



Home Office

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Dear Ms Hawkins,

Thank you for your letter of 28 April about accessing rights pending a decision on an EU Settlement Scheme (EUSS) application. I am sorry for the delay in responding to your letter.

Our aim is to process all applications to the EUSS as expeditiously as possible. Each application is considered on its own facts, which means some will inevitably take longer than others to conclude, for example if the applicant has a pending prosecution.

Complete applications are usually processed in around five working days.

Any EUSS application is likely to take longer to process if:

- we need to request more information or evidence from the applicant;
- the applicant is applying as a minor and their application is not linked to that of a parent;
- the application is based on a derivative right to reside in the UK;
- the applicant has a relevant criminal record; or
- the application is based on a family relationship which has not been relied on in a previous application to the Home Office.

In these instances, processing times will vary on a case-by-case basis, often based on how quickly the applicant can provide the additional information or evidence requested to enable us to decide their application.

The published EUSS statistics to 31 March 2023¹ show that, of the 7,221,650 applications received, approximately 98% (7,054,720) had been concluded, with 6,239,020 grants of status. They provide data on applications made after the 30 June 2021 application deadline for those resident in the UK by the end of the transition period on 31 December 2020, which show that, of the 1,169,760 applications received after 30 June 2021, around 88% (1,025,140) had been concluded. The published statistics also show that, despite consistently high application volumes each month (approximately 55,000 on average in 2022), the number of pending applications reduced throughout 2022: to 31 March 2023, there were approximately 167,000 pending applications, compared to approximately 275,000 to 31 March 2022² – a 39% decrease.

Staff have processed more than 1.6 million applications since the 30 June 2021 deadline. However, as we approach two years since the 30 June 2021 application deadline, we are seeing more speculative and abusive applications, and refusal rates are increasing. We are determined to protect the integrity of the EUSS and will take whatever steps are necessary to do so.

The number of staff working on the EUSS has remained largely consistent, although numbers can change depending on business priorities. There are currently approximately 1,300 Home Office staff who work on the EUSS. In addition, approximately 300 staff are in post to provide assistance to applicants with any questions about the scheme or who need help applying.

We also continue to provide a range of support for applicants to the EUSS, particularly those who are vulnerable. The Home Office has made available £29 million in grant funding to a UK-wide network of civil society organisations and their partners to support vulnerable people in applying to the EUSS. This has enabled the Home Office, alongside the grant-funded network, to engage with vulnerable individuals to ensure they can access the support needed to apply to the scheme. The network has now helped more than 490,000 vulnerable people apply to the EUSS, and we recognise the importance of the continuity of support which is why we are continuing to fund this work for this financial year and the next.

In addition to the support provided through Home Office grant funding, there continues to be support for vulnerable applicants available through the Resolution Centre, which provides telephone and email assistance to applicants, and through the Assisted Digital service, which provides support for those completing the online application process. Beyond that, there are several hundred organisations registered with the Office of the Immigration Services Commissioner which provide free immigration advice, including for those applying to the EUSS.

As you know, the rights of EEA citizens and their family members who have made a valid application to the EUSS, as evidenced by their Certificate of Application (CoA), are protected until their application is finally determined. I have set out a response to your questions below.

¹ <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-march-2023/eu-settlement-scheme-quarterly-statistics-march-2023>

² [EU Settlement Scheme quarterly statistics, March 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-march-2022)

NHS: Applying for an EHIC card

Q1. On what basis does the Government justify withholding an EHIC card from someone who has a CoA for a valid application to the EUSS?

Q2. Would you agree that this is a breach of Article 18(3) of the Withdrawal Agreement, which states that “all rights provided for in this Part shall be deemed to apply to the applicant”, including the rights of non-discrimination and equal treatment?

It has been Department of Health and Social Care policy to provide a Provisional Replacement Certificate (PRC) to individuals with a valid pending application to the EUSS, rather than an EHIC card. PRCs offer exactly the same healthcare entitlements as an EHIC card and are a formal eligibility document under the Withdrawal Agreement (WA). This approach was introduced to avoid delays and to ensure that those with a valid pending EUSS application have access to necessary UK-funded healthcare, whilst ensuring value for money for the taxpayer by not providing coverage to people who are not entitled to it following a negative EUSS application outcome.

The NHS has recently launched a new online application process which makes it more straightforward to access a PRC: [Apply for a Provisional Replacement Certificate \(PRC\) - Get healthcare cover for travelling abroad - NHSBSA](#).

DWP: Applying for a National Insurance number

Q3. Is a share code generated from a valid CoA sufficient to demonstrate the right to work for an application for a National Insurance Number?

Q4. If not, on what basis can the DWP ask for extra evidence of the right to work? What guidance is given to DWP decision makers on this? When was this guidance first implemented?

DWP: Accessing Universal Credit and other benefits

Q5. Will the DWP’s ADM 19-21 guidance be updated to ensure that those who have submitted a valid EUSS application will be eligible for benefits on the same basis as British citizens?

Q6. Furthermore, in the light of the High Court judgment on the case of the Independent Monitoring Authority against the Home Office, and the Home Office’s subsequent decision not to appeal this judgment, what provision is being made in guidance to ensure that anyone with permanent residence rights will be eligible for benefits on the same basis as British citizens, even where they have not yet been granted settled status (whether that is because they are waiting for a decision on their settled status application, or because they have not yet applied for settled status)?

We are currently discussing these questions with the Department for Work and Pensions and will write to you separately about them.

Home Office Checking Services: Proving the Right to Work and the Right to Rent

Q7. What is the basis of the policy that a share code generated from a CoA is insufficient to prove the Right to Work or the Right to Rent, and that a PVN from the ECS or LCS is required instead?

Q8. Given that the Home Office recognises an application as a valid application when issuing the CoA, why does it require the extra step of a PVN from the ECS or LCS before allowing someone to work or rent?

Article 20(3) of the WA permits the host state to adopt the necessary measures to refuse, terminate or withdraw any right conferred by the WA in the case of the abuse of those rights or fraud, subject to certain procedural safeguards.

In that context, in order to make a valid application to the EUSS, a person must provide evidence of their identity and nationality and their biometrics (a facial photograph for all and fingerprints for non-EEA citizens without a biometric residence card). The Home Office does not currently assess an individual's eligibility or suitability under the EUSS in then issuing a CoA.

As explained in our letter of 16 January, using the Employer Checking Service (ECS) and Landlord Checking Service (LCS) to confirm the right to work or rent for EUSS applications made from 1 July 2021, provides a safeguard for genuine applicants, employers, and landlords. It ensures there is a prompt manual check so that those who may seek to use the EUSS to obtain a right to work or rent to which they are not entitled are not automatically able to secure employment or rent accommodation in the private rental sector. It also ensures employers and landlords can feel confident to provide services to those who are eligible.

Q9. Can you please list all the circumstances under which a share code from a CoA could result in a denial of a PVN from the ECS or the LCS?

Where a referral is made to the ECS or LCS, decisions relating to whether a positive notice is issued are considered according to the circumstances of each case. It is therefore not possible to provide a list of all the circumstances in which a referral to the ECS or LCS could result in the denial of a positive notice.

Q10. In how many cases to date have the ECS and the LCS respectively denied a PVN to an employer / landlord who requested one on behalf of someone with a share code generated from a digital CoA? Can you break these cases down by nationality of the applicant and month / year?

The Home Office does not hold this information.

Q11. Would you agree that the extra required step of receiving a PVN from the ECS / LCS can increase the risk that a candidate with a CoA is discriminated against as compared with someone whose share code is immediate proof of their Right to Work or the Right to Rent?

It has been a long-standing requirement for employers and landlords to verify the right to

work or rent for individual cohorts via the Home Office checking services (ECS and LCS). As explained in our previous letter, our ongoing engagement with organisations tells us that use of the ECS and LCS are established processes that employers and landlords operate as a matter of course.

The ECS aims to provide a response within five working days and is currently responding well within this timeframe. Where the LCS has not considered a request within two working days, an automated response is provided to the landlord confirming the issue of an automatic statutory excuse for 12 months.

The Home Office has consistently made clear that any person who discriminates is breaking the law. We would urge them to familiarise themselves with published guidance and the statutory codes of practice available on GOV.UK.

Q12. Would you agree that the extra required step of receiving a PVN from the ECS / LCS is a breach of Article 18(3) of the Withdrawal Agreement?

No. Those with a CoA have the rights provided for in Part 2 of the WA. The Right to Work Positive Verification Notice (PVN) and Positive Right to Rent Notice (PRRN) do not prevent them from accessing those rights. Indeed, those checks are intended to confirm the individual's right to work and right to rent. All nationals in the UK are subject to right to work checks and all nationals in England are subject to right to rent checks.

The PVN and PRRN are a necessary and proportionate measure to protect the EUSS from abusive and fraudulent applications. Each EUSS application is considered on its merits, but the ECS/LCS check helps to identify applicants who may be attempting to frustrate the system where they have submitted repeated failed applications.

DVLA: Exchanging a driving licence

Q13. Are you aware that the DVLA will not exchange someone's EU driving licence while they are waiting for a decision on their valid EUSS application?

Q14. If so, on what basis can the DVLA deny someone their right to a UK driving licence while in possession of a CoA for a valid application to the EUSS?

Q15. Would you agree that this is a breach of Article 18(3) of the Withdrawal Agreement, which states that "all rights provided for in this Part shall be deemed to apply to the applicant", including the rights of non-discrimination and equal treatment?

Yes, we are aware of this. We do not believe that the equal treatment provisions of the WA extend to the issuing of driving licences and therefore these documents cannot be obtained using a CoA. We are working with the Foreign, Commonwealth & Development Office to understand the approach in EU Member States.

Family reunion rights

Q16. How many people, who are currently waiting for a grant of status under the EUSS or for an EUSS Family Permit, have ‘relevant EEA citizen’ sponsors who are themselves still waiting for a grant of status under the EUSS?

Q17. For these people, how long on average have the sponsor and the joining family member applicant been waiting for a decision on their respective applications?

Q18. Would you agree that the denial of family reunion rights to someone with a pending EUSS application is a breach of Article 18(3) of the Withdrawal Agreement, which states that “all rights provided for in this Part shall be deemed to apply to the applicant”, including the rights of non-discrimination and equal treatment?

Statistics of applications received and concluded for both the EUSS and the EUSS family permit³ are published quarterly. It is not possible to determine from the available data applications which relate to a person whose sponsor has a pending EUSS application.

Consistent with the WA, those applying as a family member for EUSS status or an EUSS family permit to join a relevant EEA citizen in the UK must demonstrate that their sponsor meets the requirements under Appendix EU or Appendix EU (Family Permit), including either holding EUSS status or, in certain circumstances, being eligible for it, had they applied by 30 June 2021 (and, where they are, were not a British citizen).

Travel

Q19. What is the Home Office response to our recommendation that “Policy change should be sought such that joining family members whose nationality is not on the UK’s visa-national list are allowed to travel to the UK without first needing to have obtained EUSS status or an EUSS family permit. They should be allowed to enter the UK for the express purpose of being reunited with their family sponsor and submitting an in-country EUSS application.”?

As we set out in our letter of 19 August 2022, the WA does not require the UK to permit joining family members entry to the UK without an entry visa. Article 14(3) of the WA explicitly allows the UK to provide a visa system for their entry. Whilst Appendix EU was changed from 6 October 2021 to permit those who had arrived in the UK as a visitor to make an in-country EUSS application as a joining family member (bringing within the Immigration Rules a previous temporary concession outside Appendix EU made in the context of the COVID-19 pandemic), we have been clear that entry as a visitor when the intention is to apply in-country to the EUSS does not meet the requirements of the visitor route (under which the person will have undertaken to leave the UK at the end of their permitted visit) and the person risks being refused admission at the UK border. Joining family members are advised to apply for an EUSS family permit or (under scope more generous than the WA requires) from overseas to the EUSS, in either case free of charge, for the purpose of joining their EEA citizen sponsor in the UK.

Q20. What is the Home Office response to our recommendation that “Policy change should be sought such that with immediate effect, all those whose nationality is not

³ [Why do people come to the UK? For family reasons - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/why-do-people-come-to-the-uk-for-family-reasons)

on the UK's visa-national list can travel to the UK on the basis of an existing pending EUSS or EUSS family permit application. Failure to do so is a breach of Article 18(3) of the Withdrawal Agreement for those with pending EUSS applications.”?

Q21. What is the Home Office response to our recommendation that “Policy change should be sought such that new-born children of any nationality, whether on the UK's visa-national list or not, should be able to travel to the UK with parents who have status under the EUSS, without being required to first acquire either an EUSS family permit or status under the EUSS.”?

Q22. What is the Home Office response to our recommendation that “Policy change should be sought such that any visa nationals currently in the UK with a pending in country EUSS application should be able to freely leave and re-enter the UK, even if their visitor visa, EUSS family permit or other leave to enter the UK has expired while waiting for the Home Office to make a decision on their EUSS application.”?

Q23. What is the Home Office response to our recommendation that “Policy change should be sought such that any non-visa nationals currently in the UK with a pending in-country EUSS application should be able to freely leave and re-enter the UK. Failure to do so would be a breach of Article 18(3).”?

As noted above, the WA expressly provides for joining family members to be subject to a visa system for entry to the UK.

In respect of EUSS family permit applications, it is reasonable to expect a person who requires entry clearance to obtain it before travelling to the UK.

For those with a pending EUSS application, the guidance is clear that the holder of a CoA cannot rely on that in order to travel to the UK.⁴ A CoA is only evidence that a valid EUSS application has been made. It is strongly recommended that they obtain an EUSS family permit or EUSS status before coming to the UK to avoid delays and the possibility of being refused entry.

Q24. Why is it not possible for someone without EUSS status, but who has a CoA of a valid application to the EUSS, to update their UKVI account with a new travel document?

Q25. Why is it not possible for someone with pre-settled status to update their UKVI account with a new travel document when they also have a pending application to the EUSS?

A person can update their identity and travel documents online via their UKVI account. The vast majority of these update requests are handled in real time via a fully digital process. The process currently requires us to hold a verified identity for the person.

It is not possible to offer this update process to EUSS applicants while their application is being considered and while their original identity and document data may still be subject to review. However, we are reviewing designs to consider how we could facilitate an update

⁴ [Entering the UK under the EU Settlement Scheme and EU Settlement Scheme family permit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/entering-the-uk-under-the-eu-settlement-scheme-and-eu-settlement-scheme-family-permit)

in this scenario.

A person with a pending EUSS application who changes their passport while holding a CoA or pre-settled status is not prohibited from travelling on their new document (subject to meeting any relevant visa requirements). Where a passenger arrives with a different travel document to that registered on their UKVI account, there is a process by which manual checks can be made to establish the individual holds EUSS status at the UK border.

Q26. What is your advice to someone who is entitled to travel, yet is unable to update their UKVI account with their new travel document, especially in circumstances where their old travel document has been retained by their consulate or embassy upon issuance of a renewed document, or where their old one has been lost or stolen?

A person is able to travel on a new passport before updating the relevant information in their UKVI account. Where a passenger arrives with a different travel document to that registered on their UKVI account, there is a process by which manual checks can be made to establish the individual holds EUSS status at the UK border.

Yours sincerely,

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