Report on Statement of Changes to the Immigration Rules relating to the EU Settlement Scheme

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HERE FOR GOOD

On 17 July 2023 new Statements of Changes to the Immigration Rules were published. Several changes relate to the EU Settlement Scheme ('EUSS'). Here for Good's EUSS legal policy officer and caseworker, Bianca Valperga, outlines the changes and explores anticipated issues.

Please note that we have decided to focus only on the issues that are the most prominent in our casework and that we feel we are in a good position to comment on.

Index

1. Changes to the reasonable grounds policy for late applicants

In our view, the new Guidance relating to reasonable grounds to make late applications represents a sharp change in direction by the Home Office. This relates both to the **type** of reasonable grounds considered in the Guidance, the **approach** that Home Office caseworkers have in applying this and the limited **remedies** available to those applicants who are deemed to not satisfy the new Guidance.

We note that the Guidance seems to suggest that the time passed since the opening of the Scheme in April 2019 as well as the application deadline of June 2021 should be considered as indications of the need to **restrict** the reasonable grounds to submit a late application.

The Guidance also seems to indicate that the wide range of communications activities and outreach work undertaken to engage applicants to apply in partnership with the advice sector should be considered as a reason why certain reasons are **no longer** considered as falling within the reasonable grounds for making a late application.

We strongly contest this and note that no substantive explanation has been provided to substantiate the above position.

Whilst Home Office grant-funded organisations have helped more than 490,000 vulnerable people to apply, as mentioned in the updated Guidance, there is no clarity on the overall number of vulnerable applicants or EEA nationals and their family member eligible to apply under the Scheme that can be used as a comparative for the number provided. This makes it impossible to estimate what proportion of eligible applicants who have been supported and whether that figure can substantiate the claim made above by the Home Office in their updated Guidance.

The Guidance makes a point about the amount of time that has passed since the Scheme opened, but it does not acknowledge the period before the UK Government decided to leave the EU during which no such residence scheme existed. This is particularly relevant for example for long-term residents in the country, who may have settled here a long time ago under previous provisions and may not be aware of the need to apply under the Scheme. This may become particularly relevant when characteristics such as age, language barriers, literacy, mental health and other vulnerabilities are added to the mix.

The points made above also seem to disregard the complexity of some applications under the Scheme, the complexity of the Scheme as a whole, and the limited access to appropriate legal advice.

In our experience, many individuals who are referred to us are made aware of their rights under WA or EUSS only at the point of receiving our support. This is frequently the case for family members of EEA nationals or people who have a derivative right to reside. These types of family members, who under the previous EEA Regulations would have been able to claim this right once they were made aware of it for example via legal advice, are now faced with a harsh cliff edge based on a change in approach that seems to not appropriately consider its impact on vulnerable applicants.

Several reports[1] over the last few years have touched upon applicants' awareness (or the lack thereof) of the need to apply under the Scheme. We don't see any mention of an assessment by the Home Office of this and of the impact that the Guidance changes will have on these cohorts of people.

[1] The Migration Observatory at the University of Oxford

Professor Charlotte O'Brien and Alice Welsh, The Status of EU Nationals: emergency measures needed, 27th May 2021

JCWI, When the Clapping Stops: EU Care Workers after Brexit

Thomas, Best intentions: EU migrant workers in Fenland; A Survey. The Social Market Foundation, Sept. 2020

New Europeans UK, Digital Status: Handle with care

Roma Support Group

Based on our experience helping applicants under the EUSS, we reach the opposite conclusion to the Home Office. **We believe that the people, who have not yet had access to adequate support to submit an EUSS application which properly considers their WA rights, should be protected rather than penalised.** They represent the cohorts of the population that the Home Office hasn't been successful in reaching.

We have received multiple referrals since the changes were implemented on 09/08/23, when speaking to individuals that received a validity decision on the base on the new guidance the Here for Good team collected examples such as:

"*I had never heard of the scheme until I applied for a new job*"

or

"*I have never seen any information campaigns*"

or

"*No one in my community was aware that the scheme even existed".*

We submit that the present change in the Guidance is built around the opposite assumption and it is an unreasonable change which does not properly consider its impact on vulnerable applicants.

An approach that so severely excludes certain grounds should be substantiated by more than the approximation above. A change that does not consider this leads to the failure to operate the Scheme in a **smooth, transparent and simple way.**

We submit that this change in approach raises questions as to the compatibility with the WA, specifically with Art. 18 (1) (d) and (e).

We further submit that in line with WA duties, an applicant should be assessed with regard to all the circumstances and reasons for not respecting the deadline.

We are concerned that the present system as it is currently designed, seems to operate on assumptions to exclude certain grounds, unless further very compelling and practical reasons that have hindered them in making an application under the Scheme exist. This places an unreasonable burden on the applicant that is inconsistent with the WA.

The operational system in place to assess these late grounds **does not** respect Art. 18 WA duties to help the applicant avoid omissions, it does not allow for all the circumstances of an applicant to be assessed, nor does it allow the Scheme to operate in a smooth and transparent manner.

We note that the updated Guidance mentions this to be a non-exhaustive list but based on the way the reasonable grounds consideration seems to be conducted, we have doubts that this can actually be implemented in such a way that allows the applicant to effectively rely on their WA rights to make a late application.

Furthermore, the way in which this is implemented casts doubts as to its compatibility with the WA, specifically with Art. 18 (1) (r) and/or with the EU concept of proportionality, good administration and good faith and effective remedy as an applicant who is refused in their application at the validity stage will only have access to a remedy via judicial review. This also imposes an unnecessary administrative burden (including cost) on applicants who may, if the late application Guidance was properly construed, have been assessed to have had reasonable grounds for making a late application.

We are also concerned that in line with the approach mentioned above, **the updated guidance also removes the section relating to "28-day notices" that were issued by Immigration Enforcement to EU citizens and family members who may be eligible to apply to the EUSS**, but had not yet made an application. The 28-day notices were intended to provide the information and option for possible EUSS applicants to submit a late application, before any immigration enforcement action was taken against them. By removing this section, the Home Office is indicating immigration enforcement will now begin against EU citizens and family members who have not made and EUSS application if they do not hold any other form of immigration status.

This seems to be based on an incorrect assumption, that enough information and support has been provided to applicants. Based on our experience helping applicants under the EUSS, we reach the opposite conclusion to the Home Office.

We believe that the people, who have not yet had access to adequate support to submit an EUSS application which properly considers their WA rights, should be protected rather than penalised. They represent the cohorts of the population that the Home Office hasn't been successful in reaching. If someone is encountered who was not previously aware of the need to apply, we fail to understand why they shouldn't be given the opportunity to do so, allowing them a reasonable time to access legal help and submit a valid application.

1. The new reasonable grounds for late applications

We note that the list of reasonable grounds given is supposed to be non-exhaustive.

The Guidance seems to indicate that in all cases and therefore also in cases that are not listed in the guidance: *'In all cases, the relevant test is whether, on the balance of probabilities and based on all the information and evidence provided by the applicant or otherwise available to you, you are satisfied that, at the date of application, there are reasonable grounds for the person's delay in making their application under the EU Settlement Scheme.'*

There is no further mention of how the grounds that fall outside of the list provided will be considered by the decision maker.

We note that the following paragraph has been taken out of the new Guidance: *'In line with the general approach under the EU Settlement Scheme of looking to grant status, rather than for reasons to refuse, you must take a flexible and pragmatic approach to considering, in light of the circumstances of each case, whether there are reasonable grounds for the person's delay in making their application.'*

This may have an impact on the way decision-makers will look at grounds that are not covered by the non-exhaustive list. This is particularly the case, when it comes to the addition of a group of grounds that the Home Office will normally not accept as able to satisfy the requirements of reasonable grounds to make a late application.

2. Repeat Applications

We believe that the new Guidance on the subject of repeat applications applies a restrictive test that does not properly consider **all the reasonable grounds** that may lead an applicant who has been previously refused in their application to submit a further fresh application.

Firstly, we note that the previous Guidance mentioned: *'However, there may be occasional circumstances in which there may be reasonable grounds for a refused, in-time applicant to make a late further application to the scheme, **such as, for example, for example, where a deficient in-time application was made on their behalf by a third party or there is a good reason why they did not engage with our attempts to contact them following an earlier in-time application to obtain further information or evidence as to their eligibility for status under the scheme.'***

and

'Where a person has already made a late application to the EU Settlement Scheme, with reasonable grounds for their delay in making their application, and this application has been refused, 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. Whether they can establish such reasonable grounds will, however, depend on the particular circumstances of the case'

This has been modified in the new updated Guidance to consider a further late application following an in-time or late application to be accepted only if there are *'**occasional circumstances** in which there may be reasonable grounds for a refused, in-time applicant to make a late, further application to the scheme, s**uch as, for example, where there is a good reason related to an underlying physical or mental condition why they did not engage with our attempts to contact them following an earlier**, intime application to obtain further information or evidence as to their eligibility for status under the scheme. Whether there are such reasonable grounds will depend on the particular circumstances of the case and the evidence provided.'*

We believe this will have a particularly strong impact on the cohort of vulnerable applicants we help.

Since the 2021 application deadline, we have continued to receive a steady stream of referrals for new applications under the Scheme as well as repeat applications.

The reasons given by the latter group that reach out to us requiring help with making further applications are mostly due to or a combination of:

- lack of IT and language skills to understand the refusal letter drafted in English
- lack of access to specialised free immigration advice to be able to understand and challenge the refusal
- lack of access to specialised free immigration advice to be able to understand the complexity of Appendix EU to be able to submit a successful application
- lack of access to specialised free immigration advice to be able to understand and reply to Home Office requests for further information

Furthermore, up until the changes came into effect on the 9th August, refused EUSS applicants were informed in their refusal letter that they could submit a fresh application. In most cases these were accepted but due to the more restrictive changes this changed overnight.

Here for Good has previously raised our concerns about the standardised and opaque nature of communications with EUSS caseworkers.[2] In our experience it is extremely hard for a non-represented applicant to properly understand the mistakes or omissions they made in their application or the reason for refusal. Home Office refusal letters regularly do not properly and specifically assess the reasons why they have decided not to accept certain evidence, leaving the applicant confused as to the reasons for refusal. These concerns are still to be addressed by the Home Office.

We are particularly concerned how these unresolved issues will be further exacerbated by the new Guidance around late applications. An applicant who has previously made applications under the Scheme who was unable to understand communications received, and failed to understand their refusal letter and hence access appeal rights, will be faced with a very stringent test in line with new Guidance that will leave them at a very high risk of not being able to submit a valid application and have their WA rights recognised.

We believe this may have a severe negative impact on many vulnerable EUSS applicants.

The new Guidance's only mention of *'a good reason **related to an underlying physical or mental condition why they did not engage with our attempts to contact them following an earlier'*** is not appropriate to reflect the situations and difficulties that EEA nationals and their family members are experiencing.

The new wording in the Guidance removes the safety net available to vulnerable applicants who have previously submitted applications which do not accurately reflect their entitlement to residence rights. Now their substantive position will only be considered if further unspecified compelling circumstances are present, such as a medical issue.

In our view, no explanation has been provided for the difference in treatment of applicants in these circumstances and the distinction drawn is not reasonable or rational.

[2] https://hereforgoodlaw.org/strategic-litigation/

As such, the Scheme fails to operate in a smooth, transparent and simple manner.

We recommend keeping the threshold around further applications the way it was stated in the previous version of the Guidance. This would, for example, allow applicants who made a deficient application due to lack of access to proper legal advice to submit a valid application once they are able to access the advice needed to navigate Appendix EU.

3. Other reasonable grounds considered by the Guidance

Within the list of examples given by the current Guidance with regards to those reasonable grounds that would **normally** be accepted, we note a change to the approach given to applications made by **children**.

Specifically, we note that if the application is being submitted by an applicant who has turned 18, there is a requirement for the Home Office caseworker to be satisfied that the applicant is applying *'within a reasonable period. While the time it takes to realise the need to apply will depend on the circumstances of each case, you must be satisfied the delay is reasonable and sufficiently justified. Longer delays may be harder to justify, depending on the circumstances of the case'.*

The previous guidance took a different approach; it considered how '*It may be some months or even years after the deadline has passed before a person who was a child at the time realises - perhaps when they first need to evidence their immigration status in order to work or study in the UK - that an application to the scheme should have been made on their behalf and was not.'*

We fail to understand the change in approach and are interested to find out if any equality assessment was carried out. **In our view, no explanation has been provided for the difference in treatment of applicants in these circumstances and the distinction drawn is not reasonable nor rational.**

We also note that **victims of trafficking or modern slavery** were taken out from this example list. We fail to understand why this is the case and how instances of modern slavery cannot be considered as 'reasonable grounds' for failing to make an application in time.

EEA nationals and their family members who applied and **obtained a residence card under the EEA Regulations, as well as long term residents in the UK,** are not considered in the list of reasonable grounds in the updated Guidance. We fail to understand why this is the case and would be interested to find out if any assessment has been made with regard to this cohort, who may reasonably have been unaware of the need to apply under the Scheme.

This cohort of people was previously considered under the heading of Other compelling practical or compassionate reasons, together with people who might have *'unaware of the requirement to apply to the EU Settlement Scheme by the relevant deadline or they may have failed to make an application by that deadline because for example:*

- *they had no internet access, had limited computer literacy or limited English language skills or had been living overseas.*

Or a person may have been unaware of the requirement to apply to the EU Settlement Scheme by the relevant deadline or they may have failed to make an application by that deadline because for example:

- *of a lack of permanent accommodation which meant that they did not have access to a computer or to the documents required to make an application*
- *they have complex needs and were not aware of the support available to help them apply*
- *they were hampered in accessing the support available to help them apply by restrictions associated with the COVID-19 pandemic*
- *they overlooked the need to apply, or they overlooked the deadline, or they failed to get round to applying by the deadline, in light of their personal circumstances*

- *they have lived in the UK for a significant period of time and having done so did not realise they must still secure status under the EU Settlement Scheme*
- *they need to apply on a paper application form and did not request this from the EU Settlement Resolution Centre until shortly before the relevant deadline'*

We fail to understand why the Home Office has decided to remove this cohort of people from the list of reasonable grounds for late application so abruptly, and without an apparent assessment of the impact it would have on this cohort of people.

No explanation has been provided for the difference in treatment of applicants in these circumstances and the distinction drawn is not reasonable nor is it rational.

As such the Scheme fails to operate in a smooth, transparent and simple manner.

4. Other reasonable grounds not considered by the Guidance

The updated Guidance does add a list of circumstances that **will not generally be considered to satisfy the reasonable grounds to make a late application.**

This is an abrupt shift in their approach and does not seem to be based on a proper assessment of the situation.

We believe that the arguments for changing the Guidance provided by the Home Office (enough time has passed since the application deadline and legal advice has been made available) do not stand. If you are still struggling to access legal advice and to secure your rights under the Scheme, you should be considered as highly vulnerable and as such protected and supported to apply instead of being further hindered.

The following situations are now included in the list outlining circumstances that will **not generally be considered to satisfy the reasonable grounds to make a late application**

- *person unaware of the deadline*
- *failed to apply because of IT skills,*
- *English and computer access;*
- *hampered in accessing the support available to help them apply by restrictions associated with the COVID-19 pandemic;*
- *they overlooked the need to apply before the 30 June 2021 deadline, or*
- *they failed to get round to applying by that deadline, in light of their general personal circumstances, such as work or study commitments.*

In our view, this is not appropriate and not helped by the provision that These will generally no longer be considered reasonable grounds for their delay in making their application to the scheme, u**nless there are very compelling practical or compassionate reasons beyond those** - such as lacking the physical or mental capacity to apply or having significant, ongoing care or support needs - which are already covered by this guidance.

We submit that in line with WA, **all circumstances and reasons for not respecting the deadline must be considered.**

The present system places the burden on the applicant to provide **further** very compelling and practical reasons, beyond for example their lack of IT and English skills, that may have hindered them in making an application under the Scheme.

This does not allow for **all** their circumstances to be properly assessed as that would only happen if they can satisfy a further requirement for further **very** compelling practical or compassionate reasons.

We also note that this approach makes no distinction between EEA nationals and their family members and joining family members, notwithstanding the difference in timeline and deadlines available to these two cohorts.

According to Appendix EU, a JFM needs to apply by the required date of 3 months from their arrival or their birth in the case of children who were born after the end of the transition period. Considering the very short deadline of 3 months and the lack of information provided to potential applicants (e.g. at airports) we would expect that this cohort should be considered differently, and reasonable grounds should exist if for example an applicant argues that they were not aware of the deadline of 3 months to apply, without the need to provide further compelling reasons as indicated in the present Guidance.

The present approach groups all applicants together and fails to properly assess each applicant's circumstances.

5. Assessment at the validity stage

Our understanding is that according to the updated Guidance, an application will be refused as **invalid** if the reasons for the late application are not considered to be reasonable grounds.

An application will be refused without any contact being made with the applicant to remedy their mistakes if:

1. The applicant has not provided **any** substantive information about their delay in making an application.
2. The applicant has provided substantive information which, in line with this guidance, **you do not consider to constitute reasonable grounds for their delay in making their application.**

We have great concerns about the compatibility of this process with the duties of the WA, **specifically with regard to Art. 18 (1) (e) and (o).**

This Article clearly indicates that the Host State must help the applicant avoid errors in their application and give the applicant the opportunity to correct errors and omissions. We submit that this applies to the application process as a whole including the validity stage. We fail to understand how the process outlined above satisfies this requirement.

Furthermore, a certain level of assessment of the grounds is done by the Home Office caseworker at this validity stage, as they will need to assess if the grounds are outside of the guidance provided, or if they 'appear' to constitute reasonable grounds. The issue is that this assessment seems to be done by the Home Office caseworker only not involving any communications with the applicant.

The list of reasonable grounds should be considered as a non-exhaustive list. We have expressed our doubts about this being implemented in practice considering the amendments made to the new Guidance.

Considering the system outlined above, we are concerned that applicants who are relying on reasonable grounds outside of the example list, will be assessed in a way that prevents them from addressing their reasonable grounds properly, especially if there is no communication before a refusal letter is sent.

It is our opinion that the list of reasonable grounds that are recognised in the updated guidance has severely shrunk beyond the protection of the WA. As such, we envisage that the number of applications that will be refused as invalid will increase and impact a higher number of applicants.

Adding this assessment at the validity stage will naturally delay the issue of Certificate of Application. The IMA has previously looked at the delays in obtaining a COA and the issues connected to this. This new step that has been added to the validity assessment, will inevitably impact these delays further.

A lack of a Certificate of Application until an application is validated, will also mean that applicants will not be able to access temporary protection until their application is validated. Art. 18 (3) WA states:

'***Pending a final decision by the competent authorities*** *on any application referred to in paragraph 1, and pending a final judgment handed down in case of judicial redress sought against any rejection of such application by the competent administrative authorities,* ***all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4).'*** (emphasis added)

We have suggested to the IMA that they investigate whether current practices and processes comply with the duties of the WA.

Applications refused at the validity stage will not have a right to appeal or to an administrative review. We note that Art. 18 (1)(r) requires that *'the applicant shall have* ***access to judicial and, where appropriate, administrative redress procedures in the host State against any decision refusing to grant the residence status.'***

We understand this article to necessarily include the totality of a EUSS application, the fact that the refusal happens at the validity stage should not mean that this protection is not afforded.

Furthermore Art. 18 (1)(r) states that *'The redress procedures shall allow for an* ***examination of the legality of the decision, as well as of the facts and circumstances on which the proposed decision is based.*** *Such redress procedures shall ensure that t****he decision is not disproportionate.'***

We have suggested to the IMA that they consider whether a judicial review is an effective remedy in line with art. 18 (1)(r) WA duty to examine facts as well as legality and ensure proportionality is considered.

In many cases, it will be very difficult for vulnerable clients to afford the fees for a judicial review to challenge a refusal at the validity stage.

If an applicant is able to instruct an adviser who can apply for legal aid on behalf of an applicant, the fee may be waived but doing so will be very difficult for a vulnerable applicant, if at all and as a result they will be further disadvantaged and hindered in accessing justice.

We have suggested to the IMA that they explore whether designing a system where judicial reviews are the only remedy may lead to a disproportionate burden on the tribunal, which inevitably leads to further delays. Considering the issue of backlogs present and reported both in EUSS application and EUSS administrative reviews and the impact this has had on applicants' lives, we question if such a system is able to operate the Scheme in a 'smooth, transparent and simple' manner as required by the WA.

Furthermore, it imposes an unnecessary administrative burden (including cost) on applicants who may be able to provide the necessary information directly to a Home Office caseworker if the Guidance is properly construed and if they are contacted to correct their errors and omissions in line with the WA.

2. Changes to prevent illegal entrants to the UK from being able to make a valid, in-country application to the EUSS as a joining family member

We understand EU9 of Appendix EU to have been modified to add '*(f) The applicant, if they rely on being a joining family member of a relevant sponsor and where the date of application is on or after 9 August 2023,* ***is not an illegal entrant.'***

Updated Guidance states:

'For applications under Appendix EU made on or after 9 August 2023, where an applicant relies on being a joining family member of a relevant sponsor, they must not be an illegal entrant. Where they are, you must reject the application as invalid.

An illegal entrant is defined in Appendix EU as having the same meaning as in Section 33(1) of the Immigration Act 1971.

Section 3(1)(a) of the Immigration Act 1971 states that a person who is not a British citizen shall not enter the UK unless given leave to do so in accordance with provisions of, or made under, that Act. Entry without leave is a breach of section 3(1)(a) and therefore constitutes illegal entry as defined by section 33(1) of the Immigration Act 1971.'

1. Illegal entry under EU free movement law

We have asked the IMA for a clarification of their position, and of relevant EU institutions on **the concept of illegal entry within the EU law context.**

It is our understanding that EU law as previously applied in the UK before the end of the transition period did not have such a concept.

This meant that people who didn't have leave under domestic legislation or who may have overstayed, were able to make an application to have their EU rights recognised as these had direct effect. As such, a person who was considered as an overstayer or without domestic leave to remain under domestic law was able – if they satisfied the relevant conditions and exercised a relevant free movement right – to rely on these EU rights as the basis of their residence in the UK.

We are concerned that the introduction of the concept of a domestic concept of illegal entry represents a departure from this and whether this departure is consistent with the WA and general principles of EU law.

2. Illegal entry within the WA

The relevant WA Articles for the situation of joining family members who are entering the UK to join their family member as described by Appendix EU are **Art. 10 (e)(ii), Art. 14, Art. 20 and Art. 18 (1) (m).**

We note that Art. 18 (1)(m) indicates the supporting documents that the host State may require such an applicant to provide. **We note that there is no mention of documents referring to the applicant's immigration history.**

We note that Art 13(4) WA states:

'The host State may not impose any limitations ***or conditions for obtaining****, retaining or losing residence rights on the persons referred to in paragraphs 1, 2 and 3,* ***other than those provided for in this Title.***

There shall be no discretion in applying the limitations and conditions provided for in this Title, ***other than in favour of the person concerned'***

We understand this to mean that the domestic Scheme can only be **more favourable** to individuals covered by the WA and afford additional protection to them, but it cannot add further requirements or limitations to the rights enshrined in the WA.

We have suggested to the IMA that they undertake a close assessment of this issue to understand if the WA, as properly interpreted, allows the domestic residence Scheme to add the present requirement to JFM applications.

3. Illegal entry under domestic law and WA

The updated guidance states that an illegal entrant is an applicant who previously entered or sought to enter the UK either:

• in breach of a deportation order
• in breach of the immigration laws
• by means of deception (this includes deception by another person)

We are particularly interested in the interaction between the WA and the second point above.

Updated guidance considers 'immigration law' in a strictly domestic sense and states:

'An applicant who has entered or sought to enter the UK in breach of the immigration laws ***may include a person who has entered the UK clandestinely or without leave.***

In assessing whether the applicant is in breach of immigration laws, you must note that ***in some circumstances, it is permissible to enter the UK without formal written leave,*** *including:*

• crews of aircraft and vessels granted 'deemed' leave for a short period to leave on another aircraft or vessel
• Australia, Canada, New Zealand, the United States of America, Japan, Singapore and South Korea (B5JSSK) nationals, as well as Irish, ***EU, other EEA and Swiss nationals using e-gates, granted leave to enter verbally by an immigration officer***
• deemed leave for eligible arrivals via the Common Travel Area'

We understand the above to mean that EEA nationals who enter the UK using the e-gates will be considered as entering with valid leave and therefore not be in breach of immigration rules.

We have asked for the IMA's view and position about any potential conflict between this domestic-looking provision and WA rights.

This scenario may be relevant to family members entering the UK exercising a WA right, for example joining family members entering the UK with a certificate of application. Art. 18 (3) WA states that during this time, all rights provided for in this Part (including right to enter and exit at Art. 14 WA) shall be deemed to apply to the applicant.

This can be the case because they either applied under the Scheme from outside the UK or they applied inside the UK and are awaiting a decision.

We note that the Home Office's own guidance on the subject of EEA nationals at borders requires such applicants to have a further document to be able to enter the UK, **but we question if this is the correct approach in line with Art. 10 (e)(ii), Art. 14, Art. 20 and Art. 18 (1) (m) of the WA.**

If the IMA undertakes an enquiry related to this and concludes that a joining family member in such a situation is exercising a WA right, then we submit that this will need to be considered in line with the new requirement of illegal entry that seems to focus on domestic law only.

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