

# EU Settlement Scheme - Update

## 11<sup>th</sup> June 2020

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*Suggested £5 donation to SARI  
and/or The3Million*

# OVERVIEW

- ▶ *Is BREXIT FINAL ?*
- ▶ Appendix EU and the Settlement Scheme – an overview & pre-Covid Updates
- ▶ Different types of EEA nationals: British Citizens, Dual Nationals, Persons of Northern Ireland
- ▶ COVID-19 Difficulties
- ▶ Administrative Reviews & Appeals
- ▶ Case law Update
- ▶ The BREXIT effect

# IS BREXIT FINAL?

- Withdrawal date – 11pm, 31<sup>st</sup> January 2020.
- Deal SIGNED - 24<sup>th</sup> January 2020.
- Transition Period/Implementation - **until 31<sup>st</sup> December 2020** and applicants have until **30 June 2021** to register under the EU Settlement Scheme to retain their (and their family's) right to remain in the UK.
- SSHD has for now ruled out (announced on 29<sup>th</sup> April 2020) an extension to EU settlement scheme despite coronavirus lockdown - opposition MPs call to extend the deadline after figures in March dropped by 100,000 applications compared to the month before. BUT government figures included 2000 applicants a day & between March 25 to April 19 over 20,000 emails.
- **BUT** - 3million campaign representing EU citizens in the UK, have previously said: "The UK does not know how many people must apply, how many people have applied, and they also don't know whether the people who have applied successfully have been granted the right status.
- The scheme announced as the European Temporary Leave to Remain, allowing entry post-BREXIT - has gone — a new immigration system proposed for 1<sup>st</sup> January 2021 (yet to be finalised).

# Appendix EU – Settlement Scheme

- Eligibility (now clarified by HC 2631 9th September 2019) – residence:
- Residing in the UK by 31st December 2020 (NB: no change of date there).
- Historic continuous 5 years residence (i.e. permanent residence).
- Family members (including durable partners) established by 31st December 2020 (with exceptions for children born/adopted after that date).
- For all other Dependent relatives (see Annex 1 of Appendix EU) only those already resident in the UK by 31st December 2020.
- If moving to the UK after-Brexit but during the transition period, you can still apply under the EU Settlement Scheme if you apply by 30<sup>th</sup> June 2021. (exception to certain categories of British citizens)

# BRITISH CITIZENS

## EU Settlement Scheme: family member of a qualifying British citizen, 15th November 2019 guidance - [12]

- Sets out how a British citizen meets the definition of 'qualifying British citizen' in Annex 1 to Appendix EU.
- For a British citizen - family member: spouse, durable partner, child, dependent parent, needs to show:
  - 1) Relationship before BREXIT - MUST return before 29<sup>th</sup> March 2022.
  - 2) Relationship after BREXIT – MUST return before 31<sup>st</sup> Dec 2020.
  - 3) Relationship with dependent relative of spouse/civil/durable partner MUST exist prior to return to the UK - MUST return by 31<sup>st</sup> Dec 2020 (different from the above two!)

See Guidance: EU Settlement Scheme: family member of a qualifying British citizen pp. 12,23 & 24

# DUAL NATIONALS

## EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, 8th November 2019 guidance:

- *A family member of a relevant EEA citizen can also apply where they are the family member of a dual British and EEA citizen who exercised free movement rights in the UK prior to the acquisition of British citizenship and who retained their EEA nationality of origin after acquiring British citizenship. This reflects the CJEU judgment in Lounes.*

# PERSONS OF NORTHERN IRELAND

Da Souza litigation & [Statement of Changes CP 232, 14 May 2020](#) – relevant provisions come into force on 24 August 2020:

- ▶ “Relevant EEA citizen” will be amended to include a “relevant person of Northern Ireland”.
- ▶ A relevant person of Northern Ireland is, in turn, defined in line with the “people of Northern Ireland” under the [Good Friday Agreement](#).
- ▶ Includes therefore a British citizen, an Irish citizen or a dual British and Irish citizen who was born in Northern Ireland (and at the time of their birth had at least one parent who was a British citizen; or an Irish citizen; or a dual British and Irish citizen; or who was otherwise entitled to reside in Northern Ireland without any restriction on their period of residence).
- ▶ This will mean that qualifying family members of the people of Northern Ireland will be able to apply for immigration status under the EU Settlement Scheme. This will also apply to a qualifying person of Northern Ireland living in England, Scotland and Wales.

# COVID Difficulties 1

- ▶ Applying to the EU Settlement Scheme during the Coronavirus pandemic?
- ▶ Can I still get documents approved during the pandemic?
- ▶ What if I cannot produce a valid passport or national ID card? - [Page 25, Guidance for decision makers, EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, Version 5.0. May13, 2020](#)
- ▶ Some countries have extended the validity period of their identity documents in response to the COVID-19 situation - page 13 of guidance.
- ▶ IMPORTANT to consult [operational instructions](#) on COVID-19 measures in conjunction with this guidance e.g. for submission of ID documents by post and fingerprint biometrics.



# COVID Difficulties 2

- ▶ How will my application be affected if I have been outside the UK during the pandemic ?
- ▶ Continuous residence and Covid -19.
- ▶ Historical residence.
- ▶ Can I make an application after deadline ?
- ▶ The UK-EU Withdrawal Agreement does allow for applications to be made to the EUSS scheme after the normal deadline (six months after the end of the transition period) - See Article 18 (c) and 18 (d) – need to be reasonable grounds.

# ADMINISTRATIVE REVIEWS & APPEALS

- Guidance p.114 onwards: Anyone who makes a valid application under Appendix EU and is refused or is granted pre-settled status (limited leave to enter or remain), will be able to challenge the decision by administrative review (if refused on eligibility or when granted pre-settled instead of settled status) and/or (depending on the date of application) by appeal.
- Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (SI 2020 No. 61) – In force 31<sup>st</sup> January 2020:
- Anyone who makes a valid application under Appendix EU on or after 11pm on 31 January 2020 has a right of appeal as opposed to administrative review.

# STATUTORY APPEALS

## ▶ What can you appeal?

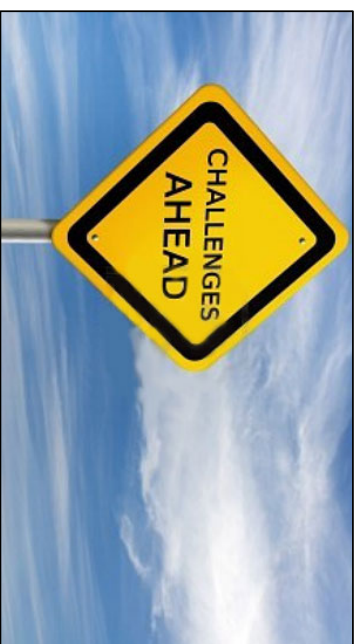
- ▶ Where an applicant is refused on eligibility or suitability grounds, or where they are granted pre-settled status and believe they qualify for settled status.
- ▶ Grounds of appeal:
  - ▶ Decision breaches any right claimed under the Withdrawal Agreement, the EEA EFTA separation agreement or the Swiss citizens' rights agreement
  - ▶ Decision was not in accordance with the Immigration Rule under which it was made

# CASE LAW UPDATE

- ▶ ***Ammari (EEA appeals – abandonment)*** [\[2020\] UKUT 124 \(IAC\)](#) - Regulations appeal can still continue even if leave granted under EUSS.
- ▶ ***Kunwar (EFM – Calculating periods of residence)*** [\[2019\] UKUT 63 \(IAC\)](#) confirmed in the Court of Appeal's decision of ***SSH D v Aibangbee*** [\[2019\] EWCA Civ 339](#):
  - Third country-national EFMs, who are partners of EU citizens, cannot rely on time prior to the obtaining of residence cards as time accrued for the purposes of obtaining permanent residence.
  - Residence cards for EFMs have no retrospective effect.
  - Highlight distinction between family members and EFMs.

# The BREXIT Effect

## YOUR EXPERIENCES AND CHALLENGES



# Contact Details

THANK YOU

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**Suggested donation of £5 to Stand Against Racism & Inequality** - Support for victims of any type of hate crime including racist, faith-based, disability, homophobic, transphobic, age-based or gender-based - using [this link](#).

Or **the3Million** - The largest campaign organisation for EU citizens in the UK, formed after the 2016 EU referendum to protect the rights of people who have made the UK their home - using [this link](#).