

## **New Proposed EUSS COVID-19 guidance – what does it mean?**

EEA+ nationals need to show that they have been continuously resident in the UK by 11pm 31 December 2020 in order to be eligible to apply to the scheme. Those seeking to apply for settled status also need to show continuous residence for a qualifying 5 year period.

*What does ‘continuous residence’ mean?*

Continuous residence means a period of unbroken residence in the UK. Generally speaking residence will be broken if you are absent from the UK for more than 6 months in any 12 month period, except where you have a single period of absence which did not exceed 12 months and was for an important reason (such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting); or Crown Service, compulsory military service or time spent working in the UK marine area.

*Do COVID-19 related absences count as an ‘important reason’?*

Following Here for Good’s legal challenge to the now withdrawn *Coronavirus (COVID-19): EU Settlement Scheme - guidance for applicants*, the Home Office has confirmed that COVID-19 related absences can count as an important reason. This means that certain COVID-19 absences will not break an applicant’s continuity of residence for the purpose of an EUSS application.

*What scenarios will be covered by the Home Office’s proposed new guidance?*

- (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.

The new guidance is expected to be published by the Home Office by 11 June 2021, with the changes being applied to applications as a concession to the current immigration rules. The Immigration Rules will however be amended to reflect the above changes later this year (expected in Autumn 2021).