



Home Office

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Minister for Future Borders and
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Dear Stuart,

I am writing to you following the Delegated Legislation Committee's consideration of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 ("the consequential amendments SI"), on 8 December. I am copying this letter to members of that Committee.

You asked during the debate of the consequential amendments SI about a range of scenarios regarding EEA citizens' access to benefits and services, including NHS healthcare, during the grace period and thereafter.

Protections for resident EEA citizens

The Government has established the EU Settlement Scheme ("the scheme") to enable those EEA citizens resident in the UK by 31 December 2020 and their family members to obtain a UK immigration status, which will allow them to continue their lives in the UK broadly as now.

The Government has also legislated, in the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ("the grace period SI"), to protect existing rights held at the end of the transition period by those lawfully resident in the UK under free movement rules who have not yet obtained status under the scheme. These protections will apply for the duration of the grace period and until the final determination of an application made under the scheme by the deadline of 30 June 2021.

EEA citizens and their family members who do not have the right of permanent residence or are not exercising EU Treaty rights at the end of the transition period will not have rights under free movement law to be protected during the grace period. This maintains their current position, in which they are not residing lawfully in the UK.

In these circumstances, they will be able to resolve their status by obtaining status under the scheme. They will enjoy the same residence rights from the time they are granted status as someone who was lawfully resident in the UK

at the end of the transition period, and will be able to access benefits and services on at least the same terms as now.

Employer and landlord checks

There will be no change to Right to Work and Right to Rent checks until the end of the grace period. This means EEA citizens will continue to be able to rely on their EEA passport or nationality identity card for these purposes, including those who do not have saved rights by virtue of the grace period SI. They should apply to the scheme by the deadline of 30 June 2021. Guidance to employers and landlords makes clear they should not discriminate against EEA citizens who do not yet have status under the scheme.

From 1 July 2021, all EEA citizens undergoing a new Right to Work or Right to Rent check will need to demonstrate lawful status, under the scheme or the new points-based immigration system. However, there will be no requirement for employers or landlords to carry out retrospective checks on existing EEA employees or tenants.

The rights of those EEA citizens and their family members who were lawfully resident at the end of the transition period and who, from 1 July, have a pending application under the scheme made by the deadline, or an appeal against the refusal of an application submitted by then, will be protected until it is finally determined. As they will no longer be able to use their passport or national identity card from 1 July, the Home Office will make the required changes to the Right to Work and Right to Rent schemes to ensure they can continue to prove their right to work or rent pending the outcome of their application.

During the grace period, the Home Office will not take enforcement action against EEA citizens who may be eligible to apply to the scheme, except where they are involved in serious or persistent criminality or pose a serious threat to the security of our country. Our focus will remain on signposting individuals to the scheme and providing necessary support to apply. We have been clear criminal sanctions, including in respect of the offence of working illegally, are reserved only for serious cases in which the individual is knowingly acting unlawfully.

Accessing benefits and services

The grace period SI includes provisions to ensure continued access to benefits and services as now, during the grace period and until the final determination of an application made under the scheme by the deadline. This includes access to social housing and homelessness assistance, where eligible. When applying for this support during the grace period, EEA citizens and their family members will need to show they were lawfully resident at the end of the transition period, and they meet the relevant eligibility criteria. Those who do not have saved rights will be able to resolve their status, and associated entitlements where eligible, by obtaining status under the scheme.

There are important safeguards in place to ensure vulnerable migrants who are destitute and have community care needs, including issues relating to human rights or the wellbeing of children, can receive support. Local authorities may provide a basic safety net of support, regardless of immigration status, if it is established there is a genuine care need which does not arise solely from destitution.

Late applications

Those who have not applied to the scheme by the deadline of 30 June 2021 will not have lawful status in the UK after that date. This means, for example, they will not be able to evidence their right to work or rent if they seek new employment or a new tenancy agreement in the private rented sector during the period in which they have no lawful status. They will also not be entitled to benefits and services while they do not have lawful status.

In line with the withdrawal agreements¹, late applications will be accepted where there are reasonable grounds for missing the deadline. The Home Office will publish non-exhaustive guidance on what constitutes reasonable grounds early in 2021. Those who are subsequently granted status under the scheme will be able to access benefits and services as now from the point it is granted, provided they meet the relevant eligibility criteria.

The National Health Service (Charges to Overseas Visitors) (Amendment) (EU Exit) Regulations 2020 provide an exemption from charging for those who make a late application under the scheme. The exemption will apply from the date the late application is made, until it is finally determined. The costs of any relevant treatment undertaken after the grace period and before a late application is made, and when the individual does not have lawful immigration status, would be recoverable, and would not be refundable when the application is made. In addition, if someone's late application was refused, any treatment costs for the period between making a late application and the date of refusal, during which they were exempt, would be recoverable.

The Government has established the scheme to protect the rights of those resident in the UK by the end of the transition period. They should make their application to obtain a UK immigration status. The Home Office is working closely with other government departments to ensure benefits claimants who may be eligible for the scheme are encouraged to apply. Consistent with the usual approach to late immigration applications, the Government does not think it appropriate to grant anyone who applies to the scheme after the deadline access to lawful status pending determination of their application, although as with other migration matters we may expedite a decision where compelling or compassionate circumstances exist.

I hope this information helps to provide some clarity further to the scenarios you set out during the Committee. We will continue to review the progress

¹ The EU Withdrawal Agreement, the EEA European Free Trade Association Separation Agreement and the Swiss Citizens' Rights Agreement.

with the scheme over the grace period and beyond, but as regularly stated any EEA citizen with concerns about their position beyond 1 July 2021 should make their application to the scheme today, with support available online, on the phone and through our 72 Grant Funded Organisations.

With my very best wishes.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Foster', with a large flourish at the end.

Kevin Foster MP

Minister for Future Borders and Immigration