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Dear Monique Hawkins,

Thank you for your three letters of 15 April to the Minister for Safe and Legal Migration about travel restrictions for individuals with pending applications to the EU Settlement Scheme (EUSS), further questions about travel by holders of EUSS status and updating EUSS status to add another nationality. Please note you are receiving a response from an official. I am sorry for the delay in responding to the issues you have raised in your letters, which I address in turn below.

### **Travel restrictions for individuals with pending applications under the EUSS**

**Q1. We are hearing of very long delays in EUSS Family Permits being issued. An FOI (ref 67879) asking “Can you please provide average and median processing time from application to decision for family permits, for applications decided in the most recent 12 months available?” was refused on cost grounds. How is the Home Office monitoring whether EUSS Family Permits are being issued on the basis of an accelerated procedure, as per Article 14(3) of the Withdrawal Agreement?**

Applications are currently subject to waiting times which are longer than usual due to the volume of applications received during 2021. Some cases may also take longer to process due to their complexity.

In addition, during the COVID-19 pandemic, the restrictions put in place to protect staff, significantly reduced the number of officials able to work in the office to process EUSS family permit cases. As these restrictions have been relaxed, more staff have been able both to work in the office and be trained in this area of work.

Where staff have all the information needed to conclude a case, the decision is expedited as far as possible in accordance with Article 14(3) of the Withdrawal Agreement.

In our letter to you of 5 May, we provided data broken down by month and outcome for the most recent 12 months available, split between EUSS family permits and travel permits (noting that the average processing time for outcomes reflected any time an application spent going through the appeals process). In this letter, we also

directed you to the quarterly immigration statistics, which provide for data to be filtered by year, application type (including EUSS family permits) and outcomes.

**Q2. What is the policy justification for retaining someone's passport while they wait (sometimes for over a year) for a visa decision to be made, thereby removing their ability to travel to other countries than the UK? We are aware that in some countries it is possible to request the return of the passport, however, this comes at an additional charge and is not easily identifiable. Where the visa in question is an EUSS Family Permit, how is this passport retention policy compatible with Article 14(3) of the Withdrawal Agreement?**

When customers apply for a visa, they normally attend a Visa Application Centre (VAC), run by our Commercial Partners VFS and TLS. As part of that process, customers are asked to submit their passports in order for vignettes to be placed in the passport once the decision to grant the family permit has been made by UKVI. This saves customers having to make multiple visits to the VAC to return the passport for the vignette to be affixed and then to collect it. There is an option to purchase an added value service called Keep My Passport (KMP) which enables a customer to keep their passport with them. Customers may also purchase KMP after they have applied, if they need their passport to be returned to them before a decision has been made. Exceptionally, UKVI will consider a request made to the VAC for a passport to be returned at no cost where there are compelling or compassionate circumstances. This request will be considered on a case-by-case basis.

Article 14(3) of the Withdrawal Agreement does not stipulate any specific process in respect of retention of passports. It is considered that the above approach is compatible with that article.

**Q3. EU/EEA/Swiss joining family members with biometric identity documents are entitled to apply directly to the EU Settlement Scheme from outside the UK. They then cannot travel to the UK until their application is concluded.**

**a. Why can they not directly travel to the UK with the intention of applying for EUSS status once in the UK, given that other EU/EEA/Swiss citizens are able to enter the UK visa-free as visitors, and given Article 18(1)(e) of the Withdrawal Agreement?**

**b. Why can they not travel to the UK on the basis of a pending EUSS application, given that other EU/EEA/Swiss citizens are able to travel visa-free to the UK as visitors, and given Article 18(3) of the Withdrawal Agreement?**

As you will recall, whilst an amendment to Appendix EU was made in October 2021 to permit those who had arrived in the UK as visitors to make an EUSS application once here, we have been clear that entry as a visitor when the intention is to apply to the EUSS does not meet the requirements of the visitor route and the individual risks being refused admission at the border.

The Withdrawal Agreement does not require the UK to permit applications to the EU Settlement Scheme to be made outside the United Kingdom. However, the UK has implemented a more generous approach whereby applications can be made

overseas when someone possesses the relevant documents, as set out in Appendix EU. Pending the determination of someone's application made overseas, Article 18(3)<sup>1</sup> of the WA does not provide that they should be permitted to travel to the UK.

**Q4. Other non-visa national joining family members (who are not EU/EEA/Swiss nationals, and who do not already have a valid UK issued biometric residence card) have to apply for an EUSS Family Permit before they can travel to the UK to apply for EUSS status.**

- a. Why can they not directly travel to the UK with the intention of applying for EUSS status once in the UK, given that their other compatriots are able to enter the UK visa-free as visitors, and given Article 18(1)(e) of the Withdrawal Agreement?**
- b. Why can they not travel to the UK on the basis of a pending EUSS Family Permit, given that their non-visa compatriots can travel visa-free to the UK as visitors?**
- c. Why do they need to apply for an EUSS Family Permit, rather than being able to apply directly to the EUSS from outside the UK, using either biometric passports if they have one, or paper applications, given that their non-visa compatriots can travel visa-free to the UK as visitors, and given Article 18(1)(e) of the Withdrawal Agreement?**

The Withdrawal Agreement does not require the UK to permit joining family members entry to the UK without an entry visa. Article 14(3) of the Withdrawal Agreement explicitly allows the UK to provide a visa system for entry.

The response to the previous question concerning entry to the visitor applies here also.

The guidance is clear that the holder of a certificate of application (CoA) cannot rely on that in order to travel to the UK. A CoA is only evidence that an EUSS application has been made. In the event that a non-visa national joining family member arrives at the UK border they may be permitted to enter the UK if they can provide sufficient evidence of a qualifying relationship with a UK national. However, it is strongly recommended that they obtain a family permit before coming to the UK to avoid delays and the possibility of being refused entry.

As noted above, the UK has been more generous than the Withdrawal Agreement requires and provides the possibility of making an EUSS application outside the UK. In order to be able to do so, the applicant must hold a relevant document, which, in the case of a non-EEA national, is a UK-issued biometric immigration document (see Appendix EU).

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<sup>1</sup> Article 18(3) states: Pending a final decision by the competent authorities on any application referred to in paragraph 1, and pending a final judgment handed down in case of judicial redress sought against any rejection of such application by the competent administrative authorities, all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4).

**Q5. We have received many reports of people with an EUSS Family Permit who have now been waiting a very long time for a decision on an application for status under the EUSS.**

**a. An EUSS Family Permit is granted once eligibility (for family relationship) and suitability checks have been concluded. Are those eligibility and suitability checks repeated from first principles (without reference to the EUSS Family Permit application) when someone makes a subsequent application for status under the EUSS, even when they make that application within a matter of days of arriving in the UK once their EUSS Family Permit is granted?**

**i. If so, how is this practice in accordance with Article 18(1)(e) of the Withdrawal Agreement? For an application within six months of an EUSS Family Permit being issued, would checking for evidence of residence in the UK not be sufficient for an application for status under the EUSS?**

**ii. If not, why are some subsequent applications to the EUSS (following grant of an EUSS Family Permit) taking months to conclude? Is the Home Office monitoring the lengths of these applications in order to demonstrate compliance with the combined effect of Articles 14(3) and 18(1)(e)?**

The EUSS Family Permit converts to leave to enter on arrival in the UK and is therefore a grant of leave under **Appendix EU (Family Permit)**.

Although the EUSS Family Permit is a grant of leave in the same way as any other successful application under the Immigration Rules, it does not automatically mean that the individual will meet the specific criteria of Appendix EU. Any subsequent application to the scheme would therefore be required to be assessed against those criteria of Appendix EU and pass through the requisite checks at each stage of the application process, Identity, Suitability, and Eligibility.

Our aim is to process all applications to the EUSS as quickly as possible. Each individual case is considered on its own facts, which means some cases will inevitably take longer than others to conclude. Cases may take longer dependent on the circumstances of the case, for example, if the applicant is facing an impending prosecution or has a criminal record or has not provided sufficient information for a decision to be made.

Furthermore, an applicant's circumstances may have changed since the permit was issued. For example, a child may have been under 21 at the point an EUSS Family Permit had been issued but over 21 by the time an application to the scheme was submitted. They would therefore be required to provide further evidence of eligibility than had been provided with the Family Permit application.

**b. If the EUSS application is pending for longer than the validity of their EUSS Family Permit, they are effectively unable to travel and return to the UK, as they are highly likely to be denied boarding. This is despite the fact that the 'border guidance' (p38) states that someone with a pending EUSS application and expired EUSS FP has temporary**

**protection and should be allowed to enter the UK.**

- i. Why therefore, does the ‘carrier guidance’ state (our emphasis): “Visa nationals who have a valid pending application to the EU Settlement Scheme are advised not to travel to the UK until their application is granted unless they hold a valid visa or visa exemption document. A Certificate of Application or Acknowledgement of Application is not satisfactory evidence of status.”?**
- ii. How is this restriction of travel compatible with Article 18(3) of the Withdrawal Agreement, given that the applicant had been granted an EUSS Family Permit, and has submitted an application for status under the EUSS?**

Under the UK’s Carriers’ Liability Scheme, a carrier may be liable to a charge of £2,000 per person if they bring a passenger to the UK who does not have a valid travel document and, if they require a visa, a visa of the required kind. To mitigate the risk of incurring such charges, carriers will conduct pre-boarding checks to ensure their passengers are properly documented for travel to the UK. This also includes checks to ensure the travel documents are genuine and are being presented by the rightful holder.

The advice to carriers states that a CoA may not be accepted without a valid visa or visa exemption document as evidence of a visa of the required kind. It is for this reason we also advise those who usually require a visa to travel to the UK who have a pending application they should not travel abroad until their application is concluded to avoid experiencing difficulties in returning to the UK, unless they possess a valid visa or visa exemption document. We are content this position is consistent with the terms of the Withdrawal Agreement.

**Q6. We have also received reports from visa-national family members who were resident in the UK on or before 31 December 2020, who have applied to the EU Settlement Scheme with their EEA Biometric Residence Card (BRC), and whose EUSS application is pending for longer than the validity of their BRC. As in Q5(b) above, they are effectively denied freedom of travel once their BRC expires because they will be denied boarding by carriers, despite the fact that the ‘border guidance’ (p38) states that someone with a pending EUSS application and expired EEA BRC has temporary protection and should be allowed to enter the UK.**

- a. As in Q5(a)(i), what is the justification for the UK Government not ensuring that carriers must allow people with expired BRCs and pending EUSS applications to be allowed to travel back to the UK?**
- b. Why can people only apply for replacement BRCs once they are granted EUSS status, and not while they have pending EUSS applications?**

As mentioned above in response to Q5b, carriers conduct document and visa checks prior to boarding to mitigate the risk of incurring a charge under the UK’s Carriers’ Liability Scheme. For those who require a visa to travel to the UK, carriers will check that they have a valid passport and valid visa or visa exemption document. A CoA

simply confirms that a valid application has been made; not that the holder has been granted status under the EU Settlement Scheme. Consequently, a CoA may not be accepted without a valid visa or visa exemption document as evidence of a visa of the required kind.

Where someone has not yet been granted EUSS status, any biometric residence card (BRC) they hold has been issued under the Immigration (European Economic Area) Regulations 2016. These regulations were revoked following the end of the transition period, and therefore BRCs can no longer be issued under them. This is why an existing BRC cannot be renewed. However, once they are granted status under the EUSS, they can be issued with a replacement BRC under Appendix EU to the Immigration Rules.

### **Travel problems for holders of EUSS status**

**Q1. The section [“If you have an EU Settlement Scheme family permit”](#) on the page for those who are not from the EU/EEA/Switzerland states that people with an expired family permit can enter the UK if they have already applied to the EU Settlement Scheme.**

**The section does not make clear that these people are highly likely to be denied boarding, as stated in the new section 2.4 of the Section 40 charging guidance for carriers. Other sections on the web page make clear that visa nationals will still need a valid visa or visa exemption document, but this section does not.**

**Therefore this new documentation still gives citizens misleading information about the travel documents they need. Could you therefore ensure that this section of the travel website, and the Section 40 charging guidance, are made consistent?**

Thank you for identifying this inconsistency on GOV.UK. This has been corrected on the relevant webpage and now makes it clear that a valid permit or other visa/visa exemption document would need to be held by a visa national to avoid being denied boarding by carriers and consequently not able to get to the border.

**Q2. With regard to another new web page <https://www.gov.uk/euss-travel-permit> (as described in your letter of 15 February), could you please update [this existing Gov.UK website](#) on replacing biometric residence permits/cards? It currently states “If your BRC was lost, stolen or damaged outside the UK: You cannot apply for a replacement BRC outside the UK. You will need to apply online for a new family permit.” Could it be changed to refer to travel permits rather than family permits, and for the link to go to the new travel permit page?**

Thank you for identifying this error on GOV.UK. It will be corrected as soon as possible.

**Q3. Please could you urgently update section 1.3 of the Section 40 charging guidance for carriers to state that charges will not apply to nationals of the**

**European Economic Area and Switzerland, given that we have extensive correspondence from you to say that carriers do not need to check whether passengers have status under the EU Settlement Scheme?**

**Q4. Could you give us a timeframe in which this change to the guidance will be made?**

**Q5. Further to this update to the S40 charging guidance, could you ensure that information on this change is relayed effectively to all carriers, for example by using your central and port liaison teams, and if necessary updating internal guidance to the Home Office's International Liaison Officer network - as described in your letter to us of 15 April 2021?**

We keep all our guidance under review. We will look at whether changes may be made to section 1.3 of the Section 40 charging guidance to reinforce the advice previously issued to carriers that they do not currently need to establish whether an EEA or Swiss citizen has status in the UK when deciding whether to board them.

However, carriers are required to ensure that such individuals have a valid passport or national identity card and may carry out checks for this purpose. This also includes checks to ensure the travel documents are genuine and are being presented by the rightful holder.

**Q6. Would you consider changing the advice to say that if someone can provide evidence of pre-settled or settled status under the EU Settlement Scheme via the 'View and Prove' service, that the carriers must accept this, rather than may accept this? If your answer is that it cannot be changed, could you please provide a justification for that decision?**

We are continuing to engage with carriers on our requirements for travel to the UK and provide updated guidance. Regarding those EEA and Swiss citizens who may continue to use a national identity card to enter the UK, we have been clear with carriers that they are not currently required to establish an EEA or Swiss citizen's immigration status, or to confirm that they are entitled to enter the UK on a national identity card, when deciding whether to bring them to the UK. They only need to check the individual has a valid passport or valid national identity card. No carriers' liability charge will currently be levied where a carrier brings an EEA or Swiss citizen to the UK on a national identity card they are not entitled to use.

For non-EEA national family members who are visa nationals, carriers are obliged to check they have a valid visa as well as a valid travel document. We therefore continue to issue physical documents in the form of an EUSS family permit, EUSS travel permit or EUSS biometric residence card to enable such individuals to demonstrate to carriers that they have the required 'visa'.

We have in addition advised carriers they may rely on the online View and Prove service for evidence a visa national has an online immigration status (or eVisa). We are considering how we might further emphasise this message to carriers to strengthen their awareness of this option, but we cannot currently compel carriers to carry out checks in this way. Consequently, we strongly advise visa nationals to

ensure they travel with a valid EUSS family permit, EUSS travel permit or EUSS biometric residence card or a valid UK-issued EEA biometric residence card to avoid difficulties when returning to the UK.

While we do not expect them to do so, we will also advise carriers that, where they wish to confirm for their own commercial purposes that an EEA or Swiss citizen has been granted status under the EUSS, they may also use the online View and Prove service for this purpose.

**Q7. As in Q5, could you ensure that these changes are relayed effectively to all carriers, using all communication channels at your disposal?**

We have been clear with carriers on the cohorts of people entitled to continue to use a national identity card for travel to the UK. In addition, we have updated our guidance to make clear carriers may rely on View and Prove checks to establish whether EUSS status is held in the absence of a valid EEA or EUSS document. However, we will look at whether there may be further opportunities to clarify the guidance and strengthen the message and we are also happy to look at updating other sources of guidance such as the online travel information manual (TIMATIC) produced by the International Aviation Transport Association.

### **Updating EUSS status to add another nationality**

**Q1. Is the advice this individual received from the Home Office correct in that they can't add an EU passport to their EUSS status (issued on the basis of an application from a non-EU national)? If so, why can they not do so?**

EUSS status holders will have created a UKVI account when they applied to the scheme, and they should notify us of updates using their account. Details of what can be updated can be found at:

[Update your UK Visas and Immigration account details: Overview - GOV.UK \(www.gov.uk\)](https://www.gov.uk/update-uk-visas-immigration-account)

**Q2. If the advice was incorrect, and they are able to add an EU passport to their EUSS status, are they able to do so online or would they need to send their passport by post to the Home Office in Liverpool?**

An applicant can add a new travel document if the personal details on that document remain the same, and this is a fully online and automated process that takes most applicants a few minutes. If, as in this case, the personal details (including nationality) are different, then there is an alternative process that requires the applicant to post their new document to the Home Office for verification. This requirement is to ensure the security and integrity of an individual's personal details.

**Q3. If someone in this position can only update their EUSS status to link a new passport by sending their passport by post to the Home Office, would you agree that it is reasonable to allow them to travel back to the UK before doing so? Not to do so would deny them their residence rights in the UK for a considerable period while they await the return of the passport granting**

## **boarding rights and entry to the UK.**

As previously advised, the responsibility for deciding whether to carry a passenger rests with the carrier. We have issued guidance to carriers confirming they are not currently required to establish an EEA or Swiss citizen's immigration status, or their entitlement to travel on a national identity card, when deciding whether to bring them to the UK.

**Q4. Assuming this individual can reach the UK border, can they enter the UK showing a valid passport which is not linked to their EUSS status, together with a cancelled passport which is linked to their EUSS status? If their cancelled passport has been retained by their country's authorities, can they evidence their status by logging into View & Prove with the number of their cancelled passport?**

Border Force is able to check EUSS status held by an individual when they travel on a document not linked to their UK Visas and Immigration account. However, to avoid delays at the border we recommend that, before they travel, individuals register their current passport or nationality identity card which they will use for travel on their UK Visas and Immigration account.

**Q5. In the more general case where someone renews an expired passport while abroad, can they enter the UK showing a valid passport which is not linked to their EUSS status, together with an expired passport which is linked to their EUSS status? If their expired passport has been retained by their country's authorities, can they evidence their status by logging into View & Prove with the number of their expired passport?**

As explained above, to avoid delays at the border we recommend that, before they travel, individuals register their current passport or nationality identity card on their Visas and Immigration account.

However, status holders can continue to access their status online by entering the document number from the identity document that they used in their application (even if this document has expired), plus their date of birth.

Yours sincerely,

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