



IMMIGRATION AND PUBLIC LAW

GOLDSMITH
CHAMBERS

Brexit, Appendix EU (FP) and over the EU Settlement Bridge – 30th March 2021

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HEADLINES & DEADLINES

- ▶ The EU Settlement Scheme - Appendix EU (FP) (Samina & Sarah)
- ▶ Discretions within EUSS and post-Grace period (Samina & Sarah)
- ▶ Disclosure & immigration exemption from the Data Protection Bill (Luke)
- ▶ **WITHDRAWAL DATE** – 11pm, **31st January 2020**
- ▶ Withdrawal Agreement in force – **1st February 2020**
- ▶ Withdrawal Agreement **IMPLEMENTATION PERIOD**: until **31st December 2020**
- ▶ Deadline for applications for those who have not yet applied/been granted status under EUSS is 30 June 2021 (with exceptions) – **GRACE PERIOD**

HEADLINES – key framework

- ▶ EUSS in-country - Eligibility is governed by Appendix EU to the Immigration Rules
- ▶ EUSS out-of-country - Eligibility is governed by Appendix EU (Family Permit)
- ▶ Also refer to - EU Settlement Scheme casework guidance
- ▶ The Withdrawal Agreement (WA) governs the continuing rights of family members of EU, EEA, Swiss and/or qualifying British citizens. The European Union (Withdrawal Agreement) Act 2020 incorporates the WA (& EEA EFTA Separation Agreement & Swiss Citizens' Rights Agreement) and the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 repeals the retained EU law relating to free movement – explicitly revokes EEA Regulations 2016: see Schedule 1.
- ▶ WA Art. 9 contains the relevant definitions, inc. 'family members', Art. 10 sets out the remit of the WA (i.e. who is in scope), Art.18 covers the 'issuance of residence documents' and Art. 19 the same but during the transition period.

APPLYING FROM OUTSIDE THE UK

TO APPLY FROM OUTSIDE THE UK CONSIDER:

- 1) [Appendix EU \(FP\) & EU Settlement Scheme Family Permit and Travel Permit](#) Guidance, 31st December 2020
- 2) Some provisions of the [EEA Regulations](#) 2016 relating to EEA Family Permits retained until 30.06.2020 for EEA nationals who do not have pre/settled status – see [Grace / Temporary Protection Regulations](#) 2020.

What is the difference between:

- i) EUSS family permit **ii)** EUSS travel permit **iii)** EEA family permit

▶ [Appendix EU \(Family Permit\)](#) – see definitions in [Annex 1](#). Largely mirror Appendix EU categories (see **earlier** webinars) for joining/accompanying relevant EEA citizen, who was resident in the UK prior to 31st December 2020.

▶ **Validity of EUSS family permit will be for a “RELEVANT PERIOD” i.e -**

- i) 6 months from the date of decision** on the application.
- ii) Where the applicant indicates in their application form that they intend to arrive in the UK on or after 1 April 2021, and their intended date of arrival in the UK is more than 3 months from the date of decision, then document is valid for a period of **4 months from their intended date of arrival in the UK** (ART 18 (1)(b) - see later slides as to why this matters).
- iii) The holder can enter the UK as many times as they wish within that period.

AFTER ARRIVING IN THE UK & ALTERNATIVES

WHAT NEXT if you want to stay longer?

- ▶ DEADLINE to apply to the EU Settlement Scheme - 30 June 2021.
- ▶ BUT, joining family members arriving after 01 April 2021 can apply within 3 months of arrival, or show reasonable grounds (See Withdrawal Agreement – ART 18(1)(c) and (d) for not applying within this 3 month period).

APPENDIX FM – An Alternative

- ▶ From the 31 December 2020, Appendix FM to the Immigration Rules amended to include:
- ▶ GEN 1.3(d) Appendix FM:

References to a person being “in the UK with limited leave under Appendix EU” mean an EEA national in the UK who holds valid limited leave to enter or remain granted under paragraph EU3 of Appendix EU to these Rules on the basis of meeting condition 1 in paragraph EU14 of that Appendix.”

CURRENT PROBLEMS WITH FAMILY MEMBERS...

- Durable Partners - Need to have been recognized under Regulations 2016 otherwise, tricky and needs more consideration – see **earlier** webinars.
 - ▶ Can continue to apply for EEA family permits until 30 June 2021 (Other EFMs cannot)
 - ▶ The durable partnership must have existed before 31 December 2020;
 - ▶ The EEA national partner must have been exercising free movement rights in UK before 31 December 2020;
 - ▶ The 3rd-country partner must have had EEA residence document as a durable partner in the UK before 31 December 2020, unless they are a “joining family member” and did not reside in the UK before 31st December 2020 or had other lawful leave while living in the UK before 31 December 2020.
 - ▶ Or a settlement scheme family permit.

EXPIRED IDs, ABSENCES DUE TO COVID-19 IMPACT

- ▶ **If unable to produce a valid passport/National ID card due to Covid-19** – can claim compelling practical or compassionate reasons, IF:
 - E.g. closure of or inability to travel to an embassy.
 - Still need evidence of inability to obtain ID due to such public health restrictions & still need to provide alternative evidence of ID.
 - See Guidance for automatic extensions of some passports: see pp.27-30 [Guidance for decision makers, EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, 19th January 2021](#)
- ▶ **Absences** – More than one absence of over 6 months, and an absence of more than 12 months: breaks continuity of residence, even if the absence is caused by public health restrictions. An ‘important reason’ for a single absence of more than 6 months, and up to 12 months from the UK, includes where:
 - Ill with coronavirus yourself,
 - Sharing a house with someone ill with coronavirus,
 - Required to self-isolate as a result of being, or being in contact with someone who is, in a vulnerable or high-risk category
 - Need a supporting letter from a doctor outlining the details and the dates ill / in quarantine
- ▶ [Coronavirus \(COVID-19\): EU Settlement Scheme - guidance for applicants & Operational Instructions](#)

MISSED THE DEADLINE ?

- ▶ **Can I make an application after 30th June 2020 deadline?**
- ❖ The Withdrawal Agreement does allow for applications to be made under both Appendix EU and Appendix EU (FP) after the deadline set in the WA, i.e. six months after the end of the transition period. See WA Article 18 (c) (not v relevant to us) and 18 (d).
- ❖ Art.18(d): The competent authorities shall assess all the circumstances and reasons for not respecting the deadline and shall allow those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline;
- ❖ See pp.24-25 of the Settlement Scheme: EU, other EEA and Swiss citizens and their family members Guidance - 19th January 2021

MISSED THE DEADLINE ?

- ▶ See pp.24-25 of the Settlement Scheme: EU, other EEA and Swiss citizens and their family members Guidance - 19th January 2021
 - ❖ Examples of such reasonable grounds will include:
 - ❖ Children whose parent, guardian or local authority fails to apply on their behalf
 - ❖ People in abusive or controlling relationships who were prevented from applying; and
 - ❖ Those who lack the physical or mental capacity to apply.
 - ❖ Further, non-exhaustive guidance will be published on what constitutes such reasonable grounds, to underpin a flexible and pragmatic approach to considering late applications under the EU Settlement Scheme, in light of the circumstances of each case.
 - ❖ Further guidance will also be published on the process by which a person may, based on such reasonable grounds, seek a reasonable further period in which to make a late application to the EU Settlement Scheme.

MISSED DEADLINE ? Current Guidance is all we have...

- ▶ JCWI took a Judicial Review to require the SSHD to put in place essential safeguards beyond the June deadline for applications. Warning on the risks of leaving many without immigration status and exposed to the consequences of the hostile environment; at risk of losing their jobs, homes, access to benefits, healthcare etc... Grounds against the SSHD included:
 - ❖ Acting unlawfully by failing to collect, monitor & publish equality data about the EUSS in breach of public sector equality duty under Equality Act 2010;
 - ❖ In breach of Equality Act & EU principles of equal treatment & non-discrimination because of discriminatory impact of EUSS on minority/protected grps;
 - ❖ In breach of Human Rights Act because no adequate safeguards to stop vulnerable groups & minorities from being made undocumented.
- ▶ The High Court did not grant permission. As was reported in the media, *“it was the nature of all application schemes that there needed to be a deadline, and noted the Home Office’s argument that there would be a period of grace for those people who could show that they had reasonable grounds for making a late application”*.
- ▶ A Home Office spokesperson said: *“There have been 4.6 million grants of status under the EU Settlement Scheme already, securing people’s rights in UK law. The scheme is simple and straightforward, with a wide range of support available online, over the phone and in person for those who have questions or need help applying. We continue to work closely with employers, local authorities and charities to raise awareness of the scheme and we continue to encourage EU citizens to apply.”*

SOME STATISTICS

- ▶ [EU Settlement Scheme statistics](#)
- ▶ [Quarterly Statistics up to September 2020](#)
- ▶ Regulations 2016 appeals – recently dealt with cases with notices of appeal lodged in Dec 2019.
- ▶ EUSS appeals only just starting to come through (appeal rights for decisions made after 31.01.2020.)

Total number of applications as of 28 February 2021

5.18 million

Total number of concluded applications as of 28 February 2021

4.81 million

Total number of applications by nation as of 28 February 2021

England	Scotland	Wales	Northern Ireland
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4,670,700	257,500	85,900	83,800
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Concluded applications by outcome type as of 28 February 2021

Settled	Pre-settled	Refused	Withdrawn or void	Invalid
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53%	44%	0.9%	1%	1%
(2,553,900)	(2,099,200)	(45,500)	(55,300)	(54,100)

Transitional Arrangements

- ❖ Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 repeals the retained EU law relating to free movement with explicit repeals for certain legislations and general repeal of anything else relevant in Schedule 1, para 6. Different Regulations for commencement and no saving provisions in the Act itself.
- ❖ Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 2020/1309) ('EEA Transitional Regulations') and the Immigration, Nationality and Asylum (EU Exit) Regulations 2019 (SI 2019/745) preserve certain parts of the EEA Regulations 2016.
- ❖ The revocation of the EEA Regulations is subject to transitional provisions set out in three Statutory Instruments:
- ❖ EEA Transitional Regulations - most relevant Sch 3 (immigration) and Sch 4 (access to benefits and services).
- ❖ Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('Citizens' Rights TP Regulations') - regulates status until June 2021 known as the '**GRACE PERIOD REGULATIONS**'.
- ❖ Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 ('Citizens' Rights Restriction Regulations') (SI 2020/1210) covers EU deportations.
- ▶ **EXCEPTIONS:** ~~Some family members of the EU citizen/British citizen living in another EU member state who are not in the UK by 31st December 2020 may still be able to apply, if for example, there was a pre-existing familial relationship on or before this date – see previous slides.~~

Sources of information

Legislation

- [EU Withdrawal Act 2020 & Withdrawal agreement](#)
- [Immigration \(Citizens' Rights Appeals\) \(EU Exit\) Regulations 2020](#)
- [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU exit\) regulations 2020](#)
- [The Citizens' Rights \(Restrictions of Rights of Entry and Residence\) \(EU Exit\) Regulations 2020](#)

Home Office Guidance

- [Administrative review: EU Settlement Scheme guidance](#)
- [Rights of appeal guidance](#)
- [EU Settlement Scheme: EU, other EEA and Swiss Citizens and their family members 19.1.21](#)
- [EU Settlement scheme guidance \(general page\)](#)

Government websites

- [Immigration rules – Appendix EU](#)
- [Immigration rules – Appendix EU \(Family Permit\)](#)
- [Immigration rules - Appendix AR \(EU\)](#)
- [Immigration rules – specified forms and procedures in connection with applications for administrative review](#)
- [Apply to the EU Settlement Scheme](#)
- [See also Coronavirus \(COVID–19\) guidance for applicants\)](#)
- [Administrative review - gov.uk guidance & visas-immigration.service guidance](#)

Contact Details

- ▶ Any Questions?
- ▶ THANK YOU

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