



Home Office

Nicole Francis  
ILPA  
Lindsey House  
40-42 Charterhouse Street  
London  
EC1M 6JN

2 Marsham Street  
London  
SW1P 4DF

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Dear Nicole,

Thank you for your letter of 2 October regarding the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ("the grace period SI"), laid before Parliament on 21 September and considered by the House of Commons on 14 October.

As you note in your letter, there is no provision in the grace period SI as regards saved EU law rights for EEA and Swiss citizens (or their family members) who have not been granted status under the EU Settlement Scheme, and who are not lawfully resident in the UK at the end of the transition period. Where a person has yet to obtain status under the scheme, the grace period SI will protect any relevant EU law rights which they hold when, subject to Royal Assent to the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, free movement to the UK ends at the end of the transition period. It will protect those rights pending the final outcome of an application made by them under the scheme by the 30 June 2021 deadline, as is required by the citizens' rights agreements. This means that those who have yet to apply will be in no lesser position as regards their rights of residence in the UK on 1 January 2021 as they were on 31 December 2020, pending an application to the scheme. This is in line with the citizens' rights agreements and reflects the current position under EU law.

An EEA or Swiss citizen or their family member who is resident in the UK at the end of the transition period but who does not have permanent residence and is not exercising Treaty rights – as a worker, self-employed person, self-sufficient person, student or family member – will still be able to apply to the scheme by the deadline of 30 June 2021. They will not have residence rights under EEA free movement rules to be protected during the grace period, which is their current position, and they will not be able to start exercising free movement rights in the UK after free movement to the UK has ended at the end of the transition period. However, they will still be able and encouraged to secure the status they need under UK law to continue living in the UK beyond 30 June 2021 by obtaining status under the scheme.

The grace period SI will not change in any way the eligibility criteria for obtaining status under the EU Settlement Scheme, nor will it affect the Government's commitment, in line with the citizens' rights agreements, to accept late applications where there are reasonable grounds for missing the deadline.



I note your point that section 7 of the European Union (Withdrawal Agreement) Act 2020 provides the power to make regulations covering those within scope of the citizens' rights agreements and those eligible for but not yet granted status under the EU Settlement Scheme. The Government has used the power to protect the rights of those who currently derive an EU law right of residence by virtue of their relationship to a UK national (Surinder Singh and Zambrano cases who are residing lawfully in the UK at the end of the transition period but who are not protected by the agreements). It was never the Government's intention to change how we have implemented EU law by bringing within scope of the saved EEA Regulations individuals who are not residing lawfully in the UK at the end of the transition period. To regularise their status in the UK, such individuals need to make an application to the EU Settlement Scheme.

I hope this clarifies matters.

Yours sincerely,

Nicola Smith  
Deputy Director  
European Migration and Citizens' Rights Policy