

EU Settlement Step-by-step and Update



DGLEGAL

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Agenda

- Welcome and Introduction
- Summary of the EUSS Scheme
- Settled vs Pre-Settled
- Applications
- Reviews, JR and Appeals
- Updates

Welcome and Introduction

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Summary of the EUSS Scheme

- For EU Citizens and their family members living in the UK
- Results in Pre-Settled Status (“PSS”) or Settled Status (“SS”).
- Essentially, limited leave vs indefinite leave.
- EU Citizens themselves and their family members apply online.
- Former “permanent residence” will not confer status after the end of the transition period. (ILR will, but can still apply under EUSS.)
- Irish cases are strange – can apply under EUSS, but don’t have to. Family members do.

Summary of the EUSS Scheme

- Basically, non-Brits and non-Irish are at risk of losing permission to be in the UK, so need to apply under EUSS.

Summary of the EUSS Scheme

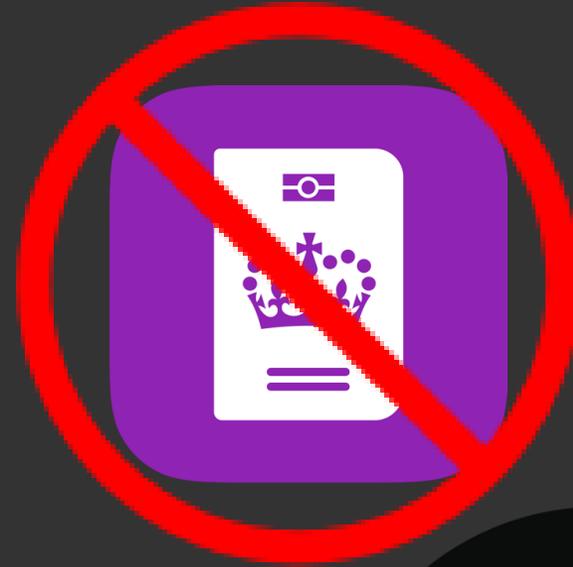
- The EUSS is a function of the Withdrawal Agreement. The EUSS is the governments means by which it implements certain aspects of the WA.
- (This will become important later – where the EUSS fails to give effect to the WA, it can possibly be challenged.)
- The EUSS is detailed in Appendix EU to the Immigration Rules.

Forms of Status (PSS vs SS)

- EU citizens and family members “continuously resident” for 5 years could apply for settled status.
- “Continuous” means not having left for >6 months out of any 12 (unless exceptions apply)
- Otherwise, apply for PSS. Expires after 5 years.

How to Apply as EU Citizen

- Identity verified using Home Office app:
- (Can alternatively book an appointment at a Visa Application Centre (VAC) or a UK Visa and Citizenship Application Services (UKVCAS) service point.)
- Complete EUSS Scheme application online.
- Upload evidence of residence.



Deadlines

- For citizens resident by 31st December 2020, deadline to apply under EUSS was 30th June 2021.
- Grace period during which existing EU law rights were protected also ended on 30th June 2021.

Family Members

- Family members can continue to apply, as long as sponsor was living in the UK at the end of 2020.
- Again, family members apply for SS if living in UK for 5 years, PSS otherwise.
- Family members are non-EU.
- Immediate (spouse/civil partner, child under 21, parent, grandparent)
- Extended (durable partner, cohabiting relative, dependant relative)
- Relationship must have formed prior to 31/12/2020

Dependents – An Example

- Learning by example:
- A applies under EUSS to reside in UK with mother, S, an Irish Citizen.
- S also happens to have PSS in the UK.
- A currently lives in an African country with grandmother. Grandfather recently died. Grandmother's health getting worse. A getting older.

Dependents – An Example

- Irish citizens are not required to engage with the Settlement Scheme (“EUSS”), though they are entitled to do so if they wish. S has sought to do so, and has pre-settled status.
- The relevant section of the Immigration Rules is Appendix EU (Family Permit), or “Appendix EU(FP)”.
- FP3 provides that an applicant will be granted entry clearance where an application is valid (as per FP4) and the applicant is eligible (as per FP6), and not unsuitable (FP7).

Dependents – An Example

- FP6(1)(b) provides that family members of relevant EEA citizens are eligible.
- Annex 1 to Appendix EU(FP) provides the definition for family members of relevant EEA citizens to include *“the child ... of a relevant EEA citizen”*.
- Annex 1 to Appendix EU(FP) provides the definition for a child to include:
“the direct descendant aged 21 years or over of a relevant EEA citizen ... dependent on the relevant EEA citizen ... at the date of application”.

Dependents – An Example

- Annex 1 to Appendix EU(FP) provides the definition for “dependent” to mean:
 - *“having regard to their financial and social conditions, or health, the applicant cannot meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen”*
AND
 - *“such support is being provided to the applicant by the relevant EEA citizen”*
AND
 - *“there is no need to determine the reasons for that dependence or for the recourse to that support”.*

Dependents – An Example

- Validity of application, suitability, nationality, identity, familial links are all undisputed.
- Dependency is disputed but we make it clear that it is limited to:
 - Having regards to his financial and social conditions, or health, whether or not, on the balance of probabilities, the Appellant cannot meet at least some of his essential living needs without the financial or other material support of his mother;
 - iWhether or not, on the balance of probabilities, that support was being provided at the date of application.
- We remind that notably, the rules make clear that the purpose of the support is not in issue.

Dependents – An Example

- No requirement in the immigration rules to demonstrate a particular length of dependence, nor is there any such requirement in the Respondent's guidance.
- Can demonstrate weekly money transfers for the two years preceding the application.
- Corroborated by bank statements.
- Witness statement confirms that this support is the sole financial support he receives.
- Dependency proved.
- Could use additional evidence (receipts of purchases, etc)

Dependents – An Example

- From current application page (as of 20th October 2021):
- Examples of the evidence you can provide include:
 - bank statements or money transfers that show you depend on them financially
 - evidence that you depend on them for health care, for example a letter from a hospital consultant

Challenges

- Administrative review - £80 – online:

www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review

- 28 days, unless in detention, in which case 7 days
- Decided within 28 days

Challenges

Judicial Review:

-  Upper Tier lodging;
-  Pre-action protocol;
-  See previous seminar:

dglegal.co.uk/webinars/step-by-step-guide-to-judicial-review-webinar/

Challenges

• Appeals:

- Conferred by Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020
- “residence scheme immigration rules” means Appendix EU to the immigration rules or any other immigration rules which are identified in the immigration rules as having effect in connection with the withdrawal of the United Kingdom from the EU;
- Appeal lies to the FTT;
- Challenges brought on basis that certain rights enjoyed by virtue of WA, EFTA ETC.

Update – Post July 2021

- ❁ From 1st July 2021, EU, EEA and Swiss citizens without PSS or SS are unlawfully present.
- ❁ Two categories of individuals to consider:
 - ❁ Those who made EUSS applications prior to 30th June 2021 and are awaiting decisions;
 - ❁ Those who missed the 30th June 2021 “deadline”.
- ❁ Application backlog is currently immense.
- ❁ First, those with applications outstanding:
 - ❁ Article 18(3) of the Withdrawal Agreement – they keep whatever status they had.
 - ❁ Proving a “right to reside” ought to be as simple as relying on proof of having made an EUSS application. Home Office have indicated that they will “be able to confirm whether an application is pending”. (Landlords, employers, benefits, healthcare)

Late Applications

- Missed deadline? Can still apply.

- In April 2020, SSHD wrote to Home Affairs Committee:

Where someone has reasonable grounds for missing the deadline, they will be given a further opportunity in which to apply. As with all aspects of the scheme we will take a flexible and pragmatic approach. We intend to publish guidance for caseworkers in due course on what constitutes reasonable grounds for missing the deadline to ensure consistency of approach.

- What does the guidance say?

Late Applications - Guidance

- EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, Version 13.0
- *“For the time being, you will give applicants the benefit of any doubt in considering whether, in light of information provided with the application, there are reasonable grounds for their failure to meet the deadline applicable to them under the EU Settlement Scheme, unless this would not be reasonable in light of the particular circumstances of the case.”*

Late Applications - Guidance

- ❁ *“Where a person who has applied late to the EU Settlement Scheme has not provided sufficient information as to the reasonable grounds for their failure to meet the deadline applicable to them, you must attempt, as with other applications under the scheme, to engage with the applicant and give them a reasonable opportunity to submit this, and you will exercise discretion in favour of the applicant where appropriate, to minimise administrative burdens.”*

Late Applications - Guidance

- ❁ *“The Home Office will take a flexible and pragmatic approach to accepting late applications and will look for reasons to grant applications, not to refuse them.*

EU Settlement Scheme: Important information for late applicants – July 2021

Late Applications - Guidance

• Examples of good reasons:

- Did not realise a separate application had to be made for the child;
- Parent or parents ignored the need to apply to the scheme themselves and took no action where the child was concerned
- LA care, LA failed to take action;
- Lacks the physical or mental capacity to apply;
- Serious medical issues;
- Modern slavery victim;
- Abusive or controlling relationship or situation;
- Other compelling practical or compassionate reasons.

Late Applications - Guidance

• Examples of good reasons:

- Exempt from immigration control;
- Existing limited leave to enter or remain;
- Existing indefinite leave to enter or remain; (don't have to apply, not aware I was eligible)
- Document or status under the EEA Regulations:
 - Has biometric residence card, or “other residence document issued under EEA regs” may not realise that, with the end of the grace period, they can no longer rely on an EU law right of residence
 - not aware that they needed to apply to the EU Settlement Scheme
- Encountered by Immigration Enforcement: should be served a **notice** and will be given **28 days** (but not clear what notice will say)

Update – Extended Family Members

- EEA family permit route closed 31st December 2020 to applications for EFMs (other than durable partners) and closed on 30th June 2021 to other applications.
- EEA family permits ceased to be valid for travel to the UK after 30 June 2021.
- Luke Piper, the3million, said Article 10(3) of the Withdrawal Agreement requires the facilitation of entry and residence for extended family members whose application for an EEA family permit, made by the end of the transition period, was successful, including on appeal.

Update – Extended Family Members

 Kevin Foster MP:

“we are creating a concession outside Appendix EU (Family Permit), which will be set out in the published EUSS family permit guidance. This will enable an EUSS family permit to be granted to an extended family member who applied for an EEA family permit by 31 December 2020 and would have been granted this, including on appeal, had the route not closed.”

Update – Further Issues

- ❁ Processing times are lengthy. Reports of over 7 weeks for an EUSS Family Permit from the US.
- ❁ Is there an argument for expedition of these matters? Consider that the WA contains wording where applications have to be processed as soon as possible and on the basis of an accelerated procedure. HO has asked “why cases should be treated with urgency”
- ❁ Administrative review issues – app in June – only a basic reply after a month – no further comms up to August.

Update – Further Issues

- Applications are at 1000 – 2000 daily, as of August.
- Online applications by 9am on 1st July are in time.
- Paper applications by 7th July are in time.
- Issues with durable partners being erroneously refused through the use of incorrect template letters.

Any Questions?

Thanks for watching!

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