

19-21: Claimants without a status under the European Union Settlement Scheme at the end of the Grace Period

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Introduction

1. The purpose of this memo is to clarify the legislation in place that affects benefit claims from EEA and Swiss nationals (and their family members), who are required to, but have not made an application and been granted an immigration status under the European Union Settlement Scheme (EUSS) prior to the end of the grace period on 30.06.21.

2. There is no new or alternative legislation other than those already in force. For the purposes of this memo the relevant legislation is the EU-UK Withdrawal Agreement (The Withdrawal Agreement)¹, the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (The Grace Period SI)² and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (The HO Consequential SI)³.

1 [2019/C 384 I/01](#); 2 [SI 2020/1209](#); 3 [SI 2020/1309](#)

Note: The term Withdrawal Agreement should also be read as including the equivalent EEA Separation Agreement (covering nationals from EFTA states) and Swiss Citizens' Rights Agreement (covering nationals from Switzerland).

3. This memo should be read in conjunction with ADM memos [29/20](#), [30/20](#), [07/21](#) and [08/21](#).

Background

4. The UK left the EU on 31 January 2020 and entered a transition period during which EU law continued

to apply until 31.12.20. In order for EEA and Swiss nationals (and their family members), resident in the UK before the end of the transition period, to continue to have the right to reside, work and access benefits, they require a status under the EUSS. The Withdrawal Agreement gave these claimants until 30.06.21, six months past the end of the transition period, to apply for their status. Prior to the end of the transition period sign-up to the EUSS was voluntary.

5. The grace period has now ended. EEA and Swiss nationals present in the UK without a status are now classified as “persons subject to immigration control” (PSIC) under section 115(9) of the Immigration and Asylum Act 1999. This means that they are unable to access non-contributory benefits.

6. However, the Withdrawal Agreement provides transitional protection for certain cohorts of EEA and Swiss nationals (and their family members), which will enable them to still access benefits where they have a pending application to the EUSS.

Claimants who made an EUSS application prior and up to 30.06.21

7. Where an EEA or Swiss national, in scope of Article 10 of the Withdrawal Agreement, made a valid application to the EUSS prior to the end of the grace period on 30.06.21 and that application is yet to be finally determined, they are protected by the Withdrawal Agreement. Additionally, they are protected if they are appealing a Home Office (HO) refusal decision to grant them EUSS. This means that they can continue to reside and access benefits as they did before the end of the grace period. Decision Makers (DMs) should ensure that reviews are set for these claimants to check when they are finally granted status.

Claimants who made an EUSS application after 30.06.21

8. There are some claimants who are in scope of Article 10 of the Withdrawal Agreement but will be making a late application to the EUSS after the end of the grace period. These claimants may be protected by Article 18 of the Withdrawal Agreement if they have reasonable grounds for submitting their application late. It is for the HO to determine whether the claimant has reasonable grounds for applying late, and where a claimant has received a certificate of application from the HO, DMs should accept that such a claimant has the protection of Article 18.

9. Therefore,

(a) where such a claimant states they have made a late application which has been validated with a certificate of application, or

(b) they are appealing an EUSS application,

they can access benefits, from the date they made an application which has been validated. DMs should ensure that regular reviews are set for these claimants to check when status is finally granted.

10. For claimants already in receipt of non-contributory benefits, who are yet to submit their EUSS

application or have submitted it but are not in scope of the Withdrawal Agreement, DWP has adopted a pragmatic approach in dealing with these claims. Such claimants are being contacted and encouraged to submit their EUSS application as soon as possible and in any event within a specified deadline or risk having their claims suspended or as a last resort terminated.

11. Where claimants are not already in receipt of non-contributory benefits, if they have submitted their EUSS application late and are not in scope of Article 10 of the Withdrawal Agreement, they will only be eligible for non-contributory benefits once they have been granted EUSS leave by the HO.

12. Where DMs are unsure whether to accept that an application has been made and validated, they should refer the case to DMA Leeds for guidance.

Annotations

Please annotate the number of this memo (19/21) against ADM paragraphs:

[C1405](#); [C1597 \(Note\)](#); [C1600](#); [C1602](#); [C1737 \(Heading\)](#); [C1861](#); [C1870 \(Heading\)](#)

Contacts

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 3E zone E, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in – Memo [7/19](#) Requesting case guidance from DMA Leeds for all benefits.

DMA Leeds, November 2021

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