

RIGHT TO RESIDE – THE IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EUROPEAN UNION WITHDRAWAL) ACT 2020 (CONSEQUENTIAL, SAVING, TRANSITIONAL AND TRANSITORY PROVISIONS) (EUROPEAN UNION EXIT) REGULATIONS 2020 – UNIVERSAL CREDIT

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INTRODUCTION

- 1 Following Royal Assent of Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 which ended Free Movement, this Act¹ makes the provisions in this statutory instrument. The Regulations within this statutory instrument 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. These changes are introduced by the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020. The majority of the changes come into force at the end of the transition period, at 11pm on 31.12.20². However, see paragraph 3 below for the exceptions.

¹ *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, s 5 & s 8(5);*

² *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); 3 reg 1(2)*

- 2 The instrument makes changes for the following four purposes
 1. to align the treatment of European Economic Area citizens who are not protected by the European Union Withdrawal Agreement, the European Economic Area European Free Trade Association Separation Agreement and the Swiss Citizens' Rights Agreement ("the Withdrawal Agreements") and the United Kingdom's implementation of those agreements, with non-European Economic Area citizens in the immigration system from 1.1.21 (referred to throughout this memo as "newly arriving European Economic Area citizens") **and**

2. to make some savings and transitional provisions, including for those with status under the European Union Settlement Scheme (in addition to those made by and under the Withdrawal Agreement Act 2020) **and**
 3. to amend provisions relating to retained European Union law **and**
 4. to reflect the Act's provisions to protect the rights of Irish citizens.
- 3 The majority of the provisions will take effect when the Immigration (European Economic Area) Regulations 2016 are revoked (i.e. 11pm on 31.12.20), with the following exceptions
1. regulations 47 and 48 will come into force immediately before the Immigration (European Economic Area) Regulations 2016 are revoked **and**
 2. regulation 49, which amends The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020 (see DMG Memo & ADM Memo – The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020, also comes into force immediately before the Immigration (European Economic Area) (Amendment) Regulations 2018 are revoked, so that The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020 comes into force as amended **and**
 3. regulations 20(7) and (8) will come into force on 1.12.20. These provisions bring European Economic Area citizens into scope of the immigration skills charge and commence when the skilled worker route opens under the points-based immigration system for those European Economic Area citizens who arrive in the United Kingdom from 1.1.21 **and**
 4. all the provisions that bring European Economic Area 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 European Union Settlement Scheme.

BACKGROUND

- 4 Currently, European Union law provides for the free movement to the United Kingdom, of European Union, European Economic Area European Free Trade Association (Iceland, Norway, Lichtenstein) and Swiss citizens (referred to collectively as "European Economic Area citizens"). Free movement is predominantly governed by the European Union Free Movement Directive 2004/38/EC, which is primarily implemented in United Kingdom law through the Immigration (European Economic Area) Regulations 2016. The Immigration (European Economic Area) Regulations 2016 have been retained in United Kingdom law by the European Union (Withdrawal) Act 2018.

- 5 The Government has committed to ending free movement to the United Kingdom and introducing a new points-based immigration system. This means that there will no longer be separate arrangements for European Economic Area citizens. Instead, there will be one new points-based immigration system. To implement this new immigration system, primary legislation is needed to repeal retained European Union law relating to free movement. The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 is being introduced to do this, with the intention of ending free movement at the end of the transition period (11pm on 31.12.20), which paves the way for the new points-based immigration system to be rolled out, which will apply to European Economic Area and non-European Economic Area citizens from 1.1.21, and will be set out within the Immigration Rules.
- 6 The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020
1. ends freedom of movement² to the United Kingdom and make newly arriving European Economic Area citizens and their family members subject to United Kingdom immigration controls. They will therefore require leave to enter and remain in the United Kingdom under immigration legislation¹ in the same way that non-European Economic Area citizens do now **and**
 2. protects the status of Irish citizens³ in the United Kingdom, confirming their right to enter and remain in the United Kingdom without permission when their free movement right ends **and**
 3. contains powers to amend, by regulations, retained European Union law governing social security coordination⁴, enabling policy changes to be delivered after the end of the transition period.

1 The Immigration Act 1971; 2 The ISSC Act, s 1; 3 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 United Kingdom under free movement rules as now. However, the changes will not impact those who are resident in the United Kingdom by the end of the transition period, and who are entitled to apply under the European Union Settlement Scheme, which includes provision for holders of European Union Settlement Scheme 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).

THE IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EUROPEAN UNION WITHDRAWAL) ACT 2020

- 8 The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020¹ creates a substantial change to immigration law. There are references to free movement and related matters across the United Kingdom's statute book in both primary and secondary legislation. The Immigration and Social Security Co-ordination (European Union Withdrawal)

Act 2020 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 Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020.

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 European Union law and ensuring the coherence of United Kingdom legislation, the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020
 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 European Economic Area citizens, other than those protected by the Withdrawal Agreement, with non-European Economic Area citizens in the immigration system from 1.1.21 by
 - 3.1 specifying that European Economic Area citizens will be person's subject to immigration control for the purpose of accessing benefits and services¹ **and**
 - 3.2 permitting European Economic Area citizens to be provided with assistance for voluntary departure from the United Kingdom in appropriate circumstances² **and**
 - 3.3 bringing newly arriving European Economic Area citizens in scope of the sham marriage and civil partnership referral and investigation scheme³ **and**
 - 3.4 permitting European Economic Area citizens to apply to the Special Immigration Appeals Commission to set aside an exclusion direction in the same way as non-European Economic Area citizens⁴ **and**
 - 3.5 applying the same civil service nationality rules to newly arriving European Economic Area citizens and their family members, as non-European Economic Area 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 Immigration (European Economic Area) Regulations 2016 when the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 repeals the governing legislation⁶, continue to have their appeal considered under that legislation⁷ **and**

5. amends provisions relating to retained European Union law by removing provisions setting out the requirements for the submission of biometrics for documentation evidencing a European Union right of residence⁸ **and**
6. reflects the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 that protects⁹ the rights of 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 United Kingdom 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, s 1(3)

European Economic Area citizens who are resident in the United Kingdom before the end of the transition period

- 10 European Economic Area citizens who are resident in the United Kingdom before the end of the transition period will be eligible to apply for immigration status under the European Union Settlement Scheme. The rights of those with European Union Settlement Scheme status will broadly allow them to continue living, working and accessing benefits and services in the United Kingdom, as they do now. In line with the Withdrawal Agreement and similar agreements reached with the European Union, European Economic Area European Free Trade Association States and Switzerland, there will be a six-month grace period from the end of the transition period i.e. until 30.6.21. This will provide time for those who arrive before the end of the transition period to make their application for European Union Settlement Scheme leave. For further guidance relating to the grace period, please see DMG Memo 2/84 & ADM Memo 26/20 – The Citizens’ Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020. The effect of The Citizens’ Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020) is to prevent the changes impacting those who are eligible to apply to the European Union Settlement Scheme but have not yet done so, provided they do so by the end of the deadline for applications of 30.6.21.

Note: As required by the Withdrawal Agreement¹, the Government has committed to accepting late applications from those with reasonable grounds for missing the 30.6.21 application deadline for applying for European Union Settlement Scheme leave to enter or remain. If a late application is made for European Union Settlement Scheme leave, the Home Office will consider whether there were reasonable grounds for making a late application, and where appropriate, provide a further 28-day period in which the individual may apply for European Union Settlement Scheme leave.

1 Withdrawal Agreement, Art 18(d)

Amendment to the Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020

- 11 An amendment¹ is made to The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020² which provides that the Immigration (European Economic Area) Regulations 2016 continue to apply, with the specified modifications, for the purposes connected to the provision of certain benefits. The Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005³ are added to that list.

1 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 49; 2 The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020, reg 11; 3 SFMF&E (Gen) Regs (NI), reg 7(3)

European Economic Area citizens and their family members who come to the United Kingdom after the end of the transition period

- 12 The changes introduced by Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 are made as a result of the end of free movement, which will be replaced by a new points-based immigration system in which European Economic Area and non-European Economic Area citizens enter and remain in the United Kingdom on the same basis. The rights of those with European Union Settlement Scheme status will broadly allow them to continue living, working and accessing benefits and services in the United Kingdom as they do now. However, the changes made by Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020, aligning European Economic Area citizens with non-European Economic Area citizens, will impact European Economic Area citizens and their family members who come to the United Kingdom after the end of the transition period i.e. from 1.1.21, and who are not eligible for the European Union Settlement Scheme.

The Citizens' Rights (Frontier Workers) (European Union Exit) Regulations 2020

- 13 Amendment¹ is made to The Citizens' Rights (Frontier Workers) (European Union Exit) Regulations 2020² to insert the following new paragraph which exempts Irish citizen frontier workers from becoming a person subject to immigration control, 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)

Amendments and savings of primary and secondary legislation

- 14 The table at **Appendix 1** details amendments and savings to primary legislation.
- 15 The table at **Appendix 2** details amendments and savings to secondary legislation.
- 16 The table at **Appendix 3** details the revocation of secondary legislation.
- 17 The table at **Appendix 4** details amendment of primary & secondary nationality legislation.

ACCESS TO BENEFITS AND SERVICES

- 18 Part 3 of this instrument contains amendments to legislation governing access to benefits and services, to reflect that a European Economic Area citizen will be a person subject to immigration control 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 European Union legislation which will no longer have effect in the United Kingdom, and to make provision, where required, to ensure continued access to benefits and housing as now, for those with status under the European Union Settlement Scheme and frontier workers protected under the Withdrawal Agreements.
- 19 The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020¹ makes changes to legislation governing access to Universal Credit. Ordinarily, entitlements to benefits are predicated on an individual's immigration status. Currently, European Economic Area citizens have entitlements under European Union law. These Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 changes have the effect of treating newly arriving European Economic Area citizens in the same way as non-European Economic Area citizens currently in terms of their eligibility for housing and benefits. This means that European Economic Area citizens and their family members arriving in the United Kingdom 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*

- 20 Those residing in the United Kingdom 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 European Union Settlement Scheme will continue to be able to access benefits and services as they do now (ADM C1870 – C1875). The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 therefore saves part of the Immigration (European Economic Area) Regulations 2016 to ensure that the current eligibility tests for access to benefits and services continue to apply to that cohort as they do now.

Note: The Grace Period Statutory Instrument (see ADM Memo 27/20 & DMG Memo 2/84) – The Citizens’ Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020) makes temporary savings for those who are residing lawfully in the United Kingdom by the end of the transition period but have not made an application to the European Union Settlement Scheme by then, until their application is finally determined (providing their application is made by 30.6.21). However, see Note to paragraph 10 above concerning Home Office acceptance of late applications.

- 21 Those who are in scope of the Withdrawal Agreement and who have had a right to reside under European Union law at the end of the transition period, but who have not applied to the European Union Settlement Scheme by the application deadline date of 30.6.21 will lose their temporary protection. Unless they make their application by the deadline, the changes to align European Economic Area citizens with non-European Economic Area citizens would impact them, including their access to benefits and services. Obtaining status under the European Union Settlement Scheme would resolve their immigration status and associated rights and entitlements. Where decision makers come across such claimants, they should be signposted to the Home Office.
- 22 The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 makes amendments¹ to specified legislation² to ensure those with European Union Settlement Scheme 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 European Union Settlement Scheme 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 European Union Settlement Scheme 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 European Union Settlement Scheme indefinite leave to enter or remain (settled status) or other immigration rules for non-European Economic Area 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, s 39

AMENDMENTS TO BENEFIT LEGISLATION

- 23 For the purposes of determining whether a person meets the basic condition to be in Northern Ireland¹, except where a person falls within a specified category², a person is to be treated as not being in Northern Ireland if the person is not habitually resident in the Common Travel Area. A person must not be treated as habitually resident in the Common Travel Area unless that person has a right to reside in the Common Travel Area³ (ADM C1225). Such a person is treated as not being in Northern Ireland and therefore not entitled to Universal Credit. However certain rights to reside are specifically excluded⁴ by benefit regulations (ADM C1851 et seq). Thus, if a person only has an excluded right to reside, they cannot be treated as habitually resident in the Common Travel Area (ADM C1862). Guidance at paragraphs 25 - 31 details the amendments to Universal Credit legislation.

1 UC Regs (NI) 16, reg 9(1); 2 reg 9(4); 3 reg 9(2); 4 reg 9(3)

Universal Credit Regulations (Northern Ireland) 2016

Interpretation

- 24 At the end of the definition¹ of “EEA Regulations” insert² “and references to the European Economic Area Regulations are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020.”. This has been added so that a person reading the legislation knows that references to the Immigration (European Economic Area) Regulations 2016 are to be read in conjunction with the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of the Grace Period.

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, reg 75(2)

Initial right of residence

- 25 In line with guidance at paragraph 23 above, the excluded right¹ which exists by virtue of, an initial right of residence² is amended to omit³ “or Article 6 of Council Directive No. 2004/38/EC”.

1 UC Regs (NI) 16, reg 9(3)(a); 2 Imm (EEA) Regs 2016, reg 13;
3 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 75(3)(a)(i)

- 26 From 1.1.21 ADM guidance at C1853 should be read as

C1853 Persons who have a right to reside¹ solely on the basis of the initial three- month residence² right referred to in C1852, do not satisfy the right to reside requirement of the habitual residence test. They are to

be treated as not in Northern Ireland¹ and therefore do not satisfy the basic conditions for entitlement to Universal Credit.

¹ UC Regs (NI) 16, reg 9(3)(a); ² Imm (EEA) Regs 2016, reg 13

Derivative right to reside

- 27 The excluded right which exists by virtue of a derivative right to reside (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European citizen - the Zambrano right)¹ (ADM C1864), is amended to omit² “*or article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European citizen)*”.

¹ UC Regs (NI) 16, reg 9(3)(b); ² The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 75(3)(a)(ii)

- 28 From 1.1.21, guidance at ADM C1864 should be read that a right to reside does not include a right to reside which exists by virtue of, or in accordance with¹ a derivative right to reside², but only in cases where the right exists because the person satisfies the criteria³ that

1. the person is the primary carer of a British citizen **and**
2. the British citizen is residing in the United Kingdom **and**
3. the British citizen would be unable to reside in the United Kingdom or a European Economic Area state if the primary carer left the United Kingdom for an indefinite period.

¹ UC Regs (NI) 16, reg 9(3)(b); ² Imm (EEA) Regs 2016, reg 16; ⁴ reg 16(5)

- 29 A person claiming Universal Credit whose sole right to reside is the right described above will not satisfy the right to reside condition of the habitual residence test. Such a person will therefore be treated as not being in Northern Ireland, so will not satisfy the basic conditions of entitlement to Universal Credit¹.

¹ UC Regs (NI) 16, reg 9(3)(b)

Frontier workers

- 30 In order to allow frontier workers (and their family members who have been granted European Union Settlement Scheme leave) to have access to Universal Credit, where they meet the relevant conditions, the following provisions are inserted¹ into legislation² after paragraph (4)(ca)

“(cb) a frontier worker within the meaning of regulation 3 of the Citizens’ Rights (Frontier Workers) (EU Exit) Regulations 2020;

(cc) a family member of a person referred to in sub-paragraph (cb), who has been granted limited leave to enter, or remain in, the United Kingdom by

virtue of Appendix EU to the immigration rules made under section 3(2) of the Immigration Act 1971;”.

Note: Further guidance can be found in DMG Memo 2/85 & ADM Memo 27/20 - The frontier workers and the Citizens' Rights (Frontier Workers) (European Union Exit) Regulations 2020.

1 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 75(3)(b);
2 UC Regs (NI) 16, reg 9(4)

Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005

31 ADM guidance at L3101 - L3108 lists the conditions¹ of entitlement which must be satisfied for a social fund funeral payment to be made. The sixth condition² (L3107) is that the funeral takes place

1. in a case where paragraph (10) applies, in a member State of the European Union, Iceland, Liechtenstein, Norway or Switzerland **or**
2. in any other case, in the United Kingdom, or if the deceased was normally resident in Northern Ireland, in the Republic of Ireland.

1 SFM&FE (Gen) Regs (NI), reg 7; 2 reg 7(9)

32 The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 amends¹ sub-paragraph (10)², which is substituted with

“(10) This paragraph applies where the responsible person or the responsible person’s partner is

1. a qualified person who is a worker³ (ADM C1615 - C1617) or self-employed person⁴ (ADM C1451 - C1478) **or**
2. a person who retains the status⁵ of worker (ADM C1391 - C1398) or self-employed person (ADM C1475 - C1478) **or**
3. a person who is a family member⁶ (ADM C1596 - C1597) of
 - 3.1 a worker **or**
 - 3.2 a self-employed person **or**
 - 3.3 a person who retains the status of a worker or self-employed person **or**
4. a person who has a right to reside permanently⁷ in the United Kingdom (see ADM C1751) **or**

5. a person granted indefinite leave to enter or remain in the United Kingdom⁸ under European Union Settlement Scheme⁹".

1 *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020*, reg 62(2)(a);
2 *SFM&FE (Gen) Regs (NI)*, reg 7(10); 3 *Imm (EEA) Regs 2016*, reg 6(1)(b); 4 reg 6(1)(c);
5 regs 6(2) or 6(4); 6 reg 7(1); 7 reg 15(1)(c), (d) or (e);
8 *Immigration Act 1971*; 9 *Immigration Rules*, Appendix EU

- 33 From 1.1.21, ADM guidance at L3107 **2.1 – 2.5** should be read as if referring to the Immigration (European Economic Area) Regulations 2016, rather than the Citizenship Directive 2004/38/EC¹. Furthermore, an additional provision is added (shown at paragraph 32 **5.** above) to include a person who has been granted indefinite leave to enter or remain in the United Kingdom, under the European Union Settlement Scheme².

1 *SFM&FE (Gen) Regs (NI)*, reg 7(10)(a) - 7(10)(d); 2 reg 7(10)(e)

- 34 A provision¹ is also inserted² which provides that within this regulation, references to the Immigration (European Economic Area) Regulations 2016 are to be read with Schedule 4 to the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) Regulations 2020. This has been added so that a person reading the legislation knows that references to the Immigration (European Economic Area) Regulations 2016 are to be read in conjunction with the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of the Grace Period.

1 *SFM&FE (Gen) Regs (NI)*, reg 7(11); 2 *The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020*, reg 62(2)(b)

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

- 35 This Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 makes amendments to legislation governing access to benefits, to reflect that a European Economic Area citizen will be a person subject to immigration control 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 Attendance Allowance, Severe Disablement Allowance, Carer's Allowance, Disability Living Allowance, Personal Independence Payment, 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, from being exempt from the exclusion of being a person subject to immigration control.

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

The European Convention on Social and Medical Assistance & the European Social Charter

- 36 Further amendments are made to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, by the regulation 2 of The Social Security, Child Benefit and Child Tax Credit (Amendment) (European Union Exit) Regulations 2020.
- 37 The European Convention on Social and Medical Assistance and the European Social Charter are treaties of the Council of Europe. The United Kingdom has given effect to its obligations under the European Convention on Social and Medical Assistance and the European Social Charter by providing in domestic regulations the Social Security (Immigration and Asylum) Consequential Provisions Regulations 2000 under regulation 2 and Schedule Part I, paragraph 4) that a person who is a national of a country that has ratified the European Convention on Social and Medical Assistance or the European Social Charter and who is “lawfully present” in the United Kingdom is not excluded under s 115 of the Immigration and Asylum Act 1999 from certain income-related benefits, including Universal Credit (see ADM guidance at paragraph 44 below).
- 38 At present, under s 115(9) of the Immigration and Asylum Act 1999, persons subject to immigration control do not currently include European Economic Area nationals, and most signatories of the European Convention on Social and Medical Assistance and the European Social Charter are also members of the European Economic Area, except for Turkey and North Macedonia. This means the European Convention on Social and Medical Assistance and the European Social Charter provisions, as set out in the Social Security (Immigration and Asylum) Consequential Provisions Regulations 2000, at present, only impact nationals of Turkey and Macedonia. The Social Security (Immigration and Asylum) Consequential Provisions Regulations 2000 enable nationals of those countries to access Universal Credit, and other income related benefits, notwithstanding their person subject to immigration control status, provided they are also ‘lawfully present’ (see C1050 to C1065).
- 39 ADM guidance at C1060 **3.** advises that for the purposes of Universal Credit, a person¹ who is a national of a State which has ratified
1. the European Convention on Social and Medical Assistance done in Paris on 11.12.1953 **or**
 2. the Council of Europe Social Charter signed in Turin on 18.10.1961
- is exempt from the exclusion of being a person subject to immigration control², provided they are lawfully present in the United Kingdom³.

Note: Caselaw⁴ has clarified that the “lawfully present” requirement means that claimants must still demonstrate that they are exercising a relevant right to reside.

1 SS (I&A) CqI Amdts Regs, Sch 1, Part I, para 4; 2 Immigration and Asylum Act 1999, s115;
3 The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (SI 2000 No 636),
reg 2 & Sch, Part 1, para 4; 4 Yesilov v London Borough of Camden [2009] EWCA Civ 415;
Abdirahman v SSWP [2007] EWCA Civ 657

- 40 After 11pm on 31.12.20, European Economic Area nationals who seek to reside in the United Kingdom as part of the new points-based immigration scheme will be categorised in the same way as current Third Country National persons subject to immigration control. Once such European Economic Area nationals are given leave to enter and remain in the United Kingdom, they will be lawfully present, and may still be able to access Universal Credit (and other income-related benefits) under the domestic regulations¹ (subject to meeting specific benefit eligibility criteria). They will effectively be in the same situation as current nationals of Turkey and North Macedonia, notwithstanding their person subject to immigration control status or any No Recourse to Public Funds condition to which they are subject.

Note: European Economic Area nationals who are already in the United Kingdom, but who do not apply for pre-settled or settled status by the 30.6.21 deadline will become persons subject to immigration control, but because they are not lawfully present and do not a right to reside (they effectively require leave to enter or remain in the United Kingdom but do not have it), the Social Security (Immigration and Asylum) Consequential Provisions Regulations 2000 would not give them any additional rights to access benefits.

1 SS (I&A) CqI Amdts Regs, Sch 1, Part I, para 4; 2 Immigration and Asylum Act 1999, s 115;
3 The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (SI 2000 No 636),
reg 2 & Sch, Part 1, para 4; 4 Yesilov v London Borough of Camden [2009] EWCA Civ 415;
Abdirahman v SSWP [2007] EWCA Civ 657

- 41 As a result of the paragraph above, amendments¹ are being made to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 which
1. removes paragraph 4 from within Part 1 of the Schedule² from being relevant to persons making a claim for Universal Credit (see note below in relation to income-based Jobseeker's Allowance, Income Support, Social Fund, income-related Employment and Support Allowance or State Pension Credit) **and**
 2. amends paragraph 2 of Part II of the Schedule³ by substituting a new paragraph 2. This substituted paragraph provides that a person, who is lawfully working in Northern Ireland and who
 - 2.1 made a claim for Attendance Allowance, Severe Disablement Allowance, Carer's Allowance, Disability Living Allowance, Personal Independence Payment, Social Fund payment, Health in Pregnancy grant or Child Benefit⁴ before 1.1.21 **and**

- 2.2** is a national of a state with which the European Union had, before 1.1.21, concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing in the field of social security for the equal treatment of workers who are nationals of the signatory state and their families **or**
- 3.** who is a national of a state with which the United Kingdom has concluded an agreement which replaces, in whole or in part an agreement under Article 217 of the Treaty on the Functioning of the European Union which makes provision in the field of social security for workers who are nationals of the signatory state and their families

is not treated as a person subject to immigration control for the purposes of the benefits in the specified Regulation⁴.

Note: For the purposes of 1. above, paragraph 4 of Part I of the Schedule continues to provide that lawfully present nationals of States which have ratified the European Convention on Social and Medical Assistance or the European Social Charter are not subject to immigration control for the purposes of income-based Jobseeker's Allowance, Income Support, Social Fund, income-related Employment and Support Allowance or State Pension Credit⁵.

1 The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020, reg 2;
2 SS (I&A) CqI Amdts Regs, Sch, Part I; 3 Sch Part II; 4 reg 2(2); 5 reg 2(1)

SAVINGS PROVISIONS IN CONNECTION WITH THE IMMIGRATION (EUROPEAN ECONOMIC AREA) REGULATIONS 2016 - SCHEDULE 3

- 42 Part 6 and Schedule 3 of this statutory instrument make savings provisions in relation to the Immigration (European Economic Area) Regulations 2016. The provisions continue the effect of deportation and exclusion orders made under the Immigration (European Economic Area) Regulations 2016 and ensure applications made under the Immigration (European Economic Area) Regulations 2016, before the end of the transition period, can continue to be processed, including any related appeal.
- 43 "EEA Regulations 2016" within Schedule 3 means the Immigration (European Economic Area) 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

- 44 Any deportation or exclusion order made or treated as having been made under the Immigration (European Economic Area) Regulations 2016 that was existing immediately before the revocation of the Immigration (European Economic

Area) Regulations 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)

- 45 Any deportation or exclusion order made under the Immigration (European Economic Area) Regulations 2016, as they are continued in effect by The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020), 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)

- 46 The provisions¹ for the revocation of deportation and 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 specified legislation² is to be read as if after "exclusion order" there were inserted³ "*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 reg 34(3); 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 2(5)

Pending applications for documentation under the Immigration (European Economic Area) Regulations 2016

- 47 The following Immigration (European Economic Area) Regulations 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 Immigration (European Economic Area) Regulations 2016 before 1.1.21

1. Regulation 12 (issue of European Economic Area family permit) **and**
2. Regulation 12 where it is continued in effect by The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020) **and**
3. Regulation 17 (issue of registration certificate) **and**
4. Regulation 18 (issue of residence card) **and**
5. Regulation 19 (issue of a document certifying permanent residence and a permanent residence card) **and**
6. Regulation 20 (issue of a derivative residence card).

Existing appeal rights and appeals

- 48 Certain provisions¹ of the Immigration (European Economic Area) Regulations 2016 continue to apply² where
1. any appeal which has been brought under the Immigration (European Economic Area) Regulations 2006 or 2016 and has not been finally determined by 11pm on 31.12.20 **or**
 2. any European Economic Area decision taken before 11pm on 31.12.20 **or**
 3. any European Economic Area decision that continues in effect by virtue of The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020 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 appellant leaves the United Kingdom⁴.

1 Imm (EEA) Regs 2016, regs 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 reg 5(2)(a); 4 Sch 3, para 5(2)(b)

Schedule 3 - paragraphs 6 and 7

- 49 The modifications¹ within paragraphs 50 - 86 below, ensure that applications for documentation under the Immigration (European Economic Area) Regulations 2016 that are made before the end of the transition period or an application for a family permit made under The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020 can continue to be processed, including any appeal stage. The modifications also, with paragraph 7, make provision for savings of pending appeals, those that may still be brought and appeals in relation to European Economic Area decisions that still may be taken e.g. under The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020) and ensure that the repeal of s 109 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

- 50 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 European Union 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 European Union Treaties so far as they were applicable to and in the United Kingdom 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 European Union Treaties”⁴
 - 2.1 in so far as they relate to things done on or after exit day but before implementation period completion day, were a reference to the European Union 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 “European Economic Area State”, the words “, other than the United Kingdom” 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 United Kingdom 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

- 51 This provision¹ continues to have effect, but is modified² to include reference to the Immigration Acts. From 11pm on 31.12.20, ADM guidance at C1773 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 United Kingdom under the Immigration (European Economic Area) Regulations 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”

- 52 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 United Kingdom 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

- 53 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

- 54 Modifications are made to this provision¹ to reflect the Upper Tribunal judgement of KH². Although the modifications within this memo take effect from 11pm on 31.12.20, decision makers should be reminded that current revised ADM guidance relating to the KH judgment, can be found within DMG Memo 2/83 & ADM Memo 25/20.

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

- 55 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. ADM guidance at C1478 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. However, please see paragraph 54 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)

- 56 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”. ADM guidance at C1405 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 54 above regarding current revised ADM guidance relating to the KH judgment.

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)

- 57 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”. ADM guidance at C1408, C1409, & C1807 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 54 above regarding current revised ADM guidance relating to the KH³ judgment.

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

- 58 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

- 59 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

- 60 Modifications are made to this provision¹ to reflect the Upper Tribunal 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 United Kingdom). Although the modifications within this memo take effect from 11pm on 31.12.20, decision makers should be reminded that ADM guidance is already revised, relating to the HK judgment, and can be found within DMG Memo 2/82 & ADM Memo 20/20.

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

- 61 This provision¹ continues to have effect² with the modification that at the end of that paragraph the words “and the British citizen is to be treated as satisfying any requirement to be a qualified person” were inserted. ADM guidance at C1597 advises that, if certain conditions are satisfied, family members of British citizens have the same European Union law rights of residence as they would if they were a family member of a European Economic Area national. ADM guidance at C1597 should now be read as including the inserted wording. Although, see paragraph 60 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)

- 62 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. ADM guidance at C1600 advises on factors that are relevant to determining whether residence in a European Economic Area State (other than the United Kingdom) is or was genuine. ADM guidance at C1600 1. should now be disregarded. Although, see paragraph 60 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)

- 63 From 11pm on 31.12.20, this provision¹ is omitted². ADM C1602 provides advice for the purposes of determining whether, when treating the British citizen as a European Economic Area national, the British citizen would be a qualified person¹. Guidance at C1602 should be disregarded. Although see paragraph 60 above regarding 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 a European Economic Area State who acquires British citizenship

- 64 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

- 65 This provision¹ continues to have effect. However, one of the conditions² which sets out the circumstances when a family member of a European Economic Area national may retain their right to reside on the death or departure of the European Economic Area national from the United Kingdom, is modified³. Guidance at ADM C1778 sets out that condition and from 11pm on 31.12.20, guidance at ADM C1778 1.2 should be read as

“1.2 have resided in the United Kingdom lawfully i.e. had exercised a qualifying right to reside, for at least the year before the death of the qualified person or European Economic Area 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)

- 66 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 United Kingdom

- 67 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

- 68 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

- 69 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

- 70 This provision¹ continues to have effect² with the modification that in each of specified paragraphs, 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

- 71 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

- 72 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

- 73 This provision¹ continues to have effect², in so far as it applies to a person who has applied for a derivative residence card³.

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

- 74 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

- 75 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

- 76 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

- 77 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

- 78 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

- 79 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: European Economic Area decisions

- 80 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

- 81 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

- 82 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

- 83 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

- 84 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

- 85 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 European Union Treaties”,

in so far as they relate to things done on or after exit day but before commencement day, were a reference to the European Union Treaties so far as they were applicable to and in the United Kingdom by virtue of Part 4 of the European Union 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 European Union 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) (European Union Exit) Regulations 2020, or by virtue of the European Union withdrawal agreement, the European Economic Area European Free Trade Association 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

- 86 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 (European Union 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 European Economic Area Regulations 2016 continue to have effect by virtue of these Regulations, the Citizens’ Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020 or the Citizens’ Rights (Restrictions of Rights of Entry and Residence) (European Union 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

- 87 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 United Kingdom (pre-settled status) under the European Union Settlement Scheme are treated in the same way after the end of the transition period as they are now for the purposes of accessing benefits and services (post-transition period group - see paragraph 89). They also save relevant provisions of the Immigration Act 1988 and the Asylum and

Immigration Act 1996 so that European Economic Area 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.

- 88 “European Economic Area Regulations 2016” means¹ the Immigration (European Economic Area) Regulations 2016 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) Regulations 2020, Sch 4, para 1

- 89 “Member of the post-transition period group” means¹ a person who has European Union Settlement Scheme limited leave to enter or remain (pre-settled status) in the United Kingdom.

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

- 90 Paragraphs 92 to 114 below, specify the provisions of the Immigration (European Economic Area) Regulations 2016 that continue to apply¹ (in relation to a person who is a member of the post-transition period group,) to the benefits listed (amongst others) at paragraph 91 below, despite the revocation of the Immigration (European Economic Area) Regulations 2016. The guidance identifies the modified regulations which ensure that the Immigration (European Economic Area) Regulations 2016 continue to operate appropriately after the end of the transition period on 11pm on 31.12.20 and reflect a number of judgments as to how those Regulations should be interpreted and applied; for example: the Upper Tribunal judgments of KH (on the unlawful application of Genuine Prospect of Work to retained workers) and HK (on allowing Surinder Singh rights to those who’ve obtained permanent residence in another host State).

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

- 91 The benefits¹ referred to within paragraph 90 above are (amongst others)
1. regulation 7 (funeral payments: entitlement) of the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland) 2005 **and**
 2. regulations 2 (interpretation) and 9 (persons treated as not being in Northern Ireland) of the Universal Credit Regulations (Northern Ireland) 2016.

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

General interpretation

- 92 This provision¹ continues to have effect with the following modifications² as if

1. 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 implementation period completion day, were a reference to a right conferred by the European Union Treaties so far as they were applicable to and in the United Kingdom by virtue of Part 4 of the withdrawal agreement **or**
 - 1.2 in so far as they relate to things done on or after implementation period completion day, were omitted **or**
2. 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 implementation period completion day, were a reference to the European Union 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 implementation period completion day, were omitted **or**
3. 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. in the definition of “EEA State”, the words “, *other than the UK*” were omitted so far as relevant to things done after exit day⁶ **or**
5. at the end of the definition of “exclusion order”, there were inserted “*or directions issued by the Secretary of State that a person is not to be given entry to the UK*”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 4, para 4; 3 Sch 4, para 4(a)(i); 4 Sch 4, para 4(a)(ii); 5 Sch 4, para 4(a)(iii); 6 Sch 4, para 4(a)(iv); 7 Sch 4, para 4(v)

Continuity of residence

93 This provision¹ continues to have effect, but is modified² to include reference to the Immigrations Acts. From 11pm on 31.12.20, ADM guidance at C1773 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 United Kingdom under the Immigration (European Economic Area) Regulations 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 4, para 4(b);

3 Imm (EEA) Regs 2016, reg 3(3)(c)

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

- 94 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 United Kingdom 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 4, para 4(c); 3 Imm (EEA) Regs 2016, reg 4(1)(b); 4 TFEU, Art 49

Worker or self-employed person who has ceased activity

- 95 This provision¹ continues to have effect 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 4, para 4(d)

Qualified person

- 96 Modifications are made to this provision¹ to reflect the Upper Tribunal judgement of KH². Although the modifications within this memo take effect from 11pm on 31.12.20, decision makers should be reminded that current revised ADM guidance relating to the KH judgment, can be found within DMG Memo 2/83 & ADM Memo 25/20 which are currently being drafted.

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

- 97 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. ADM guidance at C1478 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. However, please see paragraph 96 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 4, para 4(e)(i); 3 KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

- 98 A person who is no longer working must continue to be treated as a worker, provided that certain conditions are met¹ (see ADM C1407 & C1408). One of those conditions is that the person satisfies condition B. Condition B² is amended³ to insert the words, “, *when determining whether the person is a jobseeker*.”. ADM guidance at C1405 2. C1407 3. and C1408 3. should now be read as

“can provide evidence that they are seeking employment and when determining whether that person is a jobseeker, has a genuine chance of being engaged.”

Note: Please see paragraph 96 above regarding current revised ADM guidance relating to the KH judgment.

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

- 99 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”. ADM guidance at C1408, C1409 & C1807 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 96 above regarding current revised ADM guidance relating to the KH³ judgment.

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 4, para 4(e)(iii); 3 KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

Family member

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

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 4, para 4(f)

Extended family member

- 101 This provision¹ continues to have effect. However, it is modified to read that where an extensive examination of the personal circumstances of the claimant is required², the criteria³, of *whether an EEA national would be deterred from exercising their free movement rights if the application was refused*, is omitted³ from the examination.

1 Imm (EEA) Regs 2016, reg 8; 2 reg 8(8); 3 reg 8(8)(c); 4 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(g)

Family members and extended family members of British citizens

- 102 Modifications are made to this provision¹ to reflect the Upper Tribunal 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 United Kingdom). Although the modifications within this memo take effect from 11pm on 31.12.20, decision makers should be reminded that ADM guidance is already revised, relating to the HK judgment, and can be found within DMG Memo Vol 2/82 & ADM Memo 20/20.

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

- 103 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. ADM guidance at C1597 advises that, if certain conditions are satisfied, family members of British citizens have the same European Union law rights of residence as they would if they were a family member of a European Economic Area national. ADM guidance at C1597 should now be read as including the inserted wording. Although, see paragraph 102 above regarding current guidance on HK³.

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

- 104 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. ADM guidance at C1600 advises on factors that are relevant to determining whether residence in a European Economic Area State (other than the United Kingdom) is or was genuine. ADM guidance at C1600 1. should now be disregarded. Although, see paragraph 102 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 4, para 4(h)(ii); 3 Imm (EEA) Regs 2016, reg 9(3)(a); 4 HK v SSWP (PC) [2020] UKUT 73 (AAC)

- 105 From 11pm on 31.12.20, this provision¹ is omitted². ADM C1602 provides advice for the purposes of determining whether, when treating the British citizen as a European Economic Area national, the British citizen would be a qualified person¹. Guidance at C1602 should now be disregarded. Decision makers should have regard to DMG Memo Vol 2/82 & ADM Memo 20/20 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 4, para 4(h)(iii); 3 HK v SSWP (PC) [2020] UKUT 73 (AAC)

Dual national: national of a European Economic Area State who acquires British citizenship

- 106 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 4, para 4(i)

Family member who has retained the right of residence

- 107 This provision¹ continues to have effect. However, one of the conditions² which sets out the circumstances when a family member of a European Economic Area national may retain their right to reside on the death or departure of the European Economic Area national from the United Kingdom, is modified³. Guidance at ADM C1778 sets out that condition and from 11pm on 31.12.20, C1778 2. is modified to read as

“2. have resided in the UK lawfully i.e. exercised a qualifying right to reside, for at least the year before the death of the qualified person or the European Economic Area 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 4, para 4(j)(i)

108 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 4, para 4(j)(ii)

Initial right of residence

109 This provision¹ continues to have effect² with the modification that, a person who otherwise satisfies this provision, is not entitled to a right to reside under this provision if that person is subject to a deportation order or exclusion order unless that order is set aside, revoked, or otherwise no longer has effect.

1 Imm (EEA) Regs 2016, reg 13(4); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(k)

Extended right of residence

110 This provision¹ continues to have effect² with the modification that a person who otherwise satisfies this provision, is not entitled to a right to reside in the United Kingdom under this provision if that person is subject to a deportation order or exclusion order unless that order is set aside, revoked or otherwise no longer has effect³.

1 Imm (EEA) Regs 2016, reg 14; 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(l); 3 Imm (EEA) Regs 2016, reg 14(4)

Right of permanent residence

111 This provision¹ continues to have effect² in so far as it applies to residence in the United Kingdom after 11pm on 31.12.20, as if the Immigration (European Economic Area) Regulations 2016 had been in force at all relevant times (with any necessary modifications) and as if the words “in accordance with these regulations” (in each place they occur) were substituted with the word “lawfully”³. This means that, where the decision maker has to determine whether the person’s residence complied with the Immigration (European Economic Area) Regulations 2016 prior to the end of the transition period, a person would acquire permanent residence if they had resided lawfully in the United Kingdom for 5 years.

1 Imm (EEA) Regs 2016, reg 15; 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(m); 3 Sch 4, para 4(m)(i)

- 112 The provision¹ that determines when a person is not entitled to a right of permanent residence in the United Kingdom is modified² to apply if that person is subject to a deportation order or exclusion order unless that order is set aside, revoked or otherwise no longer has effect.

1 Imm (EEA) Regs 2016, reg 15(4); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(m)(ii)

Derivative right to reside

- 113 This provision¹ continues to have effect² with the modification that, in the conditions for the primary carer of a British citizen, the word “another” is substituted with the word “an”. ADM guidance at C1861 3. should read that that particular criteria is that the British citizen would be unable to reside in the United Kingdom or in a European Economic Area State.

1 Imm (EEA) Regs 2016, reg 16(5)(c); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(n)(i)

- 114 This provision¹ continues to have effect² with the modification that a person does not have a derivative right to reside if that person is subject to a deportation order or exclusion order unless that order is set aside, or otherwise no longer has effect³.

1 Imm (EEA) Regs 2016, reg 16; 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, Sch 4, para 4(n)(ii); 3 Imm (EEA) Regs 2016, reg 16(12)

IRISH CITIZENS

- 115 The United Kingdom and Irish Governments made commitments to protect existing Common Travel Area arrangements, including the associated rights of British and Irish citizens in the other State. The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 protects the status of Irish citizens¹, by inserting new legislation² confirming their right to enter and remain in the United Kingdom without permission when free movement rights end, irrespective of from where they have entered the United Kingdom; 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 United Kingdom without requiring permission, and is reflected in the provisions made in this Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020. This unique relationship, whereby citizens of the United Kingdom and Ireland have a status in each other's State, existed long before the United Kingdom or Ireland were members of the European Union, 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 ADM Memo 15/20 & DMG Memo Vol 2 /80 – 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

- 116 Part 8 and Schedule 5 of this statutory instrument 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 statutory instrument is to be treated as if the Secretary of State had issued exclusion directions under new legislation¹ introduced by the Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020. This new legislation clarifies that subject to certain exceptions², an Irish national does not require leave to enter or remain in the United Kingdom. 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

- 117 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 United Kingdom in breach of immigration law, but instead has qualifying immigration status by virtue of their rights under clause 3ZA of the Immigration Act 1971.
- 118 The British Nationality (General) Regulations 2003 are amended to reflect that documents confirming permanent residence in the United Kingdom under the Immigration (European Economic Area) Regulations 2016 will no longer be required as part of a citizenship application, given the document relates to a European Union 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 Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020, 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 European Union law will continue to be able to use it alongside their European Union Settlement Scheme 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.

119 Guidance in paragraph 120 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 Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020⁴.

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

120 Unless the Secretary of State directs otherwise¹, the Irish citizen is to be treated for the purposes of specified legislation¹ as a person to whom sub-paragraph (3) of that legislation applies².

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 Immigration Act 1971, s 3ZA; 3 s 3ZA(3)

SUMMARY

- 121 Temporary protections for those lawfully resident in the United Kingdom i.e. those who are in scope of the Withdrawal Agreement and who have a right to reside under European Union law at the end of the transition period but who have not yet made their application to the European Union Settlement Scheme by the deadline date (30.6.21), would end. Unless they make their application by the deadline date, the changes to align European Economic Area citizens with non-European Economic Area 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** to paragraph 10 above).
- 122 Unless an Irish citizen is subject to a deportation order¹, exclusion order² or international travel ban³, their right to enter and remain in the United Kingdom without permission will continue when free movement rights end⁴, irrespective of from where they have entered the United Kingdom.

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 (ADM Memo 28/20) against ADM paragraphs:

C1225 (Heading); C1405; C1408; C1409; C1478; C1597; C1600; C1773; C1778; C1807; C1851 (Main Heading); C1853; C1862; C1864; C1870 (Main heading); L3107

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APPENDIX 1

Amendment and savings of primary legislation

(Part 2, Chapter 1 of Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020)

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 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 |

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 Reg No. | Primary Legislation | Amendment / Saving |
|--|---|-------------------------------------|
| 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 |

| | | |
|--|----------------------------|---------------------------|
| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 Reg No. | Primary Legislation | Amendment / Saving |
| 23 | Immigration Act 2016 | Schedule 12 |

APPENDIX 2

Amendment and savings of secondary legislation

(Part 2, Chapter 2 of Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020)

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 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 |

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 Reg No. | Secondary Legislation | Amendment / Saving |
|--|--|---------------------------|
| 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 |

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 Reg No. | Secondary Legislation | Amendment / Saving |
|--|---|---------------------------|
| 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 |

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 Reg No. | Secondary Legislation | Amendment / Saving |
|--|--|---|
| 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) (European Union Exit) Order 2019 | Chapter 1 of Part 2 |
| 48 | Immigration, Nationality and Asylum (European Union 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) (European Union Exit) Regulations 2020 | Regulations 7, 11 & 12 |
| 50 | Citizens' Rights (Frontier Workers) (European Union Exit) Regulations 2020 | Regulation 20 |

APPENDIX 3

Revocation of secondary legislation

(Part 2, Chapter 3 of Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020)

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 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 Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020)

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 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 Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020)

| Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (European Union Exit) Regulations 2020 Reg No. | Secondary legislation | Amendment |
|--|--|--------------------------------------|
| 80 | British Nationality (General) Regulations 2003 | Regulations 2, 7E & 7G Schedule 2 |