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Jenny Rathbone MS
Chair of the Equality and Social Justice Committee

1 November 2024

Dear Jenny Rathbone MS

LEGISLATION MONITORING BY THE IMA – STATEMENTS OF CHANGES TO IMMIGRATION RULES AND WALES-SPECIFIC LEGISLATION

At a recent session of the Committee, we discussed the IMA's statutory duty to monitor legislation dealing with matters involving citizens' rights arising from the EU-UK Withdrawal Agreement and EEA EFTA Separation Agreement.

The IMA reports on legislation impacting on those rights and routinely publishes those reports on its website (accessible here: Legislation Monitoring Reports - Independent Monitoring Authority for the Citizens' Rights Agreements).

We promised to share with the Committee reports published to date in relation to statements of changes to the Immigration Rules (which make changes to the EU Settlement Scheme) and Wales-specific legislation. Copies are enclosed. We will also continue to share such reports going forward, including that to be published in due course about a statement of changes to the Immigration Rules published by the UK Government on 10 September, which we are currently considering.

Yours sincerely,

Rhys Davies

General Counsel

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	**Second Report** in respect of the Statement of changes to the immigration rules: HC1496 presented to Parliament on 17 July 2023
Date Legislation considered by the IMA	9 August 2023 (initial consideration)
Date Legislation in force	9 August 2023
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residency
What does the legislation do?	The Statement of Changes amends the Immigration Rules ("the Rules") which are used to regulate people's entry to, and stay in, the United Kingdom.

	The reader is referred to the IMA's previous report which sets out all relevant changes. The changes with which this updated report is concerned are repeated below. **Validity Requirements – Late Applications and Illegal Entrants** Amendments are made to Appendix EU to make the requirement – under the Citizens' Rights Agreements – to show reasonable grounds for a late application to the EUSS, a validity rather than an eligibility requirement. The Explanatory Memorandum states that *"consistent with the Agreements, this will enable the Secretary of State to consider whether there are reasonable grounds for a late application as a preliminary issue, before going on to consider whether a valid application meets the relevant eligibility and suitability requirements."* The change will apply to applications made on or after 9 August 2023. Similarly, in-country applications made on or after 9 August 2023 as a 'joining family member' made by an 'illegal entrant' (as defined in section 33(1) of the Immigration Act 1971) will be rejected as invalid. Broadly speaking, joining family members are those existing close family members of EU and EEA EFTA nationals resident in the UK by 31 December 2020 who were living overseas then.
Comments	At the time of the IMA's initial report, it was acknowledged that the Agreements allow for the Home Office to determine whether someone has reasonable grounds for making their application to the EUSS out of time, before accepting it as valid. However, one consequence is that a decision not to accept the grounds as reasonable is only

	open to challenge by way of judicial review. There is no appeal mechanism. The report noted that the IMA had raised this with the Home Office and was continuing to engage with them on that issue and on its similar concerns in respect of the changes which have been made in respect of in-country applications from joining family members who are illegal entrants. Article 18(1)(r) of the Withdrawal Agreement and Article 17(1)(r) of the EEA EFTA Separation Agreement provide that an applicant to the EUSS *"shall have access to judicial and, where appropriate, administrative redress procedures in the host state against any decision refusing to grant the residence status".* Key to this provision is that it only applies to *applicants*. Until an application is accepted as valid by the Home Office, it is not an application and therefore the protections in Article 18 WA/Article 17 SA do not apply. In the event that an application is rejected on grounds that it is not valid, there are two options available to a citizen. They can either make another application to the EUSS addressing the reason the previous application was rejected as invalid (e.g. by providing sufficient evidence of reasonable grounds for their delay in applying) or apply for judicial review of the rejection decision. The IMA does not raise any issues in respect of the compatibility of the legislative changes with the Agreements, but notes that Home Office guidance, states at page 39 that " *where a person has already made a late application to the EU Settlement Scheme*

	and this application has been refused or rejected (which may have been because they were not considered to have reasonable grounds for their delay in making their application), then ***they will not normally be able to establish that there are reasonable grounds for them to make a further late application to the scheme****"* [our emphasis]. Given that challenging a validity decision is limited to judicial review, it is important that any decision-making in respect of validity is robust. The IMA is continuing to engage with the Home Office to understand its processes in respect of consideration of reasonable grounds as part of the IMA's ongoing work. Any citizen experiencing difficulties in exercising their rights is encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	The Statement of Changes in Immigration Rules presented to Parliament on 09 March 2023 (HC 1160)
Date Legislation considered by the IMA	12.05.23
Date Legislation in Force	12.04.23
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residency
What does the legislation do?	The Statement of Changes amend the Immigration Rules ("the Rules") which are used to regulate people's entry to, and stay in, the United Kingdom. This report only considers those changes that relate to the EU Settlement Scheme (EUSS) and the EUSS family permit.

	The detailed rules for the EUSS are contained in Appendix EU and for the EUSS family permit in Appendix EU (Family Permit). This report also considers changes made to Appendix AR (EU) and other provisions concerned with administrative review of EUSS decisions. The EUSS enables EU, EEA EFTA and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members, and the family members of certain British citizens returning with them from EU, EEA EFTA countries or Switzerland, to obtain UK immigration status (either pre-settled status or settled status) to live in the UK. The EUSS family permit enables relevant family members to travel to the UK. The main changes in respect of the Rules are as follows: - Durable partners The definition of durable partner in Annex 1 to Appendix EU has been amended. The Explanatory Memorandum to the Statement of Changes provides that the change is *"to underline the original policy intent under the EUSS that it is only where they had another lawful basis of stay in the UK before the end of the transition period that a durable partner who was not documented as such under the EEA Regulations can rely on that residence".* In the unreported case of Kabir v SSHD EA/13870/2021 which was heard before the changes to the Rules, the Upper Tribunal found that *"it is not possible to*

	discern the meaning or application of paragraph (b)(ii)(bb)(aaa) [the provision subsequently amended by the Rules] with any confidence". The Rules change clarifies that a person who was not a documented durable partner under the Immigration (European Economic Area) Regulations 2016, SI 2016/1052 ("EEA Regulations 2016") at the end of the transition period, and who makes an application to the EUSS after the end of the transition period as a durable partner, can only rely on their residence in the UK before the end of the transition period if they had another lawful basis to stay in the UK, e.g. as a student. <u>Durable partner of a qualifying British citizen</u> The definition of family member of a qualifying British citizen in Annex 1 to Appendix EU has also been changed. Durable partners of a qualifying British citizen will need to show that their partnership remains durable at the date of application, or that it did so for the relevant period or immediately before the death of the qualifying British citizen. <u>Derivative and Zambrano rights to reside</u> The definitions of a person with a derivative right to reside: Chen (the primary carer of a self-sufficient EU citizen child) or Ibrahim & Teixeira (a child in education in the UK of an EU citizen former worker or self-employed person in the UK and the child's primary carer) and of a person with a Zambrano right to reside (the primary carer of a British citizen) have been changed to add a new exception which permits those citizens

	who had applied for an EEA family permit by 31 December 2020 and who were subsequently granted an EUSS family permit on an equivalent basis, to apply for status under the EUSS during the currency of their leave to enter following their arrival in the UK. This is a technical change which was preceded by a concession in the relevant guidance to this effect. <u>Cancellation</u> The changes provide that where the relevant threshold is met in respect of a person subject to a travel ban imposed by the UK or the United Nations Security Council, their EUSS leave is to be cancelled. This will be subject to a right of appeal. <u>Period of validity</u> To provide for an EUSS family permit issued from 12 April 2023 to be valid in all cases for a period of six months from the date of decision. <u>Sponsor</u> To prevent a relevant EEA or Swiss citizen granted pre-settled or settled status under the EUSS in error from sponsoring an EUSS family permit. <u>Administrative Review</u> The changes provide that: -

	• where a person is refused status on both eligibility and suitability grounds, there is no right to an administrative review. Such a person will still have a right of appeal against the refusal decision. • an EUSS administrative review will be withdrawn where another application is made under the EUSS, for an EUSS family permit, as an S2 healthcare visitor or as a Service Provider from Switzerland.
Comments	Whilst the IMA notes the changes that have been made to the Rules to clarify the position for durable partners who did not hold a relevant document under the EEA Regulations 2016 but who had another lawful basis to reside in the UK before the end of the transition period, the IMA is unclear what action the Home Office is taking to resolve any issues that may have arisen as a result of confusion regarding interpretation of the relevant provisions. The Home Office has confirmed that the changes made to (b)(ii)(bb) of the definition of 'durable partner' in Annex 1 to Appendix EU from 12 April 2023 do not reflect any change in policy. Also, the Home Office has confirmed to that the IMA that it has taken steps to ensure that caseworkers and presenting officers representing the Home Office are clear on the application of the relevant provision as part of regular communication in relation to Immigration Rules changes.

	The Home Office was asked by the IMA to clarify how it is to be determined that EUSS status has been granted in error to a sponsor of an EUSS family permit. The Home Office has confirmed to the IMA that "*where an EUSS family permit application gives rise to concerns that an EEA citizen sponsor may have been granted EUSS status in error, the relevant entry clearance caseworking team will undertake checks and contact the EUSS family permit applicant to ask for further information or evidence in relation to their sponsor. For example, evidence as to the sponsor's residence in the UK before the end of the transition period.*" Finally, the Home Office has been asked to clarify how the change to paragraph 34X in Part 1 of the Rules concerning withdrawal of an administrative review where another EUSS application is made is compatible with the Citizens' Rights Agreements. The IMA is continuing to discuss this with officials. Any citizen experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	Statement of Changes in Immigration Rules HC 590
Date Legislation considered by the IMA	21 May 2024
Date Legislation in force	4 April 2024
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residence
What does the legislation do?	Statement of Changes in Immigration Rules HC 590 ("the Statement") amends the Immigration Rules made under the Immigration Act 1971 The amendments are wide-ranging and some are discussed in the Explanatory Memorandum.

	However, the provisions relevant to the IMA's remit are confined to those that amend Appendix EU and Appendix AR (EU) to the Immigration Rules. Appendix EU contains the provisions relevant to the EU Settlement Scheme ("EUSS"), under which residence status conferring rights under the Agreements can be obtained by eligible citizens. The changes made to that Appendix require a person resident in the UK before the end of the transition period on 31 December 2020 – where they seek to obtain settled status under the EUSS in place of indefinite leave to enter or remain granted to them under another route – to have held their existing indefinite leave at the end of the transition period. Appendix AR (EU) governs the administrative review of decisions under the EUSS. Aside from various drafting changes which do not result in an alteration in policy, the changes made by the Statement remove the scope to apply out-of-time for administrative review of a relevant EUSS decision taken before 5 October 2023. The scope to apply for administrative review of a relevant EUSS decision taken from that date was removed by Statement of Changes in Immigration Rules HC 1780.
Comments	The IMA raises no issues of concern at this stage. However, any citizen experiencing difficulties in exercising their rights is encouraged to report a complaint through the IMA Portal.

	Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2023
Date Legislation considered by the IMA	31 March 2023
Date in force	22 February 2023
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residence/Equal Treatment/Discrimination
What does the legislation do?	The Education (Student Finance) (Miscellaneous Amendments) (Wales) Regulations 2023 ("the Regulations") amend the eligibility categories in the following regulations: (a) the Education (Fees and Awards) (Wales) Regulations 2007 (b) the Education (European University Institute) (Wales) Regulations 2014

	(c) the Higher Education (Qualifying Courses, Qualifying Persons and Supplementary Provision) (Wales) Regulations 2015 (d) the Education (Student Support) (Wales) Regulations 2017 (e) the Education (Student Support) (Wales) Regulations 2018 (f) the Education (Postgraduate Doctoral Degree Loans) (Wales) Regulations 2018, (g) the Education (Student Support) (Postgraduate Master's Degrees) (Wales) Regulations 2019. Parts 2 to 8 of the amendment regulations make 3 key changes: - Amending the above regulations so that family members of persons settled in the UK are also eligible (which before was only available to family members of UK Nationals), - Amending the above regulations so that persons who have settled status in the UK, and those covered by the Withdrawal Agreement and EEA EFTA Separation Agreement ("the Agreements"), who come from specified British Overseas Territories (which includes Gibraltar) to study in Wales will be eligible for undergraduate tuition fee support and postgraduate support from academic year 2023 to 2024. **These changes give additional entitlement; they do not affect people with citizens' rights under the Agreements whose rights were already in place and are not affected.** - Amending the above regulations so that persons with protected rights under the Agreements will be able to count periods of residence in specified EU Overseas

	Territories as part of the normal three-year qualifying period for eligibility for tuition fee support and postgraduate support. The amendments only change the category of eligibility for students in EU related categories to extend them as outlined above. The other changes relate to amendments to the amounts and calculations of awards.
Comments	The IMA raises no issues of concern, however any citizen experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	**Interim Report** in respect of the Statement of changes to the immigration rules: HC1496 presented to Parliament on 17 July 2023
Date Legislation considered by the IMA	9 August 2023
Date Legislation in force	9 August 2023
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residency
What does the legislation do?	The Statement of Changes amends the Immigration Rules ("the Rules") which are used to regulate people's entry to, and stay in, the United Kingdom.

	This report only considers those changes that relate to the EU Settlement Scheme (EUSS) and the EUSS family permit. The detailed rules for the EUSS are contained in Appendix EU and for the EUSS family permit in Appendix EU (Family Permit). The EUSS enables EU, EEA EFTA and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members, to obtain UK immigration status (either pre-settled status or settled status) to live in the UK. The EUSS family permit enables relevant joining family members to travel to the UK. The main changes in respect of the Rules are as follows: - **Extension of limited leave to enter or remain (pre-settled status)** In December 2022, following the IMA's successful judicial review claim in *R (IMA) v Secretary of State for the Home Department* [2022] EHWC 3274 (Admin), the High Court held that the EUSS breached the Citizens' Rights Agreements. The Court found that the right to reside under the Agreements of a person granted pre-settled status does not expire by virtue of failing to make a second application to the EUSS; and that the right of permanent residence under the Agreements is acquired by a person granted pre-settled status automatically on five years' continuous qualifying residence. Paragraph EU4 of Appendix EU has been amended to provide that the Secretary of State *"may extend [pre-settled status], regardless of whether the person has made*

	a valid application under this Appendix for such an extension'. The Explanatory Memorandum states that the change reflects that the Secretary of State has the power to extend pre-settled status under sections 3(3)(a) and 4(1) of the Immigration Act 1971. The Home Office has announced in a separate press release and media fact sheet, that from September 2023, all pre-settled status holders will have their pre-settled status extended automatically, for a further period of 2 years, before it expires if they have not already obtained settled status. The Home Office states that this will ensure that nobody loses their immigration status if they do not apply to switch from pre-settled to settled status. The announcement also confirms that, at some point in 2024, the Home Office intends to take steps to automatically convert as many citizens as possible with pre-settled status to settled status once they have met settled status conditions. <u>**Validity Requirements – Late Applications and Illegal Entrants**</u> Amendments are made to Appendix EU to make the requirement – under the Citizens' Rights Agreements – to show reasonable grounds for a late application to the EUSS, a validity rather than an eligibility requirement. The Explanatory Memorandum states that *"consistent with the Agreements, this will enable the Secretary of State to consider whether there are reasonable grounds for a late application as a preliminary issue, before going on to consider whether a valid application meets the relevant eligibility*

	and suitability requirements." The change will apply to applications made on or after 9 August 2023. Similarly, in-country applications made on or after 9 August 2023 as a 'joining family member' made by an 'illegal entrant' (as defined in section 33(1) of the Immigration Act 1971) will be rejected as invalid. Broadly speaking, joining family members are those existing close family members of EU and EEA EFTA nationals who were living overseas as of 31 December 2020. <u>Closure of Zambrano and Surinder Singh routes</u> At 11.59 pm on 8 August 2023, the EUSS will close to new applications from *Surinder Singh* family members (those accompanying a British citizen family member returning to the UK after exercising free movement rights) and to *Zambrano* applicants (the primary carer of a British citizen living in the UK). The EUSS family permit will also close then to new overseas applications for *Surinder Singh* family members. The Explanatory Memorandum states that those granted an EUSS family permit as such a family member (including on appeal), following an application made by 8 August 2023, will still be able to come to the UK. They will be able to apply here to the EUSS where they do so before the expiry of the leave to enter granted by virtue of having arrived in the UK with that entry clearance (or later where they have reasonable grounds for their delay in making their application).

	Both of these routes are outside the scope of the Citizens' Rights Agreements. The Explanatory Memorandum which accompanies the Statement provides that the *"UK made generous transitional provisions enabling such persons to access the EUSS for more than four years. It is now appropriate, as a matter of fairness to other British citizens wishing to sponsor foreign national family members to settle in the UK, that any new applications should have to meet the Immigration Rules applicable to others".* **Durable Partners – Dependent Relatives** The definition of 'dependent relative' in Appendix EU has been amended to allow a child of a durable partner to be granted settled status where they have turned 18 since their previous grant of pre-settled status.
Comments	The IMA is continuing to engage with the Home Office in respect of various aspects of the changes and intends to issue a further report(s) as those discussions continue. In the interim, the IMA makes the following comments:- • The IMA issued a statement on the Home Office's plans to implement the judicial review judgment on 17 July 2023. The IMA notes that the changes to the Rules allow for pre-settled status to be extended without further application, albeit that the Secretary of State already has power to do so under the Immigration Act 1971. This change therefore does not, of itself, implement the judgment in

	R(IMA). It is necessary to consider how the Secretary of State will use this power to extend pre-settled status in order to assess whether the judgment is implemented to ensure that holders of pre-settled status do not lose their rights for failure to make a second application. Details of the steps the Secretary of State intends to take are found in the documents and statements issued by the Home Office alongside the changes. These refer to a 2-year extension and while this is welcomed so that no holder of pre-settled status loses rights in the short term, by itself it maintains the current time-limited nature of pre-settled status which the judgment in R(IMA) found to be incompatible with the Citizens' Rights Agreements. The IMA will continue to engage with the Home Office to understand the detail of its plans in order to assess whether the judgment is fully implemented on this point. The judgment also confirmed the automatic acquisition of the right of permanent residence by pre-settled status holders once the relevant criteria are met, and it is clear that some citizens who have pre-settled status will, in fact, be entitled to the right of permanent residence. The Home Office has outlined the steps it intends to take to automatically convert as many eligible pre-settled status holders as possible to settled status once they are eligible for it, without them needing to make a further application. Pending automatic conversion, such citizens' domestic immigration status will not reflect their rights under the

	Agreements. The changes to the Rules do not address this part of the judgment. The IMA is also continuing to engage with the Home Office to understand its detailed plans in respect of this part of the judgment. • The IMA acknowledges that the Agreements allow for the Home Office to determine whether someone has reasonable grounds for making their application to the EUSS out of time, before accepting it as valid. However, one consequence is that a decision not to accept the grounds as reasonable is only open to challenge by way of judicial review. There is no appeal mechanism. The IMA has raised this with the Home Office and is continuing to engage with them on that issue and on its similar concerns in respect of the changes which have been made in respect of in-country applications from joining family members who are illegal entrants. Any citizen experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	The Statement of Changes to the Immigration Rules presented to Parliament on 18 October 2022 (HC 719)
Date Legislation considered by the IMA	17 November 2022
Date Legislation in force	09 November 2022 (for changes to Appendix EU and Appendix EU (Family Permit))
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residency
What does the legislation do?	The Statement of Changes amend the Immigration Rules ("the Rules") which are used to regulate people's entry to, and stay in, the United Kingdom.

	This report only considers those changes that relate to the EU Settlement Scheme (EUSS) and the EUSS family permit. Changes have been introduced to the **EU Settlement Scheme** and **EUSS Family Permit**. The detailed rules for the EUSS are contained in **Appendix EU** and the rules for the EUSS family permit in **Appendix EU (Family Permit)**. The EUSS enables EU, EEA EFTA and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members, and the family members of certain British citizens returning with them from EU, EEA EFTA countries or Switzerland, to obtain UK immigration status (either pre-settled status or settled status) to live in the UK. The EUSS family permit enables relevant family members to travel to the UK. The main changes in respect of the Immigration Rules for the EUSS in Appendix EU and for the EUSS family permit in Appendix EU (Family Permit) are as follows:- **Clarification on the EUSS application deadline for certain joining family members** Changes have been made to the Rules to provide that where a joining family member arrives in the UK with other limited leave (e.g. a work or study visa) or as a person exempt from immigration control, the deadline for them to apply to the EUSS is linked to the end of that status, rather than within three months of their arrival in the UK.

	<u>Changes to the definitions of 'qualifying British citizen' and their family members</u> The definitions of 'qualifying British citizen' and their family members have been changed to bring into the Rules the current concessions contained in guidance in relation to family members of a qualifying British citizen returning to the UK from the EEA. The changes provide: • for a relevant child to have been born or adopted after the end of the transition period and before the family's return to the UK; • for the qualifying British citizen to have returned to the UK ahead of the family member; and • for the Sovereign Base Areas on Cyprus to be treated as part of the EEA where an accompanying family member of a member of HM Forces, who was posted there before the end of the transition period, otherwise meets the requirements of the route. **<u>Clarification on commencement of qualifying period for certain family members</u>** The definition of 'specified date' has been amended to clarify that 'relevant EEA family permit cases'[1] and - where the Secretary of State is satisfied that there are reasonable grounds for the person's failure to meet the deadline for returning to the UK - family members of a qualifying British citizen (i.e. Surinder Singh cases) will start their continuous

[1] 'Relevant EEA family permit case' is defined in Annex 1 to Appendix EU.

	qualifying period of residence in the UK under the EUSS at 23.59 GMT on the date of their arrival in the UK. **New suitability grounds for EUSS family permits** New provision for an EUSS family permit to be refused (or revoked) is added where the person is an excluded person by reference to section 8B(4) of the Immigration Act 1971 (i.e. subject to a travel ban due to a resolution of the United Nations Security Council or an instrument made by the Council of the EU, or under regulations having the same effect under section 1 of the Sanctions and Anti-Money Laundering Act 2018). Where the person is an excluded person due to conduct committed before 11pm on 31 December 2020, the entry clearance officer making the decision must also be satisfied that the refusal (or revocation) is justified on grounds of public policy, public security or public health. Article 20 of the EU Withdrawal Agreement and Article 19 of the EEA EFTA Separation Agreement require the conduct of citizens and their family members before the end of the transition period to be considered in accordance with Chapter VI of Directive 2004/38/EC. **Zambrano, Chen and Ibrahim & Teixeira Derivative Rights** • Changes have been made so that there is no longer a need to cross-reference the requirements in Appendix EU with the Immigration (European Economic Area) Regulations 2016 to understand the qualifying conditions when making an application based on Zambrano, Chen or Ibrahim & Teixeira derivative rights. The qualifying criteria are now to be found within Annex 1 to Appendix EU.

	• The Court of Appeal decisions in *Akinsanya* and *Velaj* have been reflected in the relevant definitions. • Previously under Appendix EU and in accordance with EU case-law, in order to be eligible for Ibrahim & Teixeira derivative rights, both the child and their relevant parent had to reside, or have resided, in the UK at the same time, and during such a period of residence the relevant parent had to have been a worker. The changes within the Rules provide that the relevant parent may also be, or have been, a self-employed person in the UK at the relevant time.
Comments	The IMA raises no issues of concern at this stage, however any citizen experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	The Statement of Changes in Immigration Rules presented to Parliament on 15 March 2022 (HC 1118)
Date Legislation considered by the IMA	23.05.22
Date Legislation in Force	06.04.22 for changes to Appendix EU and Appendix EU (Family Permit)
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residency
What does the legislation do?	The Statement of Changes amend the Immigration Rules which are used to regulate people's entry to, and stay in, the United Kingdom. This report only considers those key changes that fall within the remit of the IMA.

	Changes are being introduced to the EU Settlement Scheme (EUSS) and EUSS Family Permit. The detailed rules for the EUSS are contained in Appendix EU and the rules for the EUSS family permit in Appendix EU (Family Permit). The EUSS enables EU, EEA EFTA and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members, and the family members of certain British citizens returning with them from EU, EEA EFTA countries or Switzerland, to obtain UK immigration status (either pre-settled status or settled status) to live in the UK. The EUSS family permit enables relevant family members to travel to the UK. **Multiple Applications** The changes provide that:- • where a further valid application is made to the EUSS before a previous valid application has been decided, the further application will be treated as an application to vary the previous application and only the further application will be considered.

	• where 2 applications are made, and where one is under the EUSS and the other under another part of or outside the Immigration Rules and both are valid but not yet decided, both applications must be considered. Where they both fall to be granted, the Secretary of State will ask the applicant to choose which application they want to be decided and which they wish to be withdrawn. <u>EEA Family Permit Concession</u> In order to join their sponsor in the UK, and apply under the EUSS, some family members of an EU, EEA EFTA or Swiss citizen with EUSS status require a family permit. EEA family permits operated alongside EUSS family permits until 30 June 2021 and provided a separate entry clearance route for those who qualified for it. EEA family permits were available to a much wider category of family member than EUSS family permits and included e.g. dependent siblings and cousins. Article 10(3) of the EU Withdrawal Agreement and Article 9(3) of the EEA EFTA Separation Agreement require the Home Office to process EEA family permit

	applications from dependent relative extended family members as long as they applied by 31 December 2020. Notwithstanding this, the Home Office decided that EEA family permits were no longer valid for travel to the UK after 30 June 2021. The IMA received complaints from citizens who had applied before the deadline of 31 December 2020 and who were having difficulty obtaining a family permit. A temporary concession was created through guidance which instructed caseworkers to issue an EUSS family permit to dependent relative extended family members who applied for an EEA family permit by 31 December 2020 in various circumstances. The concession was temporary pending changes to the Immigration Rules. The changes made bring within the rules the concession arrangements as follows:- • an EUSS family permit is to be issued in place of an EEA family permit (and can be relied upon in a subsequent EUSS application) where an EEA family permit would have been issued (including on appeal) to a dependent relative extended family

	member, or a person with a derivative right to reside, had the route not closed after 30 June 2021. • where an EUSS family permit is issued in place of an EEA family permit under these arrangements, the person is able to start their qualifying period of continuous residence in the UK after 31 December 2020. • an appropriate letter is to be issued by the Secretary of State in place of an EEA residence card (and can be relied upon in a subsequent EUSS application) where an EEA residence card would have been issued (including on appeal) to an extended family member, had the route not closed after 30 June 2021. **Lounes dual nationals** The changes provide that *Lounes*[1] dual nationals (i.e. dual British and EU or EEA EFTA citizens who exercised free movement rights in the UK prior to obtaining British citizenship and who retained their EU or EEA EFTA nationality after obtaining British citizenship) are able to sponsor family members under the EUSS and EUSS family permit, notwithstanding the fact that they acquired British citizenship without having met free movement requirements to have held comprehensive sickness insurance in the UK as a student or self-sufficient person.

[1] Named after the case of C165/15 Toufik Lounes v Secretary of State for the Home Department

Comments	The IMA raises no issues of concern at this stage, however any citizen experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with those Agreements.

Legislation Monitoring Report	
	The Statement of Changes in Immigration Rules Presented to Parliament on 7 December 2023
Date Legislation Considered by IMA	22 January 2024
Date Legislation in Force	16 January 2024
Potential Right(s) Affected	Residence
Background and Purpose	The Immigration Rules are statements by the Secretary of State as to how he will exercise his power to regulate immigration. The Statement of Changes make several changes to the Immigration Rules, not all of which are relevant to the EU Settlement Scheme ("EUSS"). The detailed rules for the EUSS are contained in Appendix EU

	The EUSS enables EU, EEA EFTA and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members, to obtain UK immigration status (either pre-settled status or settled status) to live in the UK. The following changes are relevant to the EUSS: • revised provision for returning residents whose settled status under the EUSS has lapsed because of their absence from the UK and who wish to resume residence here. They will now need to apply under Appendix Returning Resident. Consistent with the Withdrawal Agreement and EEA EFTA Separation Agreement, EU and EEA EFTA citizens can spend up to 5 years in a row outside the UK before their settled status lapses. • provision preventing a person who entered the UK as an irregular arrival from making a valid application as a joining family member. • provision requiring a person in the UK as a visitor to make any application as a joining family member within three months of their arrival, subject to reasonable grounds for any delay in applying. • provision enabling the Secretary of State, where proportionate, to curtail pre-settled status granted under the EUSS, subject to a right of appeal, in circumstances where the citizen never met the requirements of the EUSS. The totality of the changes made by the Statement of Changes is summarised in the explanatory memorandum presented to the UK Parliament alongside them.
Comments	

	The Statement of Changes does not appear to raise issues of compatibility with the Agreements. However, any citizen experiencing difficulties in exercising their rights is encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	Statement of changes to the Immigration Rules: HC 1780, 7 September 2023
Date Legislation considered by the IMA	8 November 2023
Date Legislation in force	5 October 2023 – for the purposes of changes considered in this report
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residency
What does the legislation do?	The Statement of Changes amends the Immigration Rules ("the Rules") which are used to regulate people's entry to, and stay in, the United Kingdom. This report only considers those changes to the Rules that are relevant to the EU Settlement Scheme (EUSS), the EUSS family permit and the S2 Healthcare Visitor route.

	The detailed rules for the EUSS are contained in Appendix EU, for the EUSS family permit in Appendix EU (Family Permit), and for the S2 Healthcare Visitor route in Appendix S2 Healthcare Visitor. The EUSS enables EU, EEA EFTA and Swiss citizens living in the UK by the end of the transition period on 31 December 2020, and their family members, to obtain UK immigration status (either pre-settled status or settled status) to live in the UK. The EUSS family permit enables relevant joining family members to travel to the UK. The S2 Healthcare Visitor route provides for a route of entry to the UK for people who, by the end of the transition period, had requested authorisation from their home EEA state or Switzerland to receive a course of planned healthcare treatment provided by the NHS under the S2 route, pursuant to Regulation (EC) No 883/2004. They can be accompanied by persons providing care or support during the planned treatment period. The main change to the Rules is the removal of the right of administrative review for all decision types where it currently applies for the EUSS, the EUSS family permit and the S2 Healthcare Visitor route. The changes apply to all decisions made on or after 5 October 2023. The Explanatory Memorandum states that "*since 1 November 2018, applicants to the EUSS who are refused on eligibility grounds, or granted pre-settled rather than settled*

	status, have had an additional right of administrative review. There is also currently a right of administrative review against a decision to cancel EUSS status on certain grounds. Dual avenues of redress by way of both appeal and administrative review are not required under the Citizens' Rights Agreements and are not reflected in other immigration routes." An administrative review is an internal mechanism whereby the Home Office reviews a previous decision. Article 18(1)(r) Withdrawal Agreement ("WA") and Article 17(1)(r) EEA EFTA Separation Agreement ("SA") require the UK to provide for judicial redress against any decision refusing to grant residence status. This is provided for through the *Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020* which provide a right of appeal to the First Tier Tribunal (Immigration and Asylum) in respect of decisions to refuse, curtail or revoke EUSS status. The Explanatory Memorandum states that some minor technical amendments are also made to the Immigration Rules for the EUSS in Appendix EU to clarify the existing policy position that, where a dependent parent or child has already been granted limited leave under Appendix EU, they will not need to evidence dependency for any further applications under Appendix EU. Changes are also made to the definition of 'required date' in Annex 1 of Appendix EU to clarify that the required date specified in sub-paragraphs (a)(viii) and (ix) of that definition does not apply to applicants relying

	on being either a person with a Zambrano right to reside or a family member of a qualifying British citizen.
Comments	Whilst the IMA does not raise any issues of concern in respect of the compatibility of the legislative changes with the Citizens' Rights Agreements, it notes that the removal of the ability to request an administrative review will inevitably mean that more citizens will be required to engage with the appeal process, in the event that they wish to challenge a decision to refuse or remove their leave. Article 21 WA/Article 20 SA (relying on Article 30 Directive 2004/38) require that applicants who may wish to challenge such a decision are provided with clear information as to the factual and legal grounds on which the decision has been taken, in order that they can properly consider any next steps. Any citizen experiencing difficulties in exercising their rights is encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2023
Date Legislation considered by the IMA	10 February 2023
Date Legislation in force	1 February 2023
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Residence Discrimination/Equal Treatment
What does the legislation do?	The Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 ("the Principal Regulations"). The Principal Regulations require Local Health Boards and NHS Trusts in Wales to make and recover charges in respect of relevant healthcare services that are provided to

	overseas visitors not ordinarily resident in the United Kingdom , unless the overseas visitor or the service they receive falls within a charging exemption. The Explanatory Memorandum provides that the purpose of the Regulations is to *"ensure that the Principal Regulations reflect the provisions of Article 18 of the WA and Article 17 of the SA with regard to the charging for treatment of late EUSS applicants, and to ensure that unsuccessful late applicants are afforded equal treatment to those applicants who submitted their application to the EUSS within time."* In December 2022, the IMA wrote to officials at the Welsh Government highlighting provision within the Principal Regulations and within Guidance that required Local Health Boards and NHS Trusts in Wales to charge unsuccessful late applicants to the EUSS for treatment received during the period in which their application was being determined. The IMA considers that this is incompatible with Article 18(3) of the Withdrawal Agreement and Article 17(3) of the EEA EFTA Separation Agreement which provide (subject to provisions relating to fraud) for rights under Part 2 of the Agreements to be deemed to apply during the period when an application to the EUSS is being determined.

	The Regulations amend the Principal Regulations to remove the requirement to charge unsuccessful late applicants to the EUSS for NHS treatment received during the period when their application was being determined. They also require that where charges have been paid, they must be repaid by Local Health Boards and NHS Trust. Where charges have been made but not paid, they must not be recovered.
Comments	The IMA notes that at paragraph 6.3 of the Explanatory Memorandum, it states that "*Local Health Boards have advised the Welsh Government that no individuals with this status have been treated or charged to date. It is not expected that the number of individuals of this status treated and therefore charged would significantly change going forward."* The IMA is continuing to engage with Welsh Government officials in respect of this issue. The IMA raises no issues of concern with the Regulations at this stage, however any citizens experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.

This report is only concerned with the compatibility or otherwise of the legislation with Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement. It does not consider the merits more generally of the policy contained in the legislation and does not consider the lawfulness of the legislation beyond its compatibility with the Agreements.

Legislation Monitoring Report	
Title	The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023 No. 1294 (W. 230)
Date Legislation considered by the IMA	25 January 2024
Date Legislation in force	1 December 2023
Relevant Withdrawal Agreement/EEA EFTA Separation Agreement Right(s)	Recognition of Professional Qualifications and Discrimination/Equal Treatment
What does the legislation do?	Most of the sections in these Regulations implement provisions relating to the recognition of professional qualifications contained in the recent free trade agreement between Iceland, the Principality of Liechtenstein and the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland signed on 8th July 2021. These

	provisions do not relate to the EEA EFTA Separation Agreement or the EU Withdrawal Agreement. Regulation 4 makes provision which relate to those Agreements, specifically around the continued recognition of professional qualifications already recognised or in the process of being recognised at 11pm on 31 December 2020. Section 5(1) of the Professional Qualifications Act 2022 revoked the European Union (Recognition of Professional Qualifications) Regulations("2015 Regulations"). The IMA reviewed the Act in 2022. Our reports can be found here. As set out in our 2022 report, the 2015 Regulations (as amended) provided for an interim system for the recognition of professional qualifications for EU, EEA EFTA and Swiss citizens. From 1st December 2023, applications for recognition can no longer be made under the interim system. The Professional Qualifications Act 2022 (Commencement No. 3 and Savings and Transitional Provisions) Regulations 2023 contained saving and transitional provisions which protect the position of citizens who have already obtained recognition or who have made applications for recognition between 31 December 2020 and 1 December 2023. Our report in respect of these Regulations can be found here.

	The amendments contained in Schedule 4 of these Regulations make further provision to confirm the continued protection of those in the teaching profession, youth workers, youth support workers and work-based learning practitioners who have already obtained recognition or who have made applications for recognition between 31 December 2020 and 1 December 2023. Amendments are also made in relation to the transport profession to reflect the revocation of the 2015 Regulations.
Comments	The IMA raises no issue of concern, however, any citizen experiencing difficulties in exercising their rights are encouraged to report a complaint through the IMA Portal. Further information about the IMA and guidance on how to report complaints can also be found on the Website.