

Mr Kevin Foster MP

By email: [Kevin.foster.mp@parliament.uk](mailto:Kevin.foster.mp@parliament.uk)  
[MinisterforImmigration@homeoffice.gov.uk](mailto:MinisterforImmigration@homeoffice.gov.uk)

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Dear Kevin Foster MP,

We are writing in relation to the issue that unmarried partners of EEA nationals who were in a durable relationship by 31 December 2020, resided in the UK without immigration permission, and failed to comply with the formality of making an application for a document under the EEA Regulations by 31 December 2020, are excluded from the EU Settlement Scheme. We understand that a large number of EEA nationals and their durable partners are affected by this provision and that there are now numerous appeals pending before the First-tier Tribunal where such durable partners applied under Appendix EU without holding a residence document issued under the EEA Regulations 2016.

The Rules as they are currently drafted are such that durable partners who do not hold a residence document granted under the EEA Regulations 2016 are eligible for pre-settled status as joining family members once they have broken their continuous period of residence eg by an absence from the UK otherwise than for an important reason of at least six months or, and curiously, a period of imprisonment of any length. In our view, the need to break continuity of residence constitutes an unnecessary and disproportionate administrative burden that interferes with the EEA national's exercise of free movement rights. Furthermore, we note that the durable partner never technically commenced a continuous period of residence under EU law (precisely for the reason the Home Office requires durable partners to hold residence documents issued under the EEA Regulations 2016) so it is not clear how or why they should be required to break such a continuous period of residence.

Given that durable partners (where the relationship existed by 31 December 2020) fall within the scope of the Withdrawal Agreement, the added document requirement that penalises those in the UK without immigration status before 2021 creates arbitrary and discriminatory results and is unreasonable and disproportionate in our view.

### **Marriage/ civil partnership delayed due to Covid-19**

There are numerous cases where EEA nationals and their durable partners intended to get married or enter into a civil partnership prior to 2021 but their marriages/civil partnerships were delayed until after the end of the transition period due to Covid-19. They applied under the EU Settlement Scheme as the spouse/civil partner of an EEA national; however, they are unable to produce a Residence Card issued under the EEA Regulations 2016 to confirm that they met the definition of a durable partner on 31 December 2020.

Had it not been for Covid-19 and the delays this caused to marriages, the spouse/civil partner would have had their rights of residence protected by the Withdrawal Agreement.

***Recommendation***

**We urge the Secretary of State for the Home Department to provide a concession for those whose marriages had been scheduled prior to 1 January 2021 but were postponed due to the Covid-19 pandemic.**

The purpose of EU law and retained EU law is to eliminate obstacles to the exercise of Treaty Rights of Union citizens and their family members. EEA nationals who have not been able to marry/enter into a civil partnership before the end of the transition period due to the impact of Covid-19 should not be left in a worse position than those who were married to their spouses/entered into a civil partnership prior to 2021. In these circumstances, the effect of the requirement that durable partners must have been granted an EEA Residence Card is discriminatory.

We hope that you agree with our recommendation and look forward to hearing from you.

Yours sincerely,

Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association

Luke Piper, Head of Policy and Advocacy, the3million

Mala Savjani, Policy Officer, Here for Good