

JUST IMMIGRATION SOLICITORS

23rd March 2020

Dependant Relatives of a Relevant EEA Citizen under the New Appendix EU

Appendix EU of the Immigration Rules sets out a framework for granting indefinite or limited leave to enter or remain to an EEA citizen and their family members.

This note examines the provisions in relation to the dependant relative of a relevant EEA citizen in the Statement of Changes in Immigration Rules 12th March 2020 which will take effect on 6th April 2020.

Who are classified as dependant relatives?

Group A: Dependant of the sponsor/ a member of their household / those in strict need of their personal care on serious health grounds

- 1 The person is a relative (other than a spouse civil partner durable partner child or dependant parent) of their sponsor and
- 2 The person is a dependant of the sponsor, a member of their household or in strict need of their personal care on serious health grounds before 1 January 2020 and
- 3 The family relationship continues to exist at the date of application

Who can sponsor them?

- 1 A relevant EEA citizen who has been or is being granted indefinite leave to enter or remain or limited leave to enter or remain under the Appendix EU
- 2 A relevant EEA citizen who would be granted that leave if they made a valid application under Appendix EU
- 3 The spouse or civil partner of a relevant EEA Citizen who has or is being granted indefinite leave to enter or remain under Appendix EU

4 The spouse or civil partner of a relevant EEA citizen who would be granted that leave if they had made a valid application under Appendix EU.

Group B: A person who is subject to a non adoptive legal guardianship order in favour (solely or jointly with another party) of their sponsor and holds a relevant document as the dependant relative of their sponsor for the period of residence relied upon

This is defined as a person who before 23:00 GMT on 31st December 2020:

- i) Is under the age of 18 years and
- ii) Is subject to a non adoptive legal guardianship order in favour (solely or jointly with another party) of a relevant EEA citizen that is recognised under the national law of the state in which it was contracted and places parental responsibility on a permanent basis on the relevant EEA citizen solely or jointly with another party and
- iii) Who has lived with the relevant EEA citizen since their placement under the guardianship order and
- iv) Who has created family life with the relevant EEA citizen and
- v) Who has a parental relationship with the relevant EEA citizen that involves dependency on the relevant EEA citizen and the assumption of parental responsibility including legal and financial responsibilities for that person by the relevant EEA citizen

This is a new category of dependant relative introduced by Appendix EU in response to the Supreme Court decision in *SM Algeria v ECO (2018) UKSC 9* which says a child placed into legal guardianship under the Islamic kefalah system should be regarded as other family members under Article 3 of Directive 2004/38.

Who can sponsor them?

Only a relevant EEA citizen who has been or is being granted indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU or who would be granted that leave if they had made a valid application

Group C: A person under 18 who is the direct descendant or adopted child of the durable partner of their sponsor

A person who is under the age of 18 years who:

- a) Is the direct descendant of the durable partner of their sponsor or
- b) Has been adopted by the durable partner of their sponsor in accordance with a relevant adoption decision

Who can sponsor them?

Only a relevant EEA citizen who has been or is being granted indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU or who would be granted that leave if they had made a valid application.

Holds a Relevant Document:

The dependant relative must in addition hold a relevant document under the EEA Regulations 2016 as an extended family member before they can be granted indefinite or limited leave to enter or remain under Appendix EU. This must be applied for before 1st January 2021 if they are in the UK or before 1st July 2021 if they are outside the UK.

A relevant document means a) a family permit b) registration certificate c) a residence card d) a document certifying permanent residence or e) a permanent residence card issued under the EEA Regulations 2016.

Comments:

A dependant relative of a relevant EEA citizen must first apply for a relevant document as an extended family member under the EEA Regulations 2016

before 1st January 2021 if they are in the UK, or before 1st July 2021 if they are outside the UK. Thereafter, they are able to make an application for indefinite or limited leave under Appendix EU which they must do by 30th June 2021.

The dependant relative provisions in the new Appendix EU are more generous than the existing Appendix EU in that they give the opportunity for a dependant relative of the spouse or civil partner of a relevant EEA citizen who had such a relationship with them before 1st January 2021 to apply for indefinite or limited leave under Appendix EU. The existing Appendix EU, at the time of writing, only gives this opportunity to those who had such a relationship with the spouse or civil partner before 1st February 2017 and applied for a relevant document before 1st February 2017.

Dependant relatives are classified as other family members of a Union Citizen under Directive 2004/38. Other family members of Union Citizens are protected by the Withdrawal Agreement if their residence was recognised and facilitated by the UK before the end of the transitional period on 31st December 2020. Therefore, irrespective of the provisions in the new Appendix EU which give those outside the UK an opportunity to apply for a relevant document by 1st July 2021, it would be prudent for these family members to apply for a relevant document and indefinite or limited leave under Appendix EU before 31st December 2020, in order to ensure that they will preserve their rights under EU law after the transitional period ends on 31st December 2020.

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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 agnes.lai@just-immigration.co.uk

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