

**EXPLANATORY MEMORANDUM TO**  
**THE CITIZENS' RIGHTS (APPLICATION DEADLINE AND TEMPORARY**  
**PROTECTION) (EU EXIT) REGULATIONS 2020**

**2020 No. [XXXX]**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid in Parliament by Command of Her Majesty.
- 1.2 This Explanatory Memorandum refers to “EEA citizens” to mean citizens of the European Union (EU) countries and of other constituent countries of the European Economic Area (EEA) (Iceland, Liechtenstein and Norway) and of the European Free Trade Association (EFTA) (the EEA countries and Switzerland).

**2. Purpose of the instrument**

- 2.1 This instrument comes into force at the end of the transition period on 31 December 2020 and gives effect to aspects of the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement (“the Agreements”) concerning the residence rights of EEA citizens and their family members. In particular, it specifies the deadline of 30 June 2021 for an application to the EU Settlement Scheme (“the Scheme”) for UK immigration status by EEA citizens and their family members who are resident in the UK by the end of the transition period.
- 2.2 For those EEA citizens who are lawfully resident in the UK by virtue of free movement law immediately before the end of the transition period, and who do not yet have status under the Scheme, and for their relevant family members, this instrument saves their existing residence rights in the UK. Provision is also made for those who are not physically in the UK at that point in time but are to be treated as resident in the UK under the Agreements.
- 2.3 The instrument also makes provision to preserve access to benefits and services (subject to eligibility). It does so for the period from 31 December 2020 to 30 June 2021 (referred to in the instrument as “the grace period”), once, subject to agreement by Parliament, free movement to the UK is ended by the Immigration and Social Security Co-ordination (EU Withdrawal) Bill (“the Bill”). The protections provided for in the instrument also apply where an individual makes an application to the Scheme before the deadline, but the application has not been finally determined by the deadline.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see section 42 of the European Union (Withdrawal Agreement) Act 2020) and the territorial application of this instrument is not limited either by the Act or by the instrument.

#### **4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

#### **5. European Convention on Human Rights**

5.1 Kevin Foster MP, Minister for Future Borders and Immigration at the Home Office, has made the following statement regarding Human Rights:

“In my view the provisions of the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

#### **6. Legislative Context**

6.1 The Immigration (European Economic Area) Regulations 2016 (“the EEA Regulations”) give effect to the UK’s obligations in the field of immigration arising from membership of the EU. Subject to Parliament’s agreement, the Bill will end free movement to the UK on 31 December 2020. It will revoke the EEA Regulations. Thereafter, newly arriving EEA citizens and their family members who are not protected by the Agreements will be subject to UK immigration control and their entry to and stay in the UK will be under the global points-based immigration system which will be set out in the Immigration Rules made under the Immigration Act 1971.

6.2 The Government has legislated through Immigration Rules and the European Union (Withdrawal Agreement) Act 2020 to protect the rights of EEA citizens who are resident in the UK by the end of the transition period and their family members. This instrument is made under the powers in section 7(1) and (4) of, and paragraph 12 of Schedule 4 to, that Act. It sets the deadline of 30 June 2021 for an application by them for UK immigration status under the EU Settlement Scheme. It also saves relevant rights for those lawfully resident in the UK at the end of the transition period by virtue of the EEA Regulations (and for their relevant family members), until an application under the Scheme made by them before the deadline has been finally determined.

6.3 Various modifications are made to the EEA Regulations that are being saved for this purpose. In some cases, these modifications ensure that the saved Regulations operate appropriately (for example, the modifications deal with references to the EU Treaties that no longer operate and ensure that, in line with the Agreements, conduct committed after the end of the transition period is assessed by reference to the standards that apply under UK immigration law). The modifications also reflect a number of judgments by the UK courts and the Court of Justice of the European Union on the scope of free movement rights that have been made since the EEA Regulations were last amended.

6.4 The Immigration, Nationality and Asylum (EU Exit) Regulations 2019 (“the deficiencies SI”) amended the EEA Regulations, with effect from the end of the transition period. It is the Government’s intention, subject to the passage of the Bill, to revoke these amendments before they take effect using powers under clause 4 of the Bill.

## 7. Policy background

### *What is being done and why?*

7.1 The Government has established the EU Settlement Scheme, under Appendix EU to the Immigration Rules, under which EEA citizens and their family members can obtain the UK immigration status they need to continue living and working in the UK as they have been. This status will be required after free movement to the UK is ended and newly arriving EEA citizens and their family members who are not protected by the Agreements will be subject to UK immigration control and their treatment aligned with non-EEA citizens in the immigration system.

7.2 The purpose of Part 1 of the Bill is to end free movement to the UK by revoking the EEA Regulations at the end of the transition period on 31 December 2020. This means that EEA citizens arriving from 1 January 2021 will do so under UK immigration laws and not under EU free movement. In line with the Agreements, EEA citizens and their family members resident in the UK by the end of the transition period will have a further period, to 30 June 2021, in which to apply to the EU Settlement Scheme – the “grace period” for which this instrument provides. Since their rights under the EEA Regulations will otherwise have been revoked by the Bill, this instrument saves relevant existing provisions for those lawfully resident in the UK at the end of the transition period (referred to in the instrument as “IP completion day”) by virtue of the EEA Regulations (and for their relevant family members), pending the final outcome of an application under the Scheme made by them during the grace period. The operative provisions of the instrument (see, in particular, regulations 3 and 4) only take effect if the EEA Regulations are revoked at the end of the transition period.

7.3 The instrument includes the following provisions:

- Regulation 2 specifies the end of 30 June 2021 as the deadline by which an application to the EU Settlement Scheme must be made by EEA citizens and their family members resident in the UK by the end of the transition period;<sup>1</sup>
- Regulation 3 specifies that the EEA citizens and their family members to whom the instrument applies (referred to as “relevant persons”) are those who, at the end of the transition period, are lawfully resident in the UK by virtue of the EEA Regulations (or have a right of permanent residence in the UK under the EEA Regulations or, consistent with the Agreements, did so at any point in the preceding five years), and their relevant family members,<sup>2</sup> so long as they do not

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<sup>1</sup> In line with the Agreements, those with reasonable grounds for missing the deadline will be given a further opportunity to apply to the EU Settlement Scheme. This will be reflected in the Immigration Rules for the Scheme contained in Appendix EU.

<sup>2</sup> “relevant family members” are defined in regulation 3(6). They include family members within the meaning of regulation 7 of the EEA Regulations (spouse, civil partner, child and dependent parent), and extended family members within the meaning of regulation 8 of the EEA Regulations (where they met the definition there of durable partner immediately before the end of the transition period or they hold a valid EEA document, whether

yet have status under the EU Settlement Scheme. It provides that the provisions of the EEA Regulations specified in regulations 5 to 10 (with the modifications specified there), will continue to apply to relevant persons during the grace period. It also provides that those provisions of the EEA Regulations will continue to operate for the purposes of other legislation specified in regulation 11 which refers to the EEA Regulations. Regulation 3 also provides that the enactments specified in regulation 12 apply to relevant persons with certain modifications.<sup>3</sup> Regulation 3 also provides that the grace period runs from the end of the transition period (at 2300 on 30 December 2020) to the end of 30 June 2021;

- Regulation 4 makes similar provision where an application to the EU Settlement Scheme is made by a person (“the applicant”) before the deadline. The savings and modifications outlined in regulation 4 continue to apply to that person until that application is finally determined, which includes the outcome of any appeal against a decision to refuse them status under the Scheme;
- Regulations 5 to 10 specify the provisions of the EEA Regulations that continue to apply to a relevant person during the grace period, and to an applicant, with relevant modifications. These modifications include provision (in paragraphs (e), (h) and (j) of regulation 5) to ensure that the provisions of the EEA Regulations which continue to apply accurately reflect current EU law;
- Regulation 6 relates to residence rights and residence documentation. In particular, paragraph (a) provides that a family member of an EEA citizen will no longer be able to rely on a residence card issued by an EEA country to evidence their right of admission to the UK. This is because the reciprocal recognition of such documents will cease at the end of the transition period. EEA citizens and their family members will also be required to possess a valid passport or national identity card to enter the UK and may no longer seek to rely on other means to evidence their right to do so;
- Regulation 7 relates to powers of refusal of admission and removal. Regulation 7 saves the EU public policy, public security and public health test applicable to conduct that takes place before the end of the transition period, but, in line with the Agreements, provides that the test applicable under UK immigration law (whether a decision to deport etc would be conducive to the public good) applies in relation to conduct that takes place after the end of the transition period;
- Regulations 8 to 10 make provision for procedural matters, rights of appeal and miscellaneous matters respectively;
- Regulation 11 provides that the EEA Regulations continue to apply (with the modifications specified in regulations 5 to 10) for certain purposes connected to the provision of benefits and public services. The effect is that those to whom regulation 3 or 4 applies will retain their current entitlement to benefits and public services, pending the final outcome of an application to the EU Settlement Scheme made by them before the deadline;

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this was issued before or after the end of the transition period). The definition also covers the provision made in the Agreements for the future child of an EEA citizen resident in the UK by the end of the transition period and for the future spouse of a Swiss citizen resident in the UK by the end of the transition period.

<sup>3</sup> It is the Government’s intention to make amendments to the legislation specified in regulation 12 in consequence of the end of free movement rights.

- Regulation 12 specifies provisions of other legislation that continue (with relevant modifications) to apply for the purposes of regulations 3 and 4. This includes section 7 of the Immigration Act 1988, which specifies that individuals with a right to enter or remain in the UK by virtue of legislation such as the EEA Regulations do not require leave to enter or remain in the UK under the Immigration Act 1971. The continued application of this provision supports the ability of those to whom regulation 3 or 4 applies to continue to reside lawfully in the UK. Regulation 12 also means that relevant persons continue, for example, to be exempt from the immigration skills charge and from being a person subject to immigration control for the purpose of benefits and public services; and
- Regulation 13 specifies that, where there is a question as to whether the EEA Regulations continue to apply to a person, the onus is on that person to show that they do.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act, but relates to the withdrawal of the United Kingdom from the European Union because it makes provision for citizens' rights under the Agreements.

## **9. Consolidation**

- 9.1 It is not intended to consolidate the various primary and subordinate legislation to which the instrument relates.

## **10. Consultation outcome**

- 10.1 A public consultation has not been conducted in the preparation of the instrument, given that it contains measures required by the Agreements to protect citizens' rights. The Devolved Administrations were engaged in respect of the relevant provisions of the instrument.

## **11. Guidance**

- 11.1 Guidance issued to Home Office officials will be revised to reflect the measures contained within the instrument. It will be available by 31 December 2020, the date the instrument comes into force.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on business is expected.

## **13. Regulating small business**

- 13.1 The instrument does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this instrument is that this will be conducted internally by the Home Office.

14.2 The instrument does not include a statutory review clause because of the temporary nature of the provisions contained in it.

**15. Contact**

15.1 Sam Murray at the Home Office, Telephone: 07825 532266 or email: sam.murray@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Nicola Smith at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kevin Foster MP at the Home Office can confirm that this Explanatory Memorandum meets the required standard.