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Dear Sally,

The grace period statutory instrument

ILPA is writing further to the recent publication of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) [Regulations 2020](#), which:

- confirm the end of 30 June 2021 as the deadline for submission of applications under the EU Settlement Scheme for the purposes of the Agreements
- save various of the EEA Regulations 2016, despite the revocation of those regulations following IP completion day, with a number of modifications for 'relevant persons' and their defined 'relevant family members':
 - during the 'grace period' between 1 January 2021 and 30 June 2021, and
 - during the time that any in-time application is decided, or appeal is pending

'Relevant persons' in this context are EEA and Swiss citizens who do not (yet) have leave to enter or remain under the Scheme and were lawfully resident in the UK before IP completion date either by virtue of having a right of residence under the EEA Regulations 2016, or who have acquired permanent residence and then have not been absent from the UK for more than five continuous years immediately before IP completion date.

There is therefore currently no provision in relation to the residence status during the grace period for EEA and Swiss citizens (or their family members) who have not been granted leave under the Scheme by IP completion date, but were not 'lawfully resident' as defined above.

Such persons could therefore face difficulty in, e.g., accessing services such as healthcare, or employment, during the grace period, or during the time that any in-time application is decided, or appeal is pending. Were no further provision to be made for these people, this would seem to diminish the meaning of the 'grace period' and also contradict the mechanism made in other related regulations which do provide for protection for persons who are eligible under the EUSS but not lawfully resident under the EEA Regulations. There is also a tension with what was said here by [Kevin Foster, the Minister for Immigration](#):

As we touched on, section 7 of the European Union (Withdrawal Agreement) Act provides powers to make regulations to provide temporary protection for this cohort during the grace period. That means that if someone has not applied under the EU settlement scheme by the

end of the transition period, they will be able to continue to work and live their lives in the UK as they do now, provided that they apply by 30 June 2021 and are then granted status. The Government are currently developing those regulations, which will be debated and made in good time prior to the entry into force at the end of the transition period.

From developments in Parliament on Wednesday, we understand that it now appears that there will be no further legislative provision made to protect the residence status of these individuals during the grace period and beyond that during the time that any in-time application is decided, or appeal is pending. This is despite the specific enabling provisions set out in s.7(2) and 7(3) of the European (Withdrawal Agreement) Act 2020. We understand that one justification for this is that the position for such individuals will not change during the grace period. However, we do not agree. Persons who were not exercising treaty rights immediately before 31 December 2020 will not be able to subsequently become lawfully resident during the rest of the grace period, e.g. by starting work, as the definition of 'relevant persons' excludes them. This scenario would be particularly problematic if there is, for example, a last minute surge of applications, or another national lockdown, which causes long delays in applications being decided.

This problem could be addressed by changing the draft regulation from stating a requirement to have been 'lawfully resident' to instead stating 'resident or present'. This language would keep the class of persons limited to those already living in UK before the end of the implementation period. Given that this definition only operates for 6 months, save in cases where an EUSS application has been made, this seems a simple workable solution that respects the previously stated policy intention.

I look forward to hearing from you on this issue.

Kind regards,

Nicole Francis
Chief Executive
Immigration Law Practitioners' Association