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# EU citizen's rights after a 'no-deal' Brexit: What does the law say?

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## **WHAT IS THE LAW THAT WILL APPLY TO EU NATIONALS ON EXIT DAY IN THE EVENT OF NO DEAL?**

*The purpose of this summary is to describe the law applicable to EU nationals<sup>1</sup> residing in the UK, or who arrive in the UK, if the UK leaves the EU without a deal on 31 January 2019. The position is stated on the basis of the law (including domestic primary and secondary legislation as well as retained EU law) and the stated intentions of the Government as at 27 November 2019. This summary does not attempt to address every scenario and should not be taken to constitute legal advice: it is an attempt to summarise the position on the basis of the legislative provisions that have been adopted or proposed to date, and Government policy statements.*

*This is an updated version of the document we released at the beginning of August and updated in October. Any changes since August have been consolidated into this current version.*

The main changes since our October update are as follows:

- Non-EEA nationals holding EEA state residence cards issued by EU member states under the Free Movement Directive will not be able to use these cards to join their EEA citizen family members in the UK.
- The prohibition on systematic verification of an individual's right to reside in the UK will be removed. This means that the UK Government will be able to review any EEA nationals' right to reside in the UK on a systematic basis whereas at the moment the Government can only verify or review an EEA nationals' right to reside on an individual case by case basis where there is good reason to do so.
- Those granted European Temporary Leave to Remain must have "adequate accommodation" in the United Kingdom in order to maintain their lawful status.
- Substantial changes have been made to the circumstances in which EEA, Swiss and Turkish nationals will be subject to the threshold of whether their deportation is conducive to the public good rather than the more stringent test of public policy in EU law. These are described below.
- The *Surinder Singh* route (by which British citizens who have lived in Europe with non-European family members can return to the UK with this spouse or family member using EU free movement rules) will be phased out although there are transitional provisions which will protect many of those who may have been intending to return to the UK from an EEA state and rely on this route to bring their family members with them.

### **Immigration**

- (1) EU free movement rights continue in force after exit day unless repealed or amended by primary or secondary legislation before then.<sup>2</sup> This is the effect of ss.2-4 of the EU

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<sup>1</sup> Save where indicated otherwise, this includes nationals of EEA states, and the family members of EU and EEA nationals, to the extent that they have or would have had a right of residence under EU law by reason of their relationship.

It had been anticipated that any changes to free movement rights would be made via the Immigration and Social-Security Co-ordination (EU Withdrawal) Bill, but this had not completed its passage through Parliament before prorogation, and was not reintroduced prior to the dissolution of Parliament in November.<sup>3</sup> Section 1 EUWA (which repeals the ECA 1972) was brought into force on 17 August 2019: see European Union (Withdrawal) Act 2018 (Commencement No. 4) Regulations 2019, Regulation 2. No commencement orders have yet been made for the remaining relevant parts of the Act but it is anticipated that ss.2-7 will be brought into force on exit day if the UK leaves without a deal.

(Withdrawal) Act 2018 which, when brought into force,<sup>3</sup> will convert relevant existing EU law into ‘retained EU law’ until such time as it is repealed or amended/modified domestically. This is also consistent with statements made by the Government that free movement would be ended by primary legislation.<sup>4</sup> This means that EEA nationals and their family members can – subject to the exceptions described below - continue to enter and reside in the UK freely in accordance with their Treaty rights, the Citizens’ Directive and the Immigration (European Economic Area) Regulations 2016 (‘the EEA Regulations’), at least until the Immigration Bill is passed and brought into force, some time after exit day.

- (2) The prohibition on systematic verification of an individual’s right to reside in the UK will be removed.<sup>5</sup> This means that the UK Government will be able to review any EEA nationals’ right to reside in the UK on a systematic basis whereas at the moment the Government can only verify or review an EEA nationals’ right to reside in an individual case where there is good reason to do so.

*EEA nationals<sup>6</sup> resident in the UK before exit day*

- (3) EEA and Swiss nationals (and their family members) resident in the UK before exit day will be eligible to apply to the EU settlement scheme in order to be granted a form of leave to remain in the UK. Individuals that have been resident in the UK for five years are eligible to receive “settled status” which is indefinite leave to remain in the UK.<sup>7</sup> Those granted settled status are able to leave the UK for up to five consecutive years without losing that status.<sup>8</sup>

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<sup>3</sup> Section 1 EUWA (which repeals the ECA 1972) was brought into force on 17 August 2019: see European Union (Withdrawal) Act 2018 (Commencement No. 4) Regulations 2019, Regulation 2. No commencement orders have yet been made for the remaining relevant parts of the Act but it is anticipated that ss2-7 will be brought into force on exit day if the UK leaves without a deal.

<sup>4</sup> For example, [Explanatory Memorandum to The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) at paragraph 7.9 which says that “after exit day, Home Office regulations will continue freedom of movement for a short period of time” until the [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill](#) enters into force and repeals EU free movement law. [The Government reiterated it would not be ending free movement before 31 October on 4 September 2019](#) see for example [The Secretary of State for the Home Department’s written statement Immigration: Written statement – HCWS1817](#) and the Government’s policy paper [“No deal immigration arrangements for EU citizens arriving after Brexit”](#), dated 5 September 2019.

<sup>5</sup> [Regulation 22\(7\) of The Immigration \(European Economic Area\) Regulations 2016](#) had stated that the power to verify EU nationals’ right of residence could not be invoked systematically and this regulation has been removed by [regulation 2\(8\) of the Immigration \(Amendment\) \(EU Exit\) Regulations 2019](#).

<sup>6</sup> [The EEA includes EU countries and also Iceland, Liechtenstein and Norway](#).

<sup>7</sup> The criteria for the grant of “settled status” are set out in Appendix EU of the Immigration Rules and associated guidance and are not addressed in further detail here. Statement of Changes to the Immigration Rules HC 1919, laid on 1 April 2019 and coming into effect on 2 April 2019, amended the provisions of Appendix EU so that a person is eligible to apply for settled status if they arrived in the UK before the date and time of withdrawal, if the UK withdraws without a Withdrawal Agreement (rather than only if they arrived before 29 March 2019). See also [Statement of Changes to the Immigration Rules: HC 2631, 9 September 2019](#).

<sup>8</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 2, Chapter 2, Article 8](#).

- (4) EEA and Swiss nationals who arrive before exit day and have been in the UK for less than five years are eligible for limited leave to remain in the UK for five years which is referred to as “pre-settled status”.<sup>9</sup> They are then eligible to apply for settled status once they have been continuously resident in the country for five years.
- (5) Applicants under the settlement scheme will not have to pay the immigration health surcharge.<sup>10</sup>
- (6) The Immigration Bill laid in the previous Parliament would have revoked the Citizens’ Directive, the EEA Regulations and all other retained EU law which is inconsistent with domestic immigration law (including any regulations made under the Immigration Bill).<sup>11</sup> The Government has stated that it intended to make regulations under clause 4 of the Immigration Bill<sup>12</sup> to protect the rights of EEA nationals resident in the UK before exit day.<sup>13</sup> The Government has committed to ensuring that EEA nationals who are resident in the UK before exit can stay here until 31 December 2020, by which time they need to have applied for settled status.<sup>14</sup> At the time of writing, information on GOV.UK still states that EU nationals will have until 31 December 2020 to apply for settled status if the UK leaves without a deal.<sup>15</sup>
- (7) The Government has said that in a no deal scenario EU Citizens and their family members lawfully residing in the UK will “be able to continue to access in country benefits and services on broadly the same terms as now. This means their entitlements to healthcare, education, benefits and social housing, including supported housing and homelessness assistance, will be on the same basis as now.”<sup>16</sup> However, in order for an individual with pre-settled status to access many types of benefits and tax credits, as well as housing assistance, they require an additional EU right to reside in the UK, in addition to the limited leave to remain they obtain under pre-settled status.<sup>17</sup> This exclusion of pre-settled status from a qualifying right to reside

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<sup>9</sup> [Immigration Rules: Appendix EU](#).

<sup>10</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 4](#).

<sup>11</sup> [Immigration and Social Security Co-ordination \(EU Withdrawal\) Bill, Clause 1 and Schedule 1. This Bill has not fallen, following the UK Supreme Court’s judgment in \*R \(on the Application of Miller\) v The Prime Minister\* \[2019\] UKSC 41](#).

<sup>12</sup> Which confers on the Secretary of State power to make regulations making ‘such provision as the Secretary of State considers appropriate in consequence of, or in connection with, any provisions of’ Part 1 of the Bill, which ends free movement in the UK.

<sup>13</sup> [Explanatory Memorandum to the Immigration \(European Economic Area Nationals\) \(EU exit\) Order 2019 at paragraph 7.2](#).

<sup>14</sup> [Citizens’ Rights - EU citizens in the UK and UK nationals in the EU Policy Paper at paragraphs 9 and 11](#).

<sup>15</sup> E.g. <https://www.gov.uk/settled-status-eu-citizens-families>

<sup>16</sup> [Citizens’ Rights - EU citizens in the UK and UK nationals in the EU Policy Paper at paragraph 15](#).

<sup>17</sup> See [The Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2019](#), and [The Allocation of Housing and Homelessness \(Eligibility\) \(England\) \(Amendment\) \(EU Exit\) Regulations 2019](#) and [The Social Security \(Income-related Benefits\) \(Updating and Amendment\) \(EU Exit\) Regulations 2019](#). The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019 exclude access to the following benefits for those whose only right to reside in the UK is via pre-settled status: Income Support, Jobseeker’s Allowance, Housing Benefit, Employment and Support Allowance and Universal Credit.

for benefits purposes is the subject of judicial review proceedings issued on 16 September 2019.<sup>18</sup>

- (8) All EEA and Turkish nationals, regardless of how long they have spent in the UK, will be subject to new deportation thresholds for any conduct committed after exit day. This means that, as is the case currently for non-EEA nationals, there will be a presumption of deportation where an EEA national has received a custodial sentence of 12 months or more for an offence committed after exit day. After exit day the Home Office can exclude or deport an EEA national for post-exit day conduct where they deem it to be conducive to the public good.<sup>19</sup> EEA thresholds for deportation will continue to apply where the relevant conduct (e.g. the commission of a criminal offence) occurred before exit day. The UK deportation thresholds (which allow deportation where the Home Office deems it as conducive to the public good) will be applied to all conduct (both pre- and post-exit conduct) of all EEA citizens moving to the UK **after** exit day and to Turkish workers, business persons and their family members whose applications for leave under the European Communities Association Agreement (ECAA) are decided after Brexit.<sup>20</sup> Citizens of Iceland, Liechtenstein and Norway) and Switzerland resident in the UK **before** exit, and their family members, are subject to separately negotiated agreements and whether or not the UK leaves without a deal, their pre-exit day conduct will only ever be considered against the EU deportation thresholds which require deportation to be in the interests of public policy or for there to be a threat to public security.<sup>21</sup> EU and Turkish citizens resident in the UK **before** exit day can have their pre-exit day conduct assessed against the UK deportation threshold of conducive to the public good, only where they have also have been convicted and imprisoned for an offence relating to post-exit day conduct.<sup>22</sup>
- (9) EEA nationals and Swiss nationals and their family members who have been granted, or may be granted, leave under the EU Settlement Scheme are able to enter the United Kingdom from Ireland without being subject to the Control of Entry through Republic of Ireland Order 1972 which provides that people who enter the UK from Ireland who are outside the common travel area can only enter the UK for a defined period and without the right to work.<sup>23</sup> In other words, the rights and status of EEA nationals are not affected by the fact that they enter the UK from Ireland.

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<sup>18</sup> See <https://cpag.org.uk/welfare-rights/legal-test-cases/current-test-cases/eu-pre-settled-status>

<sup>19</sup> [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019, regulation 43.](#)

<sup>20</sup> [Statement of Changes in Immigration Rules, 24 October 2019, Part 9.](#)

<sup>21</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(9\).](#)

<sup>22</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(9\).](#)

<sup>23</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Regulations 2019, regulation 2\(4\)\(b\).](#)

- (10) EEA and Swiss nationals with leave to remain under the settlement scheme also retain any derivative EU right to remain in the UK under Regulation 16 of the EEA regulations until the Immigration Bill revokes those rights.<sup>24</sup> This is an exception to the rule that normally a person does not have a derivative right to reside if they have indefinite leave to remain.<sup>25</sup>
- (11) EEA and Swiss nationals are able to apply for the settled status scheme from overseas from 30 March 2019 if they are able to show they were previously resident in the UK in line with the eligibility requirements for settled status<sup>26</sup> (including that they meet the requirements for having a ‘continuous qualifying period’ of residence, and, if applying for ILR, have not been absent for a period of more than 5 consecutive years since meeting the eligibility requirements).
- (12) The revocation of the *Surinder Singh* provisions in the EEA Regulations does not apply to third country nationals who are residing in the UK before exit day on the basis of these rules (see below).<sup>27</sup>

#### *EEA nationals arriving in the UK after exit day*

- (1) As with EEA nationals who arrive before exit day, until the free movement provisions of EU law are revoked (by a future Immigration Bill), EEA nationals arriving after exit day can continue to rely on their EEA free movement rights.
- (2) The policy paper “No deal immigration arrangements for EU citizens arriving after Brexit”, dated 5 September 2019, states that EU citizens and their family members who arrive in the UK after exit day can remain in the UK until 31 December 2020.<sup>28</sup> This is more generous than The Immigration (European Economic Area Nationals) (EU Exit) Order 2019 (which will not come into force until the EEA Regulations are revoked<sup>29</sup>), which would permit EU citizens to remain in the UK for three months after exit day. EU citizens wishing to remain after 31 December 2020 will need to have applied for European Temporary Leave to Remain, by this date (details of this status explained below) or have obtained a UK immigration status under the new points-based immigration system. The Government’s policy paper says that otherwise, after 31 December 2020 they will be here unlawfully and will be liable to enforcement action, detention and removal as an immigration offender.

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<sup>24</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Regulations 2019, regulation 3\(6\).](#)

<sup>25</sup> [The Immigration \(European Economic Area\) Regulations 2016, Reg 16\(6\)\(b\) and \(7\)\(c\)\(iv\).](#)

<sup>26</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 2, Chapter 2, Article 7.](#)

<sup>27</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(4\).](#)

<sup>28</sup> [“No deal immigration arrangements for EU citizens arriving after Brexit”, dated 5 September 2019.](#)

<sup>29</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 1, Article 1\(2\).](#)

- (3) A Border Force officer has the power to cancel leave where it is not conducive to the public good to admit someone to the UK.<sup>30</sup>
- (4) EEA nationals will be able to enter the UK after exit day as they do now using their biometric passport or identity card.<sup>31</sup> The UK intends to phase out the use of EEA national identity cards for travel to the UK. After exit day the UK government will also remove the blue EU customs channel for customs declarations.<sup>32</sup>
- (5) EEA and Swiss nationals and their family members arriving after exit day who wish to stay longer than 31 December 2020 will by 31 December 2020 need to apply for a new status, referred to by the Government as 'European Temporary Leave to Remain' ('Euro TLR').<sup>33</sup> The Government has said that those with Euro TLR will be able to remain in the UK for 36 months, subject to identity, criminality and security checks. The Government has said that Euro TLR will be free and applications will be made after arrival in the UK.<sup>34</sup> EU citizens will not need to make special arrangements in advance. The policy paper says those with Euro TLR will receive a form of secure digital status and EU citizens may choose to use this to establish their entitlement to work and rent property until 31 December 2020, alternatively during this period they will be able to use their passport or national identity card. This leave is not intended to be extendable beyond 36 months, and the Government intends to bring into force a new immigration system from 1 January 2021. An EEA national or their family members who spend time in the UK with a Euro TLR immigration status will be able to accrue that time towards the qualifying period for settlement under the new immigration system.
- (6) The Government has now published the Immigration Rules setting out this status. ELTR3 and ELTR4 of the Immigration Rules set out the requirements for European Temporary Leave to Remain. They state that an individual can only receive Euro TLR once, it cannot be extended and that where an application is made before 1 January 2021 an eligible individual will receive Euro TLR for 36 months.<sup>35</sup> All Euro TLR expires after 31 December 2023 and cannot be granted past that date. A person granted Euro TLR must occupy adequate accommodation for their duration of their leave to remain in the UK. Adequate accommodation is defined as accommodation which is not overcrowded within the meaning of UK housing legislation and which does not contravene public health regulations. From 4 December 2019, if a non-European family member is already lawfully in the UK (other than as a visitor) they can apply

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<sup>30</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 2, Chapter 1, Article 4.](#)

<sup>31</sup> ["No deal immigration arrangements for EU citizens arriving after Brexit", dated 5 September 2019.](#)

<sup>32</sup> ["No deal immigration arrangements for EU citizens arriving after Brexit", dated 5 September 2019.](#)

<sup>33</sup> ["No deal immigration arrangements for EU citizens arriving after Brexit", dated 5 September 2019.](#)

<sup>34</sup> ["No deal immigration arrangements for EU citizens arriving after Brexit", dated 5 September 2019.](#)

<sup>35</sup> [Statement of Changes in Immigration Rules, 24 October 2019, Appendix EU Part 2.](#)



for European Temporary Leave to Remain. If granted, they will receive the same length of leave as the European family member.

- (7) Until 1 January 2021, the Government has said that EEA citizens (irrespective of when they arrived in the UK) will be able to show their EU passport or identity card in order to prove their right to rent and work.<sup>36</sup>
- (8) Non-EEA nationals holding EEA state residence cards issued by EU member states under articles 10 or 20 of the Free Movement Directive will not be able to use these cards to accompany or join their EEA citizen family members in the UK.<sup>37</sup> These nationals will now require a visa to enter the United Kingdom. Non-EEA national family members accompanying or joining EEA citizens will need to cross the UK border with a valid passport and a valid UK-issued EEA family permit or biometric residence card or biometric residence permit. After exit day, EEA citizens and their family members will not ordinarily be admitted to the UK without such documentation.<sup>38</sup>
- (9) Those arriving in the UK after exit day will not be able to acquire permanent residence in the UK under EU law as implemented by rule 15 of the Immigration (European Economic Area) Regulations 2016.<sup>39</sup>
- (10) Those British citizens moving to an EEA country **after** exit day, will no longer be able to return to the UK with a spouse or family member who is not a British or European citizen using the EU free movement rules.<sup>40</sup> Where a UK national moves to an EEA Member State after exit, their family members who resided there with them will only be able to return to the UK with them where they meet the UK's family Immigration Rules. However, this rule change does not affect the legal status of anyone who settled in the UK prior to exit day with their British partner using EU free movement rules. Furthermore UK nationals residing in an EEA Member State on exit day will continue to be able to return to the UK with their family members after exit day.<sup>41</sup>

### **Healthcare for EU/EEA citizens in the UK<sup>42</sup>**

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<sup>36</sup> [“No deal immigration arrangements for EU citizens arriving after Brexit”, dated 5 September 2019](#)

<sup>37</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(5\).](#)

<sup>38</sup> [Explanatory Memorandum to the Immigration \(Amendment\) \(EU Exit\) Regulations 2019](#), paragraph 2.7.

<sup>39</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(6\).](#)

<sup>40</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(4\).](#)

<sup>41</sup> [The Immigration \(Amendment\) \(EU Exit\) Regulations 2019, regulation 2\(4\).](#)

<sup>42</sup> Please note that because NHS charging policy is a devolved matter the National Health Service (Charges to Overseas Visitors) (Amendment etc) (EU Exit) Regulations 2019 do not apply to NHS charging in Scotland, Northern Ireland or Wales. Wales has laid [The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019](#). Scotland is yet to lay equivalent regulations.

### *EEA nationals resident in the UK before exit day*

- (1) The existing rights to free NHS care for EEA nationals and Swiss nationals under EU law will continue until the point at which the UK formally leaves the EU.<sup>43</sup>
- (2) EEA and Swiss citizens who have arrived before exit day who are eligible for limited or indefinite leave to remain under the settled status scheme in Appendix EU are exempt from NHS charging until 31 December 2020.<sup>44</sup> They are exempt even if they have not yet applied for leave to remain. EEA and Swiss citizens granted pre-settled or settled status are also exempt from NHS charging.
- (3) There is a transitional provision that means that all EEA and Swiss citizens accessing healthcare in England using the European Health Insurance Card (“EHIC”), or the S1 European healthcare certificate or the A1 healthcare certificate or any equivalent document issued by the UK who arrived before exit day are entitled to continue using that document for free NHS healthcare until the end of their visit (regardless of whether their visit continues past exit day) but they will not be entitled to use the document the next time they arrive in the UK after exit day.<sup>45</sup>
- (4) EEA and Swiss visitors who are students in England whose course of education or study began before exit day can access needs-arising treatment until the completion of their course of study.<sup>46</sup>
- (5) Frontier workers who arrive before exit day are exempt from NHS charging in England until 31 December 2020.<sup>47</sup> Frontier workers are defined as a person who works in the UK, resides in an EEA state or Switzerland and returns to their residence in that EEA state or Switzerland (as the case may be) at least once a week.

### *EEA nationals arriving in the UK after exit day*

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<sup>43</sup> [Explanatory Memorandum to The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 at paragraph 7.15.](#)

<sup>44</sup> [The National Health Service \(Charges to Overseas Visitors\) Regulations 2015, regulation 24A\(4\) and \(5\), as inserted by the National Health Service \(Charges to Overseas Visitors\) \(Amendment etc\) \(EU Exit\) Regulations 2019, regulation 8.](#)

<sup>45</sup> [The National Health Service \(Charges to Overseas Visitors\) Regulations 2015, regulation 13, as amended by the 2019 Regulations, regulation 5. This is also the position in Wales, see The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019.](#)

<sup>46</sup> [The National Health Service \(Charges to Overseas Visitors\) Regulations 2015, regulation 24A\(3\), as inserted by the National Health Service \(Charges to Overseas Visitors\) \(Amendment etc\) \(EU Exit\) Regulations 2019, regulation 8. It appears that full time students in Wales and Scotland will also remain entitled to free NHS hospital treatment after exit day but no SIs expressly addressing NHS charging for EEA students after exit day have been laid in Scotland or Wales.](#)

<sup>47</sup> [The National Health Service \(Charges to Overseas Visitors\) Regulations 2015, regulation 14B, as inserted by the National Health Service \(Charges to Overseas Visitors\) \(Amendment etc\) \(EU Exit\) Regulations 2019, regulation 7. This is also the position in Wales, see The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019.](#)

- (1) Family members of EEA and Swiss citizens eligible for leave to remain who arrive after exit day are exempt from NHS charging until at least 31 December 2020.<sup>48</sup>
- (2) The Government has stated that EEA citizens and Swiss citizens who arrive in the UK after exit day who are not visitors will be entitled to free health care for the duration of their stay if they obtain European Temporary Leave to Remain and are ordinarily resident in the UK.<sup>49</sup>
- (3) EU citizen visitors who arrive after exit day will not be charged for use of the NHS if the UK has negotiated a reciprocal healthcare agreement with their particular country.<sup>50</sup> The UK has said that it will publish a list of all countries it has negotiated reciprocal health care arrangements with after exit day.<sup>51</sup> Limited reciprocal health care arrangements have been agreed with Switzerland and the EFTA states<sup>52</sup> in a no deal scenario.<sup>53</sup>
- (4) EU visitors who arrive in England after exit day who are not the subject of a reciprocal healthcare arrangement and to whom none of the above transitional exemptions apply will be charged by the NHS after exit day at the same amount as a British citizen who is not ordinarily resident.<sup>54</sup>

### **Social Security claimants in the UK**

#### *EEA nationals resident in the UK before exit day*

- (1) If an EEA or Swiss national has been paying into the social security scheme of another EU member state and now lives in the UK this Government has said those nationals will still be able to claim benefits in the UK after exit day.<sup>55</sup> These benefits include sickness benefits, maternity benefits, disability benefits, unemployment benefits and the pension.
- (2) In determining the entitlement amount that an EU/EEA or Swiss national is entitled to claim in the UK, the government will add up all the social security contributions that individual has made in every EU/EEA member state.<sup>56</sup>

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<sup>48</sup> [Explanatory Memorandum to The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 at paragraph 7.9.](#)

<sup>49</sup> [Explanatory Memorandum to The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 at paragraph 7.9.](#)

<sup>50</sup> [The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019, regulation 14.](#)

<sup>51</sup> [Explanatory Memorandum to the Social Security Coordination \(Reciprocal Healthcare\) \(Amendment etc\) \(EU Exit\) Regulations 2019 at part 2, paragraph 5.2.](#)

<sup>52</sup> The EFTA states are comprised of Liechtenstein, Norway, Iceland and Switzerland.

<sup>53</sup> [Explanatory Memorandum to The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019 at paragraph 7.12, see also the Healthcare \(European Economic Area and Switzerland Arrangements\) Act 2019.](#)

<sup>54</sup> [The National Health Service \(Charges to Overseas Visitors\) \(Amendment etc.\) \(EU Exit\) Regulations 2019, regulation 7.](#)

<sup>55</sup> [Citizens' Rights - EU citizens in the UK and UK nationals in the EU Policy Paper at paragraph 15.](#)

<sup>56</sup> [Explanatory Memorandum to The Social Security Coordination Regulation \(EC\) No 883/2004.](#)

- (3) However after exit day, the UK will not have full information sharing between itself and particular EU member states as each information sharing agreement will need to be negotiated on a one to one basis with each individual EU member state. EEA nationals in the UK may be required to pay National Insurance Contributions ('NICs') in the UK, under UK legislation, as well as in an EU member state if that country's legislation continues to apply to them.<sup>57</sup>
- (4) The UK no longer has to make provisional payments to an EU/EEA national in the UK while a dispute is being resolved between the UK and EU member states relating to who has the obligations to make social security payments to the claimant.<sup>58</sup>
- (5) Where EEA nationals who have spent a period of time residing and working in the EU, but who now live in the UK, make a claim for a UK benefit or state pension, the UK government can ask the claimant to provide information within a reasonable period of time showing that they paid into another country's social security regime in order to determine the amount they are entitled to. This is a transferring of the burden to the individual to provide the information to the state. However, in the event that the Government decides that the information provided by the claimant is not proof that they paid into another country's social security scheme, the UK will no longer have to compensate the national for payments made into another EEA country's social security scheme<sup>59</sup>
- (6) The EU has Association Agreements with some third countries which means that workers from those countries receive equal treatment for social security provision in the UK. The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2019 ensure that where the UK Government has negotiated a new agreement with those non-EU countries those nationals will still be able to access child benefit, child tax credit, and certain disability and carer's benefits (listed at paragraphs 7.2 to 7.10 of the explanatory note) including Zambrano carers.<sup>60</sup>

## Self-employment and services

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[EEA Agreement and Swiss Agreement\) \(Amendment\) \(EU Exit\) Regulations 2019.](#)

<sup>57</sup> [Explanatory Memorandum to The Social Security Coordination Regulation \(EC\) No 883/2004. EEA Agreement and Swiss Agreement\) \(Amendment\) \(EU Exit\) Regulations 2019 at paragraph 7.11.](#)

<sup>58</sup> [Explanatory Memorandum to The Social Security Coordination Regulation \(EC\) No 883/2004. EEA Agreement and Swiss Agreement\) \(Amendment\) \(EU Exit\) Regulations 2019 at paragraph 7.11.](#)

<sup>59</sup> [See Schedule 1 Article 1A of the 883/2004 Regulations](#) and there is an equivalent provision in Art 2A of the 987/2009 Regulations (The UK domestic instruments).

<sup>60</sup> [Explanatory memorandum to The Social Security, Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2019](#)

- (1) After exit day EU, EEA, Swiss and Turkish nationals will no longer have the right to be self-employed in the UK, to own and manage a company in the UK or provide services in the UK on the same basis as UK nationals.<sup>61</sup>
- (2) EU, EEA, Swiss and Turkish nationals will no longer be able to bring a claim of discrimination on the basis of nationality in relation to their rights to set up companies, be self-employed or to provide services in the UK.<sup>62</sup> The Government in the debate on these regulations in the House of Commons said that “with regard to immigration, these regulations will not in themselves have any impact on the immigration regime applying to EEA, Turkish and Swiss nationals in the UK”.<sup>63</sup> The Government said further that: “The regulations do not impose any new restrictions on EU, EEA, EFTA, Swiss or Turkish nationals or on EU, EEA, EFTA, Swiss or Turkish-based businesses at the point at which we exit the EU, and we do not expect disapplying these rights to have a direct impact on the ability of EU, EEA, EFTA, Swiss or Turkish nationals to establish or provide services.”<sup>64</sup>

## **Education**

- (1) EEA and Swiss nationals continue to be eligible for home fee status and student finance support for courses starting in the 2019/20 academic year on the same basis as before exit day.<sup>65</sup> The Government has said that this would remain the case for the duration of their courses. The position in relation to future academic years is still under consideration.

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<sup>61</sup> [Explanatory memorandum to The Freedom Of Establishment And Free Movement Of Services \(EU Exit\) Regulations 2019 at paragraphs 2.1 and 2.5 to 2.7](#) and [The Freedom Of Establishment And Free Movement Of Services \(EU Exit\) Regulations 2019](#). These Regulations were made on 28 October 2019.

<sup>62</sup> [Explanatory memorandum to The Freedom Of Establishment And Free Movement Of Services \(EU Exit\) Regulations 2019 at paragraphs 2.8 to 2.9](#) and [The Freedom Of Establishment And Free Movement Of Services \(EU Exit\) Regulations 2019](#).

<sup>63</sup> <https://publiclawproject.org.uk/latest/plp-update-on-freedom-of-establishment-regulation/>

<sup>64</sup> <https://publiclawproject.org.uk/latest/plp-update-on-freedom-of-establishment-regulation/>

<sup>65</sup> [Explanatory Memorandum to The Education \(Student fees, awards and support\) \(Amendment\) \(EU Exit\) Regulations 2019 at paragraphs 7.1-7.3.](#)





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