

## Written evidence submitted by Seraphus (FRE0010)

We take this opportunity to answer the questions that are within our area of expertise, as well as other matters that we think are relevant to the negotiations and which should be drawn to the attention of the Committee. As such, our responses will not necessarily be set out in order that the questions appear in your letter.

### UK citizens in the EU

We are unable to comment as this is outside of our area of expertise and competence. We are a UK based law firm providing regulated legal advice on UK immigration law, with a focus on the EU Settlement Scheme (EUSS) and the implementation of the citizens' rights provisions contained in Part Two of the EU-UK Withdrawal Agreement.

### EU citizens in the UK

#### EUSS experience / Vulnerable applicants

There has been a high volume of applications for, and grants of EUSS status to date<sup>1</sup>. This implies knowledge and take up of the EUSS has been good amongst sections of the UK based European community. Though for many the application process is straightforward to navigate, there are two categories of applicants who face issues with obtaining status:

- a) Applicants who may have straightforward eligibility cases but who face practical barriers to applying (for example those who do not have English language skills<sup>2</sup>, or those who are not able to manage the online, Smartphone application process / those with no-valid ID documents / those in prisons or detention centres). There are some support services for applicants who face practical barriers however, the Home Office has not provided a significant evaluation of the demand for these services and how well they are operating for users which is necessary to identify gaps or areas of improvement.
- b) Applicants who are required to satisfy complex immigration rules in order to be granted status. Non-exhaustive examples include cases for citizens without valid ID documents (often children in care), those relying on former relationships with an EEA citizen, derivative rights / Zambrano cases, those with criminal investigations / convictions or serving custodial sentences. These applications will often have com-

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<sup>1</sup> 3,112,600 grants of either pre-settled or settled status up to 31 March 2020 based on the most recent set of Home Office published EUSS statistics dated 16 April 2020.

<sup>2</sup> See report "An inspection of the EU Settlement Scheme, (April 2019 to August 2019)", by Independent Chief Inspector of Borders and Immigration published February 2020, recommendation 4.4 on page 9.

plex conditions and evidential requirements and applicants often face significant delays with processing. Applicants will often require legal assistance to apply and whilst there *may* be support available through the Home Office Grant Funded Organisations (GFOs), this support is not universally available solely on the basis that a case is complex.

There is no available legal aid funding in England and Wales to assist applicants to the EUSS (children in care the sole exception), which means if an applicant cannot access grant funded assistance (due to geographical limitations to GFOs, the GFOs capacity for complex cases, lack of accepted vulnerability and so on), they will need to apply unrepresented or pay legal fees. Access to legal advice has a significant impact on the chances to receive a positive, more efficient, EUSS outcome where the case is complex.

There is no available legal aid funding in England and Wales to assist refused applicants with legal representation in an appeal to the immigration tribunal. Any refusal is likely to require legal advice and representation to give the refused applicant access to a just outcome. Given the low numbers of EUSS refusal decisions, there would not be significant cost implications in providing legal aid funding where someone has been refused EUSS status (and who meets the financial eligibility criteria for legal aid).

### EUSS Deadline

The deadline to apply for a UK immigration status under the EUSS must be seen in the context of a large EEA/Swiss population of which, the large majority will never before have been required to have made any application to the Home Office to prove their right to reside in the UK. In essence, 3.5-4 million citizens are being legally required to undertake a unique and alien constitutive immigration application process within a limited timeframe. There are no examples that we are aware of, where a mandatory application process has been able to grant status to all the eligible population in the way in which the EUSS must be able to be considered a success. The best and simplest way to ensure that EEA citizens and their family members are provided with the rights guaranteed in the EU-UK Withdrawal Agreement and associated agreements<sup>3</sup>, would be to grant them automatically through a declaratory process<sup>4</sup>. The following points are made on the basis that the Home Office does not intend to pursue a declaratory process.

The Home Office is obliged by the EU-UK Withdrawal Agreement to allow for late EUSS applications where there are “reasonable grounds for the failure to respect the deadline”<sup>5</sup>. Thus far, the Home Office has not produced published written guidance as to what constitutes a reasonable ground (this is promised later in the year), however, the examples of reasonable ground given by the Home Secretary in her letter to the Home Affairs Committee appear indicate a restrictive approach. It is submitted that reasonable grounds must include situations where citizens were unaware of the need to apply to

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3 There are two other agreements covering similar citizens’ rights for the EEA/EFTA states and Switzerland.

4 See report “EU Residence Rights After Brexit” by ILPA published November 2019 at page 12

5 Article 18(d)

the EUSS and where citizens fail to apply based on a mistaken belief that they were not required to apply (for example because of long UK residence).

The Home Secretary has confirmed that failure to apply by the EUSS deadline results in a loss of lawful UK immigration status<sup>6</sup>. The impact of this policy on citizens who do not apply will be the loss of: free NHS treatment (they will be subject to NHS overseas charging regulations), most social assistance, access to DWP benefits, employment rights, the right to rent property and ultimately if no status is granted, removal from the UK. Being able to apply to the EUSS after the deadline does not alleviate this impact as these rights will be lost until EUSS status is approved; this in turn requires the Home Office to accept that there are reasonable grounds for the late application. This process can take months with no guarantee of a positive outcome.

### Statistics

The ONS statistical data on the EU population is insufficient to assess how many eligible EUSS applicants there are<sup>7</sup>. This makes it impossible to estimate how many citizens need to apply for, or how many have missed the deadline to apply for EUSS status. This figure will never likely be known without a change in the way population data is gathered<sup>8</sup>.

A reasonable assumption is that the ONS EEA/Swiss population figures are an underestimate (this is why there appears to be over 100% of some nationality groups applying to the EUSS when comparing the Home Office EUSS statistical data and the ONS population estimate). The ONS explanation that the +100% application figure may be caused by overseas applications seems implausible as a primary explanation as to why there is such a large number of excessive applicants compared to the UK population data<sup>9</sup>. It is also noted that the Home Office EUSS statistics could separate out overseas applications to allow for an accurate number of UK based applications to be known. A critical issue of not knowing within a reasonable margin what the eligible EUSS population is, is that it will be very difficult to assess the success of the EUSS for many years.

It will be the numbers of late applications to the EUSS who will provide the most accurate statistical information on how many eligible UK based EUSS applicants there are (we may never know how many eligible applicants there are who no longer live in the UK). The reason for this is that an eligible UK based EUSS applicant who is unaware of the scheme, will only become aware once the deadline has passed and they become unlawful. Once a person has lost their rights by being unlawful in the UK (for example they try to move jobs and cannot prove the right to work, or they are handed a bill for

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6 See letter of the Home Secretary to the Home Affairs Committee dated 14 April 2020 at answer 13

7 See letter of the Home Secretary to HCA dated 14 April 2020 at answer 2 / see the Office for National Statistics: "Note on the difference between ONS population estimates by nationality and Home Office European Union Settlement Scheme (EUSS) statistics", published 24 February 2020.

8 See report "Not Settled Yet? Understanding the EU Settlement Scheme using the Available Data" by the Migration Observatory published 16 April 2020, section 6. Can the data be improved?

9 See ONS note at page 5 heading 5.

NHS treatment), they will understand the need to regularise their immigration status which will be done by making a late application to the EUSS.

Currently the Home Office EUSS statistics record the number of EUSS applications not the number of individual unique applicants<sup>10</sup>. This means the figures reported in those statistics are not an accurate reflection of the actual number of EEA/Swiss citizens and third country nationals who have applied to the EUSS. The Home Office states that the reason the statistics are reported in this way is consistent with the way all immigration statistics are reported<sup>11</sup>. This may be the case; however, it is submitted that the EUSS has a unique place in the UK's immigration system as it is free to apply with EEA/Swiss applicants able to make multiple applications without impinging on their rights under EU law. This contrasts with the majority of the immigration system (mainly based on the immigration routes in the Immigration Rules), where applicants pay thousands of pounds in fees and the Immigration Health Surcharge and are only realistically able to make a single application which will either succeed or fail. In other words, the recording of non-EUSS immigration applications is highly likely to reflect the actual number of individual applicants and so is a reasonable way in which to collect this data. As the EUSS operates in a way that allows the possibility of multiple applications from the same applicant, the statistical data should have been adopted to record the number of unique applicants as well as overall application numbers (as well as give a clearer indication of the actual number of citizens who have applied, recording statistics in this way would help assess whether applicants were coping with the application process by recording the prevalence of applicants needing to make multiple applications to receive a grant of status). The Home Office has indicated (not guaranteed), that in time the EUSS statistics will record applicants who move from pre-settled status to settled status to give a better indication of dual counting<sup>12</sup>. Noting that this should have been done from the outset of the statistical reporting, it is also clear that this method will not record situations where an applicant has made an invalid or void application(s) before either giving up, or successfully obtaining a grant of EUSS status. Recording this information would give the Home Office and other organisations a more accurate figure of unique applicants as well as provide useful data as to how easy the EUSS is to apply to and navigate (as noted in brackets above).

The EUSS statistics to date have not included any data about applications made on paper applications form<sup>13</sup>. Paper applications typically are more complex EUSS applications (the mandatory paper routes cover: no-valid ID cases, 'Surinder Singh' cases, 'Lounes' cases, 'Zambrano' and Derivative rights cases, which have complex conditions attached), and therefore statistical analysis of these categories is essential to understanding how well the EUSS is functioning for the most vulnerable of applicants. The Home Office has committed to producing some data about paper applications in the next set of quarterly

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10 See letter of the Home Secretary to HCA dated 14 April 2020 at answer 14.

11 See letter of the Home Secretary to HCA dated 14 April 2020 at answer 14.

12 See letter of the Home Secretary to HCA dated 14 April 2020 at answer 14.

13 See Home Office published EUSS statistics dated 16 April 2020 at page 1.

EUSS statistics due to be published in May 2020<sup>14</sup>; we hope that this data will be sufficiently detailed.

### Barriers to EUSS / other services

The identified barriers to applying to the EUSS and being granted EUSS status are set out above in the 'EUSS experience / Vulnerable applicants' section. The following points relate to accessing and evidencing the rights associated with EUSS status.

Digital status remains largely untested and therefore, there is no way to know the impact on EEA/Swiss citizens after the transition period ends in terms of evidencing their rights under EU-UK Withdrawal Agreement. The Home Office position is that there is no cliff edge in respect of these citizens being required to access and utilise their digital status, on the basis that are able to do so voluntarily now whilst also holding EU law rights. This fundamentally misrepresents the point being made that there is a cliff edge; before the end of the 'grace period' provided for in the EU-UK Withdrawal Agreement<sup>15</sup>, EEA/Swiss citizens are able to use their passports and national ID cards to evidence their rights (to free NHS treatment, work, rent, open bank accounts), after the grace period ends they will not be able to use these documents without also showing their digital EUSS status as well. Therefore, unless digital status is accessible to the holder and the organisation checking the holder's immigration status understands the digital immigration status, there will be significant barriers to the holders of EUSS status accessing their rights.

Access to an optional physical ID card confirming EUSS status in addition to the digital status provided, would alleviate many of the concerns citizens have with respect of being asked to prove their lawful status and associated rights<sup>16</sup>. The Home Office continues to advocate the perceived benefits of digital status without engaging with the question as to why issuing an optional physical ID card is so difficult to accommodate<sup>17</sup>; citizens and advocates merely ask that an option is made available for citizens who wish to hold one given that this will clearly improve their psychological wellbeing and feeling of security in the post-Brexit environment.

It is difficult assess the degree to which UK public bodies, businesses and landlords have continued to treat EU citizens in the same manner as when the UK was a member state, as the laws applicable to these bodies will not have changed during the transition period. This means that discriminatory treatment will be experienced by in large, without any official confirmation (for example, a potential employer is unlikely to state in writing to an EU citizen that they can only employ them if they hold EUSS status as this would be unlawful). Campaign groups and civil society organisations appear to confirm that

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14 See Home Office published EUSS statistics dated 16 April 2020 at page 2.

15 Article 18(b)

16 See report "Experiences and Impact of the EU Settlement Scheme: Report on the 3million Settled Status Survey" by Professor Tanja Bueltmann of Northumbria University at page 25.

17 See letter of the Home Secretary to HCA dated 14 April 2020 at answer 6.

EEA/Swiss citizens are being asked for evidence of EUSS status during the transition period by organisations who do not have the legal right to request it<sup>18</sup>.

An area where EEA/Swiss citizens can voluntarily use their digital EUSS settled status to access rights is with certain DWP benefits. Holding settled status should passport the holder through the right to reside test for benefits on the basis that they are settled in the UK<sup>19</sup>. However, there are continued reports of settled status holders failing the right to reside test because DWP assessors are either, not familiar with settled status as a passporting immigration status or, because the proof of settled status not accepted (in other words the holder could not show their digital status in an acceptable way). Settled status holders who fail the right to reside test have received an unlawful decision from the DWP and whilst there is a review mechanism in place, this can be a time consuming process during which time the affected citizen will not receive any benefit income which they would be entitled to but for the unlawful decision.

The certificate of application letter received by a Non-EEA/Swiss family member does not confirm a right to work which can lead to difficulties for this group obtaining or maintaining employment during the processing time for their EUSS applications (this processing tends to take longer than EEA/Swiss applications<sup>20</sup>). For Non-EEA/Swiss applicants who hold a valid Biometric Residence Card (issued under the EEA Regulations) or Biometric Residence Permit (issued under UK immigration law) at the point of EUSS application, there seems no reason why the certificate of application letter issued to them cannot confirm the rights associated with their immigration documents remain valid whilst their EUSS application is processed.

Lastly, there will be two groups of EEA/Swiss citizen, those residing under the EU-UK Withdrawal Agreement (i.e. in receipt of pre-settled or settled status) and those residing under other UK immigration law provisions. In absence of a physical ID card, differences in evidencing rights between these two groups of EEA/Swiss citizens will add further confusion.

### The Independent Monitoring Authority

There is a strong argument for civil society representatives of EEA citizens to input into the IMA to ensure that the practical experiences of citizens are taken into account by this body. There is a significant emphasis on the fact that EUSS status secures the rights of EEA citizens and their family members living in the UK. Whilst this may be legally correct, as noted above possessing legal rights is not the same as being able to exercise those legal rights. An example is that where an EEA/Swiss citizen who holds settled status is refused Universal Credit on the basis of failing the right to reside test (as noted

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18 See report "Experiences and Impact of the EU Settlement Scheme: Report on the 3million Settled Status Survey" by Professor Tanja Bueltmann of Northumbria University at page 39

19 See The Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations 2019

20 See EU Settlement Scheme: current estimated processing times for applications at webpage <https://www.gov.uk/government/publications/eu-settlement-scheme-application-processing-times/eu-settlement-scheme-pilot-current-expected-processing-times-for-applications>

above). In this case there is no legal basis for the citizen to fail the right to reside test as their settled status is proof that they legally pass the test. Therefore, the issue is with citizen's practical access to the legal rights because of failures (potential systemic ones) on the part of the decision-making authority.

The same issues could arise with the NHS, social services, employers, landlords, banks. Whilst there may be individual redress in these cases, the IMA needs to be aware where the prevalence in denying these rights reaches systemic levels. This input is best provided by civil society organisations who are often at the forefront of assisting affected citizens accessing their legal rights.

### Detained and imprisoned citizens

We are extremely concerned about this group of individuals who are ultimately the most vulnerable of vulnerable persons, and we have very little answers from the Home Secretary on how they can protect their lawful residence in the UK.

More evidence is required from the Home Secretary on how the population of EEA/Swiss citizens and their family members who are servicing criminal sentences, or who have completed criminal sentences and remain imprisoned under immigration powers, or who are detained in immigration detention centers, can participate in the EUSS. Currently there is no official process for these individuals to apply to the EUSS from their place of residence. In all places of residence, access to IT is limited or not available and, unless these individuals have outside assistance, they will not be able to participate in the EUSS until such time they secure their release. If this occurs after deadline they will be released into a period of unlawful residence without access to social and legal assistance.

Many individuals will be in the process of appealing their deportation orders, a process that takes upwards of a year or more. Those appeals are unlikely to be concluded before the EUSS deadline. They will be excluded from the EUSS in the interim because of the existence of the deportation order, but if they win their appeal, they will become overstayers because they were prevented from applying to the EUSS before the deadline.

There remain questions about how residence at these facilities will affect a person's continuous residence in the UK in the following circumstances:

- a) For prisoners who have 5 years continuous qualifying residence before their sentence, and who are not subject to removal decisions, we don't yet know if being in prison be considered to be a good reason for applying late to the EUSS.
- b) For eligible EUSS applicants with under 5 years UK residence who do not face enforcement action at the end of their sentence, if their sentence ends after the specified date, they will not be able to begin a new continuous qualifying period of residence in the UK. This appears inconsistent with the EU-UK Withdrawal

Agreement<sup>21</sup> in that conduct that took place before the end of the transition period should be dealt with in line with EU standards. If a person's transition period conduct does not result in enforcement action this means their conduct is not sufficiently serious to result in their removal. Yet, based on the definition of the Specified Date in Appendix EU<sup>22</sup>, they are not able to begin a new qualifying period.

- c) We don't have an answer to the question of whether time spent in immigration detention is considered as UK residence under the EUSS. We don't know if non-EEA family members with 5 years sponsored residence *before* their EEA/Swiss sponsor was imprisoned, have the right to be granted settled status.

This group of individuals need access to legal aid assistance from within prisons and detention centers to ensure they can have a representative who can facilitate their participation with the EUSS as well as ensuring their family members residing outside these centers are simultaneously protected.

While it is within our expertise to give evidence of the law and the issues facing this group of individuals, we recommend contacting Bail for Immigration Detainees<sup>23</sup> (Pierre Makhlouf, Assistant Director, [pierre@biduk.org](mailto:pierre@biduk.org)). BiD is the foremost charitable organisation working with prisoners and immigration detainees, they will be able to give evidence based on their direct interactions with these individuals.

### Impact of Covid-19

The loss of face-to-face advice and outreach work may increase the numbers of vulnerable eligible applicants missing the deadline to apply to the EUSS. The Home Secretary confirmed that there is no intention to move the EUSS deadline even in spite of the interruption to Home Office and GFO/advice services due to Covid-19<sup>24</sup>. This position should be reviewed once the impact of Covid-19 on EUSS applications is better understood (we refer to the points made on the detrimental impact to citizens who miss the EUSS deadline).

At the present time we do not know what the impact will be for those citizens with less than 5 years UK residence who are unable to return to the UK at the moment because of Covid-19. It is possible their continuous UK residence will be interrupted which will necessitate a new EUSS application assuming they are resident in the UK before the end of the transition period. It would be preferable for the Home Office to implement a concession because of the health emergency, to allow those affected not to break their continuous UK qualifying residence.

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21 <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1580206007232&uri=CELEX%3A12019W/TXT%2802%29#d1e1088-1-1>

22 <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

23 <https://www.biduk.org>

24 Home Secretary oral evidence to the Home Affairs Committee given by video link on 29 April 2020.

New-borns are not able to obtain birth certificates from local authorities at the present time. This means eligible children cannot obtain a passport or national ID cards from their national embassy; they are therefore prevented from applying to the EUSS as they have no valid ID document nor any alternative ID that could be presented with an EUSS application.

Non-EEA/Swiss family member applicants have been particularly impacted by Covid-19. In many cases they are currently unable to apply to the EUSS as the postal identity verification route is suspended. All non-EEA/Swiss family member applicants without biometric residence cards have to verify their identity through the postal route, which means those affected cannot extend existing UK immigration status as they cannot lodge EUSS applications. The impact to these citizens is that, through no fault of their own, they may become overstayers and consequently lose the right to work, access benefits, receive free NHS treatment until they are able to regularise their status (as noted above, Non-EEA/Swiss are already subjected to a significantly longer processing time and therefore detrimental consequences will apply for longer).

### Summary

We hope that this written evidence assists the Committee with its work. Accompanying this written evidence is a list of outstanding questions yet to be answered by the Home Office, it will provide further illustration on the complexity of this scheme and the obstacles that may prevent in-time applications.

## EUSS Questions

01/05/2020

TOPIC	QUESTION	ANSWER
<b>Section 1 – Operational</b>		
<b>Application process</b> <i>5 years residence</i>	If an applicant selects that they have lived in the UK for 5 years or more, how does this alter the case working process if their residence is not automatically confirmed?	
<b>Application process</b> <i>ILR Holder</i>	Does the system as a default ask a holder of ILR for the proof of this? When would an ILR holder be asked for proof that their status remains valid?	
<b>Application process</b> <i>ILR Holder</i>	For a person who holds ILR, does the system carry out the automated NiNo checks as well?	
<b>Application process</b> <i>Children</i>	With children who have difficulty obtaining an ID document (for example those in care without contact with their parents), is the recommended approach to apply on a paper form without a valid ID?	
<b>Application process</b> <i>Children</i>	What is the procedure for assessing the eligibility of children whose parent(s) have pre-settled status? Are they asked for evidence of their UK residence or are they given leave in line with the parent(s)?	
<b>Application process</b> <i>Children</i>	Does the EUSS application process check if children who are born in the UK are British by birth (for example by checking the NiNo records of the parents)? If not, what will happen if a child later discovers that they are British?	
<b>Application process</b> <i>Legal representatives</i>	The online application asks for information where a third party has assisted the applicant with their online submission. Where the third party is an instructed legal representative why is there no option for the first point of contact to be the legal representative rather than the applicant? (The online form asks for the legal representative's email address and so there seems no technical reason why communication cannot be directed at them. If applicants have instructed representatives this is because they want and require assistance with their application. This is possible with all other types of immigration / nationality applications so why not EUSS?)	
<b>Application process</b> <i>Fresh application</i>	If someone is granted pre-settled status not settled status and they disagree with this outcome, how soon are they able to make a new application for settled status with additional evidence (i.e. how long before the system allows them to start a fresh application)?	
<b>Automated checks</b> <i>False positives</i>	How does the online system allow people to state that the automated checks have given a false positive regarding the most recent 5 years of residence? A person may wish to rely on a historical period of 5 years residence but is not able to do so	

	as the only option is to apply for pre-settled status which is the incorrect outcome for that person.	
<b>Automated checks</b> <i>False positives</i>	What will happen in the future if it is established a person accepted settled status based on a false positive but, who could have relied on a historical period of 5 years residence instead?	
<b>Automated checks</b> <i>False positives</i>	What will happen in the future for someone who incorrectly accepted settled status (due to not understanding the legal terms / processes involved with the EUSS), who has since obtained 5 years UK residence?	
<b>Family members</b> <i>Certificate of Application</i>	Can the CoA letters issued to non-EEA family member who hold valid leave to remain confirm that they have to the same conditions as their current leave to remain (including where applicable the right to work), as per Section 3C leave during the processing period? If not, how will a person with Section 3C leave and the right to work in the UK prove this to an employer?	
<b>Family members</b> <i>Right to work</i>	Does the HO online right to work check acknowledge that a non-EEA family member with extant LTR/E (with permission to work as a condition), who has made an application under the EUSS has the continued right to work?	
<b>Family members</b> <i>BRC/P conditions</i>	Where a non-EEA family member has leave to remain with conditions and a valid BRP (eg/ Tier 4 restrictions on working / Appendix FM no recourse to public fund), how will they prove to an employer / DWP that their status issued under the EUSS has different conditions attached as their BRP will conflict with the holders' digital status? Are there any HO communications to employers / the DWP to confirm that a person's physical ID and digital status could contain different information about the conditions of their LTR?	
<b>Family members</b> <i>Replacement BRC/P</i>	What is a non-EEA EUSS status holder supposed to do if their BRC/P is expiring after their status has been issued? Will there be a fee to obtain a new document? Why is there no information about replacing BRC/P in the status grant letter?	
<b>Family members</b> <i>McCarthy applications</i>	How should a family member of a McCarthy dual British citizen make their EUSS application? Are they required to complete a paper application form or are they able to apply online?	
<b>Family members</b> <i>Evidence burden</i>	Does a non-EEA/Swiss family member have to show that their EU sponsor has 5 years UK residence even if the EU citizen has settled status?	
<b>Family members</b> <i>Surinder Singh</i>	Will the HO continue to issue EEA Regulation Family Permits to family members of British citizens who meet the Surinder Singh criteria up until March 2022?	
<b>Rejections</b> <i>Invalid applications</i>	How are applicants notified that their application is invalid? Is an applicant who receives an invalid rejection given the reason why?	

<b>Rejections</b> <i>Invalid applications</i>	Will the Home Office be collecting data about rejected applications where the validity requirements are not satisfied? This information will be important to assess whether there are barriers to applicant (including vulnerable applicants) accessing the EUSS. If this information is being collected, how is it being broken down (ie: is the reason for the validity rejection being recorded).	
<b>Grant Funded Organisations</b> <i>Appeals</i>	Does the HO funding (current and future) cover assistance for EUSS applicants who have received an eligibility refusal who have appealed to the immigration Tribunal?	
<b>Grant Funded Organisations</b> <i>Complex cases / Appeals</i>	Appeal work to the Immigration Tribunal requires the GFO to hold OISC Level 3. Is there enough complex case work capacity available for EUSS applications within the GFO network? Is this capacity reviewed by the HO?	
<b>EUSS Statistics</b> <i>Double counting</i>	It was previously indicated that the EUSS statistics will start to record the double counting of EUSS applications from unique applicants. Is this still the intention and is so when is it will the statistics start to show this information?	
<b>EUSS Statistics</b> <i>Post-grant status removal</i>	How will EUSS status cancellations / revocations be recorded in the official statistics?	
<b>EUSS status</b> <i>Updating expired ID</i>	The HO has provided us additional information about the plans to introduce an electronic means of updating citizens' EUSS profile with their newly issued ID documents. We understand that the launch date has been delayed and if there are any updates, we would be grateful if this could be provided.	
<b>EUSS status</b> <i>Updating digital profile</i>	The HO previously indicated EEA EUSS holders would be able to add travel documents to their digital profile if these documents were not used for the application (i.e. their digital profile can have both their passport and national ID card registered), is this still the intention?	
<b>Section 2 – Interpretation / Policy</b>		
<b>Definitions</b> <i>person who has ceased activity</i>	In the definition of a person who has ceased activity, under sub-paragraph (c) there is no explanation as to how long the citizen needs to commute weekly between the UK and EEA/Switzerland before qualifying for settled status? This question is not answered in the caseworker guidance either. How long should a person in this situation be commuting weekly before they can apply for settled status?	
<b>Definitions</b> <i>Continuous qualifying residence</i>	The definition states the requirement not to have been absent from the UK for more than 6 months in <b>any</b> 12 months during the 5-year qualifying period (subject to the exemptions). Does this mean that absences are calculated on a rolling basis, instead of in fixed 12-month blocks as they would be if making an EU permanent residence application?	

<b>No valid ID policy</b>	For applicants who are not able to apply with valid proof of identity, does the issuing of a certificate of valid application mean that the applicant has passed the 'no ID policy' test? If not, at what point in the process is the reason for applying without valid ID assessed?	
<b>Settled Status grant</b> <i>Absences allowance</i>	A holder of settled status is allowed an absence of up to 5 years (4 years if a Swiss citizen), without their ILR lapsing under article 13 of the Immigration (Leave to Enter and Remain) Order 2000. Paragraph EU7(2) confirms this and states an Appendix EU ILR holder is able to "resume their residence in the UK" in line with the Order. What is the definition of a person "resuming their residence" in the UK and where can this definition be found? Does the HO interpret Article 15(3) of the Withdrawal Agreement as allowing an intention to settle clause in order for the ILR holder not to lose their status? If an ILR holder returns to the UK for 1 day within the 5 / 4 year allowance and leaves again, does the absence clock reset for another 5 / 4 years?	
<b>Evidence</b> <i>Not in English</i>	Do EUSS case workers ask for documents that are not in English to be provided with a translation? If so, what level of professional translation is required for applicant documents that are not in English? There is no reference in the EUSS caseworker guidance how to assess evidence documents that are not in English.	
<b>Family members</b> <i>Unmarried partners</i>	The HO previously indicated the intention to change Appendix EU to provide retained rights for unmarried partners who are victims of domestic violence. Will this change be made and if so when?	
<b>Family members</b> <i>Dependent parents</i>	Some non-EEA parents are considered extended family members under the EEA Regulations (where member of the household but not financially dependent). Do these parents need a relevant document to granted status under the EUSS bearing in mind that dependency is assumed under the Appendix EU definition of dependent parent (in essence this means that all parents are direct family members not EFM for the purpose of the EUSS)?	
<b>Family members</b> <i>Change of circumstances</i>	If a non-EEA citizen granted pre-settled status on the basis of marriage to an EEA/Swiss citizen then divorces, do they need to apply for reapply for pre-settled status based on the retained rights of residence provisions? Does the change of circumstance negate their pre-settled status under the general grounds of refusal?	
<b>Family members</b> <i>Northern Irish citizens</i>	Can the HO explain how the commitments in the New Decade, New Approach document at page 48 will affect family reunion sponsorship for dual British/Irish citizens resident in Northern Ireland? Are there plans to include the family members of these dual citizens in the EUSS?	
<b>Paper application forms</b>	This is the email response from the SRC to a request for a paper application forms for a Zambrano carer. "Paper applications	

<p><i>Refusal to issue</i></p>	<p><i>are only available depending on an applicant's individual circumstances, and <b>after we are sure a person is eligible</b>. For us to assess whether you meet the criteria to apply using a paper application, please resubmit your query via the online enquiry form"</i></p> <p>The HO has made past assurances that the triage process involved in obtaining a paper application form, does not involve an applicant having to prove there are eligible to apply in a particular category. The bolded text above contradicts this. How can we be sure that citizens are not being denied access to the EUSS by being refused paper application form. If the SRC decision is that a person cannot have an application form, how can they challenge this refusal to allowed them to apply to the EUSS?</p>	
<p><b>Late applications</b> <i>Appeal rights</i></p>	<p>Will the right of appeal be available for those who apply after the deadline arguing 'good reason', where their good reason is rejected?</p>	
<p><b>Suitability</b></p>	<p>Why does the online application form ask for criminal convictions without stating that only unspent convictions need to be declared? Irrespective of other guidance pages available to applicants, the question in the application is misleading and may result in declarations being made that are not required.</p>	
<p><b>Suitability</b></p>	<p>We understand that citizens with matters that have been concluded by the police / Immigration Enforcement but have not been updated as such on the PNC are having their applications put on hold without the ability to make representations. This is occurring even where the matter they were investigated for would not reach the suitability thresholds for referral to IE. Will the HO change the process so that citizens can show with alternative evidence that their police / IE matter has been concluded without the need for the PNC to be updated, so that their applications can be processed?</p>	
<p><b>Hostile environment</b> <i>Post-Grace period immigration status</i></p>	<p>What will be the immigration status of people who do not apply before the deadline until such time as the HO considers whether they have a good reason for missing the application date? This is not a question about whether they will be able to apply to the EUSS as this policy is clear, the question is whether they will be unlawfully resident in the UK from 01 July 2021 to the date when they are granted EUSS status (assuming the good reason is accepted).</p>	<p><i>SSHD letter to the HCA on 14/04/20 "Those who have not applied to the EUSS by the deadline will not have lawful status in the UK. This means, for example, they will not be able to evidence a right to work or rent if they seek new employment or a new private rental property during the period in which they have no lawful status."</i></p>
<p><b>Hostile environment</b> <i>Bank Accounts</i></p>	<p>Will Section 40 of the Immigration Act 2014 by used in the future to close bank accounts of EEA citizens who have not applied to the EUSS (either accidentally or deliberately as they have chosen to leave the UK)?</p>	
<p><b>Home Office publications</b></p>	<p>When will the Policy Equality Statement be published [this document was confirmed as existing in June 2019 by then Immigration Minister, Caroline Nokes]</p>	

<b>Home Office publications</b>	When will the vulnerable elderly strategy / guidance be published? Those without capacity are unable to apply themselves, but in many cases it is unclear whether those supporting them have authority to act for them with respect of making an EUSS application. There is no available guidance on this which means that many vulnerable adults are not able to make EUSS applications.	
<b>Home Office publications</b>	When will the good reasons for late applications policy be published?	
<b>Section 3 – Prisoners / Immigration Detainees</b>		
<b>Detained applicants</b> <i>Prisons</i>	What practical steps are being taken to facilitate prisoners (those currently serving a sentence and those held under immigration powers) to participate in the EUSS?	
<b>Detained applicants</b> <i>Detention Centres</i>	What practical steps are being taken to facilitate immigration detainees (in IRCs) to participate in the EUSS?	
<b>Detained applicants</b> <i>Identity</i>	Will those being held by the HO or Ministry of Justice (immigration detainees and prisoners) need to provide proof of their ID with their applications as this ID is already accessible to the Home Office?	
<b>Detained applicants</b> <i>Application process</i>	Can a paper form be provided for those who are in prisons (both prisoners and immigration detainees) to apply to the EUSS?	
<b>Deportation Orders</b> <i>Appeals / EUSS deadline</i>	What happens to those people who are currently in the process of appealing their deportation orders, whose appeal is not concluded before the EUSS closure date? They will be excluded from the EUSS because of their deport order, but if they win their appeal, they will become overstayers because they have not applied to the EUSS before the deadline.	
<b>Detained applicants</b> <i>EUSS deadline</i>	For prisoners who have 5 years continuous qualifying residence before their sentence and who are not subject to removal decisions, will being in prison be considered to be a good reason for applying late to the EUSS? Will a policy be issued on this?	
<b>Detained applicants</b> <i>Continuous qualifying period</i>	For eligible EUSS applicants with under 5 years UK residence who do not face enforcement action at the end of their sentence, if their sentence ends after the specified date, they will not be able to begin a new continuous qualifying period. This appears inconsistent with the Withdrawal Agreement in that conduct that took place before the end of the transition period should be dealt with in line with EU standards. If a citizens' transition period conduct does not result in enforcement action this means their conduct is not sufficiently serious to result in their removal. Yet, based on the definition of the Specified Date in Appendix EU, they are not able to begin a new qualifying period.	

<b>Immigration detention</b> <i>Continuous qualifying period</i>	Is time spent in immigration detention considered as UK residence under the EUSS?	
<b>Family members</b> <i>Right to settled status</i>	Do non-EEA family members with 5 years sponsored residence <u>before</u> their EEA sponsor was imprisoned, have the right to be granted settled status?	
<b>Detained applicants</b> <i>Access to legal advice</i>	Will the MOJ facilitate a duty solicitor scheme for EU nationals in prisons, like they do in IRCs?	
<b>Detained applicants</b> <i>Access to legal advice</i>	Will legal aid be available for people who are refused in the EUSS, and if not why not?	
<b>Section 4 – Covid-19</b>		
<b>Valid Identity Document</b> <i>New-borns</i>	The HO has been made aware that many embassies are unable to issue valid ID documents to new-born children in the absence of a birth certificate which is currently not obtainable from local authorities (unless there are exceptional reasons). These children will have no alternative ID as the birth certificate is the first stage in obtaining valid ID. Is there any way in which children in this position can make an EUSS application?	
<b>Continuous Residence</b> <i>Good reason to exceed 6 months</i>	Will a concession be added to Appendix EU to allow for continuous residence to be uninterrupted where the applicant has been outside of the UK for more than 6 months due to CV19 where this is not due to illness on the applicants part (i.e. they have logistical reasons why they exceeded the 6 months)? At the moment, the 'important reason' for an absence between 6-12 months concession would not appear to cover travel logistics.	We understand that this is under ministerial review. If there are any updates on this issue, we would be grateful if this could be provided.
<b>Continuous Residence</b> <i>New reason to exceed 12 months</i>	Will a concession be added to Appendix EU to allow for continuous residence to be uninterrupted where the applicant has been outside of the UK for more than 12 months due to CV19 (in line with the condition for military service)?	As above
<b>Continuous Residence</b> <i>Good reason to exceed 6 months on x2 occasions</i>	Will there be a concession added to Appendix EU for an applicant to maintain continuous residence where they have x2 6 month but less than 12-month absences. This scenario assumes the first 6-12 month absences was for one of the currently defined 'important reasons' with the second 6-12 month absence relating to CV19.	As above
<b>Qualified sponsors</b> <i>EEA Qualifying Residence</i>	Will there be a concession in Appendix EU where an applicant or sponsor is required to be a qualified person within the meaning of Regulation 6 of the EEA Regulations, but this was not possible or there was an interruption because of the impact on CV19 on their qualifying activity?	We understand that this is under ministerial review. If there are any updates on this issue, we would be grateful if this could be provided.
<b>Grace Period</b> <i>Extension</i>	We believe that there are strong grounds to extend the grace period on the basis that the majority of EUSS outreach and	We understand that an extension has been ruled out as per the evidence given by the

	assistance has ceased for the foreseeable future. Our concern remains this lost time will impact on vulnerable applicants unless the deadline to apply is moved appropriate to the amount of time activities are suspended for.	Secretary of State to the Home Affairs Committee on 29 April 2020.
<b>Non-EEA applicants</b> <i>Extension of leave under 3C</i>	Non-EEA family members who do not possess a valid BRC are not able to apply to the EUSS currently as the postal-ID route is suspended. This means for those with extant leave to enter / remain they are unable to submit an application in order to extend their current leave by operation of Section 3C. To prevent family members in this position becoming overstayers, will the HO either: <ul style="list-style-type: none"> <li>a) Allow them to submit an online application with biometrics to be enrolled at a later date?</li> <li>b) Confirm in published guidance that these applicants are eligible to use a paper application form to apply?</li> </ul>	
<b>Non-EEA applicants</b> <i>Biometric process</i>	Will the definition of <i>required biometrics</i> in sub-paragraph (b) of Annex 1 of Appendix EU be amended to remove the requirement for non-EEA citizens to provide fingers as UK Visa and Citizenship Application Services have suspended all biometric enrolment activities at the centres? In effect, there can be no processing of their applications whilst this requirement remains in place.	We understand that the biometric enrolment processes are under ministerial review. If there are any updates on this issue, we would be grateful if this could be provided.
<b>SRC</b> <i>Call centre closure</i>	Are there any updates as to when the SRC will reopen to take calls from applicants and advisors?	
<b>SRC</b> <i>Email communications</i>	We previously made a suggestion regarding the online SRC service to enable a way of following up responses received where there needs to be further clarification / information provided. Is this possible?	
<b>Case working</b> <i>Processing times</i>	Does the HO have any update as to the impact of CV19 on processing times for EUSS applications?	
<b>Section 5 – Family Permits / Naturalisation / Borders / Miscellaneous</b>		
<b>Appendix EU family permits</b>	What is the journey for someone who is issued an Appendix EU family permit? There is no reference in caseworker guidance or on the gov.uk webpage. Does the family permit grant information explain to the holder they must apply to the EUSS within the lifetime of the family permit to ensure they do not overstay?	
<b>Appendix EU family permits</b> <i>Definitions</i>	How will the Specified Date definition in Annex 1 of Appendix EU be altered to allow for a continuous qualifying period to begin after the end of the transition period?	
<b>Appendix EU family permits</b> <i>Dependent parents</i>	Why does the online form for dependent parents ask whether the parent is financially dependent on the sponsor when in the immigration rules, dependency is assumed (i.e.: the question is not necessary to ask)? The checklist provided once the application is made also asks for evidence of dependency which is inconsistent with this approach.	

<b>Appendix EU family permits</b> <i>Dependent parents</i>	Will there be any situations in the future where dependency of parents will not be assumed? If so, when will these changes be made?	
<b>Frontier Workers</b>	When will the details of the frontier worker visa / permit be published?	
<b>Naturalisation</b> <i>EU Permanent Residence documents</i>	<p>The gov.uk webpage (<a href="#">here</a>) advises those with EU permanent residence that they must apply for EUSS status or naturalisation before 30 June 2021. The indication is that applications for naturalisation made with PR documents before the end of the grace period, will be honoured with respect of the requirement for the applicant to be settled in the UK at the point of application; is this correct?</p> <p>If someone with EU permanent residence applies for naturalisation before 30 June 2021 but does not receive a decision before 01 July 2021, what will their immigration status be whilst their naturalisation decision is pending?</p>	
<b>Naturalisation</b> <i>Lawful residence</i>	For EEA citizens who wish to move from settled status to naturalisation, will the naturalisation process involve an assessment of their right to reside during the period of qualifying residence relied on? Or will it be accepted that as they have been granted settled status, they can meet the lawful residence requirement to naturalise?	
<b>Naturalisation</b> <i>Good character</i>	With respect of the WRS / WAS, will failure to apply to these schemes when required be a reason to refuse to naturalise a citizen with settled status or EU permanent residence?	
<b>British citizenship</b> <i>Erroneous passport grants</i>	Has the HO taken active steps to identify the EU children who have been incorrectly issued British passports? Will their immigration status be protected during the period when they need to apply for an immigration status? Will they be able to apply late to the EUSS?	
<b>Right to work checks</b> <i>Post-grace period</i>	As a transition measure during the 'grace period', employers, landlords and public service providers will continue to accept the passports and national identity cards of EU citizens as evidence of permission up until 30 June 2021. A possible impact of this approach will be that a non-eligible EEA visitor could pass the right work evidence check during the grace period. Will these stakeholders be required to recheck the status of EEA citizens who provided a passport or national identity card as proof of rights in the period between 01 January 2021 and 30 June 2021?	
<b>UK Border</b> <i>Post-grace period</i>	After the grace period ends, what will happen at the border for a person who has not updated their EUSS status with their new ID document?	
<b>UK Border</b> <i>Phasing out of ID cards</i>	When will travel on ID cards be phased out for non-EUSS, EEA/Swiss citizens? If this happens before 30/06/21, how will citizens who are eligible to apply for the EUSS but have not yet	

	done so be able to travel into the UK on their ID cards as guaranteed by the Withdrawal Agreement?	
<b>UK Border</b> <i>Warning flags</i>	We have encountered citizens with 'warning flags' on their travel information even though they have no character grounds that would justify a flag. How do these citizens have their records updated to remove the flag?	

**END**



# Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

Email: [freucom@parliament.uk](mailto:freucom@parliament.uk) Website: [www.parliament.uk/freucom](http://www.parliament.uk/freucom)

24 April 2020

Christopher Desira  
Seraphus Solicitors

Dear Mr. Desira,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

## UK citizens in the EU

- Could you set out the means by which UK citizens can secure their rights under the Withdrawal Agreement in each EU Member State, how easy are these systems to use and how do they compare with the EU Settlement Scheme in the UK?
- What has been the experience of UK citizens in the EU Member States securing their rights under the Withdrawal Agreement so far?
- Has the treatment of UK citizens been consistent across the EU Member States or have there been differences between Member States?
- Have public bodies, businesses and landlords in the EU Member States continued to treat UK citizens in the same manner as during EU membership?
- What has been the impact of COVID-19, if any, on securing the rights of UK citizens in EU Member States?
- Are there any administrative, legal, technical, financial or practical issues outstanding and what action might be taken to resolve them and by whom?
- Do you have any estimates for how many UK citizens have undergone the necessary formalities to secure their rights in each Member State and how many have yet to do so?
- Is there a role for civil society representatives of UK citizens in the EU to contribute towards monitoring of the Withdrawal Agreement? If not, how might this be addressed?
- Do you have any other concerns for UK citizens in the EU regarding the remainder of the transition period, including the roll-out of the proposed EU-wide biometric document?

## EU citizens in the UK

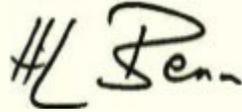
- What has been the experience of EU citizens in the UK securing their rights through the EU Settlement Scheme so far?
- Have public bodies, businesses and landlords in the UK continued to treat EU citizens in the same manner as during EU membership?
- What has been the impact of COVID-19, if any, on securing the rights of EU citizens currently living in the UK?
- Are there any administrative, legal, technical, financial or practical issues outstanding and what action might be taken to resolve them and by whom?
- Do you have any estimates for how many EU citizens in the UK have yet to apply to the EU Settlement Scheme?
- Is there a role for civil society representatives of EU citizens in the UK to input into monitoring of the Withdrawal Agreement? If not, how might this be addressed?

- Do you have any other concerns for EU citizens in the UK regarding the remainder of the transition period up until the June 2021 deadline for applications?

As the rights of certain family members of these citizens are also covered by the Withdrawal Agreement, please include in your responses any information you may have on such eligible persons.

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at [freucom@parliament.uk](mailto:freucom@parliament.uk).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

**Hilary Benn**  
**Chair of the Committee**