



Home Office

Direct Communications Unit  
2 Marsham Street  
London  
SW1P 4DF

Tel: 020 7035 4848  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

Monique Hawkins  
the3million

Zoe Bantleman  
Immigration Law Practitioners' Association

124 City Road  
London  
EC1V 2NX

[monique.hawkins@the3million.org.uk](mailto:monique.hawkins@the3million.org.uk)

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Dear Monique Hawkins and Zoe Bantleman,

Thank you for your letter of 16 November regarding changes to the approach to late applications to the EU Settlement Scheme (EUSS). Please note that you are receiving a response from a policy official.

It is now more than two years since the EUSS application deadline of 30 June 2021 for those resident in the UK by the end of the transition period on 31 December 2020. Meeting the deadline for applying or having reasonable grounds for the delay in applying, is now a requirement for a late application, made on or after 9 August 2023, to be valid and a Certificate of Application (CoA) to be issued. These changes were introduced to help to protect the integrity of the EUSS against speculative and abusive applications, whilst continuing to enable those with reasonable grounds for their delay in applying to make a late application.

The published caseworker guidance includes examples of what might constitute reasonable grounds for the delay in making an application, as well as examples of circumstances which will generally no longer be accepted. However, each application is considered on a case-by-case basis, with the appropriate consideration given to the individual circumstances. The Home Office will continue to accept and consider late applications from applicants who can show that there are reasonable grounds for their delay in applying.

You have raised several points and made a number of recommendations. We always welcome feedback from stakeholders which can enable us to improve our services and we are grateful for your suggestions. We have addressed your recommendations in turn below.

**R1. In the aim of consistency and simplification across the Immigration Rules, we recommend EU10(1) is replaced with the following, which would introduce discretion to treat an application as valid, in line with other simplified Appendices**

such as SW 1.6 and PL 1.4: EU10. (1) An application made under this Appendix may be rejected as invalid where it does not meet the requirements in paragraph EU9.

**R2. Use the discretion introduced in recommendation R1 to instruct caseworkers to take eligibility into account before rejecting an application as invalid. Introduce content into the guidance to allow caseworkers to accept an application as valid by exercise of discretion, where information and evidence suggests the applicant is likely to meet the eligibility criteria.**

We think that there is a clear rationale for having separate validity and eligibility stages under the EUSS. This was set out in the EUSS Policy Equality Statement:  
[www.gov.uk/government/publications/eu-settlement-scheme-policy-equality-statement](http://www.gov.uk/government/publications/eu-settlement-scheme-policy-equality-statement)

**(viii) Valid application**

*73. Requiring an application under the EUSS to be valid – because, for example, the applicant has submitted their application through the required process and has proved their identity – before a caseworker considers whether the applicant meets the eligibility and suitability requirements for status under the scheme enables the application process for the EUSS to be made as simple and streamlined as possible for as many applicants as possible, as required by the agreements. It also enables the Home Office to make best use of the available caseworkers rather than have them deal with applications made in whatever form the applicant chooses by people who have not even proved their identity. These are important public interest considerations where the design and resourcing of a scheme dealing with more than four million applications are concerned.*

There is also a clear rationale, in respect of late applications, for assessing whether there are reasonable grounds for the delay in applying as part of the validity stage, before a CoA is issued. The Withdrawal Agreement (WA) clearly envisages a two-stage process for late applications for residence status under Article 18(1), and Article 18(3) confirms that temporary protection of rights, as confirmed by the issuing of a CoA, only attaches to an “application” as referred to in Article 18(1). In accordance with Article 18(1)(d), where the applicable deadline under Article 18(1)(b) for submitting an application has not been respected by the person concerned, the competent authorities will assess all the circumstances and reasons for not respecting the deadline and will allow the person to submit an application if there are reasonable grounds for the failure to respect the deadline. This two-stage process also aligns with the approach we understand is being applied to UK nationals in EU Member States with a constitutive system for obtaining the residence status referred to in Article 18(1).

In accordance with the WA, it is therefore possible that a person who may have been eligible for the EUSS does not have reasonable grounds for their delay in making their application to the scheme. That is inherent in the two-stage process for late applications envisaged by the WA. However, the existing, non-exhaustive guidance for EUSS caseworkers on reasonable grounds for late applications requires a case-by-case assessment, based on all the available information and evidence.

The guidance already permits the taking into consideration of compelling factors as part of that assessment, but, as with all aspects of the rules and guidance for the EUSS, we have kept the approach to reasonable grounds under review since 9 August and have taken account of feedback from stakeholders through the EUSS user groups and otherwise. As you know, the EUSS caseworker guidance is regularly updated and this process is currently under way in respect of the changes to Appendix EU in Statement of Changes

HC 246, laid on 7 December 2023, which have effect from 16 January 2024. The same update to the guidance will also make changes relevant to this correspondence in the light of operational experience and feedback from stakeholders. In particular, it will deal with circumstances in which a person may have had a reasonable belief they did not need to apply earlier to the EUSS, or a reasonable basis for being unaware they needed to apply.

**R3. Amend the EUSS Caseworker Guidance and practice on the treatment of late applications to return the threshold of 'reasonableness' to its ordinary meaning. In particular, the section "Circumstances which will not generally constitute reasonable grounds for delay in making an application" needs urgent amendment.**

As above, the existing, non-exhaustive guidance for EUSS caseworkers on reasonable grounds for late applications requires a case-by-case assessment, based on all the available information and evidence. It already permits the taking into consideration of compelling factors as part of that assessment, but, as mentioned above, the forthcoming update will provide further guidance in this area.

**R4. Especially in the light of the consistent past practice of the Home Office to inform refused applicants that they could submit new applications, revise the guidance such that caseworkers have clear discretion to accept repeat applications where reasons for applying after the deadline are otherwise considered 'reasonable', and/or where information and evidence suggests the applicant is likely to meet the eligibility criteria.**

Where a person has already made an application to the EUSS and this application has been refused, then they will not normally be able to establish that there are reasonable grounds for them to make a further late application to the scheme. However, the caseworker guidance is clear there may be circumstances in which there is a good reason why a previously refused applicant did not engage with the caseworker's attempts to contact them following an earlier application to obtain further information or evidence as to their eligibility for status under the scheme. Whether there are reasonable grounds to make a further application will depend on the particular circumstances of the case and the evidence provided.

**R5. Engage constructively with stakeholders, including all grant funded organisations, to discuss the impact of the changes on their services. Urgently review the funding awarded to the grant funded organisation sector, as we have been told that these organisations are specifically not funded to help with challenging refusal or rejection decisions. We refer you to our correspondence of earlier this year, in which you reiterated "The Home Office remains committed to supporting vulnerable citizens who are eligible to apply to the EUSS, and to ensuring no one is left behind."**

There is currently no plan to revise the grant funding allocation. In the first quarter of the new funding model, 74% of applications submitted by the grant-funded network have been submitted by the OISC level 1 organisations. In the same period, the OISC level 2 organisations are showing around 50% of their capacity is available, based on their grant funding bid proposals. In summary, we believe that the current funding model has made appropriate capacity available across the UK.

We work closely with all the existing grant funded organisations to ensure effective delivery of the grant funded service. £32 million of grant funding has been made available to support vulnerable people – so far more than 500,000 – in applying to the EUSS. This includes support to make late applications, applications to switch from pre-settled to

settled status, applications from joining family members and some post application support. The Home Office remains committed to supporting vulnerable people to apply to the EUSS, with grant funding support committed until the end of March 2025.

**R6. In the interests of equality of arms, create a mechanism, open to all, for the reconsideration of erroneously rejected applications (such as where evidence of reasonable grounds has been clearly overlooked) to minimise unnecessary litigation and further late applications.**

**R7. Recognise a right of appeal for applications rejected as invalid on the basis of not having a reasonable ground for a late application.**

An application to the EUSS which does not meet the validity requirements in paragraph EU9 of Appendix EU (including the requirement, where a late application made on or after 9 August 2023 is concerned, for there to be reasonable grounds for the applicant's delay in making their application) will be rejected as invalid. There is no right of appeal or scope for administrative review in respect of a rejection decision. The applicant has a means of redress against such a decision through judicial review; they can also make a further application to the EUSS evidencing reasonable grounds for their delay in making their application. Applicants can also contact the Resolution Centre if they have questions or would like to discuss a rejection letter.

The obligation in Article 18(1)(r) of the WA to provide access to judicial redress procedures against any decision refusing to grant the residence status referred to in Article 18(1) does not arise where the Home Office is not satisfied that there are reasonable grounds for the applicant's delay in making their application.

**R8. Change the application form to either allow for far more than 300 characters to explain the reason for a late application, or to state clearly that where applicants need more space than the character limit permits, they should upload separate representations as evidence.**

**R9. Instruct all caseworkers to look at all uploaded evidence, to check whether more explanation is provided about the reason for a late application.**

We have made changes to the online application form for the EUSS to increase the relevant character limit to 5,000 characters to ensure that a late applicant has plenty of space to provide information on the reasons for their delay in making an application. It is also open to them to upload additional reasoning, together with supporting evidence of their reasonable grounds.

Caseworkers consider both the information provided in the application form and any information or evidence uploaded to support the applicant's reasonable grounds for their delay in applying to the scheme.

**R10. Amend the guidance to reinstate having a document or status under the EEA regulations as an automatic reasonable ground for a late application.**

**R11. Contact everyone who has been granted a document or status under the EEA regulations, who the Home Office believes has not yet applied for EUSS status. Explain clearly to them that they need to apply for EUSS status, and reassure them that they will not be penalised for having missed the deadline.**

We have long been clear that any documentation issued under EEA Regulations ceased to be valid at the end of the grace period on 30 June 2021. We contacted all EEA biometric residence card (BRC) holders who had provided the Home Office with email contact details in mass mailer exercises in 2021 and again in 2022, where they were yet to apply to the EUSS. We have also drawn stakeholder attention to the action required of EEA BRC holders who are yet to apply to the EUSS in our quarterly EUSS stakeholder mailer.

Holders of such a document who submit a late application to the EUSS are required to provide detailed reasons for the delay in making their application and each application will be considered in light of its individual circumstances. However, the changes to the EUSS caseworker guidance mentioned above will take into account factors such as having had a reasonable belief that an earlier application did not need to be made due to having an unexpired EEA BRC.

Yours sincerely,

**EEA Citizen Rights & Hong Kong Unit**

Email: [Public.Enquiries@homeoffice.gov.uk](mailto:Public.Enquiries@homeoffice.gov.uk)