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Dear Mr Piper,

Thank you for your emails of 28 and 30 October to the Minister for Future Borders and Immigration and the Safeguarding User Group concerning the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ("the grace period SI") and the Immigration (Leave to Enter and Remain) (Amendment) (EU Exit) Order 2020 ("the leave to enter order"). These have been passed to this Unit to reply.

As you are aware, the grace period SI saves relevant existing EU law rights for those eligible for, but who have not yet obtained, status under the EU Settlement Scheme (EUSS) at the end of the transition period on 31 December 2020. In line with the citizens' rights agreements, it will protect those rights pending the final outcome of an application made by them under the EUSS by the 30 June 2021 deadline for those resident in the UK by the end of the transition period.

EEA or Swiss citizens or their family members who do not have the right of permanent residence or are not exercising EU Treaty rights at the end of the transition period will not have rights under free movement law to be protected during the grace period. This maintains their current position, in which they are not residing lawfully in the UK. They will not be able to start exercising free movement rights in the UK after free movement to the UK has ended at the end of the transition period. The effect for those who have yet to apply to the EUSS – whether they are here lawfully or not at that point – is that they will be in no lesser position in respect of their rights of residence in the UK on 1 January 2021 as they were on 31 December 2020, pending an application to the scheme. This reflects the citizens' rights agreements and their current position under EU law. However, an application to the EUSS provides them with the means to secure the status they need under UK law to continue living in the UK beyond 30 June 2021.

The Government has made clear EEA and Swiss citizens and their family members who are resident in the UK by 31 December 2020 have until 30 June 2021 to apply to the EUSS. During this time, the Home Office will not take enforcement action against, or seek the removal from the UK of, those who are eligible to apply to the EUSS, pending an application by them to the scheme and its final determination. This includes those without a right to reside during the grace period based on saved EU law rights. Our focus will remain on signposting individuals to the scheme and providing support to apply where this is needed. The exception will be in cases of serious or persistent criminality, in which we will continue to take action, as now.

During the grace period, right to work and right to rent checks for EEA and Swiss citizens will not change. They will be able to use their passport or national identity card to evidence their right to work and rent, as now, but if they have status under the EUSS, they may, if they wish, choose to use that as evidence. Employers and landlords will continue during the grace period to have a statutory excuse against a civil penalty if they undertake existing checks correctly. However, an employer who knowingly employs someone who does not have a right to work may still be liable for prosecution.

To make an application for benefits or services during the grace period, EEA and Swiss citizens without status under the EUSS may need to show they were exercising EU Treaty rights at the end of the transition period, as well as showing they meet the relevant eligibility criteria at the point at which they apply. In the same way as now, individuals will be able to use a wide range of evidence in order to demonstrate their entitlement. Some health services, including primary care, A&E and the diagnosis and treatment of infectious diseases like Covid-19, will continue to be provided free of charge.

The Government has been clear that, where someone has reasonable grounds for missing the deadline for applications to the EUSS of 30 June 2021, they will be given a further opportunity to apply. We intend to publish guidance for caseworkers in early 2021 on what constitutes reasonable grounds for missing the deadline. Examples will include children whose parent, guardian or local authority does not apply on their behalf; those in abusive or controlling relationships who are prevented from applying; and those who lack the physical or mental capacity to apply. However, the guidance will not be exhaustive. We will consider each case on its individual circumstances. As with all aspects of the scheme, we will take a flexible and pragmatic approach. A person who applies to the EUSS after the deadline will not have lawful status in the UK until they obtain status under the EUSS. From that point, they will enjoy the same rights as someone granted that status who applied to the scheme before the deadline.

The leave to enter order allows EEA and Swiss citizen visitors to continue to use e-Gates when arriving in the UK after free movement ends, without routinely having to be interviewed by a Border Force officer. EEA and Swiss citizens who have retained rights of admission and residence provided by the grace period SI will not require leave to enter on arrival. Accordingly, they, together with EEA and Swiss citizens who have existing leave, including under the EUSS, may continue to use e-Gates, but they will not be granted six months' leave to enter as a visitor by passing through them.

Yours sincerely,

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