

## **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 29 July 2021. 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 came 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 revoked 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 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) who were 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

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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.](#)

continuously 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 arrived 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 Settlement 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 were resident in the UK before IP completion day and applied to the Settlement Scheme by 30 June 2021 will continue to have free movement rights until their application to the EUSS has been decided. Individuals who submitted an application before 30 June 2021 but whose applications or appeals are still pending after that date therefore retain their residence rights until they receive a final decision. While awaiting a final decision, applicants can rely on their certificate of application to the scheme as evidence of their preserved rights.

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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)

- (10) Eligible EEA nationals who failed to apply to the Settlement Scheme before 30 June 2021 are able to make a late application if they have “reasonable grounds” for missing the deadline.<sup>11</sup> The Government has published non-exhaustive guidance as to what constitutes a “reasonable ground” for failing to apply by the deadline (examples include: children in care; people who were unable to apply due to being unwell; people who lack the physical or mental capacity to apply; and victims of modern slavery).<sup>12</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) The guidance also states that, if immigration enforcement encounter an individual after 1 July 2021 who has not applied to the Settlement Scheme but may be eligible to do so, they should be provided with written notice giving them a period of time (usually 28 days) to make a late application to the Settlement Scheme before any enforcement action is taken.
- (12) Applicants to the EUSS have a right to administrative review in relation to the outcome of their application.<sup>13</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>14</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.
- (13) For EEA nationals who were resident in the UK before 31 December 2020 (IP completion day), conduct that occurred 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>15</sup> This includes proportionality assessments, notification obligations, and procedural protection through rights to administrative and legal remedies.
- (14) However, all EEA nationals, regardless of how long they have spent in the UK, are 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 is a presumption of deportation where an EEA national has received a custodial sentence of 12 months or more for an offence

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<sup>11</sup> [Statement of changes in Immigration Rules, Changes to Appendix EU, updated 22 October 2020](#)

<sup>12</sup> [Home Office, ‘EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members’, Caseworker Guidance, 21 May 2021, pp 26-44; Free Movement, ‘Late applications to the EU Settlement Scheme’, 12 April 2021](#)

<sup>13</sup> [Appendix AR \(EU\) of the Immigration Rules](#)

<sup>14</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>15</sup> Article 20 WA; Article 19 EEA EFTA Separation Agreement.

committed on or after 1 January 2021.<sup>16</sup> In addition, after IP completion day, the 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>17</sup>

(15) 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>18</sup> In other words, the rights and status of EEA nationals are not affected by the fact that they enter the UK from Ireland.

(16) 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>19</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) – providing that they have reasonable grounds for making the application after 30 June 2021.

(17) 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.

(18) EEA nationals who have not applied to the EUSS by 30 June 2021 can no longer rely on their EU nationality to pass employment and landlord checks. Guidance issued for employers states that, after 1 July 2021, EEA nationals that have still not applied to the EUSS should not be newly employed; however, employers are not required to investigate the status of existing EEA national employees.<sup>20</sup> Similarly, EEA nationals who were eligible for status but did not apply by the deadline cannot rent a home after 30 June, but landlords do not have to recheck the status of existing tenants.<sup>21</sup>

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<sup>16</sup> [The UK Borders Act 2007, section 33 and 33\(6B\).](#)

<sup>17</sup> [The Immigration, Nationality and Asylum \(EU Exit\) Regulations 2019, regulation 43; The Immigration Act 1971, section 3 and 3\(6A\).](#)

<sup>18</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Regulations 2019, regulation 2\(4\)\(b\).](#)

<sup>19</sup> [The Immigration \(European Economic Area Nationals\) \(EU Exit\) Order 2019, Part 2, Chapter 2, Article 7.](#)

<sup>20</sup> [UKVI, ‘Right to work checks: an employer's guide’, 1 July 2021](#)

<sup>21</sup> [Home Office, ‘Landlord’s guide to right to rent checks’, 1 July 2021](#)

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

- (1) EEA nationals can continue to enter the UK after IP completion day 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. As of 1 January 2021, the UK government has also removed 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 are 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 require a visa. From January 2021, new routes under the Points-Based System, as provided for by Part 6A of the Immigration Rules, became 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, 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 can no longer show their EU passport or identity card in order to prove their right to rent and work.<sup>26</sup>
- (4) Non-EEA nationals holding EEA state residence cards issued by EU member states under articles 10 or 20 of the Free Movement Directive cannot use these cards to accompany or join their EEA citizen family members in the UK.<sup>27</sup> These nationals now require a visa to enter the United Kingdom. Non-EEA national family members accompanying or joining EEA citizens 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>

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<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](#)

<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](#)

- (5) Those British citizens moving to an EEA country after IP completion day, can no longer 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 can only 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 can continue 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 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 and applied to the EUSS by 30 June 2021 are "ordinarily resident" in the UK for the purposes of section 175 of the NHS Act 2006 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 will, however, be subject to charging from 1 July 2021 until the date on which their late application is submitted.

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<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](#)

<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.

- (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).<sup>35</sup>
- (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 can continue to use a EHIC in the UK until its expiry where that document was issued before 1 January 2021.<sup>38</sup> Under the EU-UK Trade and Cooperation Agreement (the “EU-UK Agreement”), an individual from an EU Member State that is responsible for the healthcare of that individual is entitled to reciprocal healthcare cover in the UK.<sup>39</sup> EEA nationals who are not covered by the EU-UK Agreement (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

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<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.](#)

<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> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Article SSC.17\(1\)\(c\); implemented by the European Union \(Future Relationship\) Act 2020, Section 26\(1\)\(a\)](#)

<sup>39</sup> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Article SSC.15; implemented by The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2020, Regulation 3](#)

UK.<sup>40</sup> The UK Government has negotiated individual reciprocal healthcare agreements with Ireland and Norway, exempting nationals of those countries from healthcare charges in the UK.<sup>41</sup> The position of other EEA nationals may change if additional reciprocal agreements are negotiated in the future.

### **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, the Government has legislated to exclude pre-settled status from being a qualifying right to reside for the purposes of accessing many types of benefits and tax credits, as well as housing assistance.<sup>42</sup> Pre-settled status holders will therefore require an additional right to reside in order to be eligible for such benefits
- (3) The government laid regulations under ISSCA which provide that those with pre-settled status will be treated in the same way as they were before 31 December 2020 for the purposes of accessing benefits.<sup>43</sup> As such, individuals with pre-settled status who were previously eligible for such benefits continue to be eligible until they cease to have pre-settled status (either because they have upgraded to settled status, or because their pre-settled status expires). This protection will apply to individuals who had a right to reside by virtue of exercising EU Treaty rights before 31 December 2020. However, those who were not exercising Treaty rights are unlikely to be able to show that they have a qualifying right to reside and will therefore be excluded from accessing many benefits.

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<sup>40</sup> [Explanatory Memorandum to National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) Regulations 2020 at paragraph 7.7](#)

<sup>41</sup> [The National Health Service \(Charges to Overseas Visitors\) \(Amendment\) \(EU Exit\) \(No. 2\) Regulations 2020, Regulation 4](#)

<sup>42</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.

<sup>43</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](#)

- (4) This exclusion of pre-settled status from being a qualifying right to reside for benefits purposes was the subject of the Court of Appeal decision in *R (Fratila & Tanase) v SSWP*,<sup>44</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. On 22 February 2021, the Supreme Court granted the Secretary of State permission to appeal,<sup>45</sup> and subsequently stayed the appeal to await the decision by the CJEU in *CG v the Department for Communities in Northern Ireland*, Case C- 709/20 which dealt with the refusal of the Northern Irish Government to give a Croatian and a Dutch national access to Universal Credit because they were residing in Northern Ireland on the basis of pre-settled status.<sup>46</sup> The CJEU gave judgment in that case on 15 July 2021 and held that the Article 18 right to non-discrimination on the basis of nationality did not apply because the women were residing in the UK on the basis of pre-settled status rather than on the basis of their EU rights of residence. However, the CJEU said the UK did have to show that it had respected the claimants' fundamental rights to dignity, respect for private life and the rights of the child under the Charter of Fundamental Rights of the EU. Following this judgment, *Fratila* is likely be relisted in the Supreme Court and heard in the coming year.
- (5) EEA nationals who have not applied for settled status before 30 June 2021 (or who have been refused such status) no longer have a qualifying right to reside and are not entitled to claim benefits on or after 1 July 2021 unless and until they are granted status under the EUSS or another form of leave to remain which gives them recourse to public funds. This is the case during the period between making a late application to the Settlement Scheme and a decision on that application.<sup>47</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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<sup>44</sup> [R \(Fratila & Tanase\) v SSWP \[2020\] EWCA Civ 1741](#).

<sup>45</sup> <https://www.eurighthub.york.ac.uk/blog/shock-and-law-court-of-appeal-pulls-rug-from-under-the-governments-rules-on-eu-pre-settled-status>

<sup>46</sup> *CG v the Department for Communities in Northern Ireland* (C-709/20)

<sup>47</sup> [Free Movement, 'Briefing: what happens to EU citizens who miss the settled status deadline?', 28 June 2021](#)

ISSCA align newly arriving EEA and non-EEA nationals by making them persons subject to immigration control when accessing benefits.<sup>48</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>49</sup> Regulations revoking EU social security co-ordination regulations have been made under s. 6 of the ISSCA;<sup>50</sup> however, the government has said that this does not affect individuals covered by the WA.<sup>51</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>52</sup>
- (3) After IP completion day, social security co-ordination is governed by the Protocol on Social Security Co-ordination to the EU-UK Agreement, which is transposed into domestic law by s. 26 of the European Union (Future Relationship) Act 2020 (“EUFRA”).<sup>53</sup> The Protocol protects the social security position in respect of the benefits listed in paragraph (1) for individuals who move between the UK and the EU, and ensures that cross-border workers in the UK are only required to pay social security contributions in one State.<sup>54</sup> To achieve these, the Protocol provides for full co-operation in information sharing between the UK and the EU member states.<sup>55</sup>

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<sup>48</sup> [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#), Part 2 and s115 Immigration and Asylum Act 1999.

<sup>49</sup> [European Union \(Withdrawal\) Act 2018, Section 7A](#)

<sup>50</sup> [The Social Security Co-ordination \(Revocation of Retained Direct EU Legislation and Related Amendments\) \(EU Exit\) Regulations 2020](#)

<sup>51</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>52</sup> [Explanatory Memorandum to The Social Security Coordination Regulation \(EC\) No 883/2004. EEA Agreement and Swiss Agreement\) \(Amendment\) \(EU Exit\) Regulations 2019.](#)

<sup>53</sup> [European Union \(Future Relationship\) Act 2020, Section 26\(1\)\(a\)](#); see the [Social Security \(Reciprocal Agreements\) \(Miscellaneous Amendments\) \(European Union Exit\) Regulations 2021](#)

<sup>54</sup> [Explanatory Notes to the European Union \(Future Relationship\) Act 2020, at paragraphs 60 and 62.](#)

<sup>55</sup> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Articles SSC.59\(5\) and Annex SSC-7, Article SSCI.2\(2\)](#)

- (4) The UK must 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>56</sup> If the disagreement cannot be resolved by the UK and the relevant EU member state, the matter may be referred to the Specialised Committee on Social Security Coordination.<sup>57</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 doubts the validity of the information provided by the claimant as proof that they paid into another country's social security scheme, the EU-UK Agreement requires the UK to request clarification from the relevant institutions of that country.<sup>58</sup> In the interim period, the Government must compensate the national for payments made into another EEA country's social security scheme on the basis of provisional calculations.<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)<sup>60</sup> including Zambrano carers.<sup>61</sup> The Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020 supplement the 2019 Regulations by preventing new benefits claims being made from 1 January 2021 under EU Association Agreements.<sup>62</sup>

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<sup>56</sup> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Annex SSC-7, Article SSCI.6\(2\)](#)

<sup>57</sup> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Annex SSC-7, Article SSCI.6\(3\)](#)

<sup>58</sup> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Annex SSC-7, Article SSCI.5\(2\)](#)

<sup>59</sup> [EU-UK Trade and Cooperation Agreement, Protocol on Social Security Coordination, Annex SSC-7, Article SSCI.7\(1\)](#)

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

<sup>61</sup> [The Social Security, Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2019](#)

<sup>62</sup> [The Social Security, Child Benefit and Child Tax Credit \(Amendment\) \(EU Exit\) Regulations 2020](#)

## 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>63</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>64</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>65</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>66</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>67</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>68</sup>
- (2) From 1 January 2021, the IMA will 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>63</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>64</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>65</sup> <https://publiclawproject.org.uk/latest/plp-update-on-freedom-of-establishment-regulation/>

<sup>66</sup> [Explanatory Memorandum to The Education \(Student fees, awards and support\) \(Amendment\) \(EU Exit\) Regulations 2019 at paragraphs 7.1-7.3.](#)

<sup>67</sup> [Statement by Michelle Donelan, Minister of State for Universities, 23 June 2020.](#)

<sup>68</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.