



The EU Settlement Scheme and Covid-19

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Unkha Banda

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Timeline

- 29 January 2020: UK's Chief Medical Officer announced the first two cases of COVID-19 in the UK
- 23 March 2020: UK entered in 'lockdown'
- 1 May 2020: ILPA wrote to SSHD to ask for COVID-19 related exemption for breaks in continuous qualifying periods for the EUSS
- 4 August 2020: SSHD states that further guidance will be 'published in due course'
- 15 December 2020: Unlawful EUSS COVID-19 guidance is published
- 11 pm 31 December 2020: end of the transition period
- 12 March 2021: Here for Good issues a claim for judicial review
- 6 May 2021: EUSS COVID-19 guidance is withdrawn with commitment that new guidance would be published by 31 May 2021
- 10 June 2021: SSHD publishes revised EUSS COVID-19 guidance
- 30 June 2021: end of the grace period

Background to the EUSS

- **Continuous residence is a key criterion for eligibility under EUSS**
 - Limited leave to remain ('Pre-settled status') = 'continuous qualifying period' under 5 years
 - Indefinite leave to remain ('Settled status') = 'continuous qualifying period' of 5 years
- **'Continuous qualifying period':**
 - Residence that started before 11pm on 31 December 2020
 - Has not been broken by certain situations, including excess absences
 - **Allowed absences:**
 - $X > 6$ months
 - $6 \text{ months} < x < 12 \text{ months}$, for an 'important reason' (exhaustive list)
- **Several consequences of absences, including:**
 - Loss of status under EUSS
 - Not qualifying for settled status by expiry date of Pre-settled status
 - Not qualifying for status under EUSS (if absences occur before you apply)

The (unlawful) EUSS Covid-19 Guidance

- Absence < 6 months (in a 12 month period)
 - 'continuous qualifying period' not broken
- 6 months < Absence < 12 months (during 5 year continuous period)
 - Ok, if overseas due to specific reasons:
 - Being unwell due to Covid-19
 - Student in the UK, but overseas due to Covid-19
 - Self-isolating
 - due to being unwell with Covid-19
 - Due to living with someone who is unwell due to Covid-19
 - Contact with someone
- Absence > 12 months
 - Will break 'continuous qualifying period'
- More than one absence of up-to 12 months in 5 year qualifying period will break 'continuous qualifying period'

Here For Good Judicial Review Challenge

- **Problems encountered:**
 - The policy was very restrictive
 - Conflicted with clear and consistent messaging re public health
 - Date of published was problematic
- **Arguments made:**
 - The guidance was unlawful for a number of reasons, including that it:
 - Failed to include reasonable, foreseeable, desirable and/or inevitable consequences of Covid-19 related absences
 - Penalised individuals for following Government advice, or travel disruptions out of their control
 - Has a disproportionate impact on people who are most vulnerable to Covid-19

The (revised) EUSS Covid-19 Guidance

- Interim measure
- Accepts that there are circumstances due to Covid-19 where people may be absent for longer than permitted under Appendix EU
 - Intention to be away for < 6 months, but exceeded up-to 12 months
 - Absence < 12 months for ‘an important reason’
 - Absence > 12 months for an important reason but advised against/prevented from returning
 - 2 x absences, with one being up-to 12 months and for an important reason
- Other matters
 - People who lose PSS due to absences
 - People who cannot apply for SS due to absences
- Some continuing issues
 - More flexibility needed re absences generally

Any questions?

THANK YOU

Unkha Banda

e: u.banda@bindmans.com

t: 020 7833 4433

@BindmansLLP

