

## **WHAT IS THE LAW THAT WILL APPLY TO EU NATIONALS AT THE END OF THE BREXIT TRANSITION PERIOD?**

*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, after the end of the Brexit transition period. 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 22 December 2020. 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.*

### **Immigration**

- (1) EU free movement rights will come to an end in the UK at the end of the transition period (referred to in the legislation as the ‘implementation period’ or ‘IP’) at 11pm on 31 December 2020 (‘IP completion day’).<sup>2</sup> This is the effect of s.1 and Schedule 1 of the Immigration and Social Security Co-ordination Act 2020 (‘ISSCA’).
- (2) The ISSCA will revoke the Citizens’ Directive, the Immigration (European Economic Area) Regulations 2016 (EEA Regulations) and all other retained EU law which is inconsistent with domestic immigration law (as it is amended from time to time, including by regulations made under the ISSCA).<sup>3</sup>

#### *EEA nationals<sup>4</sup> resident in the UK before IP completion day*

- (3) Part 2 (Citizens’ rights) of the Withdrawal Agreement between the UK and the EU (‘WA’) protects the rights of EEA and Swiss nationals, their family members and certain other people with derivative rights of residence who are in the UK before IP completion day.
- (4) Under Article 18 of the WA, the UK has opted to implement a ‘constitutive’ scheme, which requires EEA nationals to apply for residence rights, rather than a ‘declaratory’ scheme, under which residence rights would be granted automatically to those eligible. The UK has implemented this by introducing the EU Settlement Scheme under Appendix EU of the Immigration Rules.
- (5) EEA and Swiss nationals (and their family members) resident in the UK before IP completion day (11pm on 31 December 2020) are eligible to apply to the EU Settlement Scheme and to be granted a form of leave to remain in the UK. Individuals that have been continuously

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

<sup>2</sup> Section 39(1) EUWA

<sup>3</sup> Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, Section 1

<sup>4</sup> [The EEA includes EU countries and also Iceland, Liechtenstein and Norway.](#)

resident in the UK for five years are eligible to receive “settled status” which is indefinite leave to remain in the UK.<sup>5</sup> Those granted settled status are able to leave the UK for up to five consecutive years without losing that status.<sup>6</sup>

- (6) EEA and Swiss nationals who arrive before IP completion 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>7</sup> They will then be eligible to apply for settled status once they have been continuously resident in the country for five years. Settled and pre-settled status both confer on holders the right to work in the UK and the right to rent in the UK.
- (7) Applications to the settled status scheme are free of charge. Applicants under the Settlement Scheme do not have to pay the immigration health surcharge.<sup>8</sup> Successful applicants to the EU Settlement Scheme will be issued with a digital record of their status.
- (8) As an exception to the foregoing, the rights of residence of Irish citizens in the UK are unaffected by Brexit. Irish citizens enjoy a right of residence separate to UK membership of the EU. They can, but do not need to, apply for status under the EU Settlement Scheme.<sup>9</sup> The ISSCA exempts Irish citizens from immigration control by amending the Immigration Act 1971. There are three exceptions to this right (deportation, exclusion from entry by the Secretary of State, and exclusion under certain instruments). However, the UK government has a long-standing policy of only deporting Irish citizens in exceptional circumstances, and the other powers are not regularly used.<sup>10</sup> Non-European family members of Irish citizens are able to apply to the EU Settlement Scheme whether or not the Irish citizen has applied. However, in practice, it may be helpful to the prospects of the family member’s application if the Irish citizen also applies.
- (9) Eligible individuals who are resident in the UK before IP completion day will have until 30 June 2021 to apply to the Settlement Scheme, and continue to have free movement rights until that date, or until an application to the EUSS made before 30 June 2021 has been decided (whichever is later). This is known as the ‘grace period’.<sup>11</sup> During the grace period, EEA

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<sup>5</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.

<sup>6</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 2, Chapter 2, Article 8.](#)

<sup>7</sup> [Immigration Rules: Appendix EU.](#)

<sup>8</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 4.](#)

<sup>9</sup> [EU Settlement Scheme caseworker guidance, updated 24 August 2020](#)

<sup>10</sup> Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020, Section 2(1)-(5)

<sup>11</sup> [The Citizens’ Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#)

nationals who arrived in the UK before IP completion day should be able to use their EU passport to prove their right to work and rent.<sup>12</sup>

(10) Applicants will be able to make a late application to the settlement scheme after 30 June 2021 if they have “reasonable grounds” for missing the deadline.<sup>13</sup> The Government has indicated that it intends to publish non-exhaustive guidance as to what would constitute a “reasonable ground” for failing to apply by the deadline in early 2021 (examples are expected to include children in care and people who were unable to apply due to being unwell).<sup>14</sup> However, such individuals will not have a right to reside in the UK between 1 July 2021 and the date on which their late application is determined.

(11) Applicants to the EUSS have a right to administrative review in relation to the outcome of their application.<sup>15</sup> This is a reconsideration of the application by a separate team within the Home Office. The fee for administrative review is £80, which is refundable if the decision is changed as a result of case-worker error. Applicants who submitted an application to the settlement scheme on or after exit day (31 January 2020) have a right to appeal the decision to the First-tier Tribunal.<sup>16</sup> Where an applicant appeals the decision on their application to the First-tier Tribunal, the fee for the appeal is £80 without a hearing and £140 with a hearing.

(12) For EEA nationals who are resident in the UK before 31 December 2020 (IP completion day), conduct that occurs before that date is to be considered in accordance with EU law (specifically, the Citizens’ Rights Directive) for the purposes of refusing entry to, and deportation from, the UK.<sup>17</sup> This includes proportionality assessments, notification obligations, and procedural protection through rights to administrative and legal remedies.

(13) However, all EEA nationals, regardless of how long they have spent in the UK, will be subject to lower deportation thresholds for any conduct committed *after* IP completion 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 IP completion day.<sup>18</sup> In addition, after IP completion day, the

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<sup>12</sup> See for example this Home Office guidance on right to work checks:

<https://www.gov.uk/guidance/employing-eu-citizens-in-the-uk>

<sup>13</sup> [Statement of changes in Immigration Rules, Changes to Appendix EU, updated 22 October 2020](#)

<sup>14</sup> [Home Affairs Committee, Oral evidence: Work of the Minister for Future Borders and Immigration, HC 919, Q55](#)

<sup>15</sup> [Appendix AR \(EU\) of the Immigration Rules](#)

<sup>16</sup> See [The Immigration \(Citizens’ Rights Appeals\) \(EU Exit\) Regulations 2020](#) and [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#)

<sup>17</sup> Article 20 WA; Article 19 EEA EFTA Separation Agreement.

<sup>18</sup> [The UK Borders Act 2007, section 33 and 33\(6B\).](#)

Home Office can exclude or deport any EEA national for post-IP completion day conduct where they deem it to be conducive to the public good.<sup>19</sup>

- (14) 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>20</sup> In other words, the rights and status of EEA nationals are not affected by the fact that they enter the UK from Ireland.
- (15) EEA and Swiss nationals are able to apply to the settlement scheme from overseas if they are able to show they were previously resident in the UK in line with the eligibility requirements<sup>21</sup> (including that they meet the requirements for having a ‘continuous qualifying period’ of residence, and, if applying for settled status, have not been absent for a period of more than 5 consecutive years since meeting the eligibility requirements).
- (16) Third country nationals who before IP completion day have a derivative right to reside in the UK under the EEA Regulations are also eligible to apply to the EUSS.

#### *EEA nationals arriving in the UK after IP completion day*

- (1) EEA nationals will be able to enter the UK after IP completion day as they do now using their biometric passport or identity card until 1 October 2021.<sup>22</sup> The UK will phase out the use of EEA national identity cards for travel to the UK. After IP completion day the UK government will also remove the blue EU customs channel for customs declarations.<sup>23</sup>
- (2) EEA and Swiss nationals and their family members arriving after IP completion day will be subject to ordinary UK immigration rules, which are the same as those that apply to non-EEA nationals.<sup>24</sup> For all activities other than short-term visits, EEA citizens will require a visa. From January 2021, new routes under the Points-Based System, as provided for by Part 6A of the Immigration Rules, will be available for the main economic migration routes, including working, studying, and setting up a business in the UK. The main conditions attached to the various routes include an English language requirement, an Immigration Health Surcharge,

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<sup>19</sup> [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019, regulation 43](#); [The Immigration Act 1971, section 3 and 3\(6A\)](#).

<sup>20</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Regulations 2019, regulation 2\(4\)\(b\)](#).

<sup>21</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 2, Chapter 2, Article 7](#).

<sup>22</sup> [“The Border with the European Union: Importing and Exporting Goods”, Annex G \(Passengers\), updated 8 October 2020](#)

<sup>23</sup> [“The Border with the European Union: Importing and Exporting Goods”, updated 8 October 2020](#)

<sup>24</sup> [“The UK's points-based immigration system: policy statement”, dated 19 February 2020](#)

and a maintenance requirement. European Temporary Leave is no longer being implemented as an immigration status for EU nationals (as was proposed if there had been no transition period): those arriving after IP completion day are subject to same immigration rules as non-EEA nationals.<sup>25</sup>

- (3) EEA citizens who arrive after IP completion day will no longer be able to show their EU passport or identity card in order to prove their right to rent and work.<sup>26</sup> However, it is not clear in practice how employers and landlords will distinguish between EEA citizens who were resident in the UK before IP completion day, and therefore benefit from the grace period referred to above, and those who would not.
- (4) 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>27</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 IP completion day, EEA citizens and their family members will not ordinarily be admitted to the UK without such documentation.<sup>28</sup>
- (5) Those British citizens moving to an EEA country after IP completion 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>29</sup> Where a UK national moves to an EEA Member State after IP completion day, 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, non-EEA nationals who settled in the UK with a British family member prior to IP completion day using EU free movement rules are eligible to apply to the Settlement Scheme. Furthermore UK nationals residing in an EEA Member State before IP completion day will continue to be able to return to the UK with their family members after IP completion day.<sup>30</sup> In such a case, close family members who do not have UK citizenship or settled status may

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<sup>25</sup> See [EU Citizen's Rights after a No-Deal Brexit, November 2019](#).

<sup>26</sup> ["Recruiting people from outside the UK from 1 January 2021", dated 24 September 2020](#)

<sup>27</sup> [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020, Regulation 6](#)

<sup>28</sup> [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020, Regulation 6](#)

<sup>29</sup> [Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020, Section 1 and Schedule 1.](#)

<sup>30</sup> ["Living in Europe", updated 1 December 2020](#)

move to the UK without applying for a visa until 29 March 2022, but other dependents must apply for a visa after IP completion day.<sup>31</sup>

### **Healthcare for EU/EEA citizens in the UK<sup>32</sup>**

*EEA nationals arriving in the UK before IP completion day*

- (1) EEA nationals who arrived in the UK before IP completion day will be “ordinarily resident” in the UK for the purposes of section 175 of the NHS Act 2006 until at least the deadline for applications to the EUSS on 30 June 2021 and therefore not subject to NHS charging.
- (2) Those who are granted settled status under the EUSS will continue to be “ordinarily resident”. In addition, although individuals with limited leave to remain in the UK are generally not treated as being “ordinarily resident” in the UK under section 39(1)(b) of the Immigration Act 2014, those with pre-settled status under the EUSS will be treated as “ordinarily resident” and will also not be subject to NHS charging.<sup>33</sup>
- (3) The regulations also provide that where an individual has reasonable grounds for missing the deadline and submits a late application, no NHS charges will be made from the date on which the late application is submitted to the date on which it is determined.<sup>34</sup> Such individuals would, however, be subject to charging from 1 July 2021 until the date on which their late application is submitted.
- (4) 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 IP completion 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 IP completion day) but they will not be entitled to use the document the next time they arrive in the UK after IP completion day.<sup>35</sup>

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<sup>31</sup> [Statement of changes in Immigration Rules, Changes to Appendix EU \(Family Permit\), 22 October 2020](#)

<sup>32</sup> Please note that because NHS charging policy is a devolved matter the [National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) Regulations 2020](#) 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.

<sup>33</sup> Regulation 20 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020.

<sup>34</sup> The [National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) Regulations 2020](#), regulation 7.

<sup>35</sup> [The National Health Service \(Charges to Overseas Visitors\) Regulations 2015, regulation 13, as amended by the 2020 Regulations, regulation 7. This is also the position in Wales, see The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019.](#)

- (5) EEA and Swiss visitors who are students in England whose course of education or study began before IP completion day can access needs-arising treatment until the completion of their course of study.<sup>36</sup>
- (6) Frontier workers who arrive before IP completion day are exempt from NHS charging.<sup>37</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 IP completion day*

- (1) EEA nationals who arrive after IP completion day (and who are not ordinarily resident) will be “overseas visitors” and subject to charges for using the NHS under the National Health Service (Charges to Overseas Visitors) Regulations 2015. They will be subject to the same charges as non-EEA nationals who are not ordinarily resident in the UK.<sup>38</sup> This position could change in the future if the UK Government negotiates individual reciprocal healthcare agreements with other EEA countries.

### **Benefits claimants in the UK**

#### *EEA nationals resident in the UK before IP completion day*

- (1) The entitlement of EEA nationals to benefits depends on their immigration status. Those with settled status will have a “qualifying right to reside” for the purposes of the relevant social security legislation and will therefore have the same welfare rights as British citizens.
- (2) 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 a right to reside in the UK, in addition to the limited leave to remain they obtain under pre-settled status.<sup>39</sup> This exclusion

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<sup>36</sup> [Explanatory Memorandum to National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) Regulations 2020 at paragraph 7.11. 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. See also, NHS, ‘Moving to England from EU countries or Norway, Iceland, Liechtenstein or Switzerland’](#)

<sup>37</sup> [Explanatory Memorandum to National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) Regulations 2020 at paragraph 7.10 This is also the position in Wales, see The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(Wales\) \(EU Exit\) Regulations 2019.](#)

<sup>38</sup> [Explanatory Memorandum to National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) Regulations 2020 at paragraph 7.7](#)

<sup>39</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

of pre-settled status from a qualifying right to reside for benefits purposes was the subject of the Court of Appeal decision in *R (Fratila & Tanase) v SSWP*,<sup>40</sup> handed down on 18 December 2020. The Court held that the requirement for those with pre-settled status to hold another EU qualifying right to reside in order to access benefits was unlawful direct discrimination on the grounds of nationality under EU law. As the decision is based on EU law, it appears that its application is technically limited to the period before IP completion day, after which EU law will cease to apply in the UK. However, it is arguable that the same conclusion should be reached in relation to the period after IP completion by virtue of the equal treatment provisions in Article 23 of the Withdrawal Agreement. It remains to be seen whether the decision in *Fratila* will be appealed to the Supreme Court, and if not how it will be implemented.

- (3) The government has laid regulations under ISSCA which provide that those with pre-settled status will be treated in the same way after IP completion day as they are now for the purposes of accessing benefits.<sup>41</sup> This preserves the rule that anyone with pre-settled status or their family members requires an additional qualifying right to reside in order to access benefits; however, it also ensures that individuals with pre-settled status who are currently eligible for benefits continue to be so after IP completion day. Explicit provision has been made for the preservation of this status quo until at least the end of the grace period (30 June 2021), or the period of time until a pending application for status under the EUSS is decided, where an EEA national can demonstrate that they were lawfully residing in the UK and had a qualifying right to reside before IP completion day.<sup>42</sup> Government correspondence states that the protection of entitlement to benefits under these regulations applies for as long as an EEA national holds pre-settled status.<sup>43</sup>

#### *EEA nationals arriving in the UK after IP completion day*

- (1) After IP completion day, EEA nationals arriving in the UK will only have access to right to reside benefits where they have been granted a form of limited/indefinite leave to enter/remain without a prohibition on recourse to public funds as a condition. Regulations made under the

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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.

<sup>40</sup> [R \(Fratila & Tanase\) v SSWP \[2020\] EWCA Civ 1741](#).

<sup>41</sup> [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020, Part 7 and Schedule 4; The Immigration \(Citizen's Rights etc\) \(EU Exit\) Regulations 2020, Part 3](#)

<sup>42</sup> [The Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020, Part 3](#)

<sup>43</sup> See: [Letter from Ministry of Housing, Communities & Local Government at para 12, dated 19 November 2020](#) but note, the letter relates specifically to eligibility for social housing and homelessness assistance



ISSCA align newly arriving EEA and non-EEA nationals by making them persons subject to immigration control when accessing benefits.<sup>44</sup>

### **Social Security Co-ordination**

- (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 those nationals will still be able to claim social security benefits in the UK after IP completion day. These benefits include sickness benefits, maternity benefits, disability benefits, unemployment benefits and the pension. This is the effect of s. 7A of EUWA 2018, which ensures that social security co-ordination rights continue for individuals covered by the WA.<sup>45</sup> Regulations revoking EU social security co-ordination regulations have been made under s. 6 of the ISSCA;<sup>46</sup> however, the government has said that this does not affect individuals covered by the WA.<sup>47</sup>
- (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>48</sup>
- (3) However after IP completion 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>49</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>50</sup>

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<sup>44</sup> [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#), Part 2

<sup>45</sup> [European Union \(Withdrawal\) Act 2018, Section 7A](#)

<sup>46</sup> [The Social Security Co-ordination \(Revocation of Retained Direct EU Legislation and Related Amendments\) \(EU Exit\) Regulations 2020](#)

<sup>47</sup> [Explanatory Memorandum to The Social Security Co-ordination \(Revocation of Retained Direct EU Legislation and Related Amendments\) \(EU Exit\) Regulations 2020, at paragraph 7.9](#)

<sup>48</sup> [Explanatory Memorandum to The Social Security Coordination Regulation \(EC\) No 883/2004. EEA Agreement and Swiss Agreement\) \(Amendment\) \(EU Exit\) Regulations 2019.](#)

<sup>49</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>50</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.](#)

- (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>51</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>52</sup>
- (7) As of yet, the Government remains in discussion with EEA countries about social security arrangements that will apply between the UK and those countries after IP completion day. Draft regulations have been laid revoking the EU Social Security Co-ordination Regulations to create space for new agreements. In its proposed approach to negotiations, the government has stated that any agreement reached should resemble those that the UK has with non-EEA countries.<sup>53</sup> In the absence of an agreement, the rules applying to individuals moving between the UK and EU after IP completion day will be the same as those applying to non-EU countries.<sup>54</sup>

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<sup>51</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>52</sup> [Explanatory memorandum to The Social Security, Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2019](#)

<sup>53</sup> ["The Future Relationship with the EU; The UK's Approach to Negotiations", Part 2, at paragraph 17, updated 19 May 2020](#)

<sup>54</sup> [Explanatory Memorandum to The Social Security Co-ordination \(Revocation of Retained Direct EU Legislation and Related Amendments\) \(EU Exit\) Regulations 2020 at paragraph 7.4](#)

## **Self-employment and services**

- (1) After IP completion 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>55</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>56</sup> The Government said in relation to The Freedom Of Establishment And Free Movement Of Services (EU Exit) Regulations 2019, 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>57</sup>

## **Education**

- (1) EEA and Swiss nationals continue to be eligible for home fee status and student finance support for courses which started in the 2019/20 academic year on the same basis as before IP completion day.<sup>58</sup> The Government has confirmed that this will remain the case for the duration of their courses. However, for courses starting in autumn 2021, EEA and Swiss nationals will no longer be eligible for home fee status and student finance support.<sup>59</sup>

## **Independent Monitoring Authority**

- (1) In accordance with Article 159 of the Withdrawal Agreement, the UK Government has established the Independent Monitoring Authority for the Citizens’ Rights Agreements (IMA).<sup>60</sup>
- (2) From 1 January 2021, the will IMA have powers, equivalent to those the European Commission has as “guardian of the Treaties”, to conduct inquiries on its own initiative concerning alleged breaches by the UK Government of its obligations as to citizens’ rights under the Withdrawal

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<sup>55</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>56</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>57</sup> <https://publiclawproject.org.uk/latest/plp-update-on-freedom-of-establishment-regulation/>

<sup>58</sup> [Explanatory Memorandum to The Education \(Student fees, awards and support\) \(Amendment\) \(EU Exit\) Regulations 2019 at paragraphs 7.1-7.3.](#)

<sup>59</sup> [Statement by Michelle Donelan, Minister of State for Universities, 23 June 2020.](#)

<sup>60</sup> Section 15 and Schedule 2, European Union (Withdrawal Agreement) Act 2020.

Agreement and to receive complaints from EEA citizens and their family members for the purposes of conducting such inquiries.

- (3) The IMA will also have the power to bring judicial review proceedings, or to intervene in any legal proceedings, where it considers it appropriate in order to promote the adequate and effective implementation of the UK's obligations as to citizens' rights.