

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 – INCOME SUPPORT, JOBSEEKER’S ALLOWANCE, EMPLOYMENT AND SUPPORT ALLOWANCE & STATE PENSION 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, the Immigration and Social Security Co-ordination (European Union Withdrawal) 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 2020² (commonly referred to as “the Home Office Consequential Statutory Instrument”). The majority of the changes come into force at the end of the transition period, at 11pm on 31.12.20³. However, see paragraph 3 below for the exceptions.

1 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, 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 Grace Period Statutory Instrument (see DMG Memo Vol 2/84 & ADM Memo 26/20 – The Citizens' Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020), also comes into force immediately before the Immigration (European Economic Area) Regulations 2016 are revoked, so that the Grace Period Statutory Instrument 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 will repeal European Union law implemented into domestic legislation and then retain other European Union law to ensure operation of this. The Immigration and Social Security Co-ordination (European Union Withdrawal) Act 2020 does this, with the intention of ending free movement at the end of the transition period (11pm on 31.12.20), paving the way for the new points-based immigration system to be rolled out. The points-based immigration system will apply to 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 that 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.
- 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

1 The Immigration Act 1971; 2 The ISSC Act, s 1; 3 s 2; 4 s 6

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 (EU 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 (EU 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 Home Office Consequential Statutory Instrument

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 Vol 2/84 & ADM Memo 26/20 – The Citizens’ Rights (Application Deadline and Temporary Protection) (European Union Exit) Regulations 2020 (2the Grace Period”). The effect of Grace Period Statutory Instrument 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 ("the Grace Period Statutory Instrument")

- 11 An amendment¹ is made to the Grace Period Statutory Instrument² 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 *SFME&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 the Home Office Consequential Statutory Instrument 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 the Home Office Consequential Statutory Instrument, 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 ("the Frontier Workers Statutory Instrument")

- 13 Amendment¹ is made to Frontier Workers Statutory Instrument² 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 Home Office Consequential Statutory Instrument¹ makes changes to legislation governing access to Income Support, Jobseeker’s Allowance, Employment and Support Allowance and State Pension 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 Home Office Consequential Statutory Instrument changes have the effect of treating newly arriving European Economic Area citizens in the same way that non-European Economic Area citizens are currently treated, 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 (DMG 073490 - 073495). The Home Office Consequential Statutory Instrument 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 26/20 & DMG Memo Vol 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 Home Office Consequential Statutory Instrument 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 A person cannot be treated as habitually resident in the Common Travel Area unless they have a right to reside in the Common Travel Area¹ (DMG 072771). However certain rights to reside are specifically excluded by benefit regulations² (DMG 073450 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. They are therefore a person from abroad/person not in GB and not entitled to Income Support, income-based Jobseeker's Allowance, income-related Employment and Support Allowance or State Pension Credit. Guidance below, detail the amendments to benefit legislation which, from 1.1.21, omits the benefit exclusions provided for under European Union law.

¹ IS (Gen) Regs (NI), reg 21AA(2); JSA Regs (NI), reg 85A(2); ESA Regs (NI), reg 70(2); SPC Regs (NI), reg 2(2);
² IS (Gen) Regs (NI), reg 21AA(3) & (3A); JSA Regs (NI), reg 85A(3) & (3A); ESA Regs (NI), reg 70(3) & (3A); SPC Regs (NI), reg 2(3) & (3A)

Income Support (General) Regulations (Northern Ireland) 1987

- 24 In line with the guidance at paragraph 23 above, specified benefit legislation¹ specifically excludes certain rights to reside for Income Support. This Home Office Consequential Statutory Instrument amends that provision, to omit² the excluded rights to reside which reference European Union law³.

¹ IS (Gen) Regs (NI), reg 21AA(3); ² reg 21AA(3)(c) - (e); ³ The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 53(2)(a)

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

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

(zf) a family member of a person referred to in sub-paragraph (ze), 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 Vol 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 53(2)(b);
² IS (Gen) Regs (NI), reg 21AA(4)

- 26 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) (European Union Exit) 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 Home Office Consequential Statutory Instrument, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1 IS (Gen) Regs (NI), reg 21AA(6); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 53(2)(c)

Jobseeker's Allowance Regulations (Northern Ireland) 1996

- 27 In line with the guidance at paragraph 23 above, specified benefit legislation¹ specifically excludes certain rights to reside for income-based Jobseeker's Allowance. The Home Office Consequential Statutory Instrument amends that provision, to omit² the excluded rights to reside which reference European Union law³.

1 JSA Regs (NI), reg 85A(3); 2 reg 85A(3)(c) - (e); 3 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 55(2)(a)

- 28 In order to allow frontier workers (and their family members who have been granted European Union Settlement Scheme leave) to have access to income-based Jobseeker's Allowance, where they meet the relevant conditions, the following provisions are inserted¹ into legislation² after paragraph (4)(zd)

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

(zf) a family member of a person referred to in sub-paragraph (ze), 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 Vol 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 55(2)(b);
2 JSA Regs (NI), reg 85A(4)*

- 29 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) (European Union Exit) 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 Home Office Consequential Statutory Instrument, which

makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1 JSA Regs (NI), reg 85A(6); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 55(2)(c)

State Pension Credit Regulations (Northern Ireland) 2002

- 30 In line with the guidance at paragraph 23 above, specified benefit legislation¹ specifically excludes certain rights to reside for State Pension Credit. The Home Office Consequential Statutory Instrument amends that provision, to omit² the excluded rights to reside which reference European Union law³.

1 SPC Regs (NI), reg 2(3); 2 reg 2(3)(c) - (e); 3 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 59(2)(a)

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

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

(zf) a family member of a person referred to in sub-paragraph (ze), 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 Vol 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 59(2)(b);
2 SPC Regs (NI), reg 2(4)*

- 32 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) (European Union Exit) 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 Home Office Consequential Statutory Instrument, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1 SPC Regs (NI), reg 2(6); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 59(2)(c)

Employment and Support Allowance Regulations (Northern Ireland) 2008

- 33 In line with the guidance at paragraph 23 above, specified benefit¹ legislation specifically excludes certain rights to reside for income-related Employment and Support Allowance. The Home Office Consequential Statutory Instrument amends that provision, to omit² the excluded rights to reside which reference European Union law³.

1 ESA Regs (NI), reg 70(3); 2 reg 70(3)(c) - (e); 3 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 73(2)(a)

- 34 In order to allow frontier workers (and their family members who have been granted European Union Settlement Scheme leave) to have access to income-related Employment and Support Allowance, where they meet the relevant conditions, the following provisions are inserted¹ into legislation² after paragraph (4)(zd)

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

(zf) a family member of a person referred to in sub-paragraph (ze), 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 Vol 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 73(2)(b); 2 ESA Regs (NI), reg 70(4)

- 35 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) (European Union Exit) 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 Home Office Consequential Statutory Instrument, which makes clear they only apply to those who have pre-settled status. This will be relevant after the end of Grace Period.

1 ESA Regs, reg 70(6); 2 The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020, reg 73(2)(c)

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

36 DMG guidance at 39102 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)

37 This Home Office Consequential Statutory Instrument 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 (see DMG 072810 - 072817) or self-employed person⁴ (see DMG 072841 - 072864) **or**
2. a person who retains the status⁵ (see DMG 072821 - 072831) of worker or self-employed person **or**
3. a person who is a family member⁶ (see DMG 072900 - 072901) 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 DMG 073174) **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

38 From 1.1.21, DMG guidance at 39102 **5.2.1 - 5.2.e** 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 37 **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)

- 39 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 Home Office Consequential Statutory Instrument, 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

- 40 This Home Office Consequential Statutory Instrument 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

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

- 41 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.
- 42 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).

43 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).

44 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

45 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) Cql 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

- 46 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

- 47 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.
- 48 “European Economic Area 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

- 49 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)

- 50 Any deportation or exclusion order made under the Immigration (European Economic Area) Regulations 2016, as they are continued in effect by the Grace Period Statutory Instrument, 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)

- 51 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 legislation is to be read as if after “exclusion order” there were inserted² “made on the

grounds of public policy, public security or public health in accordance with regulation 27”.

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

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

52 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 Grace Period Statutory Instrument **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

53 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 has not been finally determined by 11pm on 31.12.20 **or**
2. any appeal which has been brought under the Immigration (European Economic Area) Regulations 2016 has not been finally determined by 11pm on 31.12.20 **or**
3. any European Economic Area decision taken before 11pm on 31.12.20 **or**
4. 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

- 54 The modifications¹ within paragraphs 50 - 91 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 Grace period Statutory Instruments, 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 Grade Period Statutory Instrument 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

- 55 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

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

1. a person serves a sentence of imprisonment **or**
2. a deportation or exclusion order is made in relation to a person **or**
3. a person is removed from the 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”

57 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

58 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

- 59 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 DMG guidance relating to the KH judgment, can be found within DMG Memo Vol 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)

- 60 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. DMG guidance at 072864 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. Please see paragraph 59 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)

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

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

Note: Please see paragraph 59 above regarding current revised DMG 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)

- 62 This provision¹ continues to have effect² with the modification that the words “, *where that person is a jobseeker*” are inserted after the words “continuing to seek employment and” DMG guidance at 073090, 073092, 073145, 073149 & 073428 should all now be read to the effect that a person may not retain the status of worker, self-employed person or jobseeker for longer than the relevant period without providing compelling evidence of continuing to seek employment and, where that person is a jobseeker, having a genuine chance of being engaged.

Note: Please see paragraph 59 above regarding current revised DMG 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

63 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

64 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

65 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 DMG 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)

66 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. DMG guidance at 073254 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. DMG guidance at C073254 should now be read as including the inserted wording. Although, see paragraph 65 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)

67 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. DMG guidance at 073259 advises on factors that are relevant to determining whether residence in a European Economic Area State (other than the United Kingdom) is or was genuine. DMG guidance at 073259 1. should now be disregarded. Although, see paragraph 65 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)

68 From 11pm on 31.12.20, this provision¹ is omitted². DMG 073261 provides advice for the purposes of determining whether, when treating the British citizen as a European Economic Area national, the British citizen would be a qualified

person¹. Guidance at 073261 should be disregarded. However, decision makers should have regard to DMG Memo Vol 2/82 for current guidance on HK³.

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

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

69 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

70 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 DMG 073300 sets out that condition and from 11pm on 31.12.20, guidance at DMG 073300 1.2 should be read as

“1.2 have resided in the 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)*

71 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

72 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

73 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

- 74 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

- 75 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 United Kingdom 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

- 76 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

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

“Decisions taken on conducive grounds

27A.— (1) *An European Economic Area 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 Implementation Period 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

- 78 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

- 79 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

- 80 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

- 81 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

- 82 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

- 83 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

- 84 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

- 85 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

86 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

87 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

88 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

89 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

90 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 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

- 91 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

- 92 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 94). 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.
- 93 "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(a)

94 “Member of the post-transition period group” means a person who has European Union Settlement Scheme limited leave to enter or remain (pre-settled status) in the United Kingdom¹.

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

95 Paragraphs 97 to 119 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 at paragraph 96 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

96 The benefits¹ referred to within paragraph 95 above are

1. regulation 21AA (special cases: supplemental–persons from abroad) of the Income Support (General) Regulations (Northern Ireland 1987 **and**
2. regulation 85A (special cases: supplemental–persons from abroad) of the Jobseeker’s Allowance Regulations (Northern Ireland 1996 **and**
3. regulation 2 (persons not in Northern Ireland) of the State Pension Credit Regulations (Northern Ireland 2002 **and**
4. regulation 7 (funeral payments: entitlement) of the Social Fund Maternity and Funeral Expenses (General) Regulations (Northern Ireland 2005 **and**
5. regulation 70 (special cases: supplemental–persons from abroad) of the Employment and Support Allowance Regulations (Northern Ireland) 2008.

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

97 This provision¹ continues to have effect² with the following modifications that

1. 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 commencement 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 European Union withdrawal agreement **or**

- 1.2 in so far as they relate to things done on or after commencement day, were omitted
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 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 Withdrawal Agreement **or**
 - 2.2 in so far as they relate to things done on or after commencement day, were omitted
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 UK*” were omitted⁶ **and**
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 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 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

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

1. a person serves a sentence of imprisonment **or**
2. a deportation or exclusion order is made in relation to a person **or**
3. a person is removed from the 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”

- 99 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

- 100 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

- 101 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 DMG guidance relating to the KH judgment, can be found within DMG Memo Vol 2/83 & ADM Memo 25/20.

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

- 102 This provision¹ continues to have effect² with the modification that the words “*and having a genuine chance of being engaged*” are omitted. DMG guidance at 072864 should now be read that condition E is that the person provides evidence of seeking employment or self-employment. However, please see paragraph 101 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)

- 103 A person who is no longer working must continue to be treated as a worker, provided that certain conditions are met¹ (see DMG 073086 & 073090). 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*.”. DMG guidance at 073084 **2.**, 073086 **3.** and 073090 **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 101 above regarding current revised DMG 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)(ii);

³ KH v Bury MBC and SSWP [2020] UKUT 50 (AAC)

104 This provision¹ continues to have effect² with the modification that the words “, *where that person is a jobseeker*” are inserted after the words “continuing to seek employment and” DMG guidance at 0730908, 073092, 073145, 073149 & 073428 should all now be read to the effect that a person may not retain the status of worker, self-employed person or jobseeker for longer than the relevant period without providing compelling evidence of continuing to seek employment and, where that person is a jobseeker, having a genuine chance of being engaged.

Note: Please see paragraph 101 above regarding current revised DMG 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

105 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

106 This provision¹ continues to have effect with the modification that where an extensive examination of the personal circumstances of the claimant is required, the criteria², of whether a European Economic Area 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

107 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 DMG 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)*

108 This provision¹ continues to have effect² with the modification that at the end of that paragraph the words “*and British Citizen is to be treated as satisfying any requirement to be a qualified person*” were inserted. DMG guidance at 073254 advises that, if certain conditions are satisfied, family members of British citizens have the same European Union law rights of residence as they would if

they were a family member of a European Economic Area national. DMG guidance at 073254 should now be read as including the inserted wording. See paragraph 107 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)

109 This provision¹ continues to have effect² with the modification that the specified sub-paragraph³ is to be omitted. DMG guidance at 073259 advises on factors that are relevant to determining whether residence in a European Economic Area State (other than the United Kingdom) is or was genuine. DMG guidance at 073259 **1.** should now be disregarded. See paragraph 107 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)

110 From 11pm on 31.12.20, this provision¹ is omitted². DMG 073261 provides advice for the purposes of determining whether, when treating the British citizen as a European Economic Area national, the British citizen would be a qualified person¹. Guidance at 073261 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

111 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

112 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 DMG 073300 sets out that condition and from 11pm on 31.12.20, guidance at DMG 073300 **1.2** is modified to read as

“1.2 have resided in the United Kingdom 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)

113 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

114 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

115 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

116 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)

117 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

- 118 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”. DMG guidance at 073466 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)

- 119 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

- 120 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 the Home Office Consequential Statutory Instrument. 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

- 121 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

122 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.

123 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 Grace Period Statutory Instrument, 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.

124 Guidance in paragraph 125 below applies¹ in respect of an Irish citizen who

1. immediately before commencement day, was (or was treated as) subject to an exclusion order²
2. is subject to an exclusion order³ as they are continued in effect by the Grace Period Statutory Instrument⁴.

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

- 125 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

- 126 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).
- 127 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 (DMG Memo Vol 2/86) against DMG paragraphs:

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

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DECISION MAKING SERVICES

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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	United Kingdom 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
<p>23</p>	<p>Immigration Act 2016</p>	<p>Schedule 12</p>

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
45	Immigration and Nationality (Fees) Order 2016	Articles 2 & 6

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
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