

**EXPLANATORY MEMORANDUM TO
THE STATEMENT OF CHANGES IN IMMIGRATION RULES
PRESENTED TO PARLIAMENT ON 1 APRIL 2019 (HC 2099)**

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Committee on the UK's exit from the European Union.

2. Purpose of the instrument

- 2.1 The changes concern the EU Settlement Scheme for European Economic Area (EEA) and Swiss citizens and their family members to obtain UK immigration status, and in particular are:

- To provide, in light of the European Council decision of 22 March 2019, for the scheme to be available in a 'no deal' scenario to those EEA and Swiss citizens resident here by exit and their family members; and
- To provide scope for an application for administrative review to be made in respect of a decision on an application made under the scheme outside the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The change, from 29 March 2019 to the date and time of withdrawal, made by this statement in respect of the 'specified date' under the EU Settlement Scheme – by which, in a 'no deal' scenario, EEA and Swiss citizens would need to be continuously resident in the UK and relevant family relationships would need to have been formed – will come into effect on 2 April 2019 rather than after the usual period of 21 days from the date the measure is laid before Parliament.
- 3.2 The Government considers that this departure from normal practice is justified, because, in light of the European Council decision of 22 March 2019, it is important that the Government makes clear, as soon as possible, what the cut-off date for the eligibility of EEA and Swiss citizens for the EU Settlement Scheme would be in a 'no deal' scenario. The scheme has been fully open in the UK from 30 March 2019 through the Statement of Changes in Immigration Rules HC 1919, which was laid before Parliament on 7 March 2019.

Matters of special interest to the Committee on the UK's exit from the European Union

- 3.3 The EU Settlement Scheme is contained in Appendix EU to the Immigration Rules, and it provides the basis for various groups to apply for UK immigration status, which they will require in order to remain here permanently after the UK's withdrawal from the European Union. In particular, the scheme provides the basis for resident EU citizens –

and, from 30 March 2019, other EEA and Swiss citizens – and their family members, and from that date the family members of certain British citizens, to apply for UK immigration status.

- 3.4 The scheme is consistent with the draft Withdrawal Agreement with the European Union, published on 14 November 2018,¹ as regards EU citizens resident here before the end of the planned implementation period on 31 December 2020, and their family members. It is also consistent with the citizens’ rights agreements reached with the other EEA countries (Iceland, Liechtenstein and Norway) and with Switzerland.
- 3.5 The EU Settlement Scheme will also be the basis on which EEA and Swiss citizens, resident in the UK by exit and their family members, will be able to obtain UK immigration status in order to remain here in the event of the UK leaving the EU without a deal. This was reflected, with reference to a possible ‘no deal’ exit on 29 March 2019, in the policy paper on citizens’ rights in a ‘no deal’ scenario, published by the Government on 6 December 2018.²

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.6 As this statement of changes in Immigration Rules is subject to the procedure set out under section 3(2) of the Immigration Act 1971, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this Statement of Changes in Immigration Rules is all of the United Kingdom.
- 4.2 The territorial application of this Statement of Changes is all of the United Kingdom.

5. European Convention on Human Rights

- 5.1 As this Statement of Changes in Immigration Rules is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 The Immigration Rules, as laid before Parliament by the Secretary of State, constitute a statement of practice to be followed in the administration of the Immigration Act 1971 for regulating the entry into and stay of persons in the United Kingdom.
- 6.2 This Statement of Changes in Immigration Rules will be incorporated into a consolidated version of the Immigration Rules, which can be found under the visas and

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756374/14_November_Draft_Agreement_on_the_Withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union.pdf

² <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brexit>

immigration pages of the GOV.UK website at www.gov.uk/government/collections/immigration-rules where there are also copies of all the Statements of Changes in Immigration Rules issued since May 1994.

- 6.3 For the reasons given in paragraphs 3.1 and 3.2, above, the changes to Appendix EU, Appendix EU (Family Permit) and Part 9 set out in this statement, which relate to the EU Settlement Scheme and the ‘specified date’ in a ‘no deal’ scenario, shall take effect on 2 April 2019.
- 6.4 The changes to Appendix AR and Appendix AR (EU) set out in this statement shall take effect on 22 April 2019, after the usual period of at least 21 days from the date of laying.

7. Policy background

What is being done and why?

‘Specified date’

- 7.1 On 29 March 2017, the Prime Minister gave notice of the United Kingdom’s intention to withdraw from the European Union in accordance with Article 50 of the Treaty on European Union. On 22 March 2019, the UK and the European Council agreed to extend the Article 50 process (European Council Decision (EU) 2019/476, O.J. No. L 80 I, p. 1). As a result, the Treaties of the European Union will cease to apply at 11.00 p.m. on 12 April 2019 if the House of Commons has not approved the Withdrawal Agreement by 11.00 p.m. on 29 March 2019 (instead of at 11.00 p.m. on 22 May 2019 if the House of Commons has approved the Withdrawal Agreement by 11.00 p.m. on 29 March 2019).
- 7.2 The Statement of Changes in Immigration Rules HC 1919 provided for the full opening of the EU Settlement Scheme for resident EEA and Swiss citizens and their family members from 30 March 2019. To reflect the European Council decision of 22 March 2019, changes are required to the definition of ‘specified date’ in Appendix EU, Appendix EU (Family Permit) and Part 9 of the Immigration Rules, as provided for by HC 1919. The changes will provide that, in a ‘no deal’ scenario, this cut-off date by which EEA and Swiss citizens will need to be continuously resident in the UK (and by which certain family relationships will need to have been formed) in order for a person to be eligible for status under the scheme, will be the date and time of withdrawal.
- 7.3 The changes will also ensure that, in a ‘no deal’ scenario, the grounds for the refusal of leave to enter or remain under Appendix EU or for the cancellation or curtailment of such leave, and for the refusal of entry clearance under Appendix EU (Family Permit) or for its revocation or for the cancellation of leave to enter held by virtue of a person having arrived in the UK with such an entry clearance, are consistent with the EU law public policy tests for conduct committed before the date of withdrawal, and with UK suitability provisions for conduct thereafter.

Administrative review

7.4 The Statement of Changes in Immigration Rules HC 1919 provides scope, from 9 April 2019, for EEA and Swiss citizens and certain family members to apply under the EU Settlement Scheme from outside the UK, so that they can obtain status based on their relevant previous residence in the UK. There is already scope for a person applying under the scheme from within the UK to make an application under Appendix AR (EU) to the Rules for administrative review of a decision under the scheme (to grant them limited leave rather than indefinite leave, or to refuse their application on eligibility grounds). This statement provides scope for a person applying under the scheme from outside the UK to make such an administrative review application. It also clarifies that entry clearance decisions under Appendix EU (Family Permit) are not subject to administrative review.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This Statement of Changes in Immigration Rules is not being made under the European Union (Withdrawal) Act, but it relates to the withdrawal of the United Kingdom from the European Union because it supports implementation of the EU Settlement Scheme.

9. Consolidation

9.1 The Immigration Rules were last consolidated in 1994. Consideration will be given in due course to the nature and timing of any further consolidation.

10. Consultation outcome

10.1 The Government has not undertaken a public consultation on the EU Settlement Scheme, but the overall policy and approach have been discussed with internal and external stakeholders, such as groups representing EU citizens in the UK, Consulates and community organisations, and account has been taken of those discussions.

11. Guidance

11.1 Guidance relating to these rules changes will be updated and placed on GOV.UK website.

12. Impact

12.1 The EU Settlement Scheme has no, or no significant, impact on business, charities or voluntary bodies, but it provides clarity for employers and others as to the basis on which resident EEA and Swiss citizens and their family members can remain here. There is no, or no significant, impact on the public sector.

12.2 An impact assessment on the EU Settlement Scheme was published on 20 July 2018 to support the Immigration and Nationality (Fees) (Amendment) (EU Exit) Regulations 2018. This was updated and published on 7 March 2019 to support the Immigration and Nationality (Fees) (Refund, Waiver and Amendment) (EU Exit) Regulations 2019, and is available alongside that measure on the legislation.gov.uk website.

13. Regulating small business

13.1 There is no, or no significant, impact on activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The review clauses at the beginning of this Statement of Changes require the Secretary of State to review the operation and effect of all of the relevant Immigration Rules, including any rules amended or added by the changes in this Statement, and lay a report before Parliament within five years of 6 April 2017 and within every five years after that. Following each review, the Secretary of State will decide whether the relevant Immigration Rules should remain as they are, be revoked or be amended. A further Statement of Changes would be needed to revoke or amend the relevant rules.

15. Contact

15.1 Specific written queries relating to this Statement of Changes should be directed to Clive Peckover at StatementofChanges@homeoffice.gsi.gov.uk. Please note that this mailbox is only for Parliamentary use in relation to specific technical queries regarding the drafting of this Statement of Changes. It is not a contact point for general enquiries. Queries to this e-mail address from outside Parliament about other immigration issues, including how these changes affect applications, will not receive a response.

15.2 More general queries should be directed to the Home Office as per the ‘Contact UKVI’ section on the visas and immigration pages of GOV.UK website at <https://www.gov.uk/government/organisations/uk-visas-and-immigration>.

15.3 A copy of this Statement of Changes can be found on the visa and immigration pages of the GOV.UK website at <https://www.gov.uk/government/collections/immigration-rules-statement-of-changes>.

15.4 Nicola Smith at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.5 Rt Hon Caroline Nokes MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.