

## **JUST IMMIGRATION SOLICITORS**

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### **Mind The Deadlines: Extended Family Members of EEA Nationals who are resident in the UK before 31 December 2020. What do they need to do in order to protect their rights under EU law after the end of the transitional period on 31 December 2020?**

In order to protect their residence rights in the UK after the end of the transitional period on 31 December 2020, extended family members of EEA nationals must adhere to the deadlines for applying for a residence document or family permit under the Immigration EEA Regulations 2016 as well as the deadlines for applying for settled or pre-settled status under the EU Settlement Scheme.

Otherwise they will lose their right of residence under EU law.

### **Who are classified as extended family members?**

Under Regulation 8 of the Immigration EEA Regulations 2016 (the EEA Regulations 2016), the extended family members of an EEA national include:

1. **A child under 18 who is subject to a non adoptive legal guardianship order in favour of an EEA national**

This is a new provision introduced following the Supreme Court decision in *SM (Algeria) ECO (2018) UKSC* on the position of children adopted under the kafala arrangement by EEA citizens.

In order to fulfil this criteria, the child

- a) Must be under 18

- b) Is subject to a non adoptive legal guardianship order in favour of an EEA national that is recognised under the national law of the state in which it was contracted
  - c) Has lived with the EEA national since their placement under the guardianship order
  - d) Has created family life with the EEA national
  - e) Has a personal relationship with the EEA national that involves dependency on the EEA national and the assumption of parental responsibility, including legal and financial responsibilities for the person by the EEA national
2. Relatives of an EEA national residing in a country other than the UK and is dependent upon the EEA national or is a member of the EEA national's household

The conditions in this paragraph are that the person is:

- a) A relative of an EEA national and
- b) Residing in a country other than the UK and is dependent upon the EEA national or is a member of the EEA national household and either:
  - i) Is accompanying the EEA national to the UK or wants to join the EEA national in the UK or

- ii) Has joined the EEA national in the UK and continues to be dependent upon the EEA national, or to be a member of the EEA national's household

Following the ruling from the Court of Justice of the European Union (CJEU) in the case of Rahman, an extended family member can be dependant even though they may not have lived in the same country as the EEA national. This means an extended family member who received financial support from the EEA national while living in another country can claim to be dependent on the EEA national.

If the applicant is claiming a right of residence on the basis that they were a member of the EEA national's household, then they must have been living with the EEA national's household in the same country.

- 3. A person who is a relative of an EEA national and on serious health grounds strictly requires the personal care of the EEA national or the spouse or civil partner of the EEA national

For relatives to fulfil this, the serious health grounds have to be significantly beyond ordinary ill health. Further, personal care relating to the person's physical and mental health needs must be provided on a day to day basis.

- 4. Durable partner of an EEA national or the child under the age of 18 of that partner

There is no definition of who is classified as a durable partner under the EEA Regulations 2016. This is generally interpreted by the Home Office as including couples who have lived together in a relationship similar to marriage which has continued for at least 2 years.

However, individual circumstances will always be considered. It is

possible for an applicant to be recognised as a durable partner even if the couple have been in a relationship for less than 2 years.

5. Relatives of the spouse and civil partner of an EEA national

Relatives of the spouse and civil partner of an EEA national are no longer classified as extended family members. However, those who were issued with an EEA family permit or a registration certificate or a residence card before 1 February 2017, and continue to reside in the UK on the same basis, are still classified as extended family members under the EEA Regulations 2016.

6. A relative of an EEA national who would meet the requirements in the Immigration Rules for indefinite leave to enter or remain in the UK as a dependent relative of the EEA national

It is unlikely that many would fall under these criteria. The provisions for dependant relatives under the Immigration Rules are very stringent and not many are likely to be able to fulfil the requirements.

**What do extended family members of EEA nationals need to do in order to protect their residence rights in the UK after the end of the transitional period on 31 December 2020?**

In order to protect their residence rights in the UK, extended family members of EEA nationals residing in the UK before 31 December 2020 must apply for settled or pre-settled status under Appendix EU (the EU Settlement Scheme) by 30 June 2020. Under the Withdrawal Agreement between the UK and the EU, those applying from abroad to join the EEA nationals must apply for settled or pre-settled status either by 30 June 2021 or 3 months after their arrival in the UK, whichever is the later.

Otherwise they will lose their right of residence under EU law.

## **Applying for Residence Documents or Family Permits under the EEA Regulations 2016.**

It is important to note that in order to be eligible for settled or pre-settled status under Appendix EU (the EU Settlement Scheme), extended family members living in the UK must first apply for one of the following documents under the EEA Regulations 2016:

- i) Registration certificate
- ii) Residence card
- iii) Document certifying permanent residence

Their rights to apply for one of the above documents will come to an end on 31 December 2020.

For extended family members applying to join EEA nationals living in the UK before 31 December 2020 from abroad, they must first apply for a family permit under the EEA Regulations 2016 before they are eligible to apply for settled or pre-settled status under Appendix EU (the EU Settlement Scheme). Their rights to apply for a family permit will come to an end on 31 June 2021

In order to protect their residence rights in the UK, it is important for extended family members of EEA nationals residing in the UK before 31 December 2020 to note and adhere to the deadlines.

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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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