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EU Settlement Scheme application deadline



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Summary

This briefing is for Members and their staff dealing with constituency casework related to the EU Settlement Scheme deadline.

The Home Office's EU Settlement Scheme (EUSS) is open to applications from EU, EEA and Swiss citizens (and their family members) who were resident in the UK before 1 January 2021.

The main EUSS application deadline is 30 June 2021.

The EUSS will remain operational for many years beyond that date. For example, it will continue to receive late applications and applications for settled status made by people initially granted pre-settled status. A few groups of people are eligible to apply to the EUSS later than 30 June, notably people overseas coming to join family members in the UK.

Applying without a valid passport or identity card

To apply to the EUSS, applicants require proof of their identity and nationality – typically, an unexpired passport or national identity card.

Some people have had difficulties during the Covid-19 pandemic obtaining or renewing identity documents from their national authorities and are concerned that this will affect their ability to apply to the EUSS before the deadline.

Some countries have extended the validity period of their documents. An individual might be able to use such a document in support of their EUSS application.

Furthermore, the Home Office can accept alternative proof of identity and nationality “where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or due to compelling or compassionate reasons.”

People wishing to rely on alternative evidence must contact the Home Office's EUSS Resolution Centre in the first instance.

Rights of people whose applications have not been decided by 30 June

People who have made a valid application which remains outstanding on or after 1 July will have their status and rights protected until they receive a final decision. They can use their Certificate of Application to demonstrate their status and entitlements after 30 June.

The Home Office says that employers and landlords should give people “every opportunity” to demonstrate their ongoing eligibility to work and rent whilst their application is under consideration and be mindful of avoiding unlawful discrimination.

Home Office guidance on accepting late applications

Anyone who is eligible under the EUSS can make a late application if there are reasonable grounds for their failure to apply sooner. But they will be unlawfully resident in the UK for as long as they do not have a status under the EUSS or other part of the immigration rules.

The Home Office’s caseworker guidance provides some non-exhaustive examples of scenarios that will normally constitute reasonable grounds for missing the deadline. Examples include applications made on behalf of children, people with physical or mental capacity and/or care or support needs, people with serious medical conditions, and people in abusive or controlling relationships or situations; and where there are other compelling practical or compassionate circumstances for missing the deadline. The guidance also gives some examples of circumstances when being unaware of the need to apply could be accepted as reasonable grounds.

Caseworkers are instructed to take a “flexible and pragmatic approach” and to give applicants the benefit of any doubt, for the time being.

Consequences of missing the application deadline

From 1 July, eligible people who haven’t applied to the EUSS, and people who have an outstanding late application under consideration, will not have a lawful immigration status in the UK. This will have significant implications for their entitlements in the UK. They will be affected by the compliant/hostile environment policies directed at people without immigration permission (e.g. no right to work, rent, access welfare benefits, have a bank account or driving licence).

There is some uncertainty about how authorities will respond to cases involving people who haven’t applied to the EUSS from 1 July in practice.

The Home Office has said that if Immigration Enforcement staff encounter people potentially within the scope of the EUSS, they will give them a 28-day opportunity to apply and not normally take any enforcement action during that period. The guidance does not specify what the approach will be towards people who are refused status or fail to apply to the EUSS.

Similarly the Home Office has not yet confirmed its guidance to employers and landlords about what their legal responsibilities will be in respect of people who haven’t applied to the EUSS. However, the current guidance is clear that employers and landlords will not need to conduct retrospective checks on whether an existing employee/tenant has obtained EUSS status.

1 The EU Settlement Scheme: a quick recap

1.1 Background

The Home Office's [EU Settlement Scheme \(EUSS\)](#) is open to applications from EU, EEA and Swiss citizens and their family members (hereafter collectively referred to as 'EEA citizens'). The EUSS opened to applications in March 2019. The main application deadline is 30 June 2021.¹

The EUSS implements the citizens' rights provisions of the UK-EU Withdrawal Agreement and the similar agreements with EEA countries and Switzerland.²

It grants UK immigration status to EEA citizens and their families who have been living in the UK under EU free movement law. EEA citizens must have been resident in the UK prior to the end of the transition period (11pm on 31 December 2020) to be eligible for status under the EUSS, with some exceptions.

The scheme should grant applicants either settled or pre-settled status. In accordance with Article 15 of the Withdrawal Agreement, EU citizens who have 5 years continuous residence in the UK 'shall have the right to reside permanently'. This right is granted by the UK in the form of 'settled status' (i.e. permanent permission to remain). EEA citizens who have yet to accrue 5 years continuous residence are eligible for 'pre-settled status'. Pre-settled status allows the holder to remain in the UK for a further 5 years from the date granted. This provides the necessary time for applicants to become eligible for settled status.

Holders of pre-settled status can then switch to settled status by submitting another application to the EUSS if they meet the eligibility requirements.

Statistics on the EUSS are published monthly and quarterly in the Home Office's [EU Settlement Scheme statistics](#).

As of the end of March 2021, around 4.65 million people had applied to the EUSS. This is not the latest count of total applications, but it is the latest snapshot that shows the number of unique individuals who have applied.

¹ [Citizens' Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#), SI 2020/1209, Reg 2

² [UK-EEA Separation Agreement](#) and the [Swiss Citizens' Rights Agreement](#)

Around 320,000 of these applications were from non-EU/EEA applicants who are family members of EU/EEA nationals.

As of 30 April 2021 (the latest figure currently available) there had been 2.68 million grants of settled status under the scheme. In addition, there had been around 2.23 million grants of pre-settled status, although there is some overlap between this figure and grants of settled status, since people can ‘upgrade’ to settled status once they reach 5 years of continuous residence.

Out of all applications concluded as of 30 April 2021, 97% had resulted in the granting of either pre-settled or settled status. One per cent had been ‘refused’, 1% were ‘withdrawn or void’, and 1% were ‘invalid’.

Commons Library briefing [EU Settlement Scheme](#) (February 2020) provides a more detailed overview of the scheme.

The ‘grace period’

The 30 June 2021 EUSS application deadline is in line with a requirement in the UK-EU Withdrawal Agreement to give people an additional six month “grace period” to apply to the EUSS after the end of the transition period (11pm on 31 December 2020).

Consequently, during the Brexit transition period (February – end December 2020), and for the first six months of 2021, EEA citizens and their family members could continue to rely on their rights of residence under EU law, even if they were yet to apply for EUSS status.³ But this will no longer be the case from 1 July. EU free movement of people laws no longer apply in the UK, and the grace period ends on 30 June 2021.

1.2

Who needs to apply?

Details of who should apply to the EUSS are summarised on GOV.UK’s [Apply to the EU Settlement Scheme \(settled and pre-settled status\)](#) page:

Who should apply

Except in a few cases, you need to apply if:

- you’re an EU, EEA or Swiss citizen
- you’re [not an EU, EEA or Swiss citizen](#), but your family member is (or is an eligible person of Northern Ireland)

³ [Citizens’ Rights \(Application Deadline and Temporary Protection\) \(EU Exit\) Regulations 2020](#), SI 2020/1209

(...)

This means you need to apply even if you:

- were born in the UK but are not a British citizen ...
- [have a UK 'permanent residence document'](#)
- are a family member of an EU, EEA or Swiss citizen who does not need to apply - including if they're from Ireland
- are an EU, EEA or Swiss citizen with a British citizen family member

If you have children, you [need to apply for them separately](#).

If you're an EU, EEA or Swiss citizen and you have a family member who is an eligible person of Northern Ireland, [you may be able to choose which way you apply](#).

Who else can apply

You can [apply to join your EU, EEA or Swiss family member](#) if they started living in the UK by 31 December 2020. You can either:

- apply from outside the UK, if you have a certain type of passport, identity card or residence document
- come to the UK on an [EU Settlement Scheme family permit](#) and apply to the settlement scheme once you're here

You cannot apply to the EU settlement scheme from inside the UK if you arrived after 31 December 2020 and you're here:

- on a Standard Visitor visa, Permitted Paid Engagement visa, Parent of a Child Student visa or Transit visa
- without a visa, for example if you came through an e-passport gate

You also cannot apply if you're here on a Marriage Visitor visa, unless you're applying after you have married or entered into a civil partnership with the EU, EEA or Swiss person you're joining.

Irish citizens do not need to apply to the settlement scheme. If they choose to, they can apply from within the UK regardless of how they entered.

If you're not an EU, EEA or Swiss citizen

You also may be able to apply if:

- you used to have an EU, EEA or Swiss family member living in the UK (but you've separated, they've died or the family relationship has broken down)
- you're the family member of a British citizen and you lived outside the UK in an EEA country together
- you're the family member of a British citizen who also has EU, EEA or Swiss citizenship and who lived in the UK as an EU, EEA or Swiss citizen before getting British citizenship
- you have [a family member who is an eligible person of Northern Ireland](#)
- you're the primary carer of a British, EU, EEA or Swiss citizen
- you're the child of an EU, EEA or Swiss citizen who used to live and work in the UK, or the child's primary carer
- you're the [family member of a 'frontier worker'](#)

Different application processes and deadlines apply to some of these groups.

The guidance goes on to outline groups that do not need to apply to the EUSS (but may do so if they wish, for example in order to have an up to date proof of immigration status):

Who does not need to apply

You do not need to apply if you have:

- [indefinite leave to enter the UK](#)
- [indefinite leave to remain in the UK](#)
- Irish citizenship (including British and Irish 'dual citizenship')

(...)

If you're an EU, EEA or Swiss citizen and you moved to the UK before it joined the EU

You only need to apply if you do not have [indefinite leave to remain](#). If you do have indefinite leave to remain, you'll usually have a stamp in your passport or a letter from the Home Office saying this.

If you work in the UK but do not live here ('frontier worker')

You do not need to apply to the EU Settlement Scheme if you're a 'frontier worker' or have a [Frontier Worker permit](#).

British citizens and people exempt from immigration control (e.g. foreign diplomats) cannot apply to the EUSS. But people who later cease to be exempt from immigration control can then apply to the EUSS.

1.3

Applying without a valid passport/ID card

The [‘What you’ll need to apply’](#) page on GOV.UK provides an overview of what evidence people need to provide in support of their application.

Amongst other things, it states that EEA citizens need a valid (i.e. unexpired) passport or national identity card as proof of their identity. Non-EEA citizens are asked to provide either a valid passport, valid biometric residence permit or valid biometric residence card.

Some people have had difficulties during the Covid-19 pandemic obtaining or renewing identity documents from their national authorities and are concerned that this will affect their ability to apply to the EUSS before the deadline.

As detailed in Home Office caseworker guidance, some countries have extended the validity period of their documents. Where this is the case an individual may be able to use such a document in support of their EUSS application.⁴

The Home Office can also accept alternative proof of identity and nationality “where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or due to compelling or compassionate reasons.”⁵

People are instructed to contact the Home Office’s EU Settlement Resolution Centre if they don’t have any of the specified types of supporting document. They may need to apply by paper application form.

The Home Office’s guidance for caseworkers provides more detailed information about the scope to accept alternative evidence of identity or nationality. It includes non-exhaustive lists of the types of circumstances in which alternative evidence might be allowed and examples of other supporting evidence which might be accepted.⁶

⁴ Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v.12.0, 21 May 2021, p.46-50

⁵ Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v.12.0, 21 May 2021, p.46

⁶ Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v.12.0, 21 May 2021, p.54-59

1.4

Casework enquiries: useful sources to signpost constituents to

Sources of practical information and advice about EUSS eligibility and application requirements include:

- GOV.UK, [Apply to the EU Settlement Scheme \(settled and pre-settled status\)](#)
- Citizens Advice, [Staying in the UK after Brexit](#)
- Mayor of London, [European Londoners Hub](#) (information relevant to EU citizens across the UK)
- GOV.UK, [Get help applying to the EU Settlement Scheme.](#) See also [list of organisations](#) in receipt of Home Office funding to provide EUSS advice.
- [Settled](#) (a charity providing free information, advice and support in different languages to people eligible under the EUSS)
- [Here for Good](#) (a charity providing free immigration advice to EEA nationals and family members living in the UK)
- [The 3 million](#) (a campaign organisation representing EU citizens in the UK; see resources on the ‘help’ section of its website)
- Free Movement blog, [‘Six very frequently asked questions about the EU Settlement Scheme’](#), 4 February 2021

The immigration rules for the EUSS are set out in [Appendix EU](#), [Appendix EU \(Family Permit\)](#) and [Appendix AR \(EU\)](#). A [collection of detailed Home Office guidance](#) for caseworkers considering EUSS applications and [EUSS family and travel permits](#) is also available online.

2 The application deadlines

Most people eligible to apply to the EUSS need to apply by 30 June 2021.

Different deadlines apply in certain scenarios (discussed in section 2.2 below).

Anyone who is eligible under the EUSS can make a late application after the applicable deadline, where there are reasonable grounds for their failure to apply sooner (discussed in section 3 of this briefing). But people who miss the deadline – including those who have reasonable grounds for doing so – will be unlawfully resident in the UK for as long as they do not have a status under the EUSS or other part of the immigration rules. Their lack of lawful immigration status will significantly curtail their rights and entitlements in the UK unless and until they are granted a new immigration status.

2.1 Who needs to apply by 30 June 2021?

Anyone had rights of residence in the UK under EU law before the end of the Brexit transition period (11pm on 31 December 2020) must apply to the EUSS by 30 June 2021.

2.2 Groups subject to different deadlines

Whilst 30 June 2021 is the main application deadline that will apply in most cases, there are some different EUSS application deadlines for certain circumstances. Put very briefly:

Joining family members who arrived on or after 1 April 2021

There are [different deadlines and application processes](#), depending on the nature of the relationship to the sponsor (e.g. for children born or adopted in the UK on or after 1 April 2021; for spouse/civil partners of Swiss citizens; for close family members of EEA citizens).

Family members of British citizens exercising free movement rights ('Surinder Singh' cases)

The EUSS is open to close family members of British citizens currently living in Europe up until 29 March 2022.

Specifically, EU and non-EU close family members of British citizens who were living in an EU/EEA state or Switzerland on 31 January 2020 (and still are) can return to the UK by applying to the EUSS up until 29 March 2022. The non-British family member must first [apply for an EUSS family permit](#) to enter the UK, and then apply to the EUSS after-entry for pre-settled status.

Pre-settled status holders applying for settled status

A person living in the UK with pre-settled status must apply for settled status (or another category of immigration permission) before their pre-settled status expires to avoid becoming an immigration overstayer.

The date at which a person becomes eligible to apply for settled status will be specific to the individual. People who have pre-settled status can apply for settled status when they have accrued five years' continuous residence in the UK or at the end of the five-year period.

People who cease being exempt from immigration control on or after 1 July 2021

Some EU citizens and family members (e.g. diplomats) remain exempt from immigration control as at 30 June 2021 and so cannot apply to the EUSS.

If they cease to be exempt from immigration control on or after 1 July 2021 they must apply to the EUSS within 90 days of the day they ceased to be exempt.⁷

People who have limited leave granted under another part of the Immigration Rules (or outside of the rules)

People granted limited leave outside of the EUSS which expires on or after 1 July 2021 must apply to the EUSS before expiry of that leave.⁸ People who apply before their immigration permission expires will have their previous immigration status and entitlements extended whilst their EUSS application is being decided – i.e. they will be considered to be in the UK lawfully, and subject to the same rights and conditions as their previous leave.

2.3

Government efforts to publicise the 30 June deadline

The Home Office, HMRC and DWP have recently been contacting EEA citizens in receipt of welfare benefits to remind them to apply to the EUSS if they have not already done so. Some letters have reportedly been erroneously sent to

⁷ The person will be deemed to have reasonable grounds for applying late, provided they apply within 90 days.

⁸ A person who applies before the limited leave expires will be deemed to have reasonable grounds for applying late.

some British citizens and people who already have an EUSS status. The Government's response is that:

In trying to reach as many people as possible, there may be a small number of instances where these letters are sent to recipients who are naturalised as a British citizen. The letter may also be received by a small number of individuals who have already applied to the EUSS, for example because they applied after the initial exercise with DWP or HMRC was completed, but before the letter was sent out. The letter makes clear anyone who is a British citizen or already has EUSS status does not need to take any action.⁹

A recent answer to a PQ gave an overview of other [action being taken across government departments to promote awareness of the 30 June deadline amongst hard to reach communities](#).¹⁰

Similar recent PQs have focused on efforts to target specific groups, including [social care workers](#), [care home operators](#) (in respect of residents), the [Roma community](#), and [local authorities](#) (in respect of children in care).

⁹ [UIN HL374](#), answered on 2 June 2021

¹⁰ [UIN 6289](#), answered on 27 May 2021

3 Home Office guidance on accepting late applications

The UK-EU Withdrawal Agreement specifies that people who miss the application deadline must be allowed, indefinitely, to submit a late application “within a reasonable further period if there are reasonable grounds for the failure to respect the deadline”.¹¹

The Home Office’s EUSS caseworker guidance provides an overview of how caseworkers should handle late applications.¹² The guidance is not only relevant to the 30 June deadline. Rather, it applies to all deadlines relevant in individual cases (e.g. if a person fails to apply for settled status when their pre-settled status expires).

The guidance instructs Home Office caseworkers to take a “flexible and pragmatic approach” to considering whether there are reasonable grounds for applying late. This is in line with the general approach to EUSS casework of looking to grant status rather than for reasons to refuse. It states that the relevant test to apply to late applications is whether there are “reasonable grounds” for the person’s failure to meet the deadline applicable to them:

In general, the more time which has elapsed since the deadline applicable to the person under the scheme, the harder it will be for them to satisfy you that, at the date of application, there are reasonable grounds for their failure to meet that deadline. However, there will be exceptions to this, such as where a person establishes, when they first apply to work or study in the UK, that an application to the scheme was not made on their behalf years earlier when they were a child by a parent, guardian or Local Authority.¹³

Caseworkers are instructed to give applicants the benefit of any doubt “for the time being, following 30 June 2021”, but the guidance signals that this approach might change over time:

For the time being, following 30 June 2021, you will give applicants the benefit of any doubt in considering whether ... there are reasonable grounds for their failure to meet the deadline applicable to them, unless this would not be reasonable in light of the particular

¹¹ [UK-EU Withdrawal Agreement](#), 19 October 2019, Article 18(1)(d)

¹² Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v12.0, 21 May 2021, p.26-44

¹³ Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v12.0, 21 May 2021, p.28

circumstances of the case. Any change in approach will be reflected in a revision of this guidance.

Late applicants must apply to the EUSS in the usual way (online or on a paper application form) and include an explanation of their grounds for missing the application date. Home Office caseworkers are instructed to give people a “reasonable opportunity” to submit further information and to “exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens.”¹⁴

Examples of reasonable grounds

The Home Office guidance emphasises that “every case must be considered in light of its particular circumstances”.

It includes a non-exhaustive list of scenarios that it says will normally constitute reasonable grounds for a late application and examples of the type of evidence that may be used to substantiate a late application. It doesn’t give examples of scenarios that will not normally constitute reasonable grounds for a late application.

The examples provided apply in respect of:

- **Children (including children in care and care leavers)**

The guidance says that a failure by a parent, guardian or local authority to apply to the EUSS by the relevant deadline on behalf of a child under the age of 18 will normally constitute reasonable grounds for the child to make a late application to the scheme (including where the child is now an adult).

- **People with physical or mental capacity and/or care or support needs**

The guidance says that lacking the physical or mental capacity to apply to the EU Settlement Scheme or having care or support needs will normally constitute reasonable grounds for the person to make a late application to the scheme or for an appropriate third party to apply to the scheme on their behalf.

This scenario may also cover adults with broader care or support needs, such as people with long-term physical or mental health needs or a disability residing in a residential care home or receiving support services in their own home.

- **People with serious medical conditions or receiving significant medical treatment**

The guidance says where a person had a serious medical condition (or was undergoing significant medical treatment) in the run-up to the

¹⁴ Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v12.0, 21 May 2021, p.29

application deadline, that will normally constitute reasonable grounds for the person to make a late application.

This could include an illness or accident which meant that the person was hospitalised or bedbound, or unable to perform day-to-day tasks. Pregnancy or maternity may be a reason for a late application, such as in the event of a difficult childbirth or a new-born requiring medical treatment.

- **Victim of modern slavery**

The guidance says where a person was prevented from applying to the EUSS before the deadline applicable to them because they may be a victim of modern slavery (which includes trafficking), that will normally constitute reasonable grounds for the person to make a late application to the scheme.

- **People in an abusive or controlling relationship or situation**

The guidance says where a person was prevented from applying before the deadline applicable to them because they are or were a victim of domestic violence or abuse (or the family member of such a victim), or are or were otherwise in a controlling relationship or situation which prevented them from applying, that will normally constitute reasonable grounds for the person to make a late application to the scheme.

Caseworkers are instructed that the nature of the abusive/controlling relationship or situation may take one of several forms, and to take a flexible and pragmatic approach in considering each case in light of its particular circumstances

- **Other compelling practical or compassionate reasons**

The guidance notes that there may be other compelling practical or compassionate reasons for missing the application deadline which constitute reasonable grounds for a late application.

It provides some specific examples:

- Where a person was unaware of the requirement to apply or missed the deadline because they had no internet access, had limited computer literacy or limited English language skills, or had been living overseas.

- Where a person was unaware of the requirement to apply or missed the deadline because

- a) of a lack of permanent accommodation,
- b) they have complex needs and were not aware of the support available to help them apply
- c) they were hampered in accessing the support available to help them apply by restrictions associated with the COVID-19 pandemic,

- d) 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
- e) they have lived in the UK for a significant period of time and did not realise they must still secure status under the EU Settlement Scheme
- f) 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

- A person was were unable, for practical or compassionate reasons, to obtain the evidence of identity and nationality or residence required to make an application (including where a person was unaware of the scope to rely on alternative evidence or was hampered by the impact of Covid-19 restrictions).

- A person was released from prison after the deadline and lacked access to immigration advice or had reduced access to relevant documents to make an application in prison or were waiting for a decision on whether they would be deported.

- **People exempt from immigration control**

The guidance says that where an EEA citizen or family member resident in the UK by the end of the transition period person doesn't cease to be exempt from immigration control until after 30 June 2021 (e.g. because they work for a diplomatic mission), they have reasonable grounds to make a late application.

- **People with existing limited leave**

The guidance says an EEA citizen or family member resident in the UK by the end of the transition period who has temporary leave to remain (under another part of the immigration rules) which expires after 30 June 2021 can apply to the EUSS after that leave expires.

- **People with existing indefinite leave to remain**

The guidance says an EEA citizen or family member resident in the UK by the end of the transition period who has indefinite leave can make a late application to the EUSS where they have reasonable grounds (e.g. because they were not aware that they were eligible to apply).

- **People with a document or status issued under the EEA Regulations**

The guidance says people who have residence documents issued under the EEA regulations with validity dates beyond 30 June 2021 can make a late application to the EUSS where there are reasonable grounds (e.g. because they were not aware that they can no longer rely on those residence rights and needed to apply to the EUSS).

4 Practical consequences of not having an EUSS status

4.1 People who apply but don't receive a decision by 30 June

People who make a valid application to the EUSS but do not receive a decision before 30 June 2021 are deemed to have the rights provided by the citizens' rights part of the Withdrawal Agreement until the application (and any appeal against refusal) is determined.¹⁵

This has been emphasised in answers to recent PQs:

Someone who applies by 30 June 2021 and has not yet been granted status under the EUSS can continue to live their life in the UK as now, until their application is finally determined.¹⁶

The Government has said that employers and landlords should give people “every opportunity” to demonstrate their ongoing eligibility to work and rent whilst their application is under consideration and be mindful of avoiding unlawful discrimination.¹⁷

The Withdrawal Agreement requires that people who apply to the EUSS be issued with a Certificate of Application immediately.¹⁸ Ministers have confirmed that applicants' Certificates of Application can be used as proof of their status and entitlements beyond 30 June.¹⁹

There are reports that some applicants are experiencing significant delays (of over two months) in receiving Certificates of Application. Campaigners have asked the Home Office to confirm what rights people in this situation will have after 30 June and how they will be able to evidence them.²⁰

¹⁵ Article 18(3); there are similar provisions in the EEA EFTA Separation Agreement and Swiss Citizens' Rights Agreement.

¹⁶ [UIN182056](#), answered on 21 April 2021

¹⁷ [UIN182056](#), answered on 21 April 2021

¹⁸ [UK-EU Withdrawal Agreement](#), Article 18(1)(b)

¹⁹ [UIN 1300](#), answered on 20 May 2021; [UIN182056](#), answered on 21 April 2021

²⁰ The 3 million, [Letter to the Home Office](#), 30 April 2021

4.2

Late applicants and people who don't apply

From 1 July, eligible people who haven't applied to the EUSS, and people who have an outstanding late application under consideration, will not have a lawful immigration status in the UK.

As a consequence, they would be subject to the suite of compliant/hostile environment policies which are intended to encourage people without immigration permission to leave the UK (e.g. no right to work, rent, access welfare benefits, have a bank account or driving licence).

People who don't have a lawful immigration status are potentially liable to an enforced removal if encountered by immigration authorities.

People who submit a late application

The Home Office has confirmed that people who apply late and are granted status under the scheme “will enjoy the same rights from the time they are granted status as someone who applied to the scheme before the deadline.”²¹ But as indicated above, until their EUSS application (and any appeal) is determined, they will not have a lawful UK immigration status. This could pose significant practical problems in the meantime, particularly if there is a delay in processing the EUSS application.

Information on GOV.UK states that the expected processing time for complete applications (where no further information is required) is around 5 working days but could be up to a month. The Home Office has said that certain types of application are likely to take longer than a month to process. This includes applications from minors not linked to an adult's application; paper applications; applications from people with a relevant criminal record; and certain applications from non-EEA citizens.²²

Having a break in continuous lawful residence would also have implications for the ability to satisfy the requirements for naturalisation as a British citizen.

At the time of writing, some uncertainty remains over how, in practice, different government agencies and departments will handle cases involving people who don't apply and late applicants. Updated government guidance on the approach to take after 30 June has not yet been published for some policy areas. The following sections consider specific rights and entitlements in greater detail.

²¹ Home Affairs Committee, [Letter from Home Secretary EU Settlement Scheme](#), 14 April 2020, q12,

²² GOV.UK, Guidance, [EU Settlement Scheme: current estimated processing times for applications](#), 22 May 2020

4.3

Immigration checks

Liability to immigration enforcement action

Home Office guidance on the EUSS states that from 1 July, where Immigration Enforcement staff encounter people who appear to fall within the scope of the EUSS, they will serve them with a written notice giving them a 28-day opportunity to apply to the EUSS.²³ If the person applies to the EUSS, Home Office caseworkers would then consider whether they have reasonable grounds for making a late application.

The guidance states that “no immigration enforcement action for being in the UK without leave will normally be taken” during the 28-day period. It does not specify what the approach will be towards people who are refused status or fail to apply to the EUSS.

At the time of writing, the Home Office has not published more detailed guidance on how Immigration Enforcement will approach cases involving EU, EEA, Swiss citizens and their families after 30 June.

Checks at UK border

The Home Office has said that from summer 2021 “all Border Force staff will have the ability, if required, to check ... whether an individual has applied for or been granted status under the EU Settlement Scheme”²⁴ It isn’t entirely clear what approach Border Force will take towards people returning from 1 July who do not appear to have applied to the EUSS.

There is some [brief guidance on GOV.UK](#) relevant to non-EEA citizens who have a UK residence card (also known as a EEA biometric residence card) but do not have status under the EUSS. It states:

If you do not have EU settled or pre-settled status your card will be valid until 30 June 2021.

After 30 June 2021, you’ll be able to use your card only once to travel to and enter the UK. To remain in the UK you’ll need to [apply to the EU Settlement Scheme](#) within 28 days.

The guidance doesn’t cater for people seeking entry to the UK whilst their EUSS application is under consideration.

²³ Home Office, [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), v12.0, 21 May 2021, p.30

²⁴ Home Office, [New plan for immigration: legal migration and border control strategy statement](#), CP 441, 24 May 2021, para 48

5 In detail: Welfare benefits eligibility

5.1 The general situation

For all EEA nationals in the UK before 1 January 2021, entitlement to Child Benefit and means-tested benefits, including Universal Credit, depended on them satisfying the ‘right to reside’ requirement.

The United Kingdom’s Withdrawal Agreement with the EU – given effect in the UK by Part 3 of the [European Union \(Withdrawal Agreement\) Act 2020](#) – sets out a framework for the continued legal residence (and associated rights, including social security and healthcare) of EEA citizens living in the UK, and UK nationals living in the EU, at the end of the transition period (the ‘protected cohort’). Individuals will be able to rely on the Withdrawal Agreement directly to assert their rights.

The UK implemented the continuous residence rights for EEA citizens and their families through the introduction of the [EU Settlement Scheme](#) (EUSS). EEA nationals who have been in the UK for five years who are granted settled status under the Government’s EUSS automatically satisfy the ‘right to reside’ requirement for benefits, including Universal Credit (the requirement necessary under pre-Brexit and transition period rules).

EEA nationals living in the UK at 31 December 2021, but who have not yet been in the UK for five years, can apply for pre-settled status, although with this status they must demonstrate that they satisfy the ‘right to reside’ requirement in order to qualify for benefits such as UC, until they have been in the UK for five years, when they can apply for settled status. For most of the benefits, the requirement was part of the Habitual Residence Test.²⁵

Newly arriving EEA nationals in the UK from 1 January 2021 (except Irish citizens, who remain entitled to benefits on the same basis as UK citizens) will, for benefits purposes, be subject to the same rules as non-EEA migrants. This means that, notwithstanding the Social Security Coordination Protocol to the UK-EU Trade and Cooperation Agreement, new EEA migrants will be prevented from claiming most non-contributory working-age benefits, including Universal Credit (UC). This will usually be the case unless and until they are granted indefinite leave to remain by the Home Office.

²⁵ See section 4 of [Commons Library Research Briefing SN06847, What UK benefits can people from abroad claim?, 17 June 2015](#).

If they wish to avoid being treated in the same way as EEA nationals arriving from 1 January 2021, EEA migrants who arrived before that and who have not yet done so have a “grace period” until 30 June 2021 to make an application under the EUSS. The starting position is that from 1 July 2021, EEA and Swiss citizens and their family members will need a qualifying immigration status to access non-contributory benefits in the UK.²⁶

5.2 People who do not yet have settled or pre-settled status

EEA citizens who arrived in the UK on or before 31 December 2020 but do not yet have settled or pre-settled status, will face different situations with respect to benefits depending on whether they apply under the EUSS by 30 June or not.

Existing benefits claimants with an outstanding EUSS application

People who are currently in receipt of benefits who have an outstanding EUSS application under consideration will be able to continue to receive their benefits for as long as they satisfy the eligibility criteria.²⁷ This will continue until the application is “finally determined”, which may include exhausting any rights of appeal the person has.²⁸

Existing benefits claimants who don't apply to the EUSS in time

Though some people may be able to make a late application (see section 3), a recent guide for DWP decision makers explains that:

Anyone who submits their EUSS application after the end of the grace period, becomes an unlawful resident in the UK until that application is decided.²⁹

This would mean that they would not be entitled to any non-contributory benefits.

²⁶ EU citizens who apply for and obtain an immigration status under a different part of the immigration rules (rather than under the EUSS) have different eligibilities for welfare benefits.

²⁷ [PQ HI 271 \[Social Security Benefits: EEA Nationals\], 24 May 2021.](#)

²⁸ DWP, [ADM Memo 30/20: Right to reside – the citizens' rights \(application deadline and temporary protection\) \(EU exit\) regulations 2020 – UC](#), updated 3 June 2021, paragraphs 12-13

²⁹ DWP, [ADM memo 34/20: Right to reside – European Union \(Withdrawal Agreement\) Act 2020 – UC](#), updated 3 June 2021, paragraph 17

Throughout May 2021 the DWP and HMRC proactively contacted people in receipt of benefits that they believed may need to apply to the EUSS to alert them to the need to apply before 30 June 2021.³⁰

As yet, the mechanics of what will happen to existing claims after 30 June if someone does not apply to the EUSS are unclear. Specifically, it is not known whether claimants will automatically see benefit payments stop from 1 July. From a claimant's point of view, there are possible negative consequences both to having benefit claims stopped, and to being in receipt of benefits to which they are not entitled.

People who obtain another UK immigration status

EEA citizens arriving from 1 January 2021 and those who arrived before but do not attain settled or pre-settled status may obtain another UK immigration status. EEA citizens who apply for and obtain an immigration status under a different part of the immigration rules (rather than under the EUSS) will have different eligibilities for welfare benefits.

If they do get a visa, they will not have the EUSS rights outlined in the Withdrawal Agreement and would be treated for benefit purposes in the same way as an EEA citizen arriving from 1 January 2021. In summary, they are likely to have limited leave to remain and will be subject to the condition that they have “no recourse to public funds” (NRPF) during their stay in the UK.³¹

Separately, they will likely be deemed “persons subject to immigration control” (PSIC) under [section 155](#) of the Immigration and Asylum Act 1999, and will not be entitled to a wide range of means tested and other benefits, unless and until they are given indefinite leave to remain. This includes a wide range of non-contributory benefits such as Universal Credit, legacy benefits and extra-costs disability benefits, and Pension Credit.

³⁰ Rightsnet, [DWP and HMRC to issue letters to people they believe may need to apply to the European Union Settlement Scheme](#), 13 May 2021

³¹ See Home Office, [Public Funds guidance](#), 17 March 2021

6 In detail: Social housing and private renting

6.1 Social housing and homelessness assistance eligibilities

A recent PQ confirms that people who miss the 30 June 2021 deadline to apply to the EUSS and do not have another UK immigration status “will be considered a person subject to immigration control and will not be eligible for an allocation of social housing or homelessness assistance. They will need to resolve their immigration status.”³²

6.2 Right to rent and landlords’ statutory responsibilities

Private sector landlords have statutory responsibilities to check their tenants’ immigration status gives them a ‘right to rent’.³³

Adults are disqualified from renting in the private rented sector if they do not have temporary or permanent permission to remain in the UK, or if they have a right to remain but are barred from renting property as a condition of their immigration status.

Under section 23 of the Immigration Act 2014, as amended, a landlord may be issued with a penalty notice of up to £3,000 for neglecting their duties outlined above.

There are two scenarios where this can happen:

- Where at the time a tenancy agreement is entered into, a tenant is disqualified as a result of their immigration status (referred to as pre-grant contravention).
- Where a tenancy agreement is entered into with an adult with a limited right to rent and they continue to occupy the premises after they become

³² [UIN514](#), answered on 19 May 2021

³³ Immigration Act 2014 (as amended)

disqualified as a result of their immigration status (referred to as post-grant contravention).

As explained in the Home Office's Code of Practice, a landlord should be exempt from a penalty for a pre-grant contravention if they have carried out their checks properly and on time.

Under section 33A(1) of the amended Immigration Act 2014, landlords can face criminal charges for knowingly allowing a tenant without a right to rent to occupy their premises. It is, however, a defence for a landlord to prove that within a reasonable time of finding out about the contravention they took "reasonable steps to terminate the tenancy agreement".

Home Office guidance to landlords, homeowners and letting agents on how to carry out right to rent checks and avoid civil penalties is available from GOV.UK: [Landlords: immigration right to rent checks - GOV.UK](#).

Commons Library Briefing 7025, [Right to Rent: private landlords' duty to carry out immigration status checks](#), August 2019, provides a more detailed overview of the right to rent scheme.

Right to rent checks until 30 June 2021

Home Office guidance to landlords confirms that there is no change to the way that EEA citizens can evidence their right to rent before the end of the grace period on 30 June 2021:

EEA and Swiss Citizens can continue to use their passport and national identity cards to evidence their right to rent until 30 June 2021, or if they have status under the EU Settlement Scheme or status under the points-based immigration system they can choose to evidence their right to rent using the Home Office online service. You cannot insist that they use the online service or discriminate against those who wish to use their passport or national identity card.³⁴

Right to rent checks from 1 July 2021

The Home Office has not yet published new guidance on how to conduct right to rent checks on EEA citizens after 30 June 2021.

It has advised that there is no need for landlords to conduct retrospective right to rent checks on people who entered into a tenancy agreement on or before 30 June 2021. Landlords will have a continuous statutory excuse against a penalty if they had conducted initial checks in line with the Home Office guidance:

There is no requirement for a retrospective check to be undertaken on EEA or Swiss Citizens who entered into a tenancy agreement on or

³⁴ Home Office, [Landlord's guide to right to rent checks](#), v3, 30 December 2020, p43

before 30 June 2021. You will maintain a continuous statutory excuse against a penalty if the initial checks were undertaken in line with this guidance. Irish citizens will continue to have the right to rent and prove their right to rent as they do now, for example using their passport. New guidance on how to conduct right to rent checks on EEA and Swiss nationals after 30 June 2021 will be provided in advance of this date.³⁵

People who fail to apply to the EUSS by 30 June

Recent PQs have asked what the position will be for EEA citizens who fail to apply to the EUSS by 30 June in terms of their right to rent, and whether landlords will be obliged to refuse to rent a property to an EU citizen in the event that they are unable to demonstrate proof of their status and have not applied to the EU Settlement Scheme.³⁶

The Home Office's responses simply referred to the scope for EU citizens who have reasonable grounds for missing the deadline to make a late application to the EUSS.

³⁵ Home Office, [Landlord's guide to right to rent checks](#), v3, 30 December 2020, p43

³⁶ UIN HL272, answered on 2 June 2021; [UIN 513](#), answered on 19 May 2021

7 In detail: Right to work and employer's legal obligations

Some employers are concerned about what legal obligations and liabilities might apply to them and their EEA employees if an employee fails to obtain status under the immigration rules by 30 June.

There are three main rules that are relevant in this context.

- First, an employer who employs someone who does not have the right to work in the UK can be issued a civil penalty of up to £20,000 per illegal worker.³⁷ An employer has a defence if they have carried out prescribed right to work checks. The Home Office has detailed [guidance for employers on right to work checks](#).³⁸
- Second, an employer who knowingly employs a person who does not have the right to work in the UK commits a criminal offence. This only applies if the employer knows or has reasonable cause to believe that the person does not have the right to work.³⁹
- Third, a person who works in the UK at a time when they know or have reasonable cause to believe that they do not have the right to work commits a criminal offence.⁴⁰

EEA citizens and the right to work

In accordance with the [UK-EU Withdrawal Agreement](#), EEA citizens and their family members who were resident in the UK prior to the end of the implementation period (31 December 2020) continue to have the right to live and work in the UK if they are granted status under the EUSS.

The period between 1 January and 30 June 2021 is a 'grace period'. During this time, EEA citizens and their family members who arrived in the UK prior to 31 December 2020 continue to have the right to work, even if they have yet to obtain EUSS status.⁴¹

As things currently stand, after 30 June 2021 an EEA citizen or their family member who has not applied for EUSS status will no longer have a right to live and work in the UK, unless they have a right to remain on some other ground.

³⁷ Section 15, Immigration, Asylum and Nationality Act 2006

³⁸ The formal rules are set out in the *Immigration (Restrictions on Employment) Order 2007*

³⁹ Section 21, *Immigration, Asylum and Nationality Act 2006*

⁴⁰ Section 24B, *Immigration Act 1971*

⁴¹ *Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020*

The Government has said that those who have a reasonable excuse for having missed the EUSS deadline will be able to make a late application:

Where an EEA citizen has reasonable grounds for missing the EUSS application deadline, they will be given an opportunity to make a late application.

Any EEA citizen encountered by Immigration Enforcement after 30 June 2021, who may be eligible to apply to the EUSS, will be issued with a notice which provides a further 28 days for the individual to submit their application. Further information will be provided to employers shortly about what they should do if they have an employee who finds themselves in this situation.

Each individual case will be considered on its own merits.⁴²

However, it would appear that individuals in this position will not have a right to work unless and until their EUSS is granted.

EEA citizens and right to work checks

Under prevention of illegal working legislation, an employer who employs a person who does not have the right to work in the UK will face a civil penalty unless they can show that they carried out a right to work check.

At present, there are a number of ways that an EEA citizen can evidence their right to work in the UK.

An employer will have a “continuous statutory excuse” if they are shown either an EEA passport or national ID card.⁴³ This means that the employer does not need to check the document again during the course of the person’s employment. The Home Office guidance is clear that employers will not need to retrospectively check if a worker has obtained EUSS status.⁴⁴

Alternatively, employers can also establish a defence to a civil penalty by conducting an [online right to work check](#).⁴⁵ If employers conduct an online check, the length of their statutory excuse will be the length specified through the online check. EEA citizens who have obtained EUSS status can show their right to work through this system.⁴⁶ However, employers cannot currently require an EEA worker to evidence their right to work by showing EUSS status.

Similarly, non-EEA family members can show their right to work in a number of ways. An employer will establish a continuous statutory excuse if they are shown a Permanent Residence Card. Non-EEA family members can also use the online checking service using their EUSS status or residence card.

⁴² [PQ773 \[Immigration: EU Nationals\]](#), 19 May 2021

⁴³ Part List A of Schedule 1, *Immigration (Restrictions on Employment) Order 2007*

⁴⁴ Home Office, [An Employer’s Guide to Right to Work Checks](#), 17 March 2021, p34

⁴⁵ Article 4B, *Immigration (Restrictions on Employment) Order 2007*

⁴⁶ Home Office, [An Employer’s Guide to Right to Work Checks](#), 17 March 2021, pp17-21

Provided the employer has carried out a check that establishes a continuous statutory excuse, they will have a defence to a civil penalty even if it transpires that the worker does not have the right to work. The exception is if the employer knew (or came to know) that they did not have a right to work.⁴⁷

This distinction is important in the context of EEA citizens between 1 January and 30 June 2021. Possession of an EEA passport or ID card is no longer conclusive proof that a person has a right to work (e.g. if they arrived after 1 January 2021). However, the Home Office guidance is clear that employers are not expected to differentiate between new arrivals and those who arrived before 31 December 2020.⁴⁸ As such, provided an employer has checked for the relevant documents in line with the guidance, they will have a defence to a penalty unless they know that the worker does not have a right to work.

Right to work checks after 30 June 2021

[Brief information for employers](#) on checking rights to work from 1 July was published on GOV.UK on 10 July. It states:

Employing EU, EEA and Swiss citizens from 1 July 2021

Irish citizens can continue to use their passport or passport card to prove their right to work.

All other EU, EEA and Swiss citizens will no longer be able to use their passport or national identity card to prove their right to work. You'll need to [check their right to work online](#) using:

- a share code
- their date of birth

You can also [check someone's original documents instead](#) if they do not have a UK immigration status that can be shared with you digitally. [Check which types of document give someone the right to work in the UK](#).⁴⁹

Separate guidance is clear that employers will not need to conduct retrospective checks on whether their EEA citizen employees have obtained EUSS status. It says that an employer will have a “continuous statutory excuse” and a defence to a civil penalty even if an employee fails to obtain EUSS and thus loses the right to work:

There is no mandatory requirement for retrospective checks to be undertaken on EEA nationals who were employed on or before 30 June 2021. You will maintain a continuous statutory excuse against a civil penalty in the event of illegal working if the initial right to work

⁴⁷ Section 15(4), Immigration, Asylum and Nationality Act 2006

⁴⁸ Home Office, [An Employer's Guide to Right to Work Checks](#), 17 March 2021, p34

⁴⁹ GOV.UK, Guidance, [Right to work checks: employing EU, EEA and Swiss citizens](#), 10 June 2021

check was undertaken in line with right to work legislation and in line with this guidance.⁵⁰

Again, this defence will not apply if an employer actually knows that an employee no longer has the right to work.

Offence of illegal working

If an employer has carried out prescribed right to work checks they will have a defence to a civil penalty, even if an EEA employee loses their right to work.

However, as noted above, an employee commits an offence if they work at a time when they know or have reasonable cause to believe they do not have the right to work. As such, if an EEA citizen fails to obtain EUSS status and continues working, it is possible that they might be committing an offence, even if the employer is protected from a civil penalty by a right to work check.

The Government has said that it will accept late applications to the EUSS in certain circumstances. It said that it will publish information for employers setting out what their duties are if they have an employee in this situation.⁵¹

If employers decide to carry out retrospective checks on their EEA workers to avoid this situation, they must ensure that they are not unlawfully discriminating on the basis of nationality. The Home Office guidance on right to work checks explains:

If you choose to carry out retrospective checks, you must ensure that you do so in a non-discriminatory manner. The '[Code of practice for employers: Avoiding unlawful discrimination while preventing illegal working](#)' provides practical guidance on how to avoid unlawful discrimination when employing individuals and conducting right to work checks.⁵²

The [Equality Act 2010](#) prohibits discrimination in the context of employment, including recruitment. The Act prohibits direct and indirect discrimination on the basis of certain protected characteristics. The protected characteristic of race includes nationality.

A detailed overview of discrimination law in work can be found in the Equality and Human Rights Commission's [Employment Statutory Code of Practice](#).

⁵⁰ Ibid., p35

⁵¹ [PQ773 \[Immigration: EU Nationals\]](#), 19 May 2021

⁵² Home Office, [An Employer's Guide to Right to Work Checks](#), 17 March 2021, p35

8

In detail: Access to NHS treatment

From 1 July, EEA citizens eligible for the EUSS will need to have a status under the EUSS, or an outstanding EUSS application, to satisfy the ordinary residence test for eligibility for relevant NHS services without charge.

Department of Health and Social Care guidance on implementing the overseas visitor charging regulations summarises:

9.10. EU and EFTA citizens lawfully residing in the UK by 31 December 2020 will retain their entitlement to healthcare where they meet the ordinarily resident test. From 1 July 2021, they must meet the ordinarily resident test and hold either settled or pre-settled status under the EUSS (...) Those who are awaiting the outcome of an application submitted on or before 30 June 2021 will remain entitled to free healthcare, subject to the ordinarily resident test, until that outcome is known.⁵³

The guidance goes on to explain the position for people who make a late EUSS application:

9.15 Where a late application has been made to the Home Office, as evidenced by a Home Office Certificate of Application, the person should be considered as non-chargeable from the date of their application until such time as the outcome of that application is determined by the Home Office. Should a patient claim to have a Certificate of Application but is unable to provide it at the time of treatment, OVMs should contact the Home Office SVEC service for confirmation, ...The status check will be valid for 6 months and a repeat check should not be submitted within this time period. (...)

9.16 Where the Home Office accepts a late application to the EUSS and grant a person status under that scheme, the person is non-chargeable from the date on which the late application was made. Where charges have already been made to this individual, they must not be recovered. Where charges have already been paid by the individual for treatment they received after they have made their late application, they must be refunded by the relevant body. Charges incurred before the late application was submitted should be recovered.

⁵³ Department of Health and Social Care, [Guidance on implementing the overseas visitor charging regulations](#), February 2021

9.17. Where the Home Office refuses a late application to the EUSS, the person should be considered as a chargeable patient (unless another exemption applies). This applies from the point on which the Home Office decision is confirmed. Charges may be recovered for any relevant services provided during the period when their late application was under consideration by the Home Office.

(...)

9.19. An individual who is eligible to apply to the EUSS but who has not submitted an application by 30 June 2021, who is therefore in the UK without immigration status, will be chargeable. If they receive and pay for relevant services, and then later make a late application which is granted, they should not be refunded for the earlier treatment. They should be considered against the ordinarily resident test when accessing services after the date on which they are granted EUSS status.

Services that aren't chargeable in any case

Under the NHS (Charges to Overseas Visitors) Regulations 2015 (as amended) charges only apply to secondary care and community care services, with A&E and certain other categories of secondary and community treatment exempt.

Primary medical care, including vaccination against Covid-19, is free to everyone living in the UK regardless of their immigration status or nationality. Health services should not be withheld from anyone in urgent need.

The Department of Health and Social Care [Guidance on implementing the overseas visitor charging regulations](#) (February 2021) provides further information on NHS overseas visitor charging rules in England.

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