



Monique Hawkins
Policy and research officer, the3million
(by email)

30 November 2021

Dear Monique

Thank you for your e-mail of 20 September with some further follow-up questions and comments on various issues and your further e-mails of 23 September and 15 October. I will address the issues in turn.

1. Issues around the Employer Checking Service

Thank you for bringing the report by the Work Rights Centre of 2 September to our attention.

The Employer Checking Service (ECS) was set up primarily to support individuals with a pending application to the Home Office to exercise their right to work. The service is being reviewed continually to provide support to employers and individuals regarding this.

A number of updates have recently been made to the eform to reflect policy changes. We welcome user insight and suggested adjustments to support individuals in exercising their right to work.

The report specifically highlights four issues and our response to those is as follows:

Questions don't mean what they say

The issue of displaying the previous wording has now been removed.

Out of date information

The Home Office has worked with the eform supplier to update the wording within the response message displayed after selecting "Yes" to Q1.

Whilst the wording has been updated to remove reference to EEA and Swiss nationals, the action required of the employer is the same. It is not necessary to request a right to work check via the ECS.

Retrospective checks

The opening landing page on GOV.UK is being reviewed to make clear to employers the circumstances in which they must request a right to work check via the ECS. This will include signposting to existing guidance for employers setting out they are not required to conduct retrospective checks on EEA and Swiss nationals employed before 1 July 2021. However, there may be some circumstances when a retrospective check is required. We recognise it is better to place this at the start of the process within the landing page of the eform before the employer submits a request.

Not clear where employers can find applicants' reference numbers

A prospective employee who has applied to the EU Settlement Scheme (EUSS) will have received an e-mail acknowledgement of their application which details their Unique Application Number (UAN) which they can share with the employer.

If the applicant has not received a reference number, the employer can state this within the free text field. This point will be reviewed within the next review and update to the eform.

In addition, the eform allows employers to insert a wide range of reference numbers to support the processing of a right to work check by the ECS and avoid the need for them to request further information from employers if an application cannot be traced.

We should also point out that the absence of a reference number does not prevent the processing of a check as the biographic details are also used to conduct this, but providing it does speed up how quickly we can get the check completed and returned. The ECS does not operate simply by looking up reference numbers in isolation – the provision of biographic details plays an important part in the response. Further information will be requested from employers if the details associated with the request do not result in a confirmed trace before making any right to work decision.

2. Right to enter the UK

Thank you for highlighting the potential confusion that the ‘joining family members’ section of our recent mailer communication to EEA nationals may have caused. Since receiving your feedback, we have updated that section in the mailer to make the position clearer.

To clarify, individuals must have the correct entry clearance for their purpose in coming to the UK. A person can arrive in the UK as a visitor where their purpose is, for example, to visit for a holiday, business or short stay (up to six months).

If an individual arrives in the UK as a visitor where that is not their genuine purpose, then they risk being refused entry at the border.

Although the Immigration Rules have been amended from 6 October to remove the prohibition on a visitor applying to the EUSS as a ‘joining family member of a relevant sponsor’ under Appendix EU, any individual seeking to enter the UK as a visitor must satisfy Appendix Visitor to the Immigration Rules, which includes the requirement that they intend to leave the UK at the end of their visit. Although EEA, Swiss and other non-visa nationals will not be prevented from travelling by carriers, they may be liable to be refused entry at the border if they do not satisfy the visitor rules. Visa nationals will not be accepted for travel by carriers unless they hold an in date biometric residence card or another form of entry clearance, biometric residence permit or endorsement showing indefinite or limited leave to enter.

The position remains that those who intend to join their EEA or Swiss family member who was resident in the UK by the end of the transition period should obtain EUSS status from outside the UK (where they are eligible to do so), or an EUSS family permit before they come to the UK and then apply to the EUSS within three months of their arrival in the UK.

3. DWP/HMRC data matching exercise

A joint Ministerial response from the Home Office and the Department for Work and Pensions addressing your concerns was issued on 14 October and so I will not reiterate that response here.

4. Certificates of Application (CoAs)

We acknowledge that there has been some delay with regard to the issuing of CoAs for some applicants.

Ahead of the 30 June deadline for applications by those resident in the UK by the end of the transition period, relevant application forms were also made available on-line in order to help facilitate the making of an in-time application. This did result in a very large volume of postal applications being received in what is primarily a digital route. This was also against the backdrop of the COVID-19 pandemic which has restricted the numbers of staff on site, when such staff are needed to physically handle and process postal applications. All in-time applicants to the postal route received an acknowledgment letter which can be used to evidence their rights, pending the issue of a CoA.

As the deadline of 30 June approached, we also saw a significant increase in the proportion of applications (both postal and digital) which were submitted with little or no supporting documentation. In line with published guidance we have been engaging with those customers to secure the evidence needed to validate their application. We continue to give customers a reasonable opportunity to provide the required evidence before their application is rejected as invalid.

Please be assured that the Home Office wants to ensure that the millions who have been granted status under the EUSS are clear on how they can demonstrate their right to work and right to rent; are aware of the issues they need to consider before travelling internationally; and are clear what their status means for their family members in the UK and overseas. We also want to ensure those granted pre-settled status know when and how to apply for settled status and flag the need for eligible family members in the UK who have not yet applied, including children, to make a late EUSS application. To that end, we have since mid-September and throughout October been sending an email to everyone who has been granted status under the EUSS, covering these points and containing links to further information on GOV.UK.

Yours sincerely

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Visa and Citizenship Operations
UK Visas and Immigration, Home Office

Emails from the3million - 20 September 2021

1. Issues around Employer Checking Service

We would like to draw your attention to this [short report](#) by the Work Rights Centre about some issues with the Employer Checking Service. Some tweaks to steps / wording would improve the service.

2. Rights to enter the UK

We are still facing a huge number of questions from the people we represent about who does and doesn't have the right to enter the UK - especially around joining family members, and late applicants. We had created a PDF to try to help people work it out according to their circumstances, which can be found here: <https://www.the3million.org.uk/rights-enter-uk>.

Following our meeting last week, I checked our table against what I understood from the meeting, and I think our information tallied. However, other organisations are apparently saying that it **doesn't** matter whether EU citizens (who apply to the EUSS as joining family members from abroad) lived in the UK before 31st December 2020 or not.

The latest statement of changes, which removes the definition of visitor from the Appendix EU from 6th October and allows a joining family member to apply to the EUSS whilst in the UK as a visitor (see e.g. this [Freemovement blog](#)) has caused further confusion.

We would be really grateful if you could put in writing for us all the circumstances/categories in which people with pending EUSS applications can enter the UK, and whether this changes from 6th October. Would it perhaps be possible for someone from the Home Office to check the information we are giving our grassroots via the PDF on our website <https://www.the3million.org.uk/rights-enter-uk>? Travel rights is the issue on which we get the most questions, and around which there seems to be the most disagreements, so we would be hugely grateful for your opinion on our information.

3. Letters from Home Office with DWP/HMRC data matching exercise

We've been trying to correspond with DWP and Kevin Foster about these letters, but have had no response. We would really appreciate if you are able to give this some urgent attention given that the suspension and termination of benefits is due to begin next month.

Our letters are from [6 August 2021](#), [18 August 2021](#) and [23 August 2021](#).

4. Delayed Certificates of Application

As we discussed on our meeting last week, we are still hearing from people who are facing long delays in receiving CoAs, even when applying online. As agreed, we will try and get permission / UANs from some of these people so that you can look into them, but in the meantime here are some anonymised examples:

- Contacted us on 8th July - had applied on **28th June** and received 'application submitted' email, but nothing else heard back.

On **18 August**, they confirmed still no Certificate of Application, has checked spam folder. Says: *"In the meantime, I called the Home Office Resolution Centre on 0300 123 7379 to find out about the status of my application and they said that I just have to wait and that they cannot give me timelines or statements regarding anything at all and that there is neither anything for me to do to support the progress as everything looks fine."*

- Contacted us on **1 July**: "My partner applied for Settled status in **early June** and has yet to receive her Certificate of Application which is clearly required as proof of legal rights. We sent a message yesterday via the relevant web form, requesting a Certificate of Application, and much to our

shock, received an email today thanking us for an enquiry to withdraw the application, and that to withdraw the application, they would need further details, "including the reason for withdrawal" (a link was provided back to their query form). To be very clear, at no point did we ask to withdraw the application, nor could there be any possible way for it to be interpreted in such a way. We are now worried that by contacting them again using their web form, they might withdraw the application. Calling them is also clearly not an option, as their lines are automatically disconnecting callers. As a result of not receiving the Certificate of Application, my partner may now lose out on work opportunities and other legal rights."

- The case that was the subject 'T' of [our letter to the Minister on 6 July](#) applied on **16th June**. I kept in touch with T regularly, and the CoA finally arrived on **16 August**.
- Submitted online application via app on **12th August** (the only reason they submitted a late application was because they were waiting on a parallel citizenship application (based on a Permanent Residence document) which is taking a very long time, and they initially did not realise that this meant they were now without lawful status). We have seen a screenshot which confirms that the application is fully and properly submitted. However when they log into their status, they get the message "*We cannot find your current status in this service. This is probably because your application is still in progress*". Applicant is the wife of a British citizen, and has been in the UK for 20 years. On **18th September** they still had no CoA.

"Phoning confirms they have the application but its not been viewed yet. Wife is unemployed, employer won't let her start work. She is unemployed. Cannot collect benefits as her status is not even showing as pending in the system, yet when you phone HO they can see the application is in queue."

And just one example of a paper applications - where there is no CoA after almost two months:

- *"Hello, unable to get through on the EUSS helpline and desperate for answers. Still not even had the promised certificate of application more than 2 months after the deadline. No idea when I will finally have my settled status confirmed. Without at least the certificate I have nothing to prove my right to remain. Everything is in limbo, how could I apply for a new job or what if I needed to rent new accommodation? I haven't seen my elderly parents in Germany for more than 2 years due to Covid and now I still can't travel because I wouldn't be able to get back. This is totally unacceptable. The government should have extended the deadline to allow them to catch up. Or at least issue the promised certificate, but not leave people without any proof of their status."*

Emails from the3million - 23 September 2021

I would just like to ask a further follow-up question regarding joining family members and the ability to travel to the UK.

I understood from our meeting, and I believe this was confirmed again in this week's SUG meeting, that EU national joining family members should apply for EUSS from abroad, and wait for a decision before travelling to the UK.

At the same time I am aware that the explanatory memorandum to the recent [HC617 Statement of Changes](#) says in 7.25 that "*to allow a joining family member to apply to the EUSS whilst in the UK as a visitor.*" It is not clear to me whether this means people are allowed to travel to the UK as a visitor with the intention of applying to the EUSS, or whilst having a pending EUSS application, or whether this is only intended to deal with the past cohort of people who traveled to the UK as a visitor, not knowing that they were not supposed to do that if they intended to apply to the EUSS.

As I referred to in my earlier email, other organisations are saying that it is ok for joining family members to travel to the UK and apply to the EUSS from within the UK.

We have now been made aware of an email sent to at least some EUSS status holders last week, which contains a paragraph which says:

Joining family members

If you have family members who wish to join you in the UK on the basis of your settled or pre-settled status under EUSS then there is no deadline for them coming to join you. They can join you at any point, although they must make an EUSS application within 90 days of their arrival in the UK. You can find out further information on joining family members at <https://www.gov.uk/settled-status-eu-citizens-families/join-EU-EEA-Swiss-family-member>.

To a lay person, this could easily be interpreted as saying their family member can simply travel to the UK (with a visit visa if necessary for visa nationals) and then submit an application to the EUSS. The referenced linked page says nothing about visitors, or family permits.

Could you please clarify for us what we should be saying to people who ask us whether their family members can travel to the UK?

Emails from the3million - 15 October 2021

Following up on our questions about travelling to the UK, in particular for joining family members, I was wondering whether you had had a chance to look at our table (<https://www.the3million.org.uk/rights-enter-uk>) or our questions in this email thread.

In particular, I'd like to highlight a situation we are seeing quite often, where the Joining Family Member is a new-born baby:

For example:

- **Baby born abroad / no EUSS application made:** "*Mother, EU citizen, has pending application for pre-settled status. Travels to Italy, gives birth, the baby receives an Italian passport. Can they return to the UK? Can the baby travel on its Italian passport and then apply for pre-settled status in the UK?"*
- **Baby born abroad / EUSS application pending:** "*Mother, EU citizen with PSS, baby was born in South Africa in Jan 2021. They applied for PSS for the baby, linked to the mother's, in June as soon as they got the baby's Italian passport. They haven't received a COA or decision 86 working days later. When they check the baby's status online it says nothing is found. They have tried calling but receive the message all the operators are busy and disconnects. They have tried emailing but got a generic response saying they must continue to wait. This is delaying their family returning to the UK, they were told by the EUSRC that they must not enter the UK to live until the baby has PSS. The father does not want to leave his wife and child alone in South Africa, so is now stuck as the prolonged absence from the UK is putting his settled status in the future at risk".*
- **Baby born in UK after 1 Jan / EUSS application pending:** "*Baby was born in the UK in August 2021, have applied for settled status (still pending, no COA yet) by linking to father's application for settled status (still pending, COA received). Can they travel abroad to grandparents for a week and return to the UK?"* The parents applied for status for the baby within the 90 days of birth, as required.

Please advise - the restriction on travelling to the UK for JFM appears particularly harsh for babies.