

Home Office to publish new EUSS COVID-19 guidance

Following Here for Good's successful legal challenge, we are pleased to be able to share the Home Office proposals for their revised *Coronavirus (COVID-19): EU Settlement Scheme - guidance for applicants*.

The original guidance was published on 15 December 2020 and set out the detail of how the Home Office would treat COVID-19 related absences from the UK. The issue of absences is very important as continuous residence in the UK is a key criterion for eligibility to the EU Settlement scheme.

Concerned about the impact the guidance would have on EU citizens being able to secure their residence rights in the UK post-Brexit and in light of the COVID-19 pandemic, Here for Good sought to challenge the Guidance in court. Here for Good was particularly concerned that the Guidance unlawfully penalised EU citizens who were elderly or clinically vulnerable (or those whose relatives were vulnerable in this way), those who had sought conscientiously to comply with public health guidance by avoiding non-essential travel, and those caught up in local restrictions or travel disruption.

Together with our legal team at Bindmans LLP, Counsel Charlotte Kilroy QC, Hollie Higgins (both Blackstone Chambers) and Oliver Persey (Garden Court Chambers), Here for Good lodged an application for judicial review challenging the guidance and seeking its withdrawal.

The guidance was withdrawn by the Home Office on 6 May 2021, with the Home Office initially indicating they would publish the revised guidance by 31 May 2021. On 27 May 2021 the Home Office wrote to us and the Court informing us that their new guidance would not be published by the 31 May 2021, but that they would aim to publish the revised guidance by 11 June 2021.

Since 7 May 2021, we have been pushing for the Home Office's consent to share the content of the Acknowledgement of Service from our judicial review challenge. They have finally provided that consent. Their proposals for the revised guidance are set out below in an extract from the Acknowledgement of Service. We hope that this will give clarity to those previously uncertain about their future and concerned about the impending application deadline of 30 June 2021.

"11. This review has now been completed and the following changes and/or clarifications are going to be made to the Policy:

(a) EEA citizens who have been absent from the UK for a period of up to 12 months because of COVID-19 are permitted to rely on that absence being for an important reason. The revised guidance will confirm that the EEA citizen does not themselves have to be or have been ill with COVID-19. It will clarify that those self-isolating or shielding in accordance with local public health guidance, those caring for family members affected by the virus, or those unavoidably prevented from returning to the UK in time due to travel disruption are also permitted to rely on that absence being for an important reason;

(b) EEA citizens who were already absent from the UK for an important reason and were forced to exceed the 12-month maximum permitted absence because of COVID-19, as described in the preceding sub-paragraph, will be permitted to exceed that maximum period of absence, without breaking their continuity of residence, for as long as they are absent from the UK because of COVID-19, again as described in the preceding sub-

paragraph. Any absence from the UK beyond the 12-month maximum will not, however, be counted as residence in the UK for the purposes of qualifying for settled status;

(c) EEA citizens who, as is allowed for any reason, intended to be absent from the UK for no more than six months will be permitted to have a single absence of up to 12 months treated as being for an important reason, and thereby not break their continuity of residence, where they have not returned to the UK within six months because of COVID-19, as described in sub-paragraph (a) above;

(d) EEA citizens who have already had an absence of up to 12 months for an important reason and need to rely on a second period of absence of up to 12 months for such a reason, will be permitted to have a second such absence without breaking their continuity of residence, where one of those absences is because of COVID-19, as described in sub-paragraph (a) above. Again, while this second absence will not break the person's continuity of residence, it will not be counted as residence in the UK for the purposes of qualifying for settled status.

12. Given that points (b), (c) and (d) in the preceding paragraph are outside the scope of the current drafting of Appendix EU to the Immigration Rules, the Defendant confirms that a concession outside the Rules will be made available until the changes can be reflected in Appendix EU itself by way of a Statement of Changes in Immigration Rules (expected in Autumn 2021).

13. A concession made outside the Immigration Rules in this manner will necessitate the publication of new detailed guidance, outlining both the policy position and the way in which an EEA citizen may avail themselves of it. As a result, the guidance document published on 15 December 2020 will be withdrawn and replaced. The Defendant intends to publish the new guidance, including on the concession outside the Rules, as soon as possible – and will seek to do so by 31 May – to ensure that EEA citizens are provided with certainty as to their residence rights in the UK well before the end of the grace period on 30 June.”