



19 November 2020

To:
All Chief Executives, Chief Housing Officers
and Chief Officers for Children's Services of
Local Authorities in England

Dear Chief Executive, Chief Housing Officer and Chief Officer for Children's Services,

1. This letter provides initial guidance to local housing authorities on how the changes to legislation, that come into force at the end of the transition period (on 31 December 2020), will impact on your responsibilities for assessing the eligibility of EEA citizens and their family members accessing social housing and homelessness assistance.
2. The changes to the housing legislation outlined in this letter are not an extension of local authorities' responsibilities with regards to the allocation of social housing or provision of homelessness assistance. However, local authorities may need to conduct extra checks to be able to determine an applicant's eligibility.

Background

3. On 31 January 2020, the UK formally left the European Union (EU) and entered a transition period, which will end at 11pm on 31 December 2020.
4. The UK left the EU through the Withdrawal Agreement¹, which provides for an orderly exit and transition to the future relationship with the EU. During this transition period most EU laws continue to be in force, including the free movement of people. This means that EEA citizens can continue to live, work and access benefits and services in the UK as they did before exit day. This includes maintaining their eligibility to access social housing and homelessness assistance, on broadly the same basis as they currently do.

¹ references to "the Withdrawal Agreement" in this note are to the "Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)". Equivalent provisions are to be found in separation agreements relating to the European Economic Area/European Free Trade Agreement and the EU/Swiss Free Movement of Persons Agreement, which are also given effect in domestic law by the European Union (Withdrawal Agreement) Act 2020.

5. The Immigration and Social Security Coordination (EU Withdrawal) Act 2020 ('ISSC Act 2020') has repealed the EEA Regulations, which implement EU free movement of persons in UK law, ending free movement at 11pm on 31 December 2020 and introducing a new global points-based immigration system.
6. Once free movement ends, newly arriving EEA citizens, moving to the UK from 1 January 2021, will no longer be able to rely on rights to reside under EU law, or have any rights under the Withdrawal Agreements (unless they are protected in another capacity, for example, where they are a family member joining an EEA citizen who was residing in the UK before the end of the transition period on 31 December 2020). Instead they will be subject to UK immigration rules. They will require leave to enter or remain in the UK and will generally have no recourse to public funds, as is currently the case now for other third country nationals. This means they will not be eligible for an allocation of social housing or homelessness assistance, unless covered by the exemptions in our Eligibility Rules (for example, having a refugee status), or until they are eligible and are granted indefinite leave to remain (typically after 5 years continuous residence in the UK).
7. However, in line with its commitments in [Part 2 of the Withdrawal Agreement](#), the Government has committed to preserve the rights of EEA citizens and their family members who are resident in the UK, or who are working in the UK but not primarily resident (known as 'frontier workers') before the end of the transition period by 31 December 2020.
8. The Government has set up the [EU Settlement Scheme](#)² (EUSS) to enable EEA citizens who are resident in the UK by 31 December 2020, and their family members, to apply for UK immigration status. The deadline for applications to the EUSS by those residing here at the end of the transition period is 30 June 2021. However, where a person eligible for leave under the scheme has reasonable grounds for missing the application deadline, they will be given a further opportunity to apply.
9. The Government has legislated³ to protect the rights, including to access benefits and services, of those EEA citizens who are lawfully resident in the UK at the end of the transition period under the EEA Regulations, for the duration of the grace period (1 January to 30 June 2021) and until the final determination of an application made by the deadline to the EUSS. The legislation also includes protections for their family members which may include a family member arriving in this grace period to join their EEA citizen 'sponsor' who was residing in the UK prior to the end of the transition period and is yet to apply to the EUSS.
10. On 10 December 2020, the Government will also launch a frontier worker permit scheme⁴ so that protected frontier workers can apply for a permit certifying their rights under the Agreements so they can continue to frontier work in the UK.

² Under Appendix EU of the Immigration Rules, available at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

³ Through the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020

⁴ Through the Citizens' Rights (Frontier Worker) (EU Exit) Regulations 2020

Protecting the rights of resident EEA citizens and their family members

11. The Government has legislated to preserve relevant residency rights in the EEA Regulations, otherwise revoked by the ISSC Act 2020. These will ensure that the current eligibility rules for access to social housing and homelessness assistance continue to apply as they do now to EEA citizens residing lawfully in the UK, or frontier working, by the end of the transition period (by 31 December 2020), and to their family members. This has been achieved through the ISSC Act 2020 and other statutory provisions, delivered through the following statutory instruments (SI) which will come into force on 31 December 2020:

- The Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (henceforward referred to as the 'Consequential SI')⁵;
- The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 (henceforward referred to as the 'Grace Period SI');
- The Citizens' Rights (Frontier Workers) (EU Exit) Regulations 2020 (henceforward referred to as the 'Frontier Workers SI') and
- The Immigration (Citizen's Rights etc) (EU Exit) Regulations 2020

12. These protections will be in place and apply after the end of the transition period to the following cohorts of people:

- (i) the (pre-settled status) **post-transition cohort** – this would include EEA citizens, and their family members, who have applied to the EUSS and been granted 'pre-settled status'. These protections will apply for as long as they hold pre-settled status; and
- (ii) the **grace period cohort** – this would include EEA citizens, and their family members, who are lawfully residing in the UK under the EEA Regulations by the end of the transition period (31 December 2020), but have not yet made an application to, or acquired status under, the EUSS by then. This cohort may include a family member arriving in this grace period to join their EEA citizen 'sponsor' who was residing in the UK prior to the end of the transition period and is yet to apply to the EUSS. These protections will apply specifically to resident EEA citizens who can demonstrate that they were exercising a qualifying right to reside (for example, as a worker or student) immediately before the end of the transition period, and will continue to apply to resident EEA citizens until their applications are finally determined (provided these applications are made by 30 June 2021), including until the outcome of an appeal against a decision to refuse status under the EUSS.

Modification of Primary Legislation Underpinning the Eligibility Regulations

13. The provisions of section 7(1) of the Immigration Act 1988 have been preserved in the Consequential SI and in the Grace Period SI, together with ancillary drafting, so that the reference in the Housing Act 1996 to a 'person who is subject to

⁵ Subject to Parliamentary approval of the regulations following the 'made affirmative procedure'.

immigration control' in accordance with the Asylum and Immigration Act 1996 will continue to operate in order to deliver on the commitments in the Withdrawal Agreements.

14. This will ensure that EEA citizens and their family members covered by the Withdrawal Agreements will continue to be considered as 'persons not subject to immigration control' for the purpose of Regulations 4 and 6 of the Eligibility Regulations in respect of the cohort of people described in paragraph 11.

Amendments to the Eligibility Regulations

15. MHCLG has introduced the following amendments to the Eligibility Regulations in the Consequential SI which are required as a consequence of ending free movement:

- Regulations 4(1) and 6(1) which prescribe the classes of persons from abroad who are to be treated as ineligible for an allocation of housing accommodation or for homelessness assistance, respectively; and
- Regulations 4(2) and 6(2) which prescribe the classes of people from abroad not subject to immigration control who are to be treated as eligible for an allocation of social housing and homelessness assistance.

16. Regulation 4(1) and 6(1) have been amended to remove the direct references to Article 20 of the Treaty on the Functioning of the European Union. This is to reflect that newly arriving EEA citizens and their family members moving to the UK from 1 January 2021 will no longer have an eligible right to reside derived directly from EU law (unless is a family member joining an EEA citizen who was residing in the UK before the end of the transition period (31 December 2020)). For ease of reference, we have also updated the cross-references to the corresponding provisions of the EEA Regulations, which are being saved for the limited purposes to ensure that the eligibility rules will continue to apply, as at present, for those EEA citizens lawfully resident prior to 31 December 2020.

17. Regulation 4(2) and 6(2) have been amended to make provision for EEA citizens who are frontier working in the UK for the purpose of the Frontier Workers SI and for their family members. Category (j) specifies that a frontier worker, which includes those EEA citizens who are working or self-employed in the UK but living elsewhere, should be considered as a person from abroad not subject to immigration control and eligible for an allocation of social housing or homelessness assistance, for as long as they remain a frontier worker. Category (k) clarifies that family members of a frontier worker will be eligible provided such persons have limited leave to enter and remain in the UK by virtue of [Appendix EU of the Immigration Rules](#).

18. Regulation 4 (1A) and 6 (1A) have also been amended to clarify that the current restrictions in relation to persons from abroad not subject to immigration control who are ineligible for an allocation of housing accommodation or for homelessness assistance will continue to apply. This is regardless of whether such persons also have a family permit issued under the EU Settlement Scheme granting them limited

leave to enter the UK by virtue of the Immigration (Leave to Enter and Remain) order 2000.

19. When assessing eligibility for these cases please refer to Annex A and B.

Homelessness assistance: Restricted cases

20. The Consequential SI also amends Part VII of the Housing Act 1996, section 185 (4) and (5).

21. At present, EEA citizens who reside in the UK on the basis of domestic leave, (rather than on the basis of an EU right to reside) who are made eligible for homelessness assistance by our Eligibility Regulations⁶, are permitted to rely on a dependant within their household who is not eligible for housing assistance (typically children) to establish their case for homelessness assistance. This is otherwise known as a restricted case. Other third country nationals who have domestic leave and who have been made eligible by our eligibility rules may **not** rely on such a dependant in order to make their case for assistance.

22. The amendment will bring EEA citizens in line with third country nationals, at the point the new immigration rules are introduced in January 2021. However, it will preserve the accrued rights of any lawful EEA citizen resident prior to the end of the transition period (31 December 2020) so they may continue to rely on a dependant who is ineligible.

23. After 31 December 2020, local authorities will need to be aware of this when assessing eligibility for homelessness assistance.

Schedule 3 to the Nationality, Immigration and Asylum Act 2002

24. The Regulations include changes to Schedule 3 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") to bring the position of EEA citizens into line with non-EEA citizens who do not benefit from current free movement arrangements. The effect is that EEA citizens will no longer be explicitly listed as ineligible for assistance under the wider social welfare legislation referenced in the 2002 Act, which includes local authorities' General Power of Competence under the Localism Act 2011, as well as powers under the Care Act 2014, Children Act 1989 and others.

25. These changes will be of interest to local housing authorities (LHA) wanting to support EEA citizens experiencing homelessness/rough sleeping in circumstances where the applicant is not eligible for homelessness assistance. For example, this may be because they have pre-settled status but are not eligible for assistance under the eligibility rules (because they are a jobseeker/'Zambrano' carer) or because they do not have immigration leave and are not seeking asylum (asylum claims made by EU nationals will continue to be treated as inadmissible and ineligible to asylum support unless there are exceptional circumstances).

⁶ Hence 'subject to immigration control', falling to be dealt with per Regulation 5

26. From 11pm on 31 December 2020, LAs may choose to rely on the changes being made to the NIAA to provide assistance to EEA citizens under the wider social welfare legislation referenced. It will be for the relevant local authority to satisfy itself of the lawfulness of any proposed measures and to consider how such measures may be circumscribed by existing legislation noting, for example, the restrictions set out in s.2 of the Localism Act 2011. LHAs may conclude they have the scope to provide very limited assistance, shelter and support, to those EEA citizens not eligible for homelessness assistance in circumstances where they deem such support is necessary.

Updates to Social Housing Allocation Guidance and Homelessness Code of Guidance

27. The information provided in this letter should be considered alongside [the Allocation Guidance](#) and [the Homelessness Code of Guidance](#) for local authorities which provide relevant guidance relating to an applicant's eligibility for an allocation of social housing and for homelessness services.

28. Both sets of guidance will be reviewed to reflect the forthcoming changes to the UK immigration system as a result of EU Exit and ending free movement, which will be applicable from 1 January 2021, covered in this letter. MHCLG is planning to engage with local housing authorities on revising these guidance documents to ensure they provide the right level of support when determining applications for social housing and homelessness assistance. If your local authority wishes to engage in the review of the guidance, please e-mail MHCLG (to the contacts set out below) by Wednesday 25 November.

29. Enquiries about the changes to the Eligibility Regulations and to engage in the process for reviewing the guidance should be addressed to:

- Begona Vilaplana, in relation to social housing allocations, by email to: begona.vilaplana@communities.gov.uk
- Lucy Rodger, in relation to homelessness, by email to: lucy.rodger@communities.gov.uk

Yours sincerely,

Jane Everton



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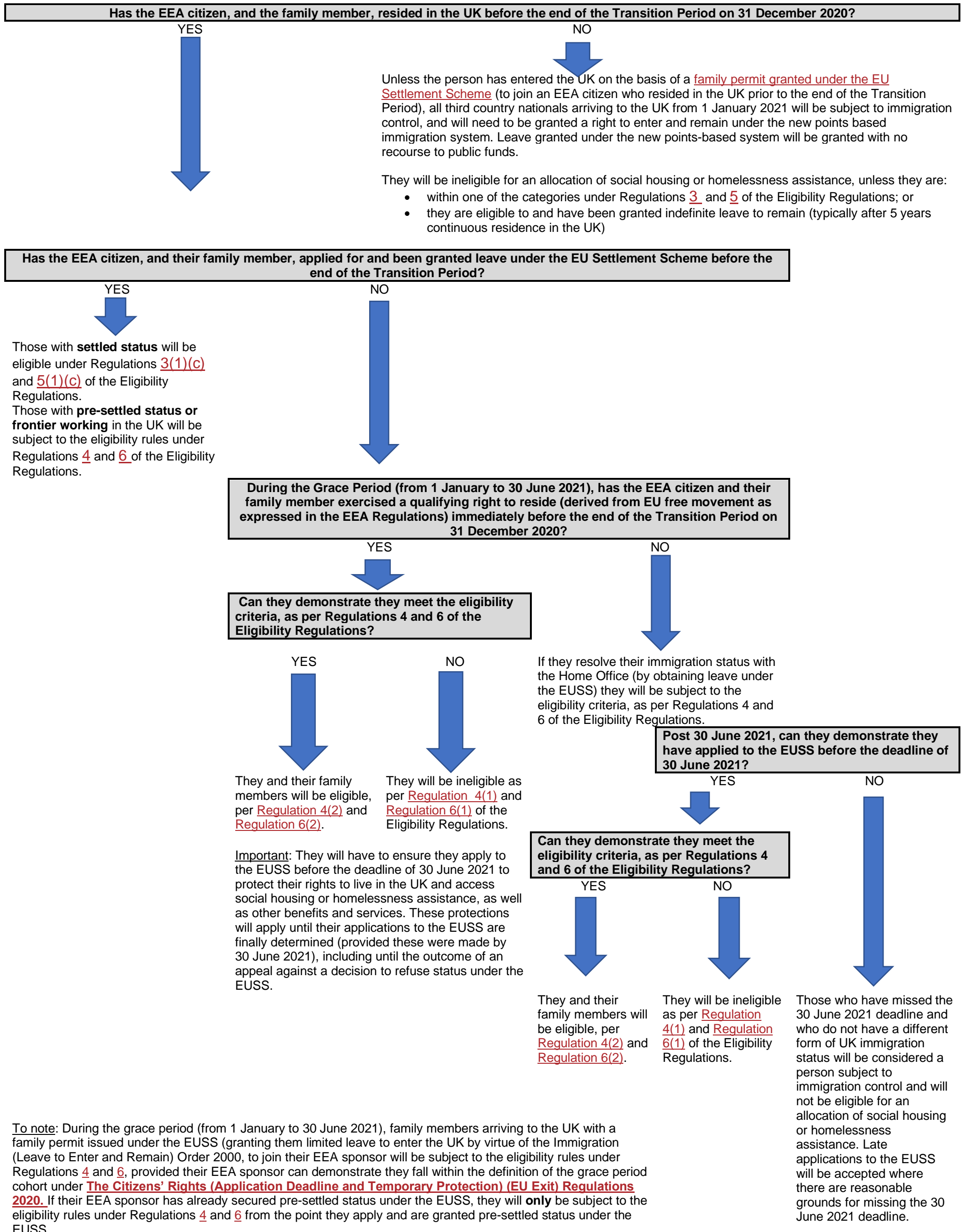
Annex A – Managing applications for social housing or homelessness assistance from 1 January 2021

1. When EEA applicants, alongside their family members, present to local authorities from 1 January 2021, they will need to provide evidence of their immigration status. Those who have applied and been granted status under the EUSS will be able to use their digital status to demonstrate their entitlement to access social housing or homelessness assistance, using the gov.uk web page: <https://www.gov.uk/view-prove-immigration-status>. Generally,
 - EEA citizens, and their family members, granted settled status (also known as indefinite leave to enter or remain) will be eligible to access social housing and homelessness assistance (under provisions in Regulation 3 and 5 of the Eligibility Regulations); and
 - EEA citizens, and their family members, granted pre-settled status (also known as limited leave to enter or remain), including EEA citizens frontier working in the UK, will be eligible on broadly the same terms as they are now (under provisions 4 and 6 of the Eligibility Regulations).
2. For those EEA citizens and their family members (including family members moving to the UK to join their sponsor EEA citizen) who are eligible to apply to the EUSS but have yet to do so during the grace period (from 1 January to 30 June 2021), local housing authorities will need to satisfy themselves that the applicant(s):
 - was exercising a qualifying EU right to reside immediately before the end of the transition period on 31 December 2020 (or the family member has joined their sponsor EEA citizen during the grace period, and both have yet to apply). This evidence is required in order for the applicant to demonstrate they are part of the 'grace period' cohort and their rights are protected by the Withdrawal Agreement; and
 - meets the relevant eligibility criteria at the time of the initial application and again when considering making an allocation to them, particularly where a substantial amount of time has elapsed since the original application.
3. You might like to signpost the applicants who have yet to apply to the EUSS gov.uk web page at: www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status; or suggest they contact the EU Settlement Resolution Centre, either [online](#) or by calling 0300 123 7379, for questions about how to apply.
4. Those EEA citizens who miss the 30 June 2021 deadline and who do not have a different form of UK immigration status will be considered to have no lawful basis for remaining in the UK. They will need to obtain status under the EUSS or another UK immigration status to resolve this. In line with the Withdrawal Agreements, late applications to the EUSS will be accepted where there are reasonable grounds for missing the 30 June 2021 deadline.
5. Newly arriving EEA citizens and their family members who move to the UK from 1 January 2021 will (unless they are eligible to apply to the EUSS in another capacity,

such as being a joining family member) come under the new points-based immigration system. Under that system, access to benefits and services will be the same for EEA and non-EEA citizens. They will generally be considered eligible after indefinite leave to remain is granted, usually after five years of continuous residence; unless they are within one of the exempted categories in the Eligibility Regulations.

6. The table at Annex B outlines how the eligibility rules in the Eligibility Regulations will apply to EEA citizens from 1 January 2021.

Annex B - From 1 January 2021, when determining the eligibility of an EEA citizen, and their family member, for an allocation of social housing or homelessness assistance, the local authority should consider the following:



Annex C: Glossary

- **“Consequential SI”** means [The Immigration and Social Security Co-ordination \(EU Withdrawal\) Act 2020 \(Consequential, Saving, Transitional and Transitory Provisions\) \(EU Exit\) Regulations 2020](#). This statutory instrument (SI) introduces a series of legislative changes to UK primary and secondary domestic legislation required as a consequence of ending free movement.
- **“EEA Regulations”** means [The Immigration \(European Economic Area\) Regulations 2016](#) (S.I. 2016/1052). These regulations implement the right of free movement of the [European Economic Area](#) (EEA) citizens and their family members in the United Kingdom.
- **European Economic Area (EEA) citizens** include nationals from all 27 EU Member States, along with the EEA EFTA countries (Norway, Iceland, and Liechtenstein) and Switzerland.
- **European Union Member States** include Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.
- A **frontier worker** is an EEA citizen who are economically active in, but not predominantly resident in the UK, by the end of the transition period.
- **“Frontier Workers SI”** means [The Citizen’s Rights \(Frontier Workers\)\(EU Exit\) Regulations 2020](#) (S.I. 2020/1213). This statutory instrument ensures the rights of people who are self-employed or employed who work in the UK before the end of the Transition Period, but whose primary residence is abroad, continue to be maintained in accordance with the Citizens’ Rights chapter of the Withdrawal Agreements.
- **“Grace Period SI”** means [The Citizens’ Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations](#) (S.I. 2020/1209) This statutory instrument introduces temporary protections for those EEA citizens, and their family members, who are lawfully resident in the UK (i.e. exercising an EU right to reside) at the end of the transition period, but have yet to apply to the EUSS by the deadline of 30 June 2021.
- **“ISSC Act”** means [The Immigration and Social Security Coordination \(EU Withdrawal\) Act 2020](#). This makes provision to end free movement of persons under retained EU law and to repeal other retained EU law relating to immigration; to confer power to modify retained direct EU legislation relating to social security co-ordination; and for connected purposes.
- [The EEA EFTA-UK Separation Agreement](#) is the Agreement reached with Norway, Iceland and Liechtenstein to protect citizens’ rights as the UK exits the EU

- **The Eligibility Regulations** means [The Allocation of Housing and Homelessness \(Eligibility\) \(England\) Regulations 2006](#) (S.I. 2006/1294)
- [The European Union \(Withdrawal Agreement\) Act 2020](#) (referred to as the 'Withdrawal Agreement Act') makes legal provision for ratifying the EU-UK Withdrawal Agreement and incorporating it into the domestic law of the United Kingdom.
- [The EU-UK Withdrawal Agreement](#) (officially titled Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community) sets out the terms of the UK's exit from the European Union, including provisions for the Transition Period.
- **The Grace Period** applies from 11pm on 31 December 2020 until 11pm on 30 June 2021. Relevant EEA citizens and their family members will have until the deadline of 30 June 2021 to apply to the EU Settlement Scheme.
- [The Swiss Citizens' Rights Agreement](#) is the agreement reached with Switzerland to protect citizens' rights as the UK exits the EU.
- **The Transition Period** (sometimes called the implementation period) applies from 11pm on 31 January 2020 (following the UK exit from the EU) and ends at 11pm on 31 December 2020. During the Transition Period, the UK remains in both the EU customs union and single market, and free movement rules continue to apply.