



Home Office

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15 February 2022

Dear Zoe, Luke and Mala,

Thank you for your letter of 7 January about EU Settlement Scheme (EUSS) applications from durable partners who did not apply for a residence document under the EEA Regulations before the end of the transition period on 31 December 2020, and about durable partners who married or formed a civil partnership with a relevant EEA citizen after the end of the transition period. I am sorry for the delay in responding to your letter.

### **Durable partners in the UK without a residence document**

The durable partner of an EU citizen resident in the UK before the end of the transition period (where the partnership was formed and was durable by then) is within scope of the Withdrawal Agreement where, in line with Article 10(2), their residence in the UK was facilitated in accordance with the Free Movement Directive before the end of the transition period, by obtaining a relevant document under the EEA Regulations.

Such a durable partner is also within scope of the Withdrawal Agreement where, in line with Article 10(3), they applied for such a document before the end of the transition period and this was issued afterwards. There are equivalent provisions in the other Citizens' Rights Agreements. Otherwise, unless they had another lawful basis of stay before the end of the transition period, such as a student visa (in which case they can apply to the EUSS and rely on alternative evidence that the partnership was formed and was durable by the end of the transition period), they will have been in the UK unlawfully.

Where they were in the UK unlawfully before the end of the transition period, it would not be appropriate to enable them to remain in the UK by simply applying to the EUSS, as this would reward them for not complying with the requirements for a lawful basis of stay. This would also penalise the many EEA citizens and their durable partners who complied with those requirements, including where the partner remained overseas before the end of the transition period (or where the couple made arrangements to marry overseas before then)

rather than choosing to reside in the UK unlawfully.

### **Marriage or civil partnership delayed due to COVID-19**

Where the spouse or civil partner of an EEA citizen resident in the UK before the end of the transition period is concerned, they will be eligible for the EUSS where they are themselves an EEA citizen and can rely on their own residence in the UK by 31 December 2020, or where the marriage or civil partnership was formed after this date and, in line with the requirements of the Free Movement Directive and the Citizens' Rights Agreements, the couple were durable partners by this date. Any impact COVID-19 may have had on the timing of the marriage or civil partnership does not affect the scope for a non-EEA citizen to have obtained or applied for a relevant document as a durable partner under the EEA Regulations before the end of the transition period, in accordance with those requirements.

Notwithstanding the date on which the marriage or civil partnership was formed, an EEA citizen resident in the UK before the end of the transition period, who obtains status under the EUSS, has a lifetime right to be joined by their existing close family members resident outside the UK at 31 December 2020, where the relationship continues to exist when the family member seeks to join them here. In addition, the EUSS permits a person who was living in the UK before the end of the transition period as the durable partner of an EEA citizen resident here by then (and who may now be their spouse or civil partner), but who did not obtain a residence card under the EEA Regulations and had no other lawful basis of stay in the UK, still to bring themselves within the scope of the scheme as a joining family member.

As you note, the person will need to break the continuity of their residence here by leaving the UK for more than six months. They will then be able to apply to the EUSS from overseas (where eligible to do so) or in the UK (by returning here via an EUSS family permit) as a joining family member of their EEA citizen sponsor, where the sponsor has obtained status under the EUSS. This places them in an equivalent position to those durable partners of EEA citizens resident in the UK before the end of the transition period who were outside the UK at that point. It also means they are not advantaged by having chosen to remain in the UK without a lawful basis of stay before the end of the transition period.

With my very best wishes.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Foster', with a large flourish at the end.

**Kevin Foster MP**  
**Minister for Safe and Legal Migration**