



**RIGHT TO RESIDE – THE IMMIGRATION AND SOCIAL
SECURITY CO-ORDINATION (EU WITHDRAWAL) ACT
2020 (CONSEQUENTIAL, SAVING, TRANSITIONAL AND
TRANSITORY PROVISIONS) (EU EXIT) REGULATIONS
2020 – CA, DLA & AA**

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Introduction

- 1 The Regulations within this Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020¹ (commonly referred to as “the Home Office Consequential SI”) are made as a consequence of the provisions in the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020² (“the



ISSC Act”) which ended Free Movement. 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. The majority of the changes came into force at the end of the transition period, at 11pm on 31.12.20³. However, see paragraph 3 below for the exceptions.

1. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 2020 No. 1309)*; 2. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, s.5 & s.8(5)*; 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 EU (Withdrawal Agreement) Act 2020 (“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 took effect when the Immigration (European Economic Area) Regulations 2016 (“the Imm (EEA) Regs 2016”) were revoked at 11pm on 31.12.20, with the following exceptions

1. regulations 47 and 48 came into force immediately before the Imm (EEA) Regs 2016 were revoked **and**
2. regulation 49, which amends the Grace Period SI (see Memo DMG 6/21 & Memo ADM 7/21 - The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020), also came into force immediately before the Imm (EEA) Regs 2016 were revoked, so that the Grace Period SI came into force as amended **and**
3. regulations 20(7) and (8) came 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 EU law provided 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 was 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 committed to ending free movement to the UK and introducing a new points-based immigration system. This means that there will no longer be separate arrangements for EEA citizens. Instead, there will be one new points-based immigration system. To implement this new immigration system, primary legislation will repeal EU law implemented into domestic legislation but then retain parts of it to ensure operation for those to whom it will continue applying to. The ISSC Act does this, and ended free movement at the end of the transition period (at 11pm on 31.12.20), paving the way for the new points-based immigration system to be rolled out. The points-based immigration system will apply to EEA and non-EEA citizens from 1.1.21 and will be set out within the Immigration Rules.
- 6 The ISSC Act
 1. ends freedom of movement¹ 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 legislation² in the same way that non-EEA citizens do now **and**
 2. protects the status of Irish citizens³ in the UK, confirming that their right to enter and remain in the UK without permission when free movement under EU law comes to an end **and**



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

1. The ISSC Act, s.1; 2. The Immigration Act 1971; 3. The ISSC Act, 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 they did prior to the end of the transition period. 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”) by the end of the grace period. This 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 and still exist when that person seeks to join the EUSS leave holder in the UK).

The Home Office Consequential SI

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

1. The ISSC Act, Part 1

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

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



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

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

EEA citizens - resident in UK, without EUSS leave, before end of transition period

- 10 The Government legislated through the Withdrawal Agreement Act 2020 to protect the rights of EEA citizens and their family members who are lawfully resident in the UK by the end of the transition period at 11pm on 31.12.20¹. The Government has established the EUSS in Appendix EU to the Immigration



Rules, to provide the means for them to obtain the UK immigration status they need to remain in the UK. 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 did prior to the end of the transition period. 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. 11pm on 31.12.20 until 11pm on 30.6.21. This will provide time for those who arrived before the end of the transition period to make their application for EUSS leave.

Note 1: This Home Office Consequential SI should be read alongside the Grace Period SI, please see Memo DMG 6/21 & Memo ADM 7/21 – The Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020. The Grace Period SI saves temporarily the existing free movement rights held at the end of the transition period by those lawfully resident in the UK under EU free movement, and who do not have status under the EUSS at that point. It saves those rights for the duration of the Grace Period (11pm on 31.12.20 until 11pm on 30.6.21) or, where an application to the EUSS is made by the deadline of 11pm on 30.6.21, until that application is finally determined.

Note 2: As required by the Withdrawal Agreement², the Government has committed to accepting late applications from those with reasonable grounds for missing the 11pm on 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. *European Union (Withdrawal Agreement) Act 2020; s.7; 2. Withdrawal Agreement, Art. 18(d)*

EEA citizens - resident in UK, with EUSS leave, before and after the end of transition period

- 11 This Home Office Consequential SI saves the Imm (EEA) Regs 2016 (despite their revocation) with relevant modifications, for EEA citizens who have been granted EUSS limited leave to enter or remain (pre-settled status) in the UK¹. Those granted status under the EUSS and covered under the Withdrawal Agreement will continue to be able to access benefits and services as they did prior to the end of the transition period.

1. *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 83 & Sch.4*



DM Action

- 12 For the purposes of CA/DLA/AA, one of the Residence & Presence conditions require that the claimant is not a PSIC. Until 11pm on 31.12.20, EEA citizens were exempt from the PSIC condition (see paragraphs 14 – 16 of the Grace Period SI – Memo DMG 6/21 & Memo ADM 7/21). From 11pm on 31.12.20, the exemption from the PSIC condition will only be saved for a limited period, for those at the end of the transition period, who
1. are entitled to permanent right of residence **or**
 2. are exercising any right to reside under the Imm (EEA) Regs 2016.
- 13 This means that disability and carer DMs need to establish whether an EEA citizen, or their family member, is a PSIC. This can be done by checking whether the person has been granted EUSS leave using either the “Get HO Data” option in CIS (Searchlight), the person’s ‘share code’ tool, or by emailing an Evidence and Enquiry form to the Home Office.
- 14 If the status check confirms that the claimant has been granted EUSS leave to enter or remain in the UK, they are not a PSIC, and do not need to rely on the protection of the Grace Period SI. The DM can then go on to determine the remaining residence and presence conditions i.e. whether the person is actually habitually resident (see DMG 073707 et seq) at the date of claim, and apply the PPT or GSL as usual.
- 15 If the status check confirms that the claimant has not been granted EUSS leave to enter or remain in the UK, they may be a PSIC. Where the claim is made during the Grace Period (i.e. after 11pm on 31.12.20 but before 11pm on 30.6.21), the DM will need to consider further information before a determination can be made as to whether the claimant is PSIC.
- Note 1:** Where DMs come across a claimant who has not yet applied for EUSS leave, that person should be signposted to the Home Office.
- Note 2:** Where the claim is made after 11pm on 30.6.21, the claimant will be a PSIC until they are granted status by the Home Office.
- 16 To be exempt from the PSIC condition during the Grace Period, the person must be a person who has EUSS leave and who has been lawfully resident in the UK on or before the end of the transition period (i.e. 11pm on 31.12.20) and also covered by the withdrawal agreement. Lawfully resident does not simply mean being present in the UK before 11pm on 31.12.20. The claimant must



have been exercising any right to reside under the Imm (EEA) Regs 2016, for example, exercising an Initial Right of Residence¹ (i.e. the first 3 months of residence from the date of admission to the UK), exercising an extended Right of Residence² (e.g. as a jobseeker, worker, self-employed person, retained worker, student etc.), acquiring a Right of Permanent Residence³ or a derivative right to reside as the primary carer of a migrant worker's child in education⁴.

Note 1: Family members may derive rights from an EEA relative who is exercising one of the rights to reside.

Note 2: Please see paragraphs 10 – 12 of Memo ADM 7/21 & Memo DMG 6/21 (the Grace Period SI memos) for guidance relating to “immediately before IP completion day”.

1. Imm (EEA) Regs 2016, reg 13; 2. Reg 6 & 14; 3. Reg 15; 4. Reg 16

- 17 Where the EEA citizen was lawfully resident before 11pm on 31.12.20 and does not yet have EUSS leave, they are not a PSIC during the Grace Period. For the purposes of entitlement to CA/DLA or AA, the DM can then go on to determine the remaining residence and presence conditions i.e. whether the person is actually habitually resident (see DMG 073707 et seq) at the date of claim, and apply the PPT or GSL as usual.

Note 1: However, as the EEA citizen has not yet applied for EUSS leave, that person should be signposted to the Home Office. The DM should note that if the EEA citizen does not apply for EUSS leave by the end of the Grace Period (i.e. following the digital data matching exercise), that EEA citizen will become a PSIC at the end of the Grace Period until they are granted status by the Home Office. It should be remembered however, that if the claimant has applied for EUSS leave by 11pm on 30.6.21, but does not yet have that status, they continue to be protected by the Grace Period SI until their application is finally determined, or where an appeal against an in-time application is pending (see paragraphs 27 & 28 of Grace Period SI Memos - Memo DMG 6/21 and Memo ADM 7/21.)

Note 2: Where there is uncertainty as to whether the claimant falls within scope of the Withdrawal Agreement and/or the Grace Period or this Home Office Consequential 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 3: Anyone under the age of 18 or arrived in the country before 1973 are not part of the digital matching exercise so will not be signposted.



- 18 Where the EEA citizen cannot demonstrate that they were lawfully resident before 11pm on 31.12.20, so cannot show that they are protected by the Withdrawal Agreement and/or the Grace Period SI, they are treated as a PSIC from 11pm on 31.12.20. Consequently, they will have no access to benefits, and family members will not be able to derive rights from them until they are granted status by the Home Office.

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

- 19 The changes introduced by the Home Office Consequential SI are made as a result of the end of free movement, which is 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 did prior to the end of the transition period. 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. 11pm on 31.12.20, and who are not eligible for the EUSS.

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

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

"Exemption for Irish citizens

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

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

Amendment and savings of primary and secondary legislation

- 21 The table at **Appendix 1** details amendments and savings to primary legislation.



- 22 The table at **Appendix 2** details amendments and savings to secondary legislation.
- 23 The table at **Appendix 3** details the revocation of secondary legislation.
- 24 The table at **Appendix 4** details amendment of primary and secondary nationality legislation.

Access to benefits and services

- 25 Although the remaining paragraphs of this memo have no direct impact on entitlement to CA/DLA/AA, disability and carer DMs need to be aware of these changes when considering whether a person falls within scope of this Home Office Consequential SI. Part 3 of this instrument contains amendments to legislation governing access to income-related 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, for those with status under the EUSS and frontier workers protected under the Withdrawal Agreements.
- 26 The Home Office Consequential SI¹ makes changes to legislation governing access to (amongst others) IS, JSA, ESA & SPC. Ordinarily, entitlements to benefits are predicated on an individual's immigration status. Prior to the end of the transition period, EEA citizens had entitlements under EU law. These Home Office Consequential SI changes have the effect of treating newly arriving EEA citizens in the same way that non-EEA citizens are currently treated, in terms of their eligibility for housing and benefits. This means that EEA citizens and their family members arriving in the UK on or after 1.1.21 and who are subject to the new points-based immigration system will generally have no access to non-contributory benefits, until they have been granted indefinite leave to remain by the Home Office.

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

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

- 27 Those residing in the UK before the end of the transition period who have been granted indefinite leave to enter or remain (settled status) or limited leave to



enter or remain (pre-settled status) under the EUSS will continue to be able to access benefits and services as they do now (DMG 073490 – 073495). The Home Office Consequential SI therefore saves part of the Imm (EEA) Regs 2016 to ensure that the current eligibility tests for access to benefits and services continue to apply to that cohort as they did prior to the end of the transition period.

- 28 Those who are in scope of the Withdrawal Agreement and who have had any right to reside at the end of the transition period, but who have not applied to the EUSS by the application deadline date of 11 pm on 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.
- 29 This Home Office Consequential SI makes amendments¹ to specified legislation² to ensure those with EUSS limited leave to enter or remain (pre-settled status) do not become chargeable for secondary health services (sometimes referred to as 'hospital and community care'). This change is required since those with EUSS limited leave to enter or remain (pre-settled status) would not currently be deemed to be 'ordinarily resident' and would therefore be chargeable for NHS healthcare. The amendment specifies that those granted EUSS limited leave to enter or remain are not defined as an "overseas visitor". This means that they will not be prohibited by their immigration status from accessing NHS healthcare without charge. Instead, they will be subject to the same test of ordinary residence as those granted EUSS indefinite leave to enter or remain (settled status) or other immigration rules for non-EEA migrants.

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

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

- 30 This Home Office Consequential SI makes amendments to legislation governing access to benefits, to reflect that an EEA citizen will be a PSIC for these purposes as a result of changes to section 115 of the Immigration and Asylum Act 1999. This includes an amendment¹ to the Social Security (Immigration and



Asylum) Consequential Amendments Regulations 2000 which, for the purposes of AA, SDA, CA, DLA, PIP, Social Fund payments and Health in Pregnancy grants, omits paragraph 1 of Part II of the Schedule (persons not excluded from certain benefits under section 115 of the Immigration and Asylum Act 1999).

This omission in effect removes family members who have rights under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (commonly known as the European Economic Agreement), from being exempt from the exclusion of being a PSIC.

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

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

- 31 Part 6 and Schedule 3 of this SI make savings provisions in relation to the Imm (EEA) Regs 2016. The provisions continue the effect of deportation and exclusion orders made under the Imm (EEA) Regs 2016 and ensure applications made under the Imm (EEA) Regs 2016, before the end of the transition period, can continue to be processed, including any related appeal.
- 32 “EEA Regulations 2016” within Schedule 3 means¹ the Immigration (EEA) Regulations 2016 and, unless provided otherwise, refers to those regulations as they had effect immediately before they were revoked.

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

Deportation and exclusion orders

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

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

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

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



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

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

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

- 36 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

- 37 Certain provisions¹ of the Imm (EEA) Regs 2016 continue to apply² where
1. any appeal which has been brought under the Imm (EEA) Regs 2006 has not been finally determined by 11pm on 31.12.20 **or**
 2. any appeal which has been brought under the Imm (EEA) Regs 2016 has not been finally determined by 11pm on 31.12.20 **or**
 3. any EEA decision taken before 11pm on 31.12.20 **or**
 4. any EEA decision that continues in effect by virtue of the Grace Period SI that was taken on or before 11pm on 31.12.20.



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

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

Schedule 3 – paragraphs 6 and 7

38 The modifications¹ within paragraphs 39 – 75 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 of Schedule 3, 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

39 This provision¹ continues to have effect with the following modifications²

1. as if all instances of the words “*or any other right conferred by the EU Treaties*”³
 - 1.1 in so far as they relate to things done on or after exit day but before 1.1.21, were a reference to a right conferred by the EU Treaties so far as they were applicable to and in the UK by virtue of Part 4 of the withdrawal agreement **or**
 - 1.2 in so far as they relate to things done on or after 11pm on 31.12.20, were omitted **or**
2. as if all instances of the words “*or the EU Treaties*”⁴
 - 2.1 in so far as they relate to things done on or after exit day but before IP completion day, were a reference to the EU Treaties so far as they



were applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement **or**

- 2.2 in so far as they relate to things done on or after 11pm on 31.12.20, were omitted **or**
3. as if at the end of the definition of “deportation order”, there were inserted “or under section 5(1) of the Immigration Act 1971”⁵ **or**
4. as if, in the definition of “EEA State”, the words “; *other than the UK*” were omitted⁶ **or**
5. as if at the end of the definition of “exclusion order”, there were inserted “*or directions issued by the Secretary of State for a person not to be given entry that a person is not to be given entry to the UK on the grounds that the person’s exclusion is conducive to the public good*”⁷.

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

Continuity of residence

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

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

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

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

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

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

Worker or self-employed person who has ceased activity

42 This provision¹ continues to have effect² with no modifications.

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

Qualified person

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

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

44 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. DMG guidance at 072864 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. Please see paragraph 43 above regarding current KH³ guidance.

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

45 This provision¹ continues to have effect² with the modification that the words “, *when determining whether the person is a jobseeker*” are inserted after the words “employment and”. DMG guidance at 073084 should now be read

2. can provide evidence that they are seeking employment and, when determining whether the person is a jobseeker, have a genuine chance of being engaged.

Note: Please see paragraph 43 above regarding current KH³ guidance.

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

46 This provision¹ continues to have effect² with the modification that the words “, *where that person is a jobseeker*” are inserted after the words “continuing to seek employment and”. DMG guidance at 073090, 073092, 073145, 073149 &



073428 should all now be read to the effect that a person may not retain the status of worker, self-employed person or jobseeker for longer than the relevant period without providing compelling evidence of continuing to seek employment and, where that person is a jobseeker, having a genuine chance of being engaged.

Note: Please see paragraph 43 above regarding current KH³ guidance.

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

47 This provision¹ continues to have effect with no modifications².

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

Extended family member

48 This provision¹ continues to have effect with no modifications².

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

Family members and extended family members of British citizens

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

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

50 This provision¹ continues to have effect² with the modification that at the end of that paragraph the words “*and BC is to be treated as satisfying any requirement to be a qualified person*” were inserted. DMG guidance at 073254 advises that, if certain conditions are satisfied, family members of British citizens have the same EU law rights of residence as they would if they were a family member of an EEA national. DMG guidance at 073254 should now be read as including the inserted wording. Although, see paragraph 49 above regarding current guidance on HK³.



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

51 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. DMG guidance at 073259 advises on factors that are relevant to determining whether residence in an EEA State (other than the UK) is or was genuine. DMG guidance at 073259 **1.** should now be disregarded. Although, see paragraph 49 above regarding current guidance on HK⁴.

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

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

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

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

53 This provision¹ continues to have effect² with no modifications.

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

Family member who has retained the right of residence

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

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



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

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

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

Right of admission to the UK

56 This provision¹ continues to have effect² with no modifications.

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

Procedure for applications for documentation

57 This provision¹ continues to have effect² with no modifications.

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

Verification of a right of residence

58 This provision¹ continues to have effect² with no modifications.

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

Exclusion and removal from the United Kingdom

59 This provision¹ continues to have effect² with the modification that in each of specified paragraphs³, after “*regulation 27*”, the words “*or on conducive grounds in accordance with regulation 27A or if the person is subject to a deportation order by virtue of section 32 of the UK Borders Act 2007*” are inserted.

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

Refusal to issue or renew and revocation of residence documentation

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



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

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

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

“Decisions taken on conducive grounds

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

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

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

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

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

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

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

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

Human rights considerations and interim orders to suspend removal

- 64 This provision¹ continues to have effect² with no modifications.



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

Interpretation of Part 6

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

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

Appeal rights

66 This provision¹ continues to have effect² with no modifications.

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

Out of country appeals

67 This provision¹ continues to have effect² with no modifications.

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

Appeals to the Commission

68 This provision¹ continues to have effect² with no modifications.

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

National security: EEA decisions

69 This provision¹ continues to have effect² with no modifications.

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

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

70 This provision¹ continues to have effect² with no modifications.

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

Temporary admission to submit case in person

71 This provision¹ continues to have effect² with no modifications.

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

Alternative evidence of identity and nationality

72 This provision¹ continues to have effect² with no modifications.

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

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

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

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

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

Appeals to the First-tier Tribunal

74 This provision¹ continues in effect² with the modification that

1. in relation to an appeal within Schedule 2, paragraph 5(1)(a) to (c), in each of paragraphs 1 and 2(4), the words “under the EU Treaties”, in so far as they relate to things done on or after exit day but before commencement day, were a reference to the EU Treaties so far as they were applicable to and in the UK by virtue of Part 4 of the EU withdrawal agreement **and**
2. in relation to an appeal within Schedule 2, paragraph 5(1)(d), in each of paragraphs 1 and 2(4), the words “under the EU Treaties”, were a



reference to “*under the Immigration (European Economic Area) Regulations 2016 as they are continued in effect by these Regulations or the Citizens’ Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020, or by virtue of the EU withdrawal agreement, the EEA EFTA separation agreement (which has the same meaning as in the European Union (Withdrawal Agreement) Act 2020) or the Swiss citizens’ rights agreement (which has the same meaning as in that Act)*”.

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

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

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

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

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

Savings provision in relation to access to benefits – Schedule 4

76 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 were before the end of the transition period, for the purposes of accessing benefits and services. 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.

Irish citizens

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

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

Transitional and transitory provisions

Transitional provisions in relation to the immigration status of Irish citizens

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

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



Transitory provision in relation to the British Nationality Act 1981

79 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.

80 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.

81 Guidance in paragraph 82 below applies¹ in respect of an Irish citizen who,

1. immediately before commencement day, was (or was treated as) subject to an exclusion order²
2. is subject to an exclusion order³ as they are continued in effect by the Grace Period SI⁴.

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

82 Unless the Secretary of State directs otherwise¹, the Irish citizen is to be treated for the purposes of specified legislation² as a person to whom sub-paragraph (3) of that legislation³ applies.

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. Sch. 5, Part 1 para 2(1); 3. Immigration Act 1971, s.3ZA(3)



Summary

- 83 Temporary protections for those lawfully resident in the UK i.e. those who are in scope of the Withdrawal Agreement and/or the Grace Period SI and who have had any right to reside under the Imm (EEA) Regs 2016 immediately before the end of the transition period but who have not yet made their application to the EUSS by the deadline date (11pm on 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 2 to paragraph 10 above).
- 84 Unless an Irish citizen is subject to a deportation order¹, exclusion order² or international travel ban³, their right to enter and remain in the UK without permission will continue when free movement rights end⁴, irrespective of from where they have entered the UK.

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

ANNOTATIONS

Please annotate the number of this memo (07/21) against DMG paragraphs:

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

CONTACTS

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

DMA Leeds: May 2021

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 Schedule 4
6	Rent Act 1977	Schedule 15
7	Marriage (Scotland) Act 1977	Sections 3 & 26
8	Housing Act 1988	Schedule 2
9	Housing (Northern Ireland) Order 1988	Article 7A
10	Housing Act 1996	Section 185
11	Special Immigration Appeals Commission Act 1997	Section 2C



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



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

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



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



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



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

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

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

APPENDIX 4

Amendment of primary nationality legislation (Part 4, Chapter 1 of Home Office Consequential SI)

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

Amendment of secondary nationality legislation (Part 4, Chapter 2 of Home Office Consequential SI)

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