UK in 2010. She has not applied for status under the EUSS. She makes a claim for benefit in March 2021.

Having first established that the UK is the competent state, the DM then needs to establish whether Adele was lawfully resident in the UK as at 11pm on 31.12.20. Lawful residence means more than simply being in the UK. The claimant must have been exercising any right to reside under the Imm (EEA) Regs 2016.

If the DM determines that Adele was exercising a right to reside as at 11pm on 31.12.20, she is protected by the Grace Period SI. As she has been in the UK for over 5 years, Adele might have gained a permanent right to reside. This does not affect the requirement for her to apply to the EUSS.

If Adele is protected by the Grace Period SI, she is not a PSIC. The DM can consider whether she is habitually resident in the UK at the date of claim and has been in the UK for 104 out of the past 156 weeks (the past presence test).

If she is not protected by the Grace Period SI and/or was not exercising EEA right to reside at the relevant dates of claim, Adele is a PSIC until granted a status under the EUSS.

The Grace Period ends at the end of 30.6.21. If Adele has not applied for EUSS leave by that time she becomes a PSIC.

EEA national with EUSS leave at end of the transition period

- 17 The alignment provisions within the Home Office Consequential SI (see paragraph 6 above) 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 they did prior to the end of the transition period. However, those changes will not impact those who are lawfully resident in the UK by the end of the transition period, and who are entitled to apply under the 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 already been established by the end of the transition period).
- 18 The Home Office Consequential SI saves the Imm (EEA) Regs 2016 and other relevant legislation (with modifications) for the purposes of EEA nationals and their qualifying family members who have been granted EUSS limited leave to remain (pre-settled status) by the end of the transition period. Consequently, EEA nationals and their family members with EUSS leave (whether settled or pre-settled status) do not fall into the definition of being a PSIC.

Note: In general, the Home Office apply the condition of having no recourse to public funds when granting limited leave to enter or remain. However, EUSS limited leave (pre-settled status) does not carry the condition of the person having no recourse to public funds. This has the effect that an individual who has been granted EUSS limited leave to enter or remain does not therefore fall within the definition¹ of PSIC.

1. Immigration and Asylum Act 1999, s.115(9)(b)

- 19 The residence and presence conditions (paragraph 13 **2.**) require that the claimant is not a PSIC. Until 11pm on 31.12.20, EEA nationals were exempt from the PSIC definition. From 11pm on 31.12.20, the exemption from the PSIC definition will only be saved for 6 months for those

1. with an in-time application pending under the EUSS (however, see Note below)
or
2. who have acquired a right of permanent residence **or**
3. exercising any right to reside at the end of the transition period.

Note: The savings within the Grace Period SI may be saved for longer than 6 months, until an application is finally determined (see paragraph 27), or where an appeal



against an in-time application is pending (see paragraph 28). Also, see **Note 4** to paragraph 7 in respect of late EUSS applications.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(5)(c)*

Example 1

Ella has made a claim to benefit. She is a Romanian citizen.

During the claims process Ella states that she has been granted status under the EUSS. She provides her notification showing the date the status was awarded and a share code. The staff member completing the HRT gather records this information and completes the referral to the HRT DM.

Having established that the UK is the competent state, the HRT DM checks Ella's status using the share code. This shows that she has settled status. As this is Indefinite Leave to Remain, Ella can access benefits on the same basis as a British Citizen.

Because Ella has recently returned from 6 months abroad, the HRT DM will need to determine whether she has regained her habitual residence since her return and whether she satisfies the past presence test / Genuine Sufficient Link test.

Example 2

Lotte made a claim to benefit from January 2021. She is a citizen of the Netherlands who returned to the UK in September 2020.

She previously lived in the UK from age 6 to age 18. She lived with her parents and her father, who is also a citizen of the Netherlands, worked throughout that time. It is clear that Lotte acquired a permanent right to reside, having been a family member of an EEA national qualified person for a continuous period of 5 years.

When Lotte was 18, her parents separated and Lotte returned to the Netherlands with her mother. That was in December 2016. Lotte didn't return to the UK for anything other than a holiday until September 2020, when she returned to what she considers her home, having grown up and gone to school in the UK.

She was unable to find any work due to health problems. She's had a couple of small jobs but has not gained worker status. Although she has been living off savings, she doesn't fully satisfy the conditions to be treated as self-sufficient.



It is clear from the information provided to the DM that Lotte has lost her permanent right to reside through absence from the UK of over 2 years (see DMG 073368), that she was not exercising a right to reside within the meaning of the Imm (EEA) Regs 2016 as at the end of the transition period and that she has not yet applied for leave under the EUSS.

However, because Lotte had held a permanent right to reside within 5 years of returning to the UK and she was lawfully resident in the UK on 31.12.20, she is protected by the Grace Period SI¹. She will be treated as still having a permanent right to reside until the end of the Grace Period at the end of 30.6.21. She must apply for status under the EUSS. If she does not do so, she will become a PSIC.

The DM signposts Lotte to the EUSS. As Lotte is protected by the Grace Period SI, she will be able to access benefits during the Grace Period and will then require a review of her right to reside following the digital data matching exercise. It should be remembered that if Lotte has applied for EUSS leave by the end of 30.6.21, but does not yet have that status, she continues to be protected by the Grace Period SI until her application is finally determined (see paragraph 27), or where an appeal against an in-time application is pending (see paragraph 28).

EEA national with no EUSS leave at end of the transition period

- 20 Where a claim to CA/DLA/AA is made on or after 11pm on 31.12.20, and the claimant is an EEA national, who has not yet applied for EUSS leave, the DM will need to consider whether the claimant has been exercising any right to reside (or was deriving a treaty right from a family member) prior to 11pm on 31.12.20. However, this determination is not made from the date of the claim. The DM only needs to establish whether the EEA national has been exercising any right to reside immediately before the end of the transition period. This determination is made in order to establish whether that person is a PSIC or whether that person is protected by the Grace Period SI. If they are protected by the Grace Period SI they are not a PSIC. This is because the amendments¹ within the Grace Period SI specify provisions of other legislation that continue to apply, where appropriate, and with relevant modifications. This includes specified legislation² which provides that individuals with a right to enter or remain in the UK by virtue of legislation such as the Imm (EEA) Regs 2016 do not require leave to enter or remain under the Immigration Act 1971. This enables individuals within the personal scope of the Grace Period SI to continue to reside lawfully in the UK, as they did prior to the end of the transition period for the duration of the Grace Period.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 12(1)(i)*; 2. *Immigration Act 1988, s.7*



21 Consequently, whether an individual becomes a PSIC¹ becomes key for those persons falling out of the scope of the Grace Period SI. Now that free movement has been repealed from the end of the transition period, any EEA national (and their family member) without EUSS leave is a PSIC, unless they are in scope of the Grace Period SI, which saves² the words “who is not a national of an EEA State” within the definition of a PSIC. This means that for anyone

1. within scope³ of the Grace Period SI (i.e. anyone exercising any right to reside immediately before the end of the transition period), the savings within the SI continue to apply during the Grace Period. The DM can then go on to determine whether the person is actually habitually resident (see DMG 073707 – 073745) at the date of claim. UK competency, the past presence test or the criteria to establish Genuine and Sufficient Link should be applied as normal **or**
2. not falling within the Grace Period SI (i.e. anyone not exercising any right to reside immediately before the end of the transition period), they become a PSIC at 11pm on 31.12.20. Consequently, they and their family members will have no access to (amongst others) CA/DLA/AA, until they and their family members fall within scope of the Withdrawal Agreement.

Note 1: Any EEA citizen (or family member) who has not yet applied for EUSS leave should be signposted to the Home Office.

Note 2: Where there is uncertainty as to whether the claimant falls within scope of the Withdrawal Agreement and/or the Grace Period SI, those cases may be submitted to DMA Leeds as part of our new escalation process. A revised template for submitting such cases can be found [here](#).

1. Immigration & Asylum Act 1999, s.115(9); 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 12(1)(i); 3. Regs 3 & 4

Example 1

Bernard is a French national who moved from France to Wales to live on 29.12.20. He makes a claim to AA in March 2021.

The DM needs to check whether Bernard is receiving a French pension, or any other French Social Security benefit, to establish the competent state. Having established that the UK is the competent state, the DM can then look at EUSS status.

As he has not applied for status under the EUSS, the DM needs to consider whether Bernard is protected by the Withdrawal Agreement and/or the Grace Period SI, for the claim. The DM considers whether Bernard was lawfully resident in the UK as at 11pm



on 31.12.20. Lawful residence means more than simply being in the UK. The claimant must have been exercising any right to reside under the Imm (EEA) Regs 2016. There is no need to consider the length of the residence at this stage.

As Bernard was exercising an Initial Right of residence¹ (see DMG 073460) on 31.12.20, i.e. he was within 3 months of his first arrival in the UK, he is therefore protected by the Withdrawal Agreement and is not a PSIC.

The DM can then go on to consider whether Bernard was actually habitually resident (DMG 073707 – 073745) in the UK at the date of claim. However, due to his lack of time in the UK, Bernard cannot possibly pass the past presence test and therefore would have to satisfy whether he has a genuine and sufficient link (GSL) to the UK.

The Grace Period ends at the end of 30.6.21. If Bernard has not applied for EUSS leave by that time, he becomes a PSIC. However, DMs should have regard to EUSS applications which have not been finally determined by the application deadline date of the end of 30.6.21 (see paragraph 27), or where an appeal against an in-time application is pending (see paragraph 28).

1. Imm (EEA) Regs 2016, reg 13

Example 2

Dipti, born in Bangladesh, who is now a German national first came to the UK on 20.2.21. She is joining her husband, Delwar. Delwar is originally from Bangladesh but was naturalised as a Polish citizen some years ago. Delwar came to the UK in 2019.

Dipti makes a claim for CA in March 2021. She came into the UK on a visitor visa, as at that time she had not decided whether she wanted move to the UK. She has now decided to make the UK her home. Neither Dipti or Delwar have applied to the EUSS.

Delwar provides sufficient information to show that he has been working part-time since July 2020 and is still in employment.

Having established that the UK is the competent state, the DM determines that the work is genuine and effective and that Delwar has worker status. As he was lawfully resident in the UK at 11pm on 31.12.20 he is protected by the Withdrawal Agreement but only for the Grace Period. By the end of 30.6.21 he must have applied to the EUSS.

The DM asks Dipti for information about the nature of her relationship to Delwar and, if they are married, the date of marriage. Dipti confirms that she and Delwar married in Bangladesh in June 2020. They can provide a marriage certificate confirming a legal relationship contracted under Bangladeshi law.



Because the relationship started before 11pm on 31.12.20 and Delwar was lawfully resident at the end of the Transition Period, at 11pm on 31 December 2020, Dipti can derive a right to reside from Delwar. She is not a PSIC, but will need to satisfy the other elements of the Residence and Presence Test.

The DM signposts Dipti to the EUSS. She will be subject to a review of her right to reside following the digital data matching exercise at the end of the Grace Period. If she has not applied for EUSS leave by that time, she will become a PSIC, and will have no access to benefits until granted an immigration status by the Home Office. However, DMs should have regard to EUSS applications which have not yet been finally determined by the application deadline date of the end of 30.6.21 (see paragraph 27), or where an appeal against an in-time application is pending (see paragraph 28).

Definitions

EEA document

22 “EEA document” means¹

1. an EEA family permit² **or**
2. a registration certificate³ **or**
3. a residence card⁴.

1. The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(6)(a) – (c); 2. Imm (EEA) Regs 2016, reg 12; 3. Reg 17; 4. Reg 18

Family member

23 “family member”¹

1. has the same meaning as defined in the specified legislation² (see DMG 072900) that had effect immediately before 11 pm on 31.12.20 **and**
2. includes an extended family member as defined in the specified legislation³ (see DMG 073293) that had effect immediately before 11 pm on 31.12.20 if that person
 - 2.1 immediately before 11 pm on 31.12.20 satisfied the condition of being a durable partner⁴ **or**
 - 2.2 holds a valid EEA document (see paragraph 22 above) (regardless of whether that document was issued before or after 11pm on 31.12.20).



Note: For the purposes of sub-paragraph 1. above, a family member is a spouse or civil partner, or direct descendants of the EEA national, their spouse or civil partner, who are under the age of 21 or dependants of the EEA national, their spouse or civil partner, or direct ascendant relatives of the EEA national, their spouse or civil partner, who are dependants.

1. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(6)(d) – (e); 2. Imm (EEA) Regs 2016, reg 7(1); 3. Reg 8; 4. Reg 8(5)

Relevant family member

24 “Relevant family member”, in relation to a person (“P”), means¹ a family member who

1. was a family member of P immediately before 11 pm on 31.12.20 **or**
2. is P’s child and
 - 2.1 the child’s other parent is a relevant person or has EUSS leave to enter or remain in the UK **or**
 - 2.2 the child’s other parent is a British citizen **or**
 - 2.3 P has sole or joint rights of custody of the child in the circumstances set out in the last point of specified legislation² **or**
 - 2.4 P falls within specified legislation³ **or**
3. becomes a family member of P after 11 pm on 31.12.20 by virtue of being issued with an EEA document (see paragraph 22 above) **or**
4. is the spouse or civil partner of P, and P is a national of Switzerland.

1. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(6)(f) – (i); 2. Withdrawal Agreement, Art. 10(1)(e)(iii); EEA EFTA separation agreement, Art.9(1)(e)(iii); 3. Swiss citizens' rights agreement, Art.10(1)(e)(iii)

Relevant person

25 “Relevant person” means¹ a person who does not have (and who has not, during the Grace Period, had) EUSS leave to enter or remain in the UK and who

1. immediately before 11 pm on 31.12.20
 - 1.1 was lawfully resident i.e. exercising any right to reside² in the UK **or**
 - 1.2 had a right of permanent residence³ in the UK **or**



2. is not a person who falls within sub-paragraph 1. but is a relevant family member of a person who immediately before 11 pm on 31.12.20
 - 2.1 did not have EUSS leave to enter or remain in the UK **and**
 - 2.2 either
 - 2.2.a was lawfully resident i.e. exercising any right to reside⁴ in the UK **or**
 - 2.2.b had a right of permanent residence⁵ in the UK.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(6)(j) – (k); 2. Imm (EEA) Regs 2016; 3. Reg 15; 4. Imm (EEA) Regs 2016; 5. Reg 15*

Grace Period

- 26 Certain provisions of the Imm (EEA) Regs 2016 will continue to apply (despite their revocation) during the Grace Period¹, to a relevant person who does not have (and who has not, during the Grace Period, had) EUSS leave to enter or remain in the UK and who
1. resided lawfully in the UK (i.e. exercised any right to reside) immediately before 11 pm on 31.12.20 **or**
 2. had a right of permanent residence in the UK by virtue of the Imm (EEA) Regs 2016 at any point in the 5 years preceding 11 pm on 31.12.20 **or**
 3. are relevant family members of such persons at 1. and 2. above.

Note: Within 3. above, a “relevant family member” is defined so that in most cases, they need to be a family member immediately before 11pm on 31.12.20. However, for the full definition of “relevant family member”, please see paragraph 24 above.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 3(2)*

Applications which have not been finally determined by the application deadline

- 27 Provision¹ is made for individuals who have made an application for EUSS leave on or before the application deadline (the end of 30.6.21), but whose application has not been finally determined by that date. The provision provides that certain provisions of the Imm (EEA) Regs 2016 continue to apply to such individuals until their application has been finally determined. This period of time is referred to as the “relevant period²”.

Note: “Finally determined” includes an application being successful or exhausting any rights of appeal that the individual may have³.

1. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 4;*
2. *Reg 4(6)(b); 3. Reg 4(7)*

28 Provision is made for those individuals who have

1. made an in-time application for EUSS leave to enter or remain in the UK on or before the application deadline¹ and
 - 1.1 whose EUSS leave has either not been granted yet **or**
 - 1.2 who have an appeal pending
- and**
2. by virtue of the Imm (EEA) Regs 2016² they
 - 2.1 resided lawfully in the UK (i.e. exercised any right to reside) immediately before 11pm on 31.12.20³ **or**
 - 2.2 had a right of permanent residence in the UK at any point in the 5 years preceding 11pm on 31.12.20⁴.

Note 1: An in-time application is one which is valid under EUSS, is made on or before the application deadline (the end of 30.6.21), and has not been withdrawn⁵.

Note 2: This does not include family members of those individuals, who may have a pending application.

Note 3: The relevant savings may continue to apply to these individuals until well after 30.6.21. The provisions⁶ saved in the Grace Period SI continue to apply to such individuals until their application is successful or the individual has exhausted any rights of appeal that they may have i.e. is finally determined.

1. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 4(2)(a); 2. Reg 4(2)(b); 3. Reg 4(2)(b)(i); 4. Reg 4(2)(b)(ii); 5. reg 4(6)(a); 6. Reg 4(7)*

Imm (EEA) Regs 2016 savings

29 Paragraphs 31 - 48, together with Appendix 1, specifies the provisions¹ of the Imm (EEA) Regs 2016 that continue to apply (despite their revocation), identifying those which are modified and those which are covered by DMG guidance. The modifications ensure that the Imm (EEA) Regs 2016 continue to operate appropriately after 11 pm



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 KH² (on the unlawful application of GPoW to retained workers – see paragraphs 37 - 39 below) and HK³ (on allowing Surinder Singh rights to those who've obtained permanent residence in another host State – see paragraphs 42 - 44 below).

Note: Although paragraphs 31 – 49 have no direct impact upon entitlement to CA, DLA or AA, disability and carers DMs need to be aware of these amendments when considering whether a person falls within scope of the Grace Period SI.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, regs 5 – 10; 2. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC); 3. HK v SSWP (PC) [2020] UKUT 73 (AAC)*

- 30 This table at **Appendix 1** identifies the Imm (EEA) Regs 2016 provisions that continue to apply under the Grace Period SI and whether the particular regulation/Schedule is modified.

General Interpretation

- 31 Within the General Interpretation provision¹, after 11pm on 31.12.20, all references to the wording of either

1. “or any other right conferred by EU Treaties²” or
2. “or the EU Treaties³”

are to be omitted⁴.

Note: On or after exit day, but before 11pm on 31.12.20⁵, all instances of the words at **1. & 2.** above should be read as though they were a reference to a right conferred by the EU Treaties so far as they were applicable to and applicable in the UK by virtue of the Withdrawal Agreement⁶.

1. *Imm (EEA) Regs 2016, reg 2; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(a)(i); 3. 5(a)(ii); 4. 5(a)(i)(bb) & 5(a)(ii)(bb); 5. 5(a)(i)(aa) & 5(a)(ii)(aa); 6. Withdrawal Agreement, Part 4*

- 32 Within the definition of “EEA decision¹”, the words “a registration certificate, residence card, derivative residence card, document certifying permanent residence or permanent residence card” are omitted².

1. *Imm (EEA) Regs 2016, reg 2; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(a)(iii)*

- 33 Within the definition of “EEA State¹”, the words “, other than the United Kingdom” are omitted so far as relevant to things done after exit day².

1. *Imm (EEA) Regs 2016, reg 2; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(a)(iv)*

Continuity of residence

- 34 This provision¹ continues to take effect² with no modifications.

1. *Imm (EEA) Regs 2016, reg 3; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(a)(b)*

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

- 35 The definition of a self-employed person¹ is amended to mean a person who is established in the UK in order to pursue activity as a self-employed person “*within the meaning of*”² specified legislation³.

1. *Imm (EEA) Regs 2016, reg 4(1)(b); 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(c); 3. TFEU, Art.49*

Worker or self-employed person who has ceased activity

- 36 This provision¹ continues to take effect² with no modifications.

1. *Imm (EEA) Regs 2016, reg 5; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(d)*

Qualified person

- 37 A person who is no longer working must continue to be treated as a worker, provided that certain conditions are met¹ (see DMG 073086 & 073090). One of those conditions is that the person satisfies condition B². This condition is amended³ to insert the words, “, *when determining whether the person is a jobseeker.*”. This amendment reflects the UT judgment of KH⁴. From 11pm on 31.12.20, DMG guidance at 073084 **2.**, 073086 **3.** and 073090 **3.** should 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.”.

1. *Imm (EEA) Regs 2016, reg 6(2)(b) & 6(2)(c); 2. reg 6(6); 3. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(e)(ii); 4. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)*

- 38 A person who is no longer self-employed continues to be treated as a self-employed person, provided that certain conditions are met¹ (see DMG 072862). One of those conditions is that the person satisfies condition E². This condition is amended to omit the words “*and having a genuine chance of being engaged*”³. This amendment reflects



the UT judgment of KH⁴. From 11pm on 31.12.20, DMG guidance at 072864 2. should be disregarded.

Note: Although guidance within this SI came into force at 11 pm on 31.12.20, DMs should already be applying the effects of the KH judgment, which took effect from 4.2.20 – see Memo DMG 27/20 & Memo ADM 31/20 – Retaining Worker Status and the Genuine Prospect of Work Test.

1. *Imm (EEA) Regs 2016, reg 6(4); 2. reg 6(4C); 3. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(e)(i); 4. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)*

- 39 DMG 073092 provides guidance on the circumstances when a person may not retain the status of worker, self-employed person or jobseeker for longer than the relevant period¹. This provision is amended to insert the words “, *where that person is a jobseeker*”². This amendment reflects the judgment of KH³. From 11pm on 31.12.20, guidance at DMG 073092 should be read as if “*where that person is a jobseeker*” is prefixed to the reference of having a genuine chance of being engaged.

Note: Although guidance within this SI came into force at 11 pm on 31.12.20, DMs should already be applying the effects of the KH judgment, which took effect from 4.2.20 – see Memo DMG 27/20 & Memo ADM 31/20 – Retaining Worker Status and the Genuine Prospect of Work Test.

1. *Imm (EEA) Regs 2016, reg 6(7); 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(e)(iii); 3. KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)*

Family members

- 40 This provision¹ continues to take effect² with no modifications.

1. *Imm (EEA) Regs 2016, reg 7; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(f)*

Extended family member

- 41 Where an extensive examination of the personal circumstances of the claimant is required¹, the criteria², of *whether an EEA national would be deterred from exercising their free movement rights if the application was refused*, is omitted³ from the examination.

1. *Imm (EEA) Regs 2016, reg 8(8); 2. reg 8(8)(c); 3. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(g)*

Family members and extended family members of British citizens



42 DMG guidance at 073254 advises that, if certain conditions are satisfied, family members of British citizens have the same EU law rights of residence as they would if they were a family member of an EEA national¹. An amendment² is made to the end of this provision, to insert the words “*and BC is to be treated as satisfying any requirement to be a qualified person*”. This gives effect to the recent UT judgment of HK³ (on allowing Surinder Singh rights to those who’ve obtained permanent residence in another host State).

1. *Imm (EEA) Regs 2016, reg 9(1)*; 2. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(h)(i)*; 3. *HK v SSWP (PC) [2020] UKUT 73 (AAC)*

43 DMG guidance at 073259 advises on factors that are relevant to determining whether residence in an EEA State (other than the UK) is or was genuine¹. The amendment² to this provision omits sub-paragraph (a). From 11pm on 31.12.20, DMG guidance at 073259 1. should be disregarded.

1. *Imm (EEA) Regs 2016, reg 9(3)*; 2. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(h)(ii)*

44 DMG 073261 provides advice for the purposes of determining whether, when treating the British citizen as an EEA national, the British citizen would be a qualified person¹. From 11pm on 31.12.20, DMG guidance at 073261 should be disregarded, as this specified legislation is omitted².

1. *Imm (EEA) Regs 2016, reg 9(7)*; 2. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(h)(iii)*

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

45 This provision¹ continues to take effect² with no modifications.

1. *Imm (EEA) Regs 2016, reg 9A*; 2. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(i)*

Family member who has retained the right of residence

46 Within this provision¹, the words “*the initiation of proceedings for*” are omitted².

1. *Imm (EEA) Regs 2016, reg 10(5)(a)*; 2. *The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 5(j)*

Derivative right to reside

47 Guidance at DMG 073466 provides advice relating to primary carers of a British citizen¹. From 11pm on 31.12.20, DMG 073466 3.2² is amended to read “an EEA state or Switzerland”³.



1. *Imm (EEA) Regs 2016, reg 16(5); 2. reg 16(5)(c); 3. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 6(f)(i)*

Effect on other legislation

- 48 Specified legislation¹ is modified to omit² reference to “a qualifying EEA State residence card” from the list of documents used for the purposes of satisfying a requirement to produce a visa³.

1. *Imm (EEA) Regs 2016, reg 43 & Sch. 3, para 3; 2. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 10(a) & (c); 3. Immigration and Asylum Act 1999, s. 40(1)(b)*

Entitlement to income-related benefits and public services

- 49 These amendments¹ ensure that the Imm (EEA) Regs 2016 provisions saved (with their modifications within paragraphs 31 - 48 above) continue to apply for the purposes of benefits and public services legislation. This is where the relevant DWP income-related benefits legislation is listed (which includes amongst others, IS, JSA(IB), ESA(IR), SPC & Social Fund funeral payments) so that the Imm (EEA) Regs 2016 are saved for the purposes of applying that DWP legislation².

Note 1: An amendment is made to the Grace Period SI, by the Home Office Consequential SI³, which provides that the Imm (EEA) Regs 2016 continue to apply, with a modification, for the purposes of entitlement to a social fund funeral payment. The Social Fund Maternity and Funeral Expenses (General) Regulations are added to the list of benefits¹ detailed within this SI.

Note 2: The saved Imm (EEA) Regs 2016 provisions are saved only for the individuals who come within the personal scope of the Grace Period SI⁴. Anyone who does not satisfy these conditions is not within the scope of the SI, regardless of their situation during the Grace Period itself, or at the time at which they make their application for benefits.

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 11; 2. IS (Gen) Regs, reg 21AA; JSA Regs, reg 85A; ESA Regs, reg 70; SPC Regs, reg 2; SFMFE (Gen) Regs, reg 7; 3. The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 49; 4. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, regs 3 & 4*

Evidencing status

- 50 Where a question arises as to whether the Imm (EEA) Regs 2016 continue to apply to a person, it is for that person to show that they do. In effect, the evidentiary burden is



on the person making the benefit claim to show they are within the scope of the Grace Period SI¹. However, where the claimant cannot provide documentary evidence, DMs should be mindful of utilising additional records² available to them, and taking a pragmatic approach in cases where for example, domestic violence is an issue (DMG 073446), so the claimant cannot provide anything other than oral evidence to demonstrate their residency status. It must be remembered that a claimant's oral statement is evidence (DMG 01400), and where that oral evidence is the only evidence available, the DM must decide on the balance of probability (DMG 01343) whether the claimant has discharged the burden of proof (DMG 01405 et seq).

1. *The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 13*; 2. *Department for Social Development v Kerr [2004] UKHL 23*

ANNOTATIONS

Please annotate the number of this memo (06/21) against DMG paragraphs:

072862; 072864; 072900 (Heading); 073084; 073086; 073090; 073092; 073254;
073259; 073261; 073293; 073466

CONTACTS

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

DMA Leeds: [May] 2021

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

APPENDIX 1

**The Imm (EEA) Regs 2016 provisions that continue to apply during
the Grace Period**

Imm (EEA) Regs 2016	SI reg no	Modified	Memo para number(s)
Reg 2 General Interpretation	Reg 5(a)(i) – (iv)	Yes	31 - 33
Reg 3 Continuity of residence	Reg 5(b)	No	34
Reg 4 Worker, Self- employed person etc	Reg 5(c)	Yes	35
Reg 5 Worker or self- employed person who has ceased activity	Reg 5(d)	No	36
Reg 6 Qualified person	Reg 5(e)(i) – (iii)	Yes	37 - 39
Reg 7 Family Member	Reg 5(f)	No	40



Reg 8 Extended Family Member	Reg 5(g)	Yes	41
Reg 9 Family members and extended family members of British citizens	Reg 5(h)(i) – (iii)	Yes	42 - 44
Reg 9A Dual nationals	Reg 5(i)	No	45
Reg 10 Family member who has retained the right of residence	Reg 5(j)	Yes	46
Regs 11 – 15 Residence rights	Reg 6(a) – (e)	Yes	Not covered within DMG guidance
Regs 16	Reg 6(f)(i) – (ii)	Yes	47
Reg 21 - 30	Reg 6(g) & (h) Reg7(1) &(2) Reg 8(a) & (b)	Yes	Not covered within DMG guidance
Reg 31	Reg 8(c)	No	



Reg 32	Reg 8(d)	Yes	Not covered within DMG guidance
Reg 33	Reg 8(e)	No	
Reg 34	Reg 8(f)(i) – (ii)	Yes	Not covered within DMG guidance
Regs 35 – 42	Reg 9(a) – (h)	No	
Sch. 2	Reg 9(i)	Yes	Not covered within DMG guidance
Reg 43 Sch. 3 Effect on other legislation	Reg 10(a) Reg 10(c)	No yes	48
Reg 45	Reg 10(b)	Yes (in so far as it relates to Sch. 4, Part 1)	Not covered within DMG guidance
Sch. 4, Part 2	Reg 10(d)	No	
Sch. 6	Reg 10(e)	Yes	Not covered within DMG guidance
Sch. 7	Reg 10(f)	No	Not covered within DMG guidance