

Note: 18<sup>th</sup> January 2021

## **Continuity of Residence, Temporary Absence and Protection of Residence. Rights of EU Citizens and their Family Members under Appendix EU.**

**This note looks at the impact of absences from the UK on applications for settled or pre-settled status under Appendix EU (the EU Settlement Scheme)**

The purpose of Appendix EU (the EU Settlement Scheme) is to implement the UK Withdrawal Agreement with the EU. It ensures that the residence rights of EU citizens and their family members who are temporarily absent from the UK at the end of the transition period on 31.12.2020 are still protected.

### **The meaning of temporary absence from the UK:**

Generally this means that the applicant was resident in the UK and Islands before the 31.12.2020 and has not been absent from the UK and Islands for more than 6 month in total in any given 12 months period, throughout the period of residence relied upon by the applicant to apply for settled (indefinite leave to enter or remain) or pre-settled status (limited leave to enter or remain)

The period of residence relied upon by the applicant will be less than 5 years if the person is applying for pre-settled status (limited leave to enter or remain) or 5 years if the person is applying for settled status (indefinite leave to enter or remain).

There are some exceptions to the general requirement that an applicant can only be absent from the UK for a maximum of 6 months in any 12 months period during the qualifying period of residence. They are:

- a) A single period of absence of more than 6 months but which does not exceed 12 months, where this is for an important reason such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting
- b) Any period of absence on compulsory military service
- c) Any period of posting on Crown service or as a spouse, civil partner, durable partner or child accompanying a person on a posting on Crown Service
- d) Any period spent working in the UK marine area (as defined in section 42 of the Marine and Coastal Access Act 2009)

Implications of the temporary absence requirement:

This can be illustrated by the following example:

An EU citizen who has lived continuously for 3 years in the UK between January 2017 to March 2020 and then left the UK, is not considered as residing in the UK.

Such an EU citizen had voluntarily left the UK for more than 6 months in a 12 month period before the end of the transition period on 31.12.2020, and remained outside the UK ever since. There is no existing residence right which is protected by the Withdrawal Agreement and Appendix EU.

## Coronavirus and Absence of more than 6 months in any 12 months period during the 5 years continuous qualifying period

The Home Office recently published guidance on this, namely the Coronavirus (COVID 19): EU Settlement Scheme - Guidance for Applicants (15 December 2020).

An applicant's 5 years continuous qualifying period for the purpose of applying for settled status (indefinite leave to enter or remain) will not necessarily be broken in the following circumstances:

1 If you have been absent from the UK for a single period of more than 6 months, but not more than 12 months, during your 5 year continuous qualifying period due to being ill with coronavirus, and you were unable to return to the UK because you were ill or in quarantine.

2 If you are a student who was studying in the UK and are studying outside the UK because of coronavirus. That absence will not cause you to break your continuous qualifying period where it is for a single period of more than 6 months but not more than 12 months during your 5 year continuous qualifying period.

Self- isolating will only be considered an important reason for absence where you are, or were, under quarantine conditions, for example:

- When ill with coronavirus yourself
- Sharing a house with someone ill with coronavirus

- When required to self-isolate as a result of being or being in contact with someone who is, in a vulnerable or high risk category

### Comments:

The deadline for EU citizens and their family members to apply for settled or pre-settled status under Appendix EU (the EU Settlement Scheme) is 30 June 2021. For some EU citizens and their family members who have been temporarily absent from the UK during the qualifying period of residence for more than 6 months in any 12 months, their chance of succeeding in any application for settled (indefinite leave to enter or remain) or pre-settled status (limited leave to enter or remain) before the deadline will depend on whether they are able to establish an exception to the general requirement on temporary absence from the UK.

The Home Office's Coronavirus (COVID 19): EU Settlement Scheme - Guidance for Applicants (15 December 2020) is limited and does not cover situations where an applicant's absence for more than 6 months from the UK is due to travel restrictions, border closures or difficulties in getting a flight as a result of COVID 19. Further, it is not clear whether the guidance applies to applications for pre-settled status. This means that some EU citizens and their family members will lose their opportunities to apply for settled or pre-settled status before the deadline if they are unable to establish another exception to the general requirement of not being absent from the UK for more than 6 months in any 12 months period during the qualifying period of residence. As the transitional period ended on 31.12.2020, they will not be able to return to the UK to restart their 5 years qualifying

period towards settled status again, and will lose their EU residence rights altogether.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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