



**Home Office**  
**Policy Equality Statement**

**EU, other European Economic Area and Swiss citizens resident in the UK and their family members**

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## 1. Policy background

1. This Policy Equality Statement (PES) supports consideration of the equalities impacts of the EU Settlement Scheme (EUSS) and its compliance with the public sector equality duty under section 149 of the Equality Act 2010.<sup>1</sup>
2. The EUSS enables European Union (EU), other European Economic Area (EEA) and Swiss citizens resident in the UK by the end of the transition period on 31 December 2020, and their family members, to obtain the UK immigration status required to remain in the UK after 30 June 2021.
3. The EUSS – which enables those persons to obtain leave under the Immigration Act 1971 – has been developed in light of the agreement on citizens’ rights reflected in the draft text of the Withdrawal Agreement with the EU,<sup>2</sup> the Withdrawal Agreement with the EU,<sup>3</sup> the separation agreement with the other EEA states<sup>4</sup> (Iceland, Liechtenstein and Norway) and the agreement with Switzerland on citizens’ rights<sup>5</sup> (‘the agreements’).<sup>6</sup>
4. EU, other EEA and Swiss citizens (hereafter referred to as ‘EEA citizens’)<sup>7</sup> and their family members have been able to exercise free movement rights to live in the UK since the UK’s accession to the EU. This puts them in a unique position as compared with third country nationals (i.e. nationals from countries outside the EEA and Switzerland).<sup>8</sup> In this context, the UK Government made securing of the rights of EEA citizens resident in the UK and their family members (and UK nationals resident in the EEA or Switzerland and their family members) a priority for the EU exit negotiations. The UK Government is clear that EEA citizens living in the UK are our

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>2</sup> [https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/759019/25\\_November\\_Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)

<sup>4</sup> [https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/766995/Agreement\\_on\\_arrangements\\_between\\_Iceland\\_the\\_Principality\\_of\\_Liechtenstein\\_the\\_Kingdom\\_of\\_Norway\\_and\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_following\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_from\\_the\\_European\\_Union.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/766995/Agreement_on_arrangements_between_Iceland_the_Principality_of_Liechtenstein_the_Kingdom_of_Norway_and_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_following_the_withdrawal_of_the_United_Kingdom_from_the_European_Union.pdf)

<sup>5</sup> [https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/767003/Agreement\\_between\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_and\\_the\\_Swiss\\_Confederation\\_on\\_citizens\\_rights\\_following\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_from\\_the\\_European\\_Union\\_and\\_the\\_Free\\_Movement\\_of\\_Persons\\_Agreement.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/767003/Agreement_between_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_Swiss_Confederation_on_citizens_rights_following_the_withdrawal_of_the_United_Kingdom_from_the_European_Union_and_the_Free_Movement_of_Persons_Agreement.pdf)

<sup>6</sup> In the remainder of this document we will refer to these agreements as ‘the agreements’, except where it is necessary to refer to them separately.

<sup>7</sup> In the remainder of this document we will refer to EU, other EEA and Swiss citizens as ‘EEA citizens’, except where it is necessary to address differences between them.

<sup>8</sup> This does not include third country nationals who are family members of EU, other EEA or Swiss citizens.

friends, family and neighbours and we want them to stay. They are a valued part of UK society and of the UK economy. We recognise that many have come to the UK and built a life here on the basis of our EU membership. We want to provide certainty and clarity so that they can carry on with their life here with minimal disruption to them or to businesses, universities and other organisations.

5. Home Office analysis, outlined in more detail in the EUSS Impact Assessment, estimates that the total number of EEA citizens and their family members eligible to apply for status under the EUSS by the end of the transition period on 31 December 2020 is likely to be between 3.5 million and 4.1 million.<sup>9</sup> This estimate excludes Irish citizens.

#### **(i) Current immigration policy – EU, other EEA and Swiss citizens and their family members**

6. Until the end of the transition period, UK immigration policy for EU citizens and their family members is governed by EU law, including Treaty provisions and secondary EU legislation on free movement, as implemented in domestic law, in particular, by the Immigration (European Economic Area) Regulations 2016 ('the EEA Regulations').<sup>10</sup> Freedom of movement is one of the four freedoms enshrined in the Treaty on the Functioning of the European Union. Agreements on the free movement of persons are also in place between the EU and the other EEA states and between the EU and Switzerland. Free movement rights can be exercised by EU, other EEA and Swiss citizens and their family members. EU secondary legislation, particularly the 2004 Free Movement Directive, and relevant Court of Justice of the European Union (CJEU) case law, set out further detail on the rights of EU citizens and their family members to move and reside freely within the EU. EU, other EEA and Swiss citizens and their direct family members can, but are not required to, apply for documentation confirming their exercise of free movement rights.

#### **(ii) Current immigration policy – third country nationals**

7. By comparison, the migration to the UK of nationals of countries outside the EEA and Switzerland, i.e. third country nationals,<sup>11</sup> is subject to control under the Immigration Act 1971 and to the detailed requirements set out in the Immigration Rules made under that Act. Those seeking to come to, or stay in, the UK are managed through a system of Immigration Rules for, in particular, the work, study and family routes, under which applicants must meet the relevant requirements and, if they do, are granted limited (or, where

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<sup>9</sup> Impact Assessment for the EU Settlement Scheme – Updated Assessment:  
[http://www.legislation.gov.uk/ukia/2019/74/pdfs/ukia\\_20190074\\_en.pdf](http://www.legislation.gov.uk/ukia/2019/74/pdfs/ukia_20190074_en.pdf)

<sup>10</sup> <https://www.legislation.gov.uk/uksi/2016/1052/made>

<sup>11</sup> This does not include third country nationals who are family members of EU, other EEA or Swiss citizens.

they qualify for settlement, indefinite) leave to enter or remain in the UK. A new global points-based immigration system will come into operation for newly arriving EEA citizens and for non-EEA citizens once the transition period ends.<sup>12</sup>

### **(iii) EU Settlement Scheme for EEA citizens resident in the UK and their family members, in line with citizens' rights agreements**

8. We want to ensure stability for EEA citizens resident in the UK and their family members. The agreements the UK reached with the EU, the other EEA states and Switzerland mean that such citizens resident here by the end of the transition period on 31 December 2020, and their family members, are able to continue to live and work in the UK. Their rights to work, study and access healthcare and benefits continue, and their existing close family members living outside the UK at the end of the transition period are able to join them in future. Their future children are also generally covered.
9. We will ensure that individuals have sufficient time to apply for their new immigration status under UK law. Consistent with the agreements, EEA citizens and their family members who are resident here by 31 December 2020 will have until 30 June 2021<sup>13</sup> to make an application for status under the Immigration Rules for the EUSS, contained in Appendix EU.<sup>14</sup> Close family members joining a resident EEA citizen in the UK after 31 December 2020 (a spouse, civil partner, durable partner, dependent child or grandchild – including of the spouse or civil partner – and dependent parent or grandparent – including of the spouse or civil partner) will have three months from their arrival in which to make an application for status under the EUSS (or until 30 June 2021 if they arrive before 1 April 2021). Consistent with the agreements, we have also made clear that, where a person has reasonable grounds for missing the deadline to apply, they will be given a further period in which to make an application.
10. Except where the relevant citizens' rights agreements<sup>15</sup> or legislation<sup>16</sup> specify otherwise, there is no intention to adopt a differential approach between citizens of different EU member states, the other EEA states and Switzerland, and the provisions of the EUSS will be applied across the qualifying cohort. It will continue to be the case that, as they did before the

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<sup>12</sup> <https://www.gov.uk/government/publications/the-uks-points-based-immigration-system-policy-statement>  
<https://www.gov.uk/government/collections/uk-points-based-immigration-system-further-details>

<sup>13</sup> Different deadlines apply to some family members of qualifying British citizens. See relevant policy background section.

<sup>14</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

<sup>15</sup> For example, under the agreement with Switzerland, settled status will lapse after more than four years' absence rather than after more than five years' absence under the other citizens' rights agreements.

<sup>16</sup> Including rights relating to Irish citizens' immigration status in the UK and the Common Travel Area provisions in section 1(3) of the Immigration Act 1971, and other rights associated with the Belfast (Good Friday) Agreement.



UK's accession to the EU, Irish citizens have their own status in the UK, independent of EU Treaty rights. They may apply for status under the EUSS if they wish to do so, but they are not required to do so. Their family members (who are not Irish citizens or British citizens) can obtain status under the EUSS by showing that the Irish citizen would be eligible for such status if they applied.

#### **(iv) EU Settlement Scheme qualifying criteria**

11. The qualifying criteria for the EUSS reflect a simplified approach so as to streamline the transition of EEA citizens resident in the UK and their family members to a new status under UK law. The requirements to be met reflect, or are more generous than, the qualifying criteria of the Free Movement Directive and of the agreements. The main requirement for status to be granted under the EUSS is residence in the UK, broadly in line with current free movement rules on the continuity of that residence under the Free Movement Directive.
12. Obtaining status under the EUSS involves, in general terms:
  - (a) the person making a valid application under the EUSS, using the required digital application process (with an assisted digital service for those who need assistance to complete the process, or a paper application form where this is required or permitted), and providing the required proof of their identity and nationality and the required biometrics;
  - (b) the person being resident in the UK by 31 December 2020. It also includes those previously resident here who are outside the UK on that date but who have maintained continuity of residence here, generally as set out in the Free Movement Directive;
  - (c) the person not being subject to a deportation order or to a decision to make a deportation order, or to an exclusion order or exclusion decision, based on conduct committed before the end of the transition period that meets the EU public policy, public security or public health test (or, in due course, conduct committed after the end of the transition period that meets the UK criminality thresholds). There are also other suitability-related grounds for refusal, e.g. deception;
  - (d) in addition, EEA citizens resident in the UK by 31 December 2020 will be able to be joined here after that date by existing close family members resident overseas at that date (a spouse, civil partner, durable partner, dependent child or grandchild – including of the spouse or civil partner, and dependent parent or grandparent – including of the spouse or civil partner), if the relationship existed at that date<sup>17</sup> and it continues to exist when the

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<sup>17</sup> For Swiss citizens, the marriage or civil partnership can be formed by 31 December 2025.

person seeks to come to the UK, and generally by their children born or adopted in the UK or overseas after that date.

13. The EUSS also provides for those with a 'derivative right' to reside under EU law. Derivative rights are derived from wider EU law rather than from the Free Movement Directive 2004/38/EC<sup>18</sup> and have been confirmed by judgments of the CJEU.<sup>19</sup> They include the primary carer of a self-sufficient EEA citizen child (a 'Chen' case) and the child of a former EEA citizen worker where the child is in education in the UK and their primary carer (an 'Ibrahim and Teixeira' case). To be eligible for status under the EUSS such applicants are subject to additional requirements consistent with the relevant derivative right under EU law, such as demonstrating that their absence from the UK would prevent the child from continuing to reside in the UK or (as appropriate) continuing to be educated in the UK and that they are not an exempt person (which means, for example, that they cannot have indefinite leave to enter or remain in the UK, unless this was granted under Appendix EU).
14. In addition in respect of derivative rights, the primary carer of a British citizen (a 'Zambrano' case, which can also include a dependant under the age of 18 of the primary carer)<sup>20</sup> is able to apply for status under the EUSS where they are not an exempt person and where:
  - (a) the British citizen is also residing in the UK; and
  - (b) the British citizen would be unable to reside in the UK or in an EEA Member State or Switzerland, if the primary carer left the UK for an indefinite period.
15. The EUSS is also available, in respect of derivative rights, to a relevant family member of a British citizen who has exercised their free movement rights under EU law for more than three months in the EEA or Switzerland immediately before returning to the UK with that family member (a 'Surinder Singh' case).<sup>21</sup>
16. The EUSS also makes provision, in respect of derivative rights, for the family members of a dual British and EEA citizen who exercised free movement rights in the UK prior to the acquisition of British citizenship and who retained their EEA nationality of origin after acquiring British citizenship (a 'Lounes' case).<sup>22</sup> It also makes provision for certain family members issued with a

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<sup>18</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32004L0038>

<sup>19</sup> Chen C-200/02; Ibrahim C-310/08; Teixeira C-480/08

<sup>20</sup> Zambrano C-3409

<sup>21</sup> Singh C-370/90

<sup>22</sup> Lounes C-165/16

residence document under the EEA Regulations as the family member of a dual British and EEA citizen (a ‘McCarthy’ case).<sup>23</sup>

17. In connection with the Belfast (Good Friday) Agreement and related commitments in the ‘New Decade, New Approach’ agreement<sup>24</sup> which restored the Northern Ireland Executive in January 2020, the EUSS also provides for a person to apply to the scheme where they are the family member of a ‘relevant person of Northern Ireland’ (as defined in Annex 1 to Appendix EU).
18. Applicants may qualify for settled status under the EUSS (which is referred to under UK immigration law as indefinite leave to enter or indefinite leave to remain), in particular:
  - (a) having completed a ‘continuous qualifying period’ (as defined in Annex 1 to Appendix EU) of residence in the UK and Islands (the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man), or in certain cases in the UK only, of five years (or less in the circumstances in which a person can qualify for permanent residence under the Free Movement Directive with less than five years’ continuous residence, including following retirement from work, as a result of permanent incapacity to work, or as the family member of such a person or of a worker or self-employed person who has died). The continuous qualifying period of residence during that five-year period must not be broken, for example by an absence of more than six months in any 12-month period, except for a single absence of not more than 12 months for a good reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting, or absences of any length for compulsory military service or spent on (or as an accompanying spouse, civil partner, durable partner or child) Crown service; or
  - (b) having acquired the right of permanent residence under the EEA Regulations, without it subsequently lapsing through absence (from the UK and Islands) of more than five consecutive years, rather than the two consecutive years for which the Free Movement Directive provides, or having been lost (for example, because a deportation order has been made in relation to the person); or

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<sup>23</sup> The CJEU judgment in McCarthy C-434/09 found that a person who holds the nationality of the host Member State (regardless of whether they hold dual nationality with another EEA Member State) and has never exercised their right of free movement does not benefit, and nor do their family members, from rights of residence under the Free Movement Directive. Transitional provisions were made in the EEA Regulations in 2012 to enable certain family members affected by the judgment to retain or obtain a residence document enabling them to remain in the UK. As a matter of domestic provision, they can rely on those provisions to obtain status under the EUSS.

<sup>24</sup> ‘New Decade, New Approach’, paragraphs 13-15:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

- (c) having valid indefinite leave to enter or remain under another UK immigration route.

And not falling to be refused on suitability grounds because:

- (a) a decision to make a deportation order has been made in respect of that person or a relevant deportation order (including an Islands deportation order), exclusion order or exclusion decision (including an Islands exclusion decision) has effect in respect of that person, justified on the grounds of public policy, public security or public health if the conduct was committed before the end of the transition period or on the grounds that the decision is conducive to the public good if the conduct was committed after that date; or
  - (b) the applicant is a relevant excluded person, i.e. they have been excluded by the Secretary of State from the Refugee Convention or humanitarian protection, or the relevant provisions for excluding them from the Refugee Convention or humanitarian protection would apply to them if they were to make a protection claim, and refusing the application is proportionate. Where such a decision is based on conduct committed before the end of the transition period, the Secretary of State must be satisfied that it is justified on the grounds of public policy, public security or public health; or
  - (c) a previous decision was made to refuse the person admission to the UK under regulation 23(1) of the EEA Regulations or to cancel their status under the EUSS or leave acquired by virtue of having arrived in the UK with an EUSS family permit, and refusing the application is proportionate and justified on the grounds of public policy, public security or public health in respect of conduct committed before the end of the transition period or on the grounds that refusing the application is conducive to the public good in respect of conduct committed after that date; or
  - (d) whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application), and the information, representation or documentation is material to the decision whether or not to grant the person status under the EUSS, and refusing the application is proportionate; or
  - (e) the applicant is subject to a removal decision under the EEA Regulations on the grounds of their non-exercise or misuse of rights under the Free Movement Directive, and refusing the application is proportionate.
19. Where a resident EEA citizen or their family member applying to the EUSS does not qualify for settled status, they will typically be eligible for pre-settled status under the EUSS (which is referred to under UK immigration law as five years' limited leave to enter or remain). They will be able to apply for

settled status under the EUSS (indefinite leave to enter or remain) as soon as they are eligible for it, generally after they have completed a five-year continuous qualifying period of residence in the UK and Islands.

20. EEA citizens or their family members may in certain circumstances (including those in which a person can qualify for permanent residence under the Free Movement Directive with less than five years' continuous residence) be eligible for settled status having been resident for a continuous qualifying period of less than five years. Examples include:
  - a 'relevant EEA citizen' who is a 'person who has ceased activity' (as defined in both cases in Annex 1 to Appendix EU);
  - a family member of a relevant EEA citizen who is a person who has ceased activity;
  - a family member of a relevant EEA citizen who has died and who was resident as a worker or self-employed person at the time of death;
  - a child under the age of 21 of a relevant EEA citizen, or their spouse or civil partner, who has settled status under the EUSS.
21. Further detail on these categories is set out below.
22. Where a relevant EEA citizen has ceased to be continuously resident in the UK and Islands after completing a continuous qualifying period of less than five years, they will be eligible for pre-settled status under the EUSS as a relevant EEA citizen where they return to reside in the UK and Islands by the end of the transition period.
23. Based on the Annual Population Survey the Home Office estimates that around 60% of EEA (excluding Irish) citizens resident in the UK in April 2018 to March 2019 arrived here before 2014, and around a further 10% are estimated to have been born in the UK.<sup>25</sup> This indicated prior to the launch of the EUSS that a majority of EEA citizens resident here might (if other criteria were met) qualify for settled status under the EUSS. As of 31 October 2020, 4,067,200 applications had been concluded, of which 55% were granted settled status, 42% were granted pre-settled status and 2.6% had other outcomes (withdrawn, void, invalid or refused).<sup>26</sup>
24. Family members living here by 31 December 2020 will also be able to apply for status under the EUSS – in the case of extended family members under the EEA Regulations (durable partners and dependent relatives) where they have had this status documented under those Regulations. Existing close

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<sup>25</sup> Home Office analysis of [Annual Population Survey April 2018 – March 2019](https://www.nomisweb.co.uk/articles/1167.aspx): <https://www.nomisweb.co.uk/articles/1167.aspx>

<sup>26</sup> <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics> Some percentages above are rounded and so they may not sum to 100%.

family members resident overseas at that date (where the relationship existed at that date and continues to exist when the person seeks to come to the UK), and generally children born or adopted after that date, will also be able to apply for status under the EUSS.

25. An EEA citizen, including where they are living in the UK under the EEA Regulations as a family member, is able to rely on their own continuous residence to apply for status under the EUSS, rather than on being a family member. They need to provide evidence of their family relationship where:
  - they rely on that relationship in one of the categories eligible for settled status with less than five years' continuous residence; or
  - they are applying as a child under the age of 21 of a relevant EEA citizen (or of their spouse or civil partner) who has settled status under the EUSS; or
  - they are relying on a retained right of residence; or
  - they became an EEA citizen within a continuous qualifying period of residence in which they otherwise rely on having been a non-EEA citizen family member of an EEA citizen.
26. Future family members of a relevant EEA citizen (other than relevant children born or adopted after this date), for example a spouse or civil partner where the marriage or civil partnership was not formed by 31 December 2020 (and the couple were not durable partners by that date) will not be eligible to apply for status under the EUSS and will need to apply under the UK family Immigration Rules. However, in light of the Swiss Citizens' Rights Agreement, Swiss citizens with settled status or pre-settled status under the EUSS will be able to be joined by a future spouse or civil partner where the marriage or civil partnership was formed by 31 December 2025. After this point, the UK family Immigration Rules will apply to a future spouse or civil partner of a Swiss citizen with status under the EUSS.
27. UK nationals returning from the EEA or Switzerland having lived there together with the family member while the UK national exercised their free movement rights, will be able to be joined by relevant family members by 31 December 2020 (where the family relationship was formed after exit, or the family member is a dependent relative) or by 29 March 2022 (where the family relationship was formed before exit or the child was born or adopted after that date) – who will be able to apply for status under the EUSS. After this point, the UK family Immigration Rules will apply to the family members of UK nationals returning with them from the EEA or Switzerland.
28. The requirements set out in the Immigration Rules for the EUSS in Appendix EU are strictly in accordance with the agreements, except where the UK is applying more favourable criteria as a matter of domestic policy. For example, the EUSS does not generally require EEA citizens to provide

evidence of undertaking qualifying activity in the UK, such as being in employment, and does not in any case require them to have held comprehensive sickness insurance as a student or self-sufficient person.

#### **(v) Performance of the EU Settlement Scheme – from testing onwards**

29. On 28 August 2018, the Home Office opened the EUSS to EU citizens working at 12 NHS Trusts, and students and staff at three universities, in north-west England. This was a managed live trial, or first ‘private beta’ phase, of the application process, which ran until 17 October 2018. 1,053 applications were received and all were granted status, with no refusals. While on a small scale, it enabled the Home Office to test certain elements of the EUSS and make improvements before opening it more widely.<sup>27</sup>
30. A second, expanded private beta testing phase was launched on 1 November 2018 and ran to 21 December 2018 and allowed the Home Office to test the online application process for the EUSS, including new features such as the ‘EU Exit: ID Document Check’ app. During this phase the EUSS was open to EU citizens working in the higher education, health and social care sectors across the UK, and to some vulnerable EU citizens being supported by one of five local authorities and seven community groups in England. This phase included the ‘EU Exit: ID Document Check’ app, which enables applicants to verify their identity remotely without having to send in their identity document, as an integrated element of the end-to-end online application process.
31. The Home Office report on this testing phase, which included more than 29,000 applications, found that 69% of decided cases were processed in three working days, with 90% of applicants able to use the identity verification app to prove their identity and most able to prove their residence through the automated checks of HM Revenue & Customs (HMRC) and Department for Work and Pensions (DWP) data so that they did not have to send any further information.<sup>28</sup> The second private beta testing phase also enabled us to make further improvements to the process, including improving guidance material for applicants, increasing the size of files an applicant can upload and introducing technical safeguards against any disruption in the automated checks of HMRC or DWP data.
32. In light of the successful testing during the private beta phases, a public beta testing phase began on 21 January 2019 and ran until 29 March 2019, and was open to all resident EU citizens with a valid passport and to their non-EU citizen family members with a valid biometric residence card. This

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<sup>27</sup>[https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/752872/181031\\_PB1\\_Report\\_Final.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/752872/181031_PB1_Report_Final.pdf)

<sup>28</sup><https://www.gov.uk/government/publications/eu-settlement-scheme-private-beta-2>

enabled the Home Office to learn further lessons from applicants' experiences of using the system and to make further improvements ahead of the full opening of the EUSS on 30 March 2019. 200,420 applications were received during the public beta test phase.<sup>29</sup> By 16 April 2019 (the latest date for which figures were available when the report on that phase was published on 2 May 2019), 187,959 of these applications had been decided: 69% were granted settled status, 31% were granted pre-settled status and none were refused, and applicants usually received a decision in between one and four days. Of those applicants providing feedback, 81% of respondents reported that the application form was 'very easy' or 'fairly easy' to complete, and 79% found using the 'EU Exit: ID Document Check' app to prove their identity 'very easy' or 'fairly easy'.

33. During the public beta testing phase, 88% of applicants chose to provide their National Insurance number as part of their application, enabling the automated checks to be made of HMRC and DWP data for evidence of their UK residence, and 73% of decided adult cases did not need to provide any further evidence of UK residence following the automated checks or because they held a valid permanent residence document or existing indefinite leave to enter or remain (and therefore qualified for settled status on that basis).
34. The public beta testing phase successfully tested the application process at scale, and therefore the full launch of the EUSS proceeded, as planned, on 30 March 2019.
35. Published EUSS experimental statistics<sup>30</sup> up to 31 October 2020<sup>31</sup> show that the total number of applications received by this date was 4,260,400. The total number of applications concluded was 4,067,200 and, of these, 55% were granted settled status and 42% were granted pre-settled status. The remaining applications (2.6%) were refused, withdrawn, void or invalid: 22,400 applications were refused; 38,200 applications resulted in the application being withdrawn or were void, for example, because the applicant was a British citizen; and 45,200 applications were treated as invalid, for example because the application did not include the required proof of identity and nationality. Eligibility refusals comprised 99% of total refusals to 30 June 2020, with the remaining refusals being made on suitability grounds.
36. Of the 4,260,400 applications, as of 31 October 2020, the majority were received from England (3,870,600), with an additional 214,700 from Scotland, 70,800 from Wales and 69,300 from Northern Ireland. The EEA nationalities with the highest number of applications received, as of 30 June

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<sup>29</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-public-beta-testing-phase-report/eu-settlement-scheme-public-beta-testing-phase-report>

<sup>30</sup> Experimental statistics are statistics that are in a testing phase and are not yet fully developed, nor have they been subject to the full level of quality assurance of National Statistics.

<sup>31</sup> <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>



2020, were Polish (718,620), Romanian (609,060) and Italian (372,380). Approximately 205,990 applications were received from non-EEA citizens.

## **2. EU Settlement Scheme: detailed policy proposals**

### **(i) Continuous qualifying period of residence**

37. Applicants may qualify for settled status under the EUSS having completed a continuous qualifying period of residence in the UK and Islands (or in some cases in the UK only) of five years (or less in the circumstances in which a person can qualify for permanent residence under the Free Movement Directive with less than five years' continuous residence, including following retirement from work, as a result of permanent incapacity to work, or as the family member of such a person or of a worker or self-employed person who has died).
38. In line with the agreements, the criteria under the EUSS as to the absence(s) from the UK which will break the continuity of residence required for settled status reflect those under the Free Movement Directive for the acquisition of permanent residence status. That is, there has not been a period(s) of absence which exceeds six months in total in any 12-month period. There is no restriction on the number of absences permitted, provided that the total period of absence does not exceed six months in any 12-month period.
39. There are exceptions to this which reflect those in the Free Movement Directive. Specifically, a single period of absence which does not exceed 12 months is permitted where it is for an important reason, such as pregnancy, childbirth, serious illness, study, vocational training or an overseas posting. Any period of absence on compulsory military service is also permitted.
40. There are also some exceptions allowed for under the EUSS which go beyond those under the Free Movement Directive:
  - any period of absence on a posting on 'Crown service' (as defined in Annex 1 to Appendix EU), or as a spouse, civil partner, durable partner or child accompanying a person on a posting on Crown service, is permitted; and
  - any period spent working in the UK marine area (as defined in section 42 of the Marine and Coastal Access Act 2009) is permitted.
41. In line with EU law and the agreements, a continuous qualifying period of residence of less than five years is broken (and restarts again from scratch on release, where this is before the end of the transition period on 31 December 2020) where the person served or is serving a sentence of imprisonment of any length in the UK and Islands.

42. A continuous qualifying period of residence of less than five years is also broken by any of the following (unless the decision or order has been set aside or no longer has effect in respect of the person):
- any decision or order to exclude or remove under regulation 23 or 32 of the EEA Regulations (or under the equivalent provisions of the Immigration (European Economic Area) Regulations of the Isle of Man);
  - a decision to which regulation 15(4) of the EEA Regulations otherwise refers, unless that decision arose from a previous decision under regulation 24(1) of the EEA Regulations (or the equivalent decision, subject to the equivalent qualification, under the Immigration (European Economic Area) Regulations of the Isle of Man);
  - an exclusion decision;
  - a deportation order, other than by virtue of the EEA Regulations;
  - an Islands deportation order; or
  - an Islands exclusion decision.
43. A continuous qualifying period of residence of five years cannot be relied upon in applying for status under the EUSS where there has been a 'supervening event' (as defined in Annex 1 to Appendix EU), which means that one of the decisions or orders listed in the previous paragraph has been made in respect of the person (unless it has been set aside or no longer has effect) or they have been absent from the UK and Islands for more than five consecutive years since completing that five-year period.
44. In line with the agreements, where a person breaks a continuous qualifying period of residence under the EUSS of less than five years (or there has been a supervening event), they are able to start a fresh qualifying period if they resume residence here by the end of the transition period on 31 December 2020 (or after that date where they are covered by the agreements as a joining family member).
45. In line with the agreements, settled status under the EUSS will not lapse unless the person is absent from the UK and Islands for more than five consecutive years (four consecutive years in the case of Swiss citizens and their family members), compared with more than two years' absence from the UK in the case of permanent residence status under the Free Movement Directive.

## **(ii) Those with a valid permanent residence document**

46. The application process for the EUSS is particularly straightforward for EEA citizens and their family members who already hold a valid permanent

residence (PR) document issued under the EEA Regulations. Once identity is confirmed, they are granted settled status, subject only to a suitability check and confirmation they have not been absent from the UK for more than five consecutive years since PR was acquired.

47. Where we have evidence PR has lapsed (by an absence of more than five consecutive years) or been lost and they do not provide evidence to the contrary, the applicant will not be eligible for settled status but (subject to satisfying the relevant eligibility and suitability criteria) will be granted pre-settled status.
48. Non-EEA citizens who hold a valid PR document do not need to provide evidence of their family relationship to the relevant EEA citizen.

### **(iii) Those with valid indefinite leave to enter or remain**

49. Those who already hold valid indefinite leave enter (ILE) or indefinite leave to remain (ILR) are not required to apply to the EUSS as their existing status under UK law will remain valid. However, they can apply for settled status (ILE/ILR) under the EUSS if they wish, in order to take advantage of the additional benefits of this, such as the lifetime right to be joined by existing close family members and the scope to be absent from the UK and Islands for up to five years without the status lapsing (instead of the usual two year period which applies to ILE/ILR granted under other parts of the Immigration Rules).
50. Those who already hold valid ILE/ILR are asked to provide evidence of that status (such as Home Office documentation or a Home Office reference number we can use to check that status) and, where relevant, evidence that they are a relevant EEA citizen, the family member of a relevant EEA citizen or of a qualifying British citizen (a British citizen who has returned to the UK after exercising their free movement rights under EU law in the EEA or Switzerland, with a family member who resided with them) or a person who has retained the right of residence by virtue of a relationship with a relevant EEA citizen or a qualifying British citizen. Once their identity and existing status are confirmed, they are granted settled status, subject only to a suitability check and confirmation they have not been absent from the UK and Islands for more than two consecutive years since being granted ILE/ILR (so that status has not lapsed).
51. Where we have evidence that their ILE/ILR has lapsed or been lost and they do not provide evidence to the contrary, the applicant will not be eligible for settled status but (subject to satisfying the relevant eligibility and suitability criteria) will be granted pre-settled status.

### **(iv) Pre-settled status**

52. Where an applicant does not qualify for settled status solely because they have completed a continuous qualifying period of less than five years, they

will be granted pre-settled status under the EUSS (five years' limited leave to enter or remain). They will not subsequently be granted settled status automatically – they will need to apply for it, so that we can confirm that they have completed a continuous qualifying period of residence of five years (or that they qualify for settled status in circumstances in which less than five years' continuous residence is required) and, where relevant, that they have maintained their family relationship (or are able to rely on a retained right of residence), and in order that suitability checks may be carried out.

53. We will send a reminder to those granted pre-settled status under the EUSS to apply for settled status before their pre-settled status expires.

**(v) Eligibility for settled status for those with less than five years' continuous qualifying residence**

54. Relevant EEA citizens or their family members may be eligible for settled status under the EUSS having been resident for a continuous qualifying period of less than five years. In line with the agreements, the eligibility requirements for settled status under the EUSS reflect the criteria under the Free Movement Directive for acquiring the right of permanent residence with less than five years' continuous residence (for example, following an EEA citizen's retirement or permanent incapacity to work). In order to establish whether an applicant to the EUSS meets those requirements and thereby qualifies for immediate settled status, they need to evidence their (or the relevant EEA citizen's) relevant prior circumstances (such as employment or self-employment) in line with the Directive.
55. A relevant EEA citizen may qualify for settled status with less than five years' continuous qualifying residence where they are a 'person who has ceased activity' (as defined in Annex 1 to Appendix EU). This means that the person meets the following requirements (and since they did so, no 'supervening event' has occurred: see section (i), above):
- they terminated activity as a worker or self-employed person in the UK and either reached the age of entitlement to a state pension on terminating that activity or, in the case of a worker, ceased working to take early retirement; and immediately before that termination, the person was a worker or self-employed person in the UK for at least 12 months and resided in the UK and Islands for a continuous qualifying period of more than three years (the conditions as to length of residence and employment do not apply where the relevant EEA citizen is the spouse or civil partner of a British citizen); or
  - they stopped being a worker or self-employed person in the UK owing to permanent incapacity to work, having resided in the UK and Islands for a continuous qualifying period of more than the preceding two years or the incapacity having resulted from an accident at work or an occupational disease that entitles the person to a pension payable in full or in part by an institution in the UK (the condition as to length of

residence does not apply where the relevant EEA citizen is the spouse or civil partner of a British citizen); or

- they resided for a continuous qualifying period in the UK of at least three years as a worker or self-employed person, immediately before becoming a worker or self-employed person in the EU, another EEA state or Switzerland, while retaining a place of residence in the UK to which they return, as a rule, at least once a week.
56. A family member of a relevant EEA citizen who is a person who has ceased activity may qualify for settled status where the relevant EEA citizen has been granted or is being granted settled status (or would be granted it if they made a valid application and, where they are, were not a British citizen) and the family member was:
- the family member of the relevant EEA citizen at the point at which the relevant EEA citizen became a person who has ceased activity; and
  - resident in the UK and Islands for a continuous qualifying period immediately before the relevant EEA citizen became a person who has ceased activity; and
  - since the relevant EEA citizen became a person who has ceased activity, no supervening event has occurred.
57. A family member of a relevant EEA citizen who has died may qualify for settled status where:
- the relevant EEA citizen was resident in the UK as a worker or self-employed person at the time of their death; and
  - the relevant EEA citizen was resident in the UK and Islands for a continuous qualifying period of at least two years before dying, or the death was the result of an accident at work or an occupational disease; and
  - the applicant was resident in the UK with the relevant EEA citizen immediately before their death and since then no supervening event has occurred.
58. In addition, as a matter of domestic policy, a child under the age of 21 of a relevant EEA citizen or of their spouse or civil partner<sup>32</sup> may qualify for

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<sup>32</sup> Where the marriage was contracted or the civil partnership was formed by the end of the transition period on 31 December 2020, or the person who is now the spouse or civil partner of the relevant EEA citizen was their durable partner before and at that date.

settled status with less than five years' continuous qualifying residence where:

- the relevant EEA citizen (or the spouse or civil partner) has been, or is being, granted settled status under the EUSS (or under its equivalent in the Islands); or
- the relevant EEA citizen (or the spouse or civil partner) is an Irish citizen who has not made a valid application under the EUSS, but would be granted settled status if they made such an application; or
- the relevant EEA citizen (or the spouse or civil partner) is a 'relevant person of Northern Ireland' who would be granted settled status under the EUSS if they made a valid application (were they not a British citizen, where they are one); or
- the relevant EEA citizen (or the spouse or civil partner) is a 'Lounes' dual EEA and British citizen, that is a 'relevant naturalised British citizen' (in accordance with sub-paragraphs (b), (c) and (d) of that definition in Annex 1 to Appendix EU).

#### **(vi) Long-term residents without official documentation**

59. EEA citizens settled here before 1973 are likely to already hold a UK immigration status and are able to seek assistance from the Windrush taskforce (as can a person of any nationality who arrived in the UK by 31 December 1988 and has settled status or a right of abode or is a British citizen) if they wish to obtain evidence of their existing status here, free of charge. Those with existing ILE or ILR confirmed in this way are not required to apply for status under the EUSS, but they may do so if they wish to swap that existing status for settled status granted under the EUSS, in order to take advantage of its additional benefits, for example, on family reunion and permitted absence.
60. EEA citizens and their family members who are long-term residents of the UK and who do not have a valid passport or national identity card are able (where appropriate) to provide alternative evidence of their identity and nationality, and will be able to rely on a wide range of household and other documents to evidence their residence here. Caseworkers will work with applicants to help them establish their eligibility under the EUSS from the material they have.

#### **(vii) Automated checks with other government departments**

61. To reduce the administrative burden on EEA citizens and their family members applying under it, the EUSS enables the applicant to provide their National Insurance number, if they wish, to allow the Home Office to obtain information on their continuous residence in the UK via automated checks (known as Application Programming Interface (API)) with other government

departments – specifically tax and certain benefit records held by HMRC and DWP. This is entirely voluntary and applicants are able to evidence their residence by providing a very wide range of documentary evidence.<sup>33</sup> Where a National Insurance number is provided, we use data from the automated checks with HMRC and DWP to help assess the applicant's continuous residence in the UK and the status under the EUSS for which they may be eligible.

62. The relevant data sharing arrangements between the Home Office and HMRC and between the Home Office and DWP, on which the automated checks are based, have been published.<sup>34</sup>
63. The Memorandum of Understanding with each department (available at the footnote to the previous paragraph) makes clear what is within the scope of the data sharing arrangement; these are: State Pension and New State Pension, Universal Credit, Housing Benefit, Jobseeker's Allowance, Employment and Support Allowance, Carer's Allowance, Personal Independence Payment, Disability Living Allowance, Income Support, Maternity Allowance, Incapacity Benefit, Attendance Allowance and Severe Disablement Allowance, Employment start date, Employment end date, Date of PAYE payments, Date Self-Assessment record set up, Self-Assessment Tax return dates of receipt, Self-Assessment Tax years, Self-Assessment total income in each tax year and Self-employment income in each tax year.
64. The Home Office caseworker is shown the months for which the automated checks have found evidence of UK residence, based on the payment of those taxes and benefits. They are not shown any information about the employment, pension or benefits types on which this evidence is based, the amount of income received, the amount of tax or benefits paid or the applicant's employer. The Home Office does not retain the information used in the automated checks.
65. Where these checks indicate that the applicant has been resident in the UK for a continuous qualifying period of five years, and where the applicant has confirmed, by way of a self-declaration as part of the application process, that they have not since been absent from the UK for a period of more than five consecutive years, no further evidence of residence will be required to determine eligibility. The applicant will be asked to confirm this is correct and (provided they do), subject to evidence of the relevant family relationship (where relevant) and to identity and suitability checks, the applicant will be granted settled status.
66. Where these checks indicate that the applicant has been resident in the UK for a continuous qualifying period of less than five years, and the applicant confirms this (and does not claim to qualify for settled status on the basis of

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<sup>33</sup> <https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence>

<sup>34</sup> <https://www.gov.uk/guidance/eu-settlement-scheme-uk-tax-and-benefits-records-automated-check>

a continuous qualifying period of less than five years), no further evidence of residence will be required to determine eligibility. Subject to evidence of the relevant family relationship (where relevant) and to identity and suitability checks, the applicant will be granted pre-settled status.

67. Where the applicant does not accept that they have been resident in the UK for a continuous qualifying period of less than five years (or claims that they are eligible for settled status with less than five years' continuous qualifying period), the applicant will be asked to provide documentary evidence to satisfy the caseworker of their eligibility for settled status. If the applicant does so, then, subject to evidence of the family relationship (where relevant) and to identity and suitability checks, they will be granted settled status. If they do not satisfy the caseworker of their eligibility for settled status, but have been resident in the UK for a continuous qualifying period of less than five years, then, subject to evidence of the family relationship (where relevant) and to identity and suitability checks, they will be granted pre-settled status.
68. Where these checks do not provide any evidence of the applicant's UK residence, or the applicant does not provide a National Insurance number, the applicant will be asked to provide documentary evidence to satisfy the caseworker that they meet the requirements for eligibility for either settled or pre-settled status. If the applicant does so, and subject to evidence of the relevant family relationship (where relevant) and to identity and suitability checks, the applicant will be granted settled or pre-settled status. If they fail to do so (after being given a reasonable opportunity to do so, as set out in published guidance), their application will be refused on eligibility grounds. The applicant can then reapply at any point before the deadline, apply for an administrative review of the decision or, if they applied after 31 January 2020, appeal against the decision to an independent tribunal.
69. Broadly, as set out in the data sharing arrangements and the guidance on them published at the link above, we use API data to confirm UK residence in the months in which payment (e.g. of benefits or taxes) is made. However, where we have evidence of self-employment from self-assessment returns, we accept that as evidence of residence for the whole year covered by the self-assessment return, where it is accompanied by a declaration from the applicant that they were resident for that period.
70. In cases in which the payment frequency is insufficient to evidence the required continuity of residence of at least six months in any 12-month period, the applicant is invited to submit documentary evidence to demonstrate sufficient residence in that period.
71. We do not conduct API checks on those applying on the basis of holding a valid permanent residence document (or existing ILE/ILR) where the applicant self-declares that they have not been absent from the UK for more than five consecutive years since the right of permanent residence was



acquired (or more than two consecutive years since ILE/ILR was granted). Such applications will still be subject to routine internal checks.

72. We do not conduct API checks on those applying on the basis of a derivative right to reside (such as a 'Zambrano' or 'Surinder Singh' case). This is because such applicants need to evidence that they have met the particular eligibility requirements relevant to that derivative right throughout the continuous qualifying period on which they rely, which is not demonstrated by the API checks.

**(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.

74. For an application under the EUSS to be a valid application, it must:

- have been made using the 'required application process' (as defined in Annex 1 to Appendix EU). This means using the relevant online application form (with assisted digital support<sup>35</sup> where appropriate) or using the relevant paper application form where this is required (for example, because the applicant relies on a derivative right to reside or wishes to rely on alternative evidence of identity where they are unable to obtain/produce the required document: see section (x), below, which, in both cases, requires the applicant to provide additional information and evidence) or is permitted where the assisted digital service confirms that the applicant is unable to complete the online process owing to their particular circumstances; and
- be accompanied by the following, provided in accordance with the required application process:
  - (where the application is made within the UK) the 'required proof of identity and nationality' (as defined in Annex 1 to Appendix EU). This means a valid passport or a valid national identity card for an EEA citizen, or a valid passport, a valid biometric residence card

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<sup>35</sup> <https://www.gov.uk/assisted-digital-help-online-applications>

issued under the EEA Regulations or a valid biometric residence permit for a non-EEA citizen, unless the caseworker agrees to accept alternative evidence where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling compassionate or practical reasons;

- (where the application is made outside the UK) the 'required proof of entitlement to apply from outside the UK' (as defined in Annex 1 to Appendix EU). This means a valid passport or a valid national identity card (where this contains an interoperable biometric chip) for an EEA citizen, or a valid biometric residence card issued under the EEA Regulations for a non-EEA citizen, unless the caseworker agrees to accept alternative evidence where the applicant is unable to produce or, in the case of an EEA citizen, obtain the required document due to circumstances beyond their control or to compelling compassionate or practical reasons;
- the 'required biometrics' (as defined in Annex 1 to Appendix EU). This means a facial photograph of the applicant (which is uploaded as part of the online application process, where the applicant is using this) and (in the case of a non-EEA citizen without a biometric residence card issued under the EEA Regulations making an application within the UK) the fingerprints of the applicant (unless, in accordance with guidance published by the Secretary of State in force at the date of application, they are not required to provide these).

75. From 6 June 2020, applications made on a paper application form may be submitted by e-mail rather than by post, where a Home Office e-mail address is specified on the form. This will, for example, assist the processing of such applications where we are working with a charity or other third party helping a vulnerable person to apply.

76. If a person submits an application which is missing any of the components required for it to be valid, it will not be rejected as invalid without the person being prompted or contacted by the Home Office and given a reasonable opportunity to provide what is needed for the application to be valid.

#### **(ix) Evidence of immigration status online**

77. The Home Office is developing a border and immigration system which is digital by default for all migrants, which over time means the Home Office will increasingly replace physical documents with accessible, easy-to-use online and digital services. This mirrors the approach adopted by other countries, such as Australia, in administering their immigration systems in the way in which people increasingly live their lives. EEA citizens, accordingly, have access to their immigration information online which they can choose to share, instead of us issuing them with a biometric residence card.

78. It is quicker, more secure and cost effective to enable those granted status under the EUSS to access and share evidence of their immigration status using an online service. It can be accessed at any time and any place, and immigration status information accessible online cannot be lost, stolen or tampered with as a physical document can. It also allows individuals to view information about their status via the online 'view and prove' service whenever they wish and share it securely with third parties such as employers or service providers. Help and support is also available to those with limited digital skills.<sup>36</sup>
79. Those granted status under the EUSS still receive formal written notification of their immigration status, by e-mail or letter, containing their conditions of leave, which they can retain as confirmation of their status for their own records. This notification includes details on how they can access and share information about their immigration status online, enabling them to quickly prove their status and entitlements to third parties who may need to check that information.
80. Non-EEA citizen family members applying to the EUSS in the UK who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS, and who enrol their fingerprint biometrics in making a valid application to the EUSS, are, if they are granted status under the scheme, issued with a biometric residence card under the EUSS in addition to immigration status online. This is because, if they travel overseas, they will require such a document, together with a valid passport, to return to and enter the UK.

#### **(x) Documents**

81. We have published, and will keep under review, a non-exhaustive list of the types of documentary evidence the applicant can provide of their UK residence,<sup>37</sup> as an alternative or supplement to the data about UK residence provided by the automated checks with HMRC and DWP where the applicant chooses to provide their National Insurance number. We guide applicants to use the documentary evidence they may have which most readily evidences their continuous qualifying period of residence, including using evidence which covers longer periods of time so as to reduce the number of individual documents which applicants need to provide. It is also recognised that some applicants may lack documentary evidence in their own name for various reasons and caseworkers will work flexibly with applicants to help them evidence their continuous qualifying period of residence by the best means available to them. This evidential flexibility

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<sup>36</sup> <https://www.gov.uk/view-prove-immigration-status>

<sup>37</sup> <https://www.gov.uk/guidance/eu-settlement-scheme-evidence-of-uk-residence>

addresses concerns about potential difficulties experienced by some groups in producing documentation to evidence their UK residence.<sup>38</sup>

82. To minimise administrative burdens on them, where the applicant is using the online application process, this allows documents to be scanned and uploaded and the Home Office does not generally require the submission by post of physical documents in respect of UK residence or family relationship. The Home Office only requires the original document to be submitted where a copy of the document has been submitted as required evidence of the family relationship and the caseworker has reasonable doubt as to the authenticity of the copy submitted.
83. We also provide for alternative documentary evidence of identity and nationality to be provided where the applicant cannot obtain or produce the required document (such as a valid passport) due to circumstances beyond their control or to compelling practical or compassionate reasons. Each case is considered in light of its individual circumstances, but the published guidance<sup>39</sup> includes non-exhaustive examples of where alternative evidence may be relied upon, such as where:
- the applicant's passport has expired or has been permanently lost or stolen and there is no functioning national government to issue a replacement;
  - there is a national authority to apply to for a document, but they have run out of documents;
  - the applicant is a victim of trafficking or of domestic violence<sup>40</sup> or abuse; or
  - the applicant's serious medical condition or mental incapacity makes it impossible or unreasonable for them to obtain the required document.
84. Where the caseworker accepts that the applicant cannot obtain or produce the required document due to circumstances beyond their control or due to compelling practical or compassionate reasons, the caseworker will work

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<sup>38</sup> See for example concerns expressed in 'Unsettled Status 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?' The Migration Observatory, <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>; 'How the EU Settlement Scheme Affects Women and Girls', NPC, <https://www.thinknpc.org/resource-hub/how-the-eu-settlement-scheme-affects-women-and-girls/#:~:text=How%20the%20EU%20settlement%20scheme%20affects%20women%20and,access%20their%20Unsettled%20status%20than%20male%20EU%20migrants>

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/910941/EUS\\_main\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/910941/EUS_main_guidance.pdf)

<sup>40</sup> 'Unsettled Status 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?' The Migration Observatory, <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>, page 3, citing ONS survey data: EU citizens are less likely than UK citizens to be victims of domestic abuse, but 101,000 EU citizens reported abuse in the year ending March 2019.

flexibly with the applicant to try to obtain sufficient supporting information or evidence to satisfy them of the applicant's identity and nationality. Each case is considered in light of its individual circumstances, but the published guidance provides non-exhaustive examples of other supporting documents or evidence which may be provided, such as:

- documents previously issued by the Home Office (such as a document issued for emergency travel purposes) provided there is no evidence that this identity or nationality was confirmed in error, fraudulently, or has significantly changed;
- an expired passport or other required document, bearing the applicant's name and photograph;
- an official document issued by the authorities of the applicant's country of origin which confirms their identity and nationality, including birth certificate, marriage certificate, driving licence, tax / social security statement, national service document, or emergency travel document or similar, but other similar documents may be considered;
- an official document issued by the UK authorities which confirms the applicant's identity and, if possible, nationality. This can include a UK driving licence, National Insurance number card, or tax or pension statement, but other similar documents may be considered;
- an official document issued by the authorities of an EEA Member State which confirms the applicant's identity and nationality, including a document confirming permanent residence in that state or registration as the family member of an EEA citizen exercising Treaty rights in that state; or
- the applicant's biometrics (facial photograph and, in the case of a non-EEA citizen, fingerprints) which match an existing government record confirming their identity and nationality.

### **(xi) Translations**

85. The application process is provided in English only. The Home Office provides key guidance on the process in the EU27 official languages, Icelandic, Norwegian and Welsh.
86. A family member applying under the EUSS or for an EUSS family permit may be required, where this is necessary for the purposes of deciding whether they meet the eligibility requirements, to provide a certified English translation of (or a Multilingual Standard Form<sup>41</sup> to accompany) a document

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<sup>41</sup> <https://www.gov.uk/government/publications/order-a-multilingual-standard-form-msf-for-a-birth-death-or-marriage-abroad/order-an-msf-for-a-birth-death-or-marriage-abroad>

submitted as required evidence of the family relationship (or as certain required evidence of qualification for an EUSS family permit) on which their application relies.

#### **(xii) Change of identity**

87. Where a change of identity occurs after a person has been granted status under the EUSS, the new identity must be proven with evidence before the Home Office can recognise the change. This is true for any change of biographical detail, including name, gender, date of birth and nationality.
88. Where that person is seeking to change the name in which their status under the EUSS was granted, they are required to provide supporting evidence that they intend to use that name for all purposes of their life, in line with our published policy.<sup>42</sup> This may include a marriage certificate or a deed poll, along with other supporting documentary evidence that the new name is being used for all purposes.
89. They must also provide evidence that they have amended the relevant details in any foreign passport(s) and national identity card(s) they hold, unless there are exceptional circumstances as specified in the policy.

#### **(xiii) Crown service**

90. As a matter of domestic policy, any period of absence does not break a continuous qualifying period of residence for the purpose of qualifying for status under the EUSS where the person is on an overseas posting on Crown service, or a spouse, civil partner, durable partner or child accompanying them on an overseas posting on Crown service.
91. For the purposes of the EUSS, 'Crown service' (as defined in Annex 1 to Appendix EU) is service as:
  - a member of HM Forces (as defined in the Armed Forces Act 2006);
  - an employee of the UK Government, a Northern Ireland department, the Scottish Administration or the Welsh Government; or
  - a permanent member of the British Council.

#### **(xiv) Crown Dependencies**

92. In most cases<sup>43</sup> residence in the Islands (the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man) counts for EEA citizens and their family members towards a continuous qualifying period of residence under the EUSS, consistent with other settlement routes under the Immigration

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<sup>42</sup> <https://www.gov.uk/government/publications/change-of-name-guidance>

<sup>43</sup> Exceptions to this are set out in the definition of 'continuous qualifying period' in Annex 1 to Appendix EU.

Rules. In addition, status granted under the EUSS cannot lapse on account of time spent in the Islands.

**(xv) Gibraltar**

93. Residence in Gibraltar does not count towards a continuous qualifying period of residence under the EUSS, consistent with other settlement routes under the Immigration Rules.

**(xvi) Family members**

94. EEA citizens resident here as a family member are able to qualify for status under the EUSS on the basis of their own continuous qualifying period of residence in the UK and Islands and will not generally need to evidence their family relationship with a relevant EEA citizen. Because their status here under EU law depends on their current or past family relationship to an EEA citizen resident in the UK, a non-EEA citizen family member without a documented right of permanent residence under the EEA Regulations<sup>44</sup> will need to provide:

- evidence of their family relationship for the relevant period, such as a birth / marriage / civil partnership certificate or a relevant document issued under the EEA Regulations on the basis of the relationship. In the case of durable partners (unless they do not rely on residence as such in the UK before the end of the transition period) and other dependent relatives, this needs to include such a document issued under the EEA Regulations (as evidence the UK has ‘facilitated’ their free movement as the Directive requires) and, unless this is a valid permanent residence document (so they no longer depend on that relationship for their status here), evidence which satisfies the decision-maker that the relationship continues to subsist; and
- the valid passport or national identity card of that EEA citizen (unless the caseworker agrees to accept alternative evidence where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling compassionate or practical reasons); and
- evidence about the continuous residence or immigration status in the UK of that relevant EEA citizen for the relevant period.<sup>45</sup>

95. Eligible family members will be granted settled status where they have completed a continuous qualifying period of residence of five years. The

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<sup>44</sup> Or an EEA citizen without a documented right of permanent residence whose application relies on their family relationship to a relevant EEA citizen.

<sup>45</sup> Where that relevant EEA citizen has been granted status under the EUSS, this will constitute sufficient evidence of that person’s identity, nationality and continuous residence (for the period on the basis of which they were granted status).

circumstances in which they may be eligible for settled status having completed a continuous qualifying period of less than five years are set out above. Where those circumstances do not apply and they have completed a continuous qualifying period of residence of less than five years, such family members will be granted pre-settled status.

96. For the purposes of the EUSS, a 'child' is defined in Annex 1 to Appendix EU to include children aged 21 or over who are dependent on their parent (or on their parent's spouse or civil partner) where that parent is a relevant EEA citizen. This is consistent with the Free Movement Directive. Specifically, in respect of children, the EUSS provides:

- as a matter of domestic policy, eligible children aged under 21 are granted settled status where:
  - a parent has been or is being granted settled status; or
  - their parent is an Irish citizen who has not been or is not being granted settled status, the Irish citizen would be granted settled status if they applied (which they are not required to do); or
  - their parent is a 'relevant person of Northern Ireland' who would be granted settled status under the EUSS if they applied (were they not a British citizen, where they are one); or
  - their parent is a dual British and EEA citizen who is a 'Lounes' case – that is a 'relevant naturalised British citizen' (as defined in Annex 1 to Appendix EU) – that person, would, but for the fact they are a British citizen, be granted settled status if they applied; or
  - they qualify for it in their own right; and
- otherwise, eligible children aged under 21 are granted pre-settled status; and
- eligible children aged 21 or over who are dependent on their parent(s) are granted settled status where they have completed five years' continuous residence. Otherwise, unless they fall within the cohort eligible for settled status having completed a continuous qualifying period of less than five years, they are granted pre-settled status and can apply for settled status as soon as they have completed five years' continuous residence, taking account of the period before they turned 21. Where they were granted pre-settled status under the age of 21, they do not need to be dependent on their parent(s) to be eligible for settled status as a child aged 21 or over.

97. As described in Part 1 on policy background, EEA citizens resident here by 31 December 2020 will be able to be joined here after that date by existing



close family members resident overseas at that date (a spouse, civil partner, durable partner, dependent child or grandchild – including of the spouse or civil partner, and dependent parent or grandparent – including of the spouse or civil partner), if the relationship existed at that date and it continues to exist when the person seeks to come to the UK, and generally by children born in the UK or overseas after that date to (or legally adopted by) a parent or parents with or eligible for status under the EUSS.

98. Consistent with the agreements, the EUSS also:

- reflects retained rights of residence for family members under the Free Movement Directive (for example, following the death of or divorce from a relevant EEA citizen);
- reflects Free Movement Directive rights of permanent residence with less than five years' continuous residence – for example, following an EEA citizen's retirement or permanent incapacity to work;
- allows family members to rely on their relationship with a dual British and EEA citizen who has acquired British citizenship after exercising free movement rights in the UK (a 'Lounes' case);
- covers certain non-EEA citizens issued with a residence document under transitional provisions in the EEA Regulations as the family member of a dual British and EEA citizen (a 'McCarthy' case); and
- reflects the case of SM (Algeria),<sup>46</sup> so that an application under the EUSS can be made by those with a relevant document issued under the EEA Regulations as an extended family member on the basis that they are a child under the age of 18 who is subject to a non-adoptive legal guardianship order in favour of an EEA citizen; that they are the dependent relative of the spouse or civil partner of an EEA citizen; or that they are a child under the age of 18 of the durable partner of an EEA citizen.

### **(xvii) Dependency**

99. The dependency on an EEA citizen aged 18 or over (or their spouse or civil partner) required in the case of a 'dependent parent' (as defined in Annex 1 to Appendix EU, which includes a dependent grandparent) is currently assumed under the EUSS, as a matter of domestic policy, so as to minimise the evidential burden on the applicant.

100. The dependency on an EEA citizen child aged under 18 required in the case of a 'dependent parent' (as defined in Annex 1 to Appendix EU, which includes a dependent grandparent) is not assumed and needs to be

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<sup>46</sup> CJEU: C-129/18; Supreme Court: [2018] UKSC 9

evidenced. This evidence might take the form of, for example, a letter from a hospital consultant confirming that the applicant needs and receives (or for the relevant period did so) the personal care of the relevant EEA citizen on serious health grounds.

101. The dependency required in the case of a 'dependent relative' (as defined in Annex 1 to Appendix EU, which covers an extended family member, other than a durable partner, under the Free Movement Directive) is established by the relevant document in that category which they are required to hold under the EEA Regulations (as evidence the UK has 'facilitated' their free movement as the Directive requires) or by the equivalent evidence which can be provided by the family member of a relevant person of Northern Ireland and, unless this is a valid permanent residence document (meaning that they no longer rely on that dependency for their status here), by evidence that the relationship continues to subsist (or did so for the relevant period).
102. The dependency required in the case of a child aged 21 or over who relies on being dependent on their parent(s) must be evidenced as meeting the following criteria, drawn from the CJEU judgment in *Reyes*:<sup>47</sup>
  - having regard to their financial and social conditions, or health, the applicant cannot (or, as the case may be, for the relevant period could not) meet their essential living needs (in whole or in part) without the financial or other material support of the relevant EEA citizen (or of their spouse or civil partner); and
  - such support is (or, as the case may be, was) being provided to the applicant by that person; and
  - there is no need to determine the reasons for that dependence or for the recourse to that support.

**(xviii) Family members with a retained right of residence**

103. Consistent with the agreements, the EUSS reflects retained rights of residence for family members under the Free Movement Directive (for example, following the death of or divorce from a relevant EEA citizen). These retained rights of residence are also available to the family members of a qualifying British citizen (a 'Surinder Singh' case) as a basis for obtaining status under the EUSS, as set out in the next section.
104. An EEA or non-EEA citizen family member may be eligible for status under the EUSS (settled status or pre-settled status, according to the overall length

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<sup>47</sup> C-423/12

of their continuous residence) as a ‘family member who has retained the right of residence’ (as defined in Annex 1 to Appendix EU), where:

- they were the family member of a relevant EEA citizen (or qualifying British citizen) and that person has died; and
- they were resident in the UK as the family member of that relevant EEA citizen (or qualifying British citizen) for a continuous qualifying period of at least one year immediately before their death;

or

- they are the child of a relevant EEA citizen (or qualifying British citizen) who has died or who has ceased to be a relevant EEA citizen (or qualifying British citizen) on ceasing to reside in the UK, or of their spouse or civil partner at that point; and
- they were attending a general educational course, apprenticeship or vocational training course in the UK immediately before the relevant EEA citizen (or qualifying British citizen) died or ceased to be a relevant EEA citizen (or qualifying British citizen), and they continue to do so;

or

- they are the parent with custody of a child who has retained the right of residence on the basis of the previous two bullet points;

or

- they ceased to be a family member of a relevant EEA citizen (or qualifying British citizen) on the termination of the marriage or civil partnership of the relevant EEA citizen (or qualifying British citizen); and, for the purposes of this provision, where, after the initiation of the proceedings for that termination, that relevant EEA citizen ceased to be a relevant EEA citizen (or that qualifying British citizen ceased to be a qualifying British citizen), they will be deemed to have remained a relevant EEA citizen (or, as the case may be, a qualifying British citizen) until that termination; and
- they were resident in the UK at the date of the termination of the marriage or civil partnership – and one of the following applies:
  - prior to the initiation of the proceedings for its termination, the marriage or civil partnership had lasted for at least three years, and both parties to the marriage or civil partnership had been resident in the UK for a continuous qualifying period of at least one year during its duration; or

- the applicant has custody of a child of the relevant EEA citizen (or qualifying British citizen); or
- the applicant has the right of access to a child of the relevant EEA citizen (or qualifying British citizen), where the child is under the age of 18 years and where a court has ordered that such access must take place in the UK; or
- the continued right of residence in the UK of the applicant is warranted by particularly difficult circumstances, such as where the applicant or another family member has been a victim of domestic violence or abuse whilst the marriage or civil partnership was subsisting; or
- they provide evidence that a relevant family relationship with a relevant EEA citizen (or qualifying British citizen) has broken down permanently as a result of domestic violence or abuse, and they were resident in the UK when the relevant family relationship broke down permanently as a result of domestic violence or abuse, and their continued right of residence in the UK is warranted where they or another family member has been a victim of domestic violence or abuse before the relevant family relationship broke down permanently.

**(xix) Family members of qualifying British citizens**

105. In certain circumstances, where a British citizen has returned to the UK after exercising their free movement rights under EU law in the EEA or Switzerland, with a family member who resided with them there, the family member can apply for settled status or pre-settled status under the EUSS. These are often described as ‘Surinder Singh’ cases after the relevant CJEU judgment. They are not covered by the agreements but, as announced on 4 April 2019,<sup>48</sup> they have as a matter of domestic policy been given time-limited access to the EUSS as a transitional measure. As a matter of fairness, this provides such British citizens with scope to return to the UK with those family members on the same basis as EU law, while bringing family reunion rights for British citizens in the UK and abroad into alignment from 29 March 2022.
106. Before the end of the transition period, an applicant who needs to rely on their eligibility as a family member of a qualifying British citizen is more likely to be a non-EEA citizen, but they may be an EEA citizen.

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<sup>48</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792710/Citizens\\_Rights\\_-\\_UK\\_nationals\\_in\\_the\\_EU.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792710/Citizens_Rights_-_UK_nationals_in_the_EU.pdf)

107. A 'family member of a qualifying British citizen' (as defined in Annex 1 to Appendix EU) can apply for status under the EUSS where they have (or, as the case may be, had) returned to the UK:

- before 2300 GMT on 29 March 2022, as the spouse or civil partner of a qualifying British citizen, and:
  - the marriage was contracted or the civil partnership was formed before 2300 GMT on 31 January 2020 (the date and time of the UK's withdrawal from the EU); or
  - the applicant was the durable partner of the qualifying British citizen before 2300 GMT on 31 January 2020 and the partnership remained durable then; or
- (where the previous sub-bullet point does not apply) before 2300 GMT on 31 December 2020, as the spouse or civil partner of a qualifying British citizen, and the marriage was contracted or the civil partnership was formed after 2300 GMT on 31 January 2020; or
- before 2300 GMT on 29 March 2022, as the durable partner of a qualifying British citizen, and:
  - the partnership was formed and was durable before 2300 GMT on 31 January 2020; and
  - the partnership remains durable at the date of application; or
- before 2300 GMT on 31 December 2020, as the durable partner of a qualifying British citizen, and:
  - the partnership was formed and was durable after 2300 GMT on 31 January 2020; and
  - the partnership remains durable at the date of application; or
- before 2300 GMT on 29 March 2022, as the child or dependent parent of a qualifying British citizen; or
- before 2300 GMT on 29 March 2022, as the child or dependent parent of the spouse or civil partner of a qualifying British citizen, as described in the first bullet point above; or
- before 2300 GMT on 31 December 2020, as the child or dependent parent of the spouse or civil partner of a qualifying British citizen, as described in the second bullet point above; or
- before 2300 GMT on 31 December 2020, as the dependent relative of a qualifying British citizen, or (as the case may be) of their spouse

or civil partner, as described in the first or second bullet point above, and that family relationship and the person's dependency (or, as the case may be, their membership of the household or their strict need for personal care on serious health grounds) existed before the applicant returned to the UK with the qualifying British citizen.

108. The family member and the qualifying British citizen must have satisfied the relevant conditions for 'Surinder Singh' cases in regulation 9 of the EEA Regulations before the end of the transition period on 31 December 2020, and immediately before returning to the UK. The family relationship must continue to exist at the date of application, unless the applicant relies on having a documented right of permanent residence, on having completed a continuous qualifying period in the UK of five years, or on being a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen.

**(xx) Family members of people of Northern Ireland**

109. In line with 'New Decade, New Approach' published by the UK and Ireland on 9 January 2020 ahead of the restoration of devolved government in Northern Ireland, eligible family members of the people of Northern Ireland (as defined in the Belfast (Good Friday) Agreement) have been able since 24 August 2020 to apply for UK immigration status, under the EUSS, on the same terms as family members of Irish citizens in the UK. This immigration status is available to the family members of all the people of Northern Ireland, no matter whether the person of Northern Ireland holds British or Irish citizenship or both, and no matter how they identify.

110. The EUSS provides for a person to apply to the scheme where they are the family member of a 'relevant person of Northern Ireland' (as defined in Annex 1 to Appendix EU) who is a person who both:

- is either:
  - a British citizen;
  - an Irish citizen; or
  - a British citizen and an Irish citizen; and
- was born in Northern Ireland and, at the time of the person's birth, at least one of their parents was either:
  - a British citizen;
  - an Irish citizen;
  - a British citizen and an Irish citizen; or

- otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.
111. A relevant person of Northern Ireland who is a British citizen cannot themselves apply to the EUSS as they have the right of abode in the UK by virtue of that citizenship and therefore cannot apply for or be granted leave to enter or remain in the UK under the Immigration Act 1971. A relevant person of Northern Ireland who is an Irish citizen has the same rights as other Irish citizens under UK legislation, which ensures their rights continue even when free movement ends, in conjunction with the legislation relating to the Common Travel Area. Irish citizens resident in the UK are not required to apply for UK immigration status under the EUSS (although they can do so if they wish as an EEA citizen). However, their family members who are not Irish (or British) citizens will need to apply under the EUSS, or to regularise their stay under another part of the Immigration Rules, if they wish to reside in the UK after 30 June 2021.
112. Family members of relevant persons of Northern Ireland applying to the EUSS will need to satisfy broadly the same requirements as to eligibility and suitability as other applicants. Variations to the eligibility requirements to reflect the specific circumstances of family members of relevant persons of Northern Ireland are examined in Part 3.

**(xxi) Person with a derivative right to reside (Chen and Ibrahim/Teixeira cases)**

113. As a matter of domestic policy,<sup>49</sup> the EUSS provides for a ‘person with a derivative right to reside’ (as defined in Annex 1 to Appendix EU) to apply for status under the scheme. This is based on their derivative right to reside in the UK under EU law as the primary carer of a self-sufficient EEA citizen child (a ‘Chen’ case) or as the child of a former EEA citizen worker where the child is in education in the UK or as their primary carer (an ‘Ibrahim and Teixeira’ case). A person under the age of 18 whose primary carer is a ‘Chen’ or ‘Ibrahim and Teixeira’ primary carer can also apply under this category.
114. To be eligible for status under the EUSS, the requirements to be met by a ‘person with a derivative right to reside’ include showing that they meet (or did so for the relevant period) the relevant requirements of the EEA Regulations as a ‘Chen’ case (except that the EEA citizen child is not required to hold comprehensive sickness insurance) or as an ‘Ibrahim and Teixeira’ case.

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<sup>49</sup> The agreements provide for their existing EU law rights to be protected, but these do not lead to a right of permanent residence in the UK equivalent to the settled status available to them under the EUSS.

## **(xxii) Person with a Zambrano right to reside**

115. As a matter of domestic policy as they are not covered by the agreements, the EUSS provides for a 'person with a Zambrano right to reside' (as defined in Annex 1 to Appendix EU) to apply for status under the scheme. This is based on their derivative right to reside in the UK under EU law as the primary carer of a British citizen who is residing in the UK and who would be unable to do so (or to live in an EEA Member State) if the primary carer left the UK for an indefinite period. A person under the age of 18 whose primary carer is a 'Zambrano' primary carer can also apply under this category. To be eligible for status under the EUSS, the requirements to be met by a 'person with a Zambrano right to reside' include showing that they meet (or did so for the relevant period) the relevant requirements of the EEA Regulations as a 'Zambrano' case.

## **(xxiii) Fees**

116. Since 30 March 2019, applications to the EUSS have been free of charge. This ensures that there is no financial barrier for any EEA citizen or their family member who wishes to stay in the UK. All applicants who paid a fee during the test phases have been reimbursed. There is also no fee for applications for the EUSS family permit or EUSS travel permit (including for biometric enrolment).

117. Non-EEA citizen family members in the UK with status under the EUSS are charged £56 where they request a new biometric residence card to reflect a change in their name or other personal information or to replace a lost, stolen or damaged card. This reflects the standard approach for biometric residence permits for non-EEA citizens.

118. There is a fee of £80 for applications for administrative review of a relevant decision under the EUSS, in line with the fee applicable in other routes. The fee is refunded where there has been a caseworking error based on the evidence which was before the original decision-maker. The fee is retained where the original decision is withdrawn solely because of new evidence provided by the applicant which was not available to the original decision-maker.

119. Where an applicant appeals the decision on their application to the First-tier Tribunal, the fee for the appeal is £80 without a hearing and £140 with a hearing.<sup>50</sup> Any further appeals made after that will also attract a fee.

120. Commercial fees apply to some services that are provided by third parties. These apply to services for:

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<sup>50</sup> <https://www.gov.uk/immigration-asylum-tribunal>



- biometric enrolment for non-EEA citizen family members who do not already hold a biometric residence card using the ‘charged for’ enrolment locations; there is no Home Office fee to enrol biometrics. Enrolment can take place at contractor run sites: seven locations across the UK can be used without any commercial charge being incurred; there is a £60 commercial charge in over 50 other locations; and
- ‘chip check’ locations where applicants can access a device loaded with the identity verification app. These attract a commercial charge set by the local authority or other provider and is generally £10-20.

121. Applicants to the EUSS are not subject to the Immigration Health Charge. To confirm this, the Immigration (Health Charge) Order 2015 has been amended accordingly.<sup>51</sup>

#### **(xxiv) Overseas applications**

122. In line with the Home Office’s obligations under the agreements in respect of ease of process for applicants, there has since 9 April 2019 been scope for applications to the EUSS to be made from overseas. A valid application can be made by EEA citizens who are overseas at the point at which they wish to apply, where they hold a valid passport or valid national identity card (where this contains an interoperable biometric chip), meaning that they can verify their identity using the identity verification app.<sup>52</sup>

123. A valid application can also be made by non-EEA citizen family members who are overseas at the point at which they wish to apply, where they hold a valid biometric residence card, biometric permanent residence card or biometric derivative residence card issued under the EEA Regulations (or a valid biometric residence card issued under the EUSS, where they already hold pre-settled status under the scheme and are now applying for settled status), also meaning that they can verify their identity using the identity verification app.<sup>53</sup>

124. Beyond the exceptional circumstances to which the footnote to the previous paragraph refers, the EUSS does not provide scope for overseas applications by non-EEA citizen family members without such a document (and therefore whose identity and family relationship to an EEA citizen we

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<sup>51</sup> <https://www.legislation.gov.uk/uksi/2019/686/contents/made>

<sup>52</sup> Unless the Secretary of State agrees to accept alternative evidence of entitlement to apply from outside the UK where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.

<sup>53</sup> Unless the Secretary of State agrees to accept alternative evidence of entitlement to apply from outside the UK where the applicant is unable to produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.

have not previously verified). They can apply for entry clearance to come to the UK in the form of a family permit in order to be able to apply under the EUSS within the UK.

125. To provide scope for overseas applications, the Home Office has amended secondary legislation<sup>54</sup> to enable the Secretary of State to grant or refuse EEA citizens and their family members indefinite or limited leave to enter the UK under the EU Settlement Scheme following a valid application made overseas. Previously this power could only be exercised by an Immigration Officer.
126. We have also amended the Immigration (Provision of Physical Data) Regulations 2006<sup>55</sup> to enable such applicants to be required to enrol their biometrics overseas (a facial photograph and, in the case of non-EEA citizen family members, scope for them also to be required to enrol their fingerprints at a visa application centre, in line with other routes).

#### **(xxv) Suitability and criminality**

127. In line with the agreements, we will refuse an application to the EUSS on suitability grounds where, based on the EU law public policy, public security or public health test in respect of conduct committed before the end of the transition period (or based on UK criminality thresholds in respect of conduct committed thereafter),<sup>56</sup> at the date of decision:
  - the applicant is subject to a deportation order (as defined in Annex 1 to Appendix EU) or to a decision to make a deportation order; or
  - the applicant is subject to an exclusion order or exclusion decision (as defined in Annex 1 to Appendix EU).
128. We may refuse an application to the EUSS on suitability grounds where, at the date of decision, the applicant is subject to an Islands deportation order or an Islands exclusion decision (as defined in Annex 1 to Appendix EU). Where these concern conduct committed before the end of the transition period, the Secretary of State must be satisfied that the public policy, public security or public health test is met in respect of the relevant order or decision.

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<sup>54</sup> <https://www.legislation.gov.uk/ukxi/2019/686/contents/made>

<sup>55</sup> <http://www.legislation.gov.uk/ukxi/2006/1743>

<sup>56</sup> The Citizens' Rights (Restrictions of Rights of Entry and Residence) (EU Exit) Regulations 2020 (S.I. 2020/1210) retain the public policy, public security and public health test for conduct committed before the end of the transition period. Section 10 of the 2020 EU (Withdrawal Agreement) Act 2020 amends the Immigration Act 1971 and the UK Borders Act 2007 to provide for the application of the UK's criminality thresholds to EEA citizens protected by the agreements and their non-EEA citizen family members for conduct committed after the end of the transition period, aligning with the approach for third country nationals:  
<https://www.legislation.gov.uk/ukxi/2020/1210/contents/made>

129. In line with the agreements, we may also refuse an application to the EUSS on suitability grounds, where, at the date of decision, it is proportionate to do so where:

- in relation to the application and whether or not to the applicant's knowledge, false or misleading information, representations or documents have been submitted (including false or misleading information submitted to any person to obtain a document used in support of the application) that is or are material to the decision whether or not to grant the applicant settled status or pre-settled status under the EUSS; or
- the applicant is subject to a removal decision under the EEA Regulations on the grounds of their non-exercise or misuse of rights under the Free Movement Directive; or
- the applicant has previously been refused admission to the UK under regulation 23(1) of the EEA Regulations (or had settled status or pre-settled status, or leave to enter granted by virtue of having arrived in the UK with an EUSS family permit, cancelled on the basis that this was justified on grounds of public policy, public security or public health in respect of conduct committed before – or because the UK criminality threshold was met in respect of conduct committed after – the end of the transition period) and the refusal of the application is justified on grounds of public policy, public security or public health in respect of conduct committed before – or because the UK criminality threshold is met in respect of conduct committed after – the end of the transition period; or
- the applicant is a 'relevant excluded person' (as defined in Annex 1 to Appendix EU), i.e. has been excluded by the Secretary of State from the Refugee Convention or humanitarian protection, or the relevant provisions for so excluding them would apply if they made an application for protection). Where such a decision is based on conduct committed before the end of the transition period, the Secretary of State must be satisfied that the decision to refuse the application is justified on grounds of public policy, public security or public health.

130. These suitability provisions do not apply where, at the date of decision on the EUSS application, the relevant order or decision has been set aside or no longer has effect in respect of the applicant.

131. Consistent with the approach taken to other forms of immigration leave, once status under the EUSS has been granted, we will restrict that leave where it is appropriate to do so. This will be done in accordance with the agreements. Specific provisions apply when cancelling or curtailing scheme leave (or leave to enter the UK granted by virtue of having arrived in the UK with an

EUSS family permit) under Part 9 of the Immigration Rules, as set out in paragraph E320 of the Rules.

132. In particular, scheme leave (or leave to enter the UK granted by virtue of having arrived in the UK with an EUSS family permit) may be cancelled under paragraph 321B of the Immigration Rules where the cancellation is justified:

- on grounds of public policy, public security or public health in respect of conduct committed before the end of the transition period – or because the UK criminality threshold is met in respect of conduct committed after the end of the transition period; or
- on the grounds that, in relation to the relevant application and whether or not to the applicant's knowledge, false or misleading information, representations or documents were submitted (including false or misleading information submitted to any person to obtain a document used in support of the application) that was or were material to the decision whether or not to grant the applicant scheme leave or an EUSS family permit; or
- in respect of leave to enter granted by virtue of having arrived in the UK with an EUSS family permit, since that entry clearance was granted, there has been a change in circumstances that is, or would have been, relevant to that person's eligibility for that entry clearance, such that their leave to enter ought to be cancelled; or
- in respect of EUSS leave, on the grounds that they cease to meet the requirements of Appendix EU.

#### **(xxvi) Applications from prisoners**

133. Appendix EU to the Immigration Rules does not prevent applications to the EUSS from those in prison. Work is in hand with HM Prison and Probation Service and others on the process for such applications.

134. Consistent with EU law and with the agreements, periods of imprisonment do not count towards an applicant's continuous qualifying period of residence under the EUSS and eligible residence restarts from scratch on release, where this is before the end of the transition period on 31 December 2020. This does not apply where the applicant has acquired the right of permanent residence under EU law, or has completed a continuous qualifying period of five years' residence, prior to their sentence of imprisonment and that sentence does not lead to their deportation. In those circumstances, they will be able to qualify for settled status under the EUSS, provided that the other relevant criteria are met.

## (xxvii) EUSS family permit

135. In line with the commitment in the agreements to allow close family members to join an EEA citizen resident in the UK with EUSS status, a new free family permit route to facilitate such travel to the UK was introduced from 30 March 2019, under Appendix EU (Family Permit) to the Immigration Rules. This currently enables existing non-EEA citizen close family members (spouses, civil partners, children/grandchildren, parents/grandparents) to join an EEA citizen with EUSS leave in the UK (or accompany them here), whether for a short stay or with a view to applying to the EUSS themselves in order to remain here longer term.
136. The EUSS family permit operates alongside the existing EEA family permit issued under the EEA Regulations while those Regulations continue to operate. The EEA family permit, which is also free of charge as per EU law, is only available to non-EEA citizen family members whose EEA citizen family member is exercising Treaty rights in the UK, which is not a requirement for EUSS leave.
137. The EUSS family permit, like the EEA family permit, requires confirmation of the family relationship of the applicant to the resident EEA citizen. The EUSS family permit also requires biometric enrolment overseas (a facial photograph and fingerprints, enrolled at a visa application centre), allowing the Home Office to check the applicant's biometrics against our records prior to entry to the UK, in line with our approach to other non-EEA visa routes.
138. If, having obtained an EUSS family permit via the online application process for this and arrived in the UK, the family member wishes to remain here beyond the period of validity of their permit, they need to make an in-country application, for status under the EUSS or otherwise.
139. The EUSS family permit is also available to applicants who apply on the basis of being a family member of an Irish citizen who does not hold EUSS leave but would qualify for it if they were to make a valid application under Appendix EU. The Irish citizen's identity card or passport as an Irish citizen, which is valid and the original document and not a copy, is required, together with evidence of their potential qualification under Appendix EU.
140. The EUSS family permit is available to applicants who apply on the basis of being a family member of a 'relevant naturalised British citizen' who would, but for the fact they are a British citizen, qualify for EUSS leave, if they made a valid application under Appendix EU, which, as a British citizen, they cannot. The relevant naturalised British citizen's identity card or passport as an EEA citizen, which is valid and the original document and not a copy, is required, together with confirmation that they are a British citizen and evidence of their potential qualification under Appendix EU (were they not a British citizen).

141. Similarly the EUSS family permit is available to applicants who apply on the basis of being a family member of a relevant person of Northern Ireland who does not hold EUSS leave but would qualify for it (but for the fact that, where they are one, they are a British citizen) if they were to make a valid application under Appendix EU. Evidence is required of that person being a relevant person of Northern Ireland, together with evidence of their identity and nationality and of their potential qualification under Appendix EU (were they not a British citizen, where they are one).
142. Durable partners and extended family member dependent relatives are not eligible to apply for the EUSS family permit and need to continue to apply for an EEA family permit in order to join or accompany an EEA citizen resident here. The status of such family members under EU law requires their entry to the UK to be facilitated via the EEA Regulations and, consistent with that, the EUSS requires that they hold a relevant document under the EEA Regulations (or equivalent evidence in the case of a family member of a relevant person of Northern Ireland) in order to be eligible for status under the EUSS.
143. Consistent with the agreements, the EUSS family permit will be made available to durable partners after the end of the transition period to facilitate their entry to the UK once free movement has ended and, where they do not rely on residence here before then as the durable partner of the EEA citizen, they will not be required to hold a relevant document under the EEA Regulations (or equivalent evidence in the case of a family member of a relevant person of Northern Ireland) in order to be eligible for status under the EUSS.
144. The EUSS family permit takes the form of an entry clearance valid for six months from the date of grant, which has effect as leave to enter for the remainder of that period when the holder crosses the UK border. During that time the EUSS family permit serves as evidence that, if that relationship continues to subsist, they come within the cohort eligible to apply to the EUSS.

**(xxviii) EUSS travel permit**

145. The EUSS travel permit provides an entry clearance for a non-EEA citizen who holds EUSS status and who has reported to the Home Office that the biometric residence card issued to them under the EEA Regulations or under the EUSS (and which, together with a valid passport, they require for travel and entry to the UK) has been lost or stolen. The EUSS travel permit facilitates their return to the UK.
146. The application for an EUSS travel permit is made via an online process. A valid passport and biometric enrolment (a facial photograph and fingerprints, enrolled at a visa application centre) are also required.

## **(xxix) Challenge and redress**

147. As part of the EUSS application process, the applicant is prompted or contacted where necessary to try to correct any errors or omissions before a decision on the application is made. Caseworkers take a pragmatic and flexible approach, exercising discretion in the applicant's favour where appropriate in order to minimise administrative burdens on the applicant, and providing the applicant with every opportunity and support to provide the information or evidence required to show that they qualify for settled status or pre-settled status under the EUSS.
148. However, if an applicant to the EUSS or for an EUSS family permit or travel permit ultimately disagrees with the outcome of their application:
- EUSS applicants who are refused on eligibility grounds or are granted pre-settled status and believe they qualify for settled status can apply for an internal administrative review of the decision. So too can a person whose EUSS status (or leave to enter the UK granted by virtue of having arrived in the UK with an EUSS family permit) is cancelled at the border because they no longer meet the relevant requirements of the Immigration Rules. There is a fee of £80 per person to apply for an administrative review, which is refunded if the original decision is withdrawn due to a caseworking error;
  - EUSS applicants who are refused on eligibility or suitability grounds or are granted pre-settled status and believe they qualify for settled status, and those refused an EUSS family permit or travel permit have a statutory right of appeal to an independent tribunal, where the relevant application was made after 11pm on 31 January 2020; or
  - they can seek a judicial review of the decision.

### **3. Public sector equality duty and immigration control**

149. The public sector equality duty under section 149 of the Equality Act 2010 requires that in exercising their functions public authorities must have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act;
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
150. Under the Equality Act 2010, the nine specified protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race

(including ethnic or national origins, colour or nationality); religion or belief; sex; sexual orientation; and marriage and civil partnership (although this final characteristic is only required to be considered in relation to the first limb of the public sector equality duty).

151. The equalities impacts of the policies described in the previous section have been considered against all protected characteristics to which the public sector equality duty applies, taking into account any exceptions.

**(i) Exceptions under the Equality Act 2010 for immigration functions**

152. Schedule 18 to the Equality Act 2010 sets out exceptions to the public sector equality duty. In relation to the exercise of immigration and nationality functions, section 149(1)(b) of the Act (to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it) does not apply to the protected characteristics of age, race (insofar as it relates to nationality or ethnic or national origins) or religion or belief. We have nonetheless considered relevant issues through the framework of the Act.

153. Under the Equality Act 2010, there are limited exceptions from the prohibition on discriminating against a person in the provision of services or in the exercise of a public function. These include where the exception (under paragraph 17 of Schedule 3 to the Act, which is relied upon in relation to the EUSS and documented in this Policy Equality Statement) is by virtue of the Immigration Acts (which includes the Immigration Rules for the EUSS in Appendix EU to the Rules, made under the Immigration Act 1971), or where there has been an authorisation signed by a Minister which permits the discrimination. It is then not unlawful under the Equality Act 2010 for a relevant person to discriminate against another in the provision of services or in the exercise of a public function on grounds of nationality or ethnic or national origins (this exception does not apply to discrimination on the grounds of colour). In addition, paragraph 1(1)(d) of Schedule 23 to the Act allows direct nationality discrimination where this is required by arrangements made with Ministerial approval, which is also relied upon in relation to the EUSS and documented in this Policy Equality Statement.

154. However, although those provisions of the Equality Act 2010 mean that direct discrimination in such circumstances is lawful under the Act, we have still considered the justification for any such discrimination. This Policy Equality Statement therefore goes further than required by the public sector equality duty and considers justification for all the proposals – regardless of whether any discrimination would be rendered lawful by operation of the Equality Act 2010 – through the framework of the Act.



### **3a – Direct discrimination**

#### **(i) EEA and British citizens and EEA and non-EEA citizen family members**

155. The EUSS is only open to applications from EEA citizens and their family members (whether EEA or non-EEA citizens). It is not open to non-EEA citizens who are not, or never have been, the family members of EEA citizens (other than certain ‘Zambrano’ cases). Nor is the EUSS open to British citizens or their family members (other than the family members of qualifying British citizens: ‘Surinder Singh’ cases, the family members of certain dual British/EEA nationals: ‘Lounes’ and ‘McCarthy’ cases, and the family members of relevant persons of Northern Ireland).
156. As regards the treatment of family members of EEA citizens, the scope of the EUSS is not restricted to particular nationalities as all eligible EEA citizens resident in the UK by the end of the transition period and their non-British citizen family members are within scope of the scheme.
157. By comparison, the migration to the UK of nationals of countries outside the EEA and Switzerland, who fall outside the scope of the EUSS (i.e. third country nationals),<sup>57</sup> is subject to control under the Immigration Act 1971 and to the detailed requirements set out in the Immigration Rules (other than in Appendix EU or Appendix EU (Family Permit)) made under that Act. This includes the non-EEA citizen family members of British citizens other than the family members of qualifying British citizens or the family members of certain dual British/EEA nationals. Those seeking to come to or stay in the UK are managed through the Immigration Rules for, in particular, the work, study and family routes, under which applicants must meet the relevant requirements, pay the relevant fee, and, if they do, are granted leave to enter or remain in the UK, subject to any conditions which apply to that leave. It may be argued that we are treating these non-EEA citizens less favourably on grounds of nationality.
158. However, we do not consider that the EUSS constitutes direct discrimination, as between: (i) non-EEA citizen family members of EEA citizens and other non-EEA citizens; (ii) EEA citizens and British citizens; or (iii) EEA citizens and non-EEA citizens. We consider there to be strong arguments that those who entered the UK exercising free movement rights, and their family members, are not in a comparable position to those who did not, given their very different entitlements and expectations.
159. The EUSS reflects the unique status of EEA citizens resident in the UK before the end of the transition period – stemming from their exercise of Free Movement Directive rights which include the right to be joined by their EEA and non-EEA citizen family members. Many of those EEA citizens have

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<sup>57</sup> This does not include third country nationals who are family members of EU, other EEA or Swiss citizens.

come to the UK and have built a life here, together with their family members, on the basis of our EU membership. They remain welcome following the UK's exit from the EU and the EUSS provides as smooth a transition for them as possible in terms of obtaining UK immigration status, so that they can carry on with their lives here with minimal disruption for them or for businesses, universities and other organisations. The reciprocation of that smooth transition for UK nationals living in the EEA or Switzerland is also something which the UK sought to secure in the negotiations with the EU, the other EEA countries and Switzerland, as set out in the citizens' rights agreements, and the EUSS has been developed in that context.

160. For these reasons, we do not consider that either as regards the comparison between non-EEA citizen family members of EEA citizens and other non-EEA citizens, between British citizens and EEA citizens or between EEA citizens and non-EEA citizens, there is a like-for-like comparison, so direct discrimination does not arise.
161. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
162. Furthermore, the difference in approach is justified by the exceptional circumstances of the UK's exit from the EU, the need to balance the rights of individuals who have lived in the UK for an extended period exercising their EU law rights with the need to bring them within the domestic immigration system after the end of the transition period, and the need for a smooth transition to a post-exit immigration system.

## **(ii) Family members of qualifying British citizens**

163. As described in Part 2 and below, some family members of a qualifying British citizen have a different deadline by which they must apply to the EUSS when compared to family members of EEA citizens (who under the agreements generally have the right to join the EEA citizen in the UK for the lifetime of the EEA citizen, as long as the family relationship existed before the end of the transition period and continues to exist when the family member seeks to come here or where certain future children are concerned). It may be argued that we are treating those family members of a qualifying British citizen less favourably on grounds of nationality.
164. However, those family reunion rights under the agreements only exist where the EEA citizen was resident in the UK by the end of the transition period and the family member was resident outside the UK at that point (or is a child born or adopted later). The qualifying British citizen resident in the EEA or Switzerland is already living with their family members. These 'Surinder Singh' family members are not covered by the agreements but, as

announced on 4 April 2019,<sup>58</sup> they have as a matter of domestic policy been given time-limited access to the EUSS as a transitional measure. As a matter of fairness, this provides such British citizens with scope to return to the UK with those family members on the same basis as EU law, while bringing family reunion rights for British citizens in the UK and abroad into alignment from 29 March 2022.

165. We do not consider therefore that the family members of a qualifying British citizen and those of a resident EEA citizen are comparable groups. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
166. The Home Office, working with other Government departments, carefully considered the justification for setting the cut-off dates for family members of qualifying British citizens to return with them to the UK and access the EUSS, taking into account the following:
- it is necessary to set cut-off dates in order to eliminate the difference in treatment of family members between different cohorts of British citizens. This will ensure that the rules and requirements for family members of British citizens are otherwise brought in line under the UK family Immigration Rules;
  - 29 March 2022 was chosen as the cut-off date for those who are family members by the UK's exit from the EU (together with children born or adopted after that point) because a period of three years after the date originally planned for that exit (and almost six years after the EU referendum result) was considered to provide sufficient time and flexibility for families to decide whether or not to relocate back to the UK on the same basis as EU law if they wished to do so;
  - 31 December 2020 was chosen as the cut-off date for spouses and civil partners where the marriage was contracted or the civil partnership was formed after exit (except where the couple were durable partners before exit, where the previous bullet point applies), and for durable partners where the durable partnership was formed after exit, as this group formed their relationship after the UK had left the EU and therefore did so in the context of free movement ending at the end of the transition period on this date;
  - 31 December 2020 was chosen as the cut-off date for 'extended family member' dependent relatives as this is the date by which, under the Withdrawal Agreement, they must have been documented

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<sup>58</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792710/Citizens\\_Rights\\_-\\_UK\\_nationals\\_in\\_the\\_EU.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792710/Citizens_Rights_-_UK_nationals_in_the_EU.pdf)

under the EEA Regulations (or have applied to be so) as an 'extended family member' in order to qualify for the EUSS.

167. We believe these policy decisions are justified and proportionate for the reasons set out above.

### **(iii) Application fees**

168. There are no application fees for the EUSS. In contrast, non-EEA citizen family members who do not qualify for leave under the EUSS must apply for alternative immigration routes which typically require a fee to be paid. For the reasons set out above, we believe that these groups are not in a comparable position to each other, so direct discrimination does not arise.

169. Even if this is incorrect and those whose nationality means they do not have to pay fees for family members and those that do are in a comparable position, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Fees Regulations made under the Immigration Acts.

170. Furthermore, and in any event, we consider that the difference in approach is justified given the exceptional circumstances of the UK's exit from the EU, the need to balance the rights of individuals who have lived in the UK for an extended period exercising EU law rights with the need to bring them within the domestic immigration system after the end of the transition period, and the need for a smooth transition to the new points-based immigration system.

### **(iv) Application process in-country for non-EEA citizen family members**

171. Non-EEA citizen family members applying in-country to the EUSS who do not hold a 'specified relevant document' (as defined in Annex 1 to Appendix EU) – that is a valid biometric residence card issued under the EEA Regulations or under the EUSS – are required to book a biometric enrolment appointment within 30 days of completing the online application. In contrast, non-EEA citizen family members who hold such a biometric residence card (and have therefore enrolled their fingerprint biometrics in a previous application to the Home Office) and EEA citizens (who are not required to enrol their fingerprint biometrics in applying to the EUSS) do not have to attend such an appointment when they apply.

172. In addition, non-EEA citizen family members applying in-country to the EUSS who do not hold such a biometric residence card (which can be used with the identity verification app to verify the person's identity) are required to send their identity document (a valid passport or biometric residence permit) to the Home Office (to be checked and returned to them) as that document cannot be used with the identity verification app. In contrast, non-EEA citizen family members who hold a valid biometric residence card issued under the

EEA Regulations or under the EUSS, and EEA citizens who hold a valid passport or national identity card, are generally able to use that document with the identity verification app to verify their identity in applying to the EUSS.

173. It is acknowledged that these requirements on some non-EEA citizen family members may result in the application process being more onerous, and therefore constitute less favourable treatment, because of the need to attend a biometric enrolment appointment and submit evidence by post, which is more time consuming and costly and less convenient. It may be argued that we are treating these non-EEA citizen family members less favourably on grounds of nationality.
174. However, we do not believe this constitutes unlawful direct discrimination on the grounds of race. We consider there to be strong arguments that those who entered the UK exercising free movement rights, and their family members, are not in a comparable position to those who did not, given their very different entitlements and expectations. The EUSS reflects the unique status of EEA citizens resident in the UK by the end of the transition period and their family members – stemming from their exercise of Free Movement Directive rights.
175. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
176. Furthermore and, in any event, we consider that the difference in treatment is justified. This is on the basis that the requirement for the enrolment of the fingerprint biometrics of non-EEA citizens applying to the EUSS who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS, and for the provision by them to the Home Office of their original identity document for verification, is justified because for immigration purposes this provides greater assurance around the identity of those applying for leave to remain in the UK. This is common in other UK immigrations routes and permitted under the Free Movement Directive and the agreements.
177. Unique identifiers, such as fingerprints, in combination with a facial photograph, allow us to fix an individual more reliably to an identity. Our experience to date with biometric applications, and their increasing use by international partners, shows clearly their value in raising identity assurance standards, thereby protecting the border and helping us detect those who cause harm. Non-EEA citizens applying to the EUSS who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS are not in any case being treated less favourably than non-EEA citizens who hold such a biometric residence card, as the latter will have already been through these processes when they applied for that document

under the EEA Regulations or for the pre-settled status they already hold under the EUSS.

178. By way of mitigation, to reduce the cost and inconvenience of the requirement to enrol fingerprint biometrics, the Home Office has established free appointment centres (known as 'core sites') in Belfast, Cardiff, Croydon, Glasgow, Liverpool, Sheffield and Solihull.

**(v) EEA citizens and non-EEA citizens: evidence of immigration status**

179. Under the EUSS, EEA citizens are provided with access to information on their immigration status online, unlike non-EEA citizens who, under the EUSS, also receive a biometric residence card under the scheme, where they do not already hold one under the EEA Regulations. This could be viewed as less favourable treatment for EEA citizens who may find it harder to evidence their status<sup>59</sup> and may arguably constitute direct discrimination on the grounds of nationality.
180. This policy was authorised in relation to the EUSS under paragraph 1(1)(d) of Schedule 23 to the Equality Act 2010 by virtue of Ministerial approval of the arrangements to provide EEA citizens with digital evidence of status only through their approval of associated policy and guidance documents. In addition, a Ministerial Arrangement was made on 17 November 2020 under paragraph 1(1)(d) of Schedule 23 to the 2010 Act.
181. Even if authorised under Schedule 23 to the 2010 Act, any discrimination must be fair and rational. We aim to move towards making online evidence of immigration status the sole means of proving immigration status to third parties in the UK across all routes and for all nationalities and to move away from physical documents. There are clear reasons for applying the policy to EEA citizens before expanding it to other nationalities.
182. By way of mitigation, we have taken into account that EEA citizens eligible for the EUSS do not require a visa to travel to the UK, and they can continue to use their passport or national identity card to prove their immigration status in the UK until 30 June 2021. They can access employment and services using their passport or national identity card until then and their ability during this period to access their immigration status information online provides an additional facility for them and for those checking status. That online service will continue to be enhanced based on user feedback. A comprehensive communications campaign will be put in place and a comprehensive support service will be developed.
183. EEA citizens are not required to use their online evidence to prove their immigration status until after 30 June 2021, although they can choose to do

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<sup>59</sup> We deal with the issue of potential indirect discrimination of a digital only status below.

so if they wish. EEA citizens can continue to use their passport or national identity card to prove their status in the UK during this time.

184. We provide a telephone helpline for landlords and employers to provide guidance on conducting right to work and right to rent checks. We continue to develop support systems, so that all users – including those who are less digitally capable – are able to access and use their online status, and improvements to the online service will continue to be made, based on issues raised or feedback provided by users.
185. Although it is optional at present, significant numbers of individuals and checking organisations are using the ‘view and prove’ online immigration status service<sup>60</sup> and it is popular with users. In the period from April to June 2020, there were over 400,000 views on the ‘view and prove’ service by migrants. In the same period, there were over 100,000 views of EUSS status by organisations checking status. Feedback so far on the online immigration status service has been positive. Users find it simple and easy to use and user satisfaction scores are over 80%, similar to those for other digital government services, such as the Driver and Vehicle Licensing Agency services for renewing driving licences and paying vehicle excise duty.<sup>61</sup>
186. The Home Office is building the necessary infrastructure and systems to make immigration status automatically available to other government departments, minimising the instances where individual users are required to go online to prove their rights. Such systems are in place for the Department for Work and Pensions and HM Revenue & Customs in assessing benefits claims. This means that the rights of individuals to benefits can be assessed without those individuals having to provide anything.
187. With the introduction of Universal Permissions to Travel,<sup>62</sup> we will enable digital status information to be used to evidence the permission to travel to the UK. Until this time, EEA citizens will be able to travel to the UK by simply showing their passport or, where permitted, their national identity card. We therefore do not believe that these individuals will be disadvantaged by having no Home Office issued physical document as evidence of their immigration status.
188. We are developing an extensive package of communications to ensure individuals, employers, landlords and other third parties are fully aware of the move to digital and how and where online immigration status can be used.

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<sup>60</sup> <https://www.gov.uk/view-prove-immigration-status>

<sup>61</sup> <https://www.gov.uk/government/publications/visas-and-citizenship-data-august-2020>

<sup>62</sup> The UK Points Based Immigration System – Further Details – July 2020:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/899755/UK\\_Points-Based\\_System\\_Further\\_Details\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/899755/UK_Points-Based_System_Further_Details_Web_Accessible.pdf)

## **(vi) Approach to non-EEA citizen family members applying overseas**

189. We do not provide scope for applications to the EUSS from outside the UK by non-EEA citizen family members who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS. To ensure that such non-EEA citizen family members have access to the EUSS we have introduced the EUSS family permit to facilitate their travel and entry to the UK, where they can then make an application to the EUSS in-country.
190. It is acknowledged that this represents less favourable treatment of non-EEA citizen family members who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS as compared to non-EEA citizen family members who do (and who can therefore apply to the EUSS from outside the UK because they can verify their identity using that document with the identity verification app and because they are not required to re-enrol their fingerprint biometrics) and as compared to EEA citizens, who are able to apply to the EUSS from outside the UK where they hold a valid passport or a valid national identity card where this contains an interoperable biometric chip (as these documents can be used with the identity verification app to verify the person's identity and because they are not required to enrol their fingerprint biometrics). It may be argued that we are treating these non-EEA citizens less favourably on grounds of nationality.
191. However, we do not believe this constitutes unlawful direct discrimination on the grounds of race. We consider there to be strong arguments that those who entered the UK exercising free movement rights, and their family members, are not in a comparable position to those who did not, given their very different entitlements and expectations. The EUSS reflects the unique status of EEA citizens resident in the UK by the end of the transition period and their family members – stemming from their exercise of Free Movement Directive rights.
192. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
193. Furthermore, the difference in treatment is justified as it is necessary and proportionate having regard to concerns about the potential for speculative or abusive applications being made to the EUSS from overseas by non-EEA citizens whose identity has not been verified in a previous application to the Home Office and to the operational challenges of alternative approaches. We consider these issues below.

### *Deterring speculative or abusive applications*

194. There is a risk that providing non-EEA citizens whose identity has not been verified in a previous application to the Home Office with the scope to make



a free and simple application from anywhere in the world for indefinite or limited leave to enter the UK could result in high numbers of speculative or abusive applications which could result in status under the EUSS being granted to those with no right to it or which, to prevent this, could make such demands on finite caseworking resources as to have a detrimental impact on the delivery of the EUSS for other applicants.

195. The two-step process for non-EEA citizens overseas who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS to obtain status under the EUSS (first, apply for a family permit to join their EEA citizen family member in the UK, or accompany them here, and second, apply to the EUSS once in the UK) provides safeguards against speculative or abusive applications. Firstly, it acts as a deterrent to those who do not have a genuine intention to join an EEA citizen family member resident in the UK or accompany them here. Secondly, it provides two opportunities to scrutinise applications against requirements such as family relationship (and required evidence of this) and suitability. Finally, requiring to see the valid passport of the applicant (which, as part of a family permit application, is presented at the visa application centre, where the applicant also enrolls their biometrics) provides greater protection against any attempted abuse (for example, as it allows us to examine the authenticity of the document).
196. By way of mitigation, the EUSS family permit application typically requires significantly less evidence to be submitted by the applicant than an application for an EEA family permit (for example, no evidence of the EEA citizen family member's exercise of Treaty rights in the UK is required) and, in contrast to the majority of other entry clearance routes, it is, consistent with the agreements, free of charge.
197. A comparison of entry clearance applications made by non-EEA citizens and EEA citizens is not possible given that EEA citizens are not required to make such an application, but the refusal rate for non-EEA citizens applying for entry clearance through the EEA family permit route is high, running at just over half of all applications for 2019.<sup>63</sup> There were 95,036 EEA family permit applications submitted in 2019, and 94,683 cases resolved, of which 46,111 (49%) were granted and 48,293 (51%) refused (the outcome for the remainder was either 'lapsed' or 'withdrawn', hence subtotals do not sum to the total). For comparison, the grant rate in 2019 for a family visa where a non-EEA citizen is applying for a visa on the basis of their relationship to another migrant who is settled in the UK or to a British citizen was 80%.<sup>64</sup>

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<sup>63</sup> Entry clearance visa summary tables – 'Vis\_02', Entry clearance visa applications and outcomes by type of visa, year ending December 2019:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868069/visas-summary-dec-2019-tables.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868069/visas-summary-dec-2019-tables.xlsx)

<sup>64</sup> Ibid

### *Technical and operational barriers*

198. The requirement for the enrolment of the fingerprint biometrics of non-EEA citizens applying to the EUSS who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS, and for the provision by them to the Home Office of their original identity document for verification, is justified on the basis that for immigration purposes this provides greater assurance around the identity of those applying for leave to enter or remain in the UK. This is the same approach taken for non-EEA family members who applied for a biometric residence card to evidence EU law rights. This is discussed further above. There are also technical barriers to allowing non-EEA citizens who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS to apply to the EUSS from outside the UK.
199. In addition, whilst biometric enrolment in a secure environment is possible overseas at a visa application centre, this could not currently be used for the purposes of applications to the EUSS as the out-of-country applications (e.g. typically visas) that these centres handle are dealt with on a separate IT system to EUSS applications.
200. The current systems will be replaced in due course by a single system that, subject to further design decisions, may include the functionality for making an application to the EUSS using biometrics enrolled at a visa application centre or submitted online. In the meantime, non-EEA citizens who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS are unable to apply to the EUSS from outside the UK.

#### **(vii) Online only applications for the EUSS family permit and EUSS travel permit**

201. The application process for the EUSS family permit and EUSS travel permit, like that for the EEA family permit issued under the EEA Regulations, is an online only process. Whilst, unlike some applications to the EUSS, no EUSS family permit or EUSS travel permit applicants are mandated to use a paper application form, an argument may be made that the lack of choice to apply using a paper form constitutes less favourable treatment of applicants who share the protected characteristic of race as non-EEA citizens who do not hold a valid biometric residence card issued under the EEA Regulations or under the EUSS must apply online for an EUSS family permit or EUSS travel permit. By comparison, EEA citizens applying to the EUSS from overseas are able to apply using a paper form where they are unable to apply online.
202. However, given that applicants for an EUSS family permit or EUSS travel permit are applying for entry clearance rather than leave to enter or remain, we do not believe that the groups are comparable. They are applying for significantly different products under separate administrative processes, one overseas and one largely in the UK.

203. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
204. This approach is, in any event, also justified in that it is necessary in order to deliver a streamlined application process for applicants, consistent with the agreements and with UK Visas and Immigration's general approach of providing online only application processes in all entry clearance application routes overseas, which in total deal with approximately 3.3 million applications a year.<sup>65</sup>
205. To mitigate any potential negative impacts on applicants and consistent with the provision across other overseas entry clearance routes, we offer telephone support to assist applicants in making their application through the online process.

**(viii) EEA and Swiss citizens**

*New spouse or civil partner of a Swiss citizen joining them after the end of the transition period*

206. A Swiss citizen resident in the UK by the end of the transition period will be able to be joined in the UK under the EUSS by a spouse or civil partner where the marriage was contracted or the civil partnership was formed after the end of the end of the transition period and before 1 January 2026 (as well as where it was contracted or formed by the end of the transition period), in comparison to EEA citizens resident in the UK by the end of the transition period who will only be able to be joined in the UK under the EUSS by a spouse or civil partner where the marriage was contracted or the civil partnership was formed by the end of the transition period. To this extent, the relevant family members of EEA citizens are treated less favourably than those of Swiss citizens.
207. We do not, however, believe that family members of Swiss citizens are comparable to family members of EEA citizens, as Swiss citizens resident in the UK by the end of the transition period have different rights here in light of the different citizens' rights agreement with Switzerland, compared to the agreements with the EU and with the other EEA states.
208. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.

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<sup>65</sup> This is the number of applications received in the year ending June 2019:  
<https://homeofficemedia.blog.gov.uk/2019/11/05/factsheet-uk-visa-services/>

209. Article 23 of the Free Movement of Persons Agreement between the EU and Switzerland states that acquired rights must continue to be protected even if the agreement itself is terminated. This provision is not replicated in the Free Movement Directive. Therefore, the difference in approach is justified by the difference in the legal basis of our relationship with the EU (and the other EEA states) and with Switzerland in respect of free movement of people, which had an impact on the outcomes of our negotiations, since the UK sought agreements on a reciprocal basis.

*Absence leading to the lapsing of settled status*

210. Swiss citizens and their family members who obtain settled status under the EUSS can only be absent from the UK and Islands for up to four consecutive years before that status lapses, as compared to five consecutive years for EU and other EEA citizens and their family members. To this extent Swiss citizens are treated less favourably than EEA citizens. It may be argued that we are treating them less favourably on grounds of nationality.
211. We do not, however, believe that Swiss citizens and their family members are comparable to EEA citizens and their family members, as Swiss citizens resident in the UK by the end of the transition period have different rights here in light of the different citizens' rights agreement with Switzerland, compared to the agreements with the EU and with the other EEA states.
212. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration (Leave to Enter and Remain) Order 2000.<sup>66</sup>
213. The difference in treatment is, in any event, justified by the difference in the legal basis of our relationship with the EU (and the other EEA states) and with Switzerland in respect of free movement of people. The Free Movement of Persons Agreement, unlike the Free Movement Directive, does not contain provisions relating to permanent residence. Currently the UK and Switzerland have arrangements under domestic law to provide permanent residence for each other's nationals.
214. As part of the UK-Swiss citizens' rights agreement, the UK and Switzerland agreed to continue arrangements on permanent residence as they are currently applied in Switzerland – which includes a four-year period of absence before permanent residence rights are lost. Therefore, the difference in approach is justified by the difference in the legal basis of our relationship with the EU (and the other EEA states) and with Switzerland in

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<sup>66</sup> <https://www.legislation.gov.uk/uksi/2019/686/contents/made>

respect of free movement of people, which had an impact on the outcomes of our negotiations, since the UK sought agreements on a reciprocal basis.

**(ix) Family members of Irish citizens, relevant naturalised British citizens and relevant persons of Northern Ireland**

*No requirement for sponsor to hold leave under the EUSS*

215. Appendix EU (Family Permit) allows a family member of an Irish citizen, of a relevant naturalised British citizen (a 'Lounes' case) or of a relevant person of Northern Ireland to apply for an EUSS family permit without their EEA citizen family member resident in the UK (referred to here as their 'sponsor') holding status under the EUSS, and to rely instead on the potential qualification for EUSS status of their sponsor if they applied (and were they not a British citizen, where they are one). By contrast, in the case of the family member of other EEA citizens resident in the UK, that sponsor must already have status under the EUSS, which may therefore be considered to constitute less favourable treatment of those family members on grounds of nationality.
216. We do not, however, believe that a family member of an Irish citizen, of a relevant naturalised British citizen or of a relevant person of Northern Ireland is in a comparable position to a family member of other EEA citizens resident in the UK. This is because of the particular status of Irish citizens, including those who are relevant persons of Northern Ireland, under the Common Travel Area arrangements and because relevant naturalised British citizens (and some relevant persons of Northern Ireland) hold British citizenship, which means that they have the right of abode in the UK and therefore cannot apply for or be granted immigration leave. These groups are therefore in a materially different position from other EEA citizens resident in the UK.
217. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
218. The difference in approach is, in any event, justified by the unique status of Irish citizens under UK legislation, and the need to maintain the Common Travel Agreement arrangements under which Irish citizens can enter and reside in the UK independently of any EU law rights. Irish citizens resident in the UK are not required to apply for status under the EUSS (but may do so if they wish), and their eligible family members (who are not Irish citizens or British citizens) can obtain status under the EUSS, or an EUSS family permit, without the Irish citizen obtaining EUSS status. This also reflects the 'New Decade, New Approach' agreement published by the UK and Ireland on 9 January 2020 ahead of the restoration of devolved government in

Northern Ireland:<sup>67</sup> in line with this, eligible family members of persons of Northern Ireland (as defined in the Belfast (Good Friday) Agreement)<sup>68</sup> are able to apply for UK immigration status, under the EUSS, on broadly the same terms as family members of Irish citizens in the UK.

219. The difference in approach is also justified, where the family members of a relevant naturalised British citizen are concerned, because that dual British/EEA national has family reunion rights under EU law (in line with the CJEU judgment in ‘Lounes’), and whilst that sponsor cannot apply to the EUSS as they are a British citizen, it is in accordance with the agreements that their family members should not be deprived of those rights.

#### *Requirement for the sponsor’s original identity document*

220. Appendix EU (Family Permit) also generally requires that an applicant for an EUSS family permit who relies on the potential qualification for EUSS status of their sponsor if they applied (and were they not a British citizen, where they are one) – where the sponsor is an Irish citizen (or a relevant person of Northern Ireland who is relied on by the applicant as being an Irish citizen) or a relevant naturalised British citizen (a ‘Lounes’ case) – has to provide the sponsor’s original identity document (their valid passport or national identity card) as an Irish citizen or otherwise as an EEA citizen.<sup>69</sup> There is no such requirement in the case of an EUSS family permit applicant of other EEA citizens resident in the UK, because in those cases the applicant relies on the sponsor holding EUSS status, which means that the sponsor’s identity and nationality will have been verified when they applied to the EUSS and we do not need to repeat that process where their family member applies for an EUSS family permit. It may be argued that we are treating applicants for an EUSS family permit who rely on the potential qualification for EUSS status of their sponsor less favourably on grounds of nationality.

221. As explained above, however, we do not believe that a family member of an Irish citizen, of a relevant naturalised British citizen or of a relevant person of Northern Ireland is in a comparable position to a family member of other EEA citizens resident in the UK. This because of the particular status of Irish citizens (and some relevant persons of Northern Ireland) and because relevant naturalised British citizens (and some relevant persons of Northern Ireland) hold British citizenship, which means that they have the right of

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>68</sup> <https://www.gov.uk/government/publications/the-belfast-agreement>

<sup>69</sup> Where the sponsor is relevant person of Northern Ireland who is relied on by the applicant as being a British citizen, the applicant can provide information or evidence – or rely that on which is already available to the entry clearance officer, e.g. from Home Office systems – which satisfies the entry clearance officer that the person is a British citizen. The applicant can do likewise to establish that a sponsor who is a relevant naturalised British citizen is a British citizen. This seeks, in both cases, to minimise the administrative burden on applicants in respect of information that it may be possible for the Home Office to confirm from its own records.

abode in the UK and therefore cannot apply for or be granted immigration leave. These groups are therefore in a materially different position from other EEA citizens resident in the UK.

222. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
223. The difference in approach is, in any event, justified by the unique status of Irish citizens under UK legislation, and the need to maintain the Common Travel Agreement arrangements under which Irish citizens can enter and reside in the UK independently of any EU law rights. Irish citizens resident in the UK are not required to apply for status under the EUSS (but may do so if they wish), and their eligible family members (who are not Irish citizens or British citizens) can obtain status under the EUSS, or an EUSS family permit, without the Irish citizen obtaining EUSS status. While it is the case that Irish citizens are not required to apply to the EUSS themselves, whether to secure their own status or for a family member to obtain status under the EUSS, it is right that, where they seek to sponsor a family member's EUSS family permit application, the Home Office is able to ensure that they are an Irish citizen, which it can only do satisfactorily through receipt of their original identity document as an Irish citizen.
224. The difference in approach is also justified, where the family members of a relevant naturalised British citizen are concerned, because that dual British/EEA national has family reunion rights under EU law (in line with the CJEU judgment in 'Lounes'), and whilst that sponsor cannot apply to the EUSS as they are a British citizen, it is in accordance with the agreements that their family members should not be deprived of those rights. But, where a relevant naturalised British citizen seeks to sponsor a family member's EUSS family permit application, it is right that the Home Office is able to ensure that they are an EEA citizen, which it can only do satisfactorily through the receipt of their original identity document as an EEA citizen.
225. To mitigate any adverse impact arising from this approach, particularly where the applicant and sponsor are in different countries, we have provided scope for the sponsor's identity document to be sent to the Home Office to be checked and returned. This avoids the need for it to be sent overseas to the applicant so they can take it to a visa application centre to be checked and then return it to the sponsor.

#### **(x) Family members of people of Northern Ireland**

226. The Equality Act 2010 does not extend to Northern Ireland, but a similar duty exists in section 75 of the Northern Ireland Act 1998. The scope of the EUSS is UK-wide and therefore the public sector equality duty is relevant to the provision made by the EUSS for family members of people of Northern Ireland. Relevant equality considerations are consequently set out below.

227. Family members of British citizens who are relevant persons of Northern Ireland may apply to the EUSS, but family members of other British citizens (with the exception in particular of ‘Surinder Singh’, ‘Lounes’ and ‘McCarthy’ cases, which concern EU law) are not eligible to apply. To this extent family members of other British citizens are treated less favourably than family members of relevant persons of Northern Ireland.
228. We do not, however, believe that a family member of a relevant person of Northern Ireland is in a comparable position to a family member of a British citizen who is not a relevant person of Northern Ireland. This is because, under the ‘New Decade, New Approach’ agreement published by the UK and Ireland on 9 January 2020 ahead of the restoration of devolved government in Northern Ireland,<sup>70</sup> eligible family members of persons of Northern Ireland (as defined in the Belfast (Good Friday) Agreement)<sup>71</sup> are to be able to apply for UK immigration status on broadly the same terms as family members of Irish citizens in the UK, reflecting the unique status of people of Northern Ireland under the Belfast (Good Friday) Agreement; the EUSS implements that commitment. This is also because of the particular status of relevant persons of Northern Ireland who are Irish citizens under the Common Travel Area arrangements. Family members of relevant persons of Northern Ireland are therefore in a materially different position from family members of British citizens who are not relevant persons of Northern Ireland.
229. Even if this is incorrect and a comparator can be identified, any direct discrimination on the grounds of race is not unlawful under the Equality Act 2010 as paragraph 17 of Schedule 3 to the Act applies and this matter is the subject of specific provision in the Immigration Rules.
230. The evidence requirements under Appendix EU where the applicant is relying on being a family member of a relevant person of Northern Ireland differ from those of other applicants to the EUSS. The former include evidence that the person is a ‘relevant person of Northern Ireland’, which includes evidence that the person was born in Northern Ireland (in the form of a birth certificate or passport showing this) and that, at the time of the person’s birth, at least one of their parents was a British citizen, an Irish citizen, a British citizen and an Irish citizen, or otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.
231. This difference is justified because the evidence is necessary to show that the person falls within the category of ‘relevant person of Northern Ireland’. This definition is based on the Belfast (Good Friday) Agreement.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/856998/2020-01-08\\_a\\_new\\_decade\\_a\\_new\\_approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade_a_new_approach.pdf)

<sup>71</sup> <https://www.gov.uk/government/publications/the-belfast-agreement>



## **(xi) Dependent parents of children under 18 years of age**

232. Under the EUSS the dependency of a parent or grandparent on a resident EEA citizen (as required by the Free Movement Directive) will not be assumed and will have to be evidenced where that EEA citizen is a child aged under 18. This is in contrast to the assumed dependency of a parent or grandparent on a resident EEA citizen aged 18 or over. The application process for the former is therefore more onerous and it could therefore be argued that this policy amounts to less favourable treatment on the basis of age.
233. There is no unlawful direct discrimination under the Equality Act 2010 on the grounds of age because under section 28 of the Act the prohibition of discrimination does not apply (in the context of exercising public functions) to the protected characteristic of age, so far as persons under the age of 18 are concerned.
234. In any event, we consider that this policy is justified as a result of the need to protect the integrity of the immigration system by preventing abusive applications from those who are not genuinely dependent and also to act as a safeguard against potential exploitation of vulnerable children, in line with our duty under section 55 of the Borders, Citizenship and Immigration Act 2009.<sup>72</sup>
235. We believe that this policy is also justified on the basis that such an approach tests the status of a relatively small number of applicants in circumstances where dependence is less likely and where the approach elsewhere of assuming it would bring the robustness of the EUSS into question and potentially put children at risk.
236. We have attempted to mitigate the impacts of this approach by making the application process and evidence requirements as straightforward as possible and selecting appropriate age ranges. Consideration was given to factors including case law on dependency, the 'age of majority', socio-economic trends and the approach in other routes and elsewhere under the EUSS. To limit impact on genuine applicants consideration was given to the fact that it is less likely that a parent is financially dependent upon a child aged under 18.<sup>73</sup> In addition, those aged under 18 are also considered more

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<sup>72</sup> <https://www.legislation.gov.uk/ukpga/2009/11/section/55>

<sup>73</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/may2020>  
<https://www.ons.gov.uk/peoplepopulationandcommunity/personalandhouseholdfinances/incomeandwealth/bulletins/totalwealthingreatbritain/april2016tomarch2018#total-household-wealth-by-age-of-household-reference-person-hrp>

vulnerable to abuse and exploitation than older young people and as such ensuring a genuine dependence on them can help to guard against this.<sup>74</sup>

237. To mitigate the impact of the evidence requirement, we have committed in published guidance to accept a variety of evidence of dependency, including:

- evidence of financial dependency, such as bank statements or money transfers to the applicant from the relevant EEA citizen (or qualifying British citizen) or their spouse or civil partner; or
- evidence that the applicant needs and receives (or for the relevant period did so) the personal care of the relevant EEA citizen (or qualifying British citizen), or of their spouse or civil partner, on serious health grounds, for example a letter from a hospital consultant.

**(xii) Dependent children aged 21 or over**

238. Under the EUSS a child or grandchild aged 21 or over must be dependent on a resident EEA citizen parent or grandparent (as required by the Free Movement Directive) and this dependency must be evidenced. The application process for children aged 21 or over is therefore more onerous. Such an approach may be said to amount to less favourable treatment on the basis of age as, under the EUSS, children aged under 21 do not need to meet these requirements.

239. The decision to attach an age limit for not requiring the dependency of children on their parents or grandparents reflects the provisions in the Free Movement Directive and the agreements.

240. However, to the extent that an argument may be made that direct discrimination does arise, this does not constitute unlawful direct discrimination under the Equality Act 2010 as section 13(2) of the Act applies, and this policy is justified as a proportionate means of achieving a legitimate aim, for the reasons which follow.

241. The legitimate aim in this case is to protect the integrity of the immigration system by preventing abusive applications from those who are not genuinely dependent. Consideration was given to factors including case law on dependency, the 'age of majority', socio-economic trends and the approach in other routes and elsewhere under the EUSS.

242. To ensure the policy of requiring and testing the dependency of children on parents is proportionate, we have sought to limit the impact on genuine applicants and only test in cases where we consider it less likely that

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<sup>74</sup> <https://www.childrensociety.org.uk/news-and-blogs/press-releases/16-and-17-year-olds-at-greatest-risk-of-abuse-and-neglect-but-are>

applicants will be dependent. Dependency is less likely where a child is aged 21 or over, given the relatively higher levels of financial independence as a result of high proportions having entered the labour market than in younger age groups.<sup>75</sup>

243. To mitigate the impact of the evidence requirement we have committed in published guidance to accept a variety of evidence of dependency, including:

- evidence of financial dependency, such as bank statements or money transfers to the applicant from the relevant EEA citizen (or qualifying British citizen) or their spouse or civil partner; or
- evidence that the applicant needs and receives (or for the relevant period did so) the personal care of the relevant EEA citizen (or qualifying British citizen), or of their spouse or civil partner, on serious health grounds, for example a letter from a hospital consultant.

### **3b – Indirect discrimination**

244. Indirect discrimination under the Equality Act 2010 may occur where a service provider or a body exercising a public function applies an apparently neutral provision, criterion or practice which puts persons sharing a protected characteristic at a particular disadvantage. Some measures under the EUSS may have a disproportionately adverse impact upon people sharing a particular protected characteristic.

245. Such adverse impact is lawful where it can be ‘objectively justified’ – that is, where it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate aim. The Equality and Human Rights Commission guidance provides further detail on proving ‘objective justification’:

‘To prove objective justification:

- the aim must be a real, objective consideration, and not in itself discriminatory (for example, ensuring the health and safety of others would be a legitimate aim).
- if the aim is simply to reduce costs because it is cheaper to discriminate, this will not be legitimate.

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<sup>75</sup><https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/april2020>

- working out whether the means is 'proportionate' is a balancing exercise: does the importance of the aim outweigh any discriminatory effects of the unfavourable treatment?
- there must be no alternative measures available that would meet the aim without too much difficulty and would avoid such a discriminatory effect: if proportionate alternative steps could have been taken, there is unlikely to be a good reason for the policy or age-based rule.<sup>76</sup>

246. The rationale for various policy approaches under the EUSS is set out below in order to demonstrate how they are a proportionate means of achieving a legitimate aim. To the extent that the approach particularly disadvantages people sharing a particular protected characteristic, we have considered how this disadvantage can be mitigated.

### **(i) Approach to evidencing the continuous qualifying period of residence**

247. As explained in the policy summary above, applicants to the EUSS who do not have a valid permanent residence document or existing indefinite leave to enter or remain will generally need to demonstrate that they have completed a continuous qualifying period of residence. There are various ways that this can be evidenced, including through an automated check with HM Revenue & Customs (HMRC) and the Department for Work and Pensions (DWP) where the applicant chooses to provide their National Insurance number.

248. We use certain data from HMRC and DWP provided by the automated checks to verify UK residence, for example evidence as to tax paid on employment or self-employment income or of certain benefits received,<sup>77</sup> and thereby minimise the need for applicants to provide documentary evidence of their residence here.

249. The automated checks for establishing UK residence may assist certain protected groups less than others, as set out in the analysis below. As the checks are only used to help applicants to evidence their UK residence, any such evidence the checks provide can only assist applicants in showing that they qualify for settled status or pre-settled status under the EUSS. The automated checks are also optional for all applicants, depending on whether they choose to provide their National Insurance number.

250. We consider that this policy is justified as it represents a proportionate means of achieving a legitimate aim – in particular, and consistent with the agreements, in streamlining the application process for the EUSS and

<sup>76</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/commonly-used-terms-equal-rights>

<sup>77</sup> State Pension and New State Pension, Universal Credit, Housing Benefit, Jobseeker's Allowance, Employment and Support Allowance, Carer's Allowance, Personal Independence Payment, Disability Living Allowance, Income Support, Maternity Allowance, Incapacity Benefit, Attendance Allowance and Severe Disablement Allowance.

minimising the documentary evidence of UK residence which applicants need to provide.

251. The nature of the benefit eligibility rules means that Jobseeker's Allowance and Maternity Allowance count for a month of UK residence for each month it is received. In respect of other benefits covered by the automated checks, those rules mean that the period of UK residence that they show depends on how long the benefit has been claimed for.
252. Where the person has received the benefit for a full 12-month period, the automated checks count that as UK residence for 12 months for every full 12-month period the benefit has been received from the first point of claim. Where the person has received the benefit for less than a full 12-month period, the automated checks count the first month of the claim (or of that 12-month period of the claim) as evidence of UK residence. Unless other records from the automated checks evidence the person's UK residence for the remaining period, they will need to provide documentary evidence of UK residence for that remaining period.
253. This means that the application process under the EUSS may be more onerous for those in receipt of benefits other than Jobseeker's Allowance and Maternity Allowance covered by the automated checks, but the inclusion of those other benefits in the checks still means that the application process is simpler and more streamlined for recipients of them than would otherwise be the case.
254. Where we have identified that certain groups who share a protected characteristic may be particularly impacted by certain aspects of the approach to evidencing the continuous qualifying period of residence, we have sought to mitigate this impact wherever possible and we will continue to keep this impact, and the scope for further mitigation, under review, as the EUSS continues to operate.
255. As a general approach under the EUSS, we are committed to minimising the administrative burden on applicants and are looking for reasons to grant status, not refuse. Caseworkers will work with applicants to help them provide any further evidence required. A person's application to the EUSS will not be refused solely based on a negative result from the optional automated checks – the automated checks can only assist an applicant in showing that they qualify for settled status or pre-settled status under the EUSS. Information about the automated checks, how they calculate the continuous period of UK residence and what tax and benefit records they are based on and why is publicly available.<sup>78</sup>

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<sup>78</sup> <https://www.gov.uk/guidance/eu-settlement-scheme-uk-tax-and-benefits-records-automated-check>

## Age

256. EEA citizens in the UK tend to be young or of working age. Home Office estimates based on the Annual Population Survey, April 2018 to March 2019, suggest that 19% of the resident population of EEA citizens (excluding Irish citizens) are aged under 16, 79% are aged 16-64 and 3% are aged 65 or over.<sup>79</sup>
257. Applicants are able to demonstrate their UK residence through, among other things, employment or self-employment. This will support those in employment, primarily likely to be of working age but which may also include some still in employment past State Pension Age or those who have only recently ceased employment. Office for National Statistics data<sup>80</sup> suggests that around 2.3 million working age (proxied as those aged 16-64) EU27 nationals were estimated to be resident in the UK in July-September 2020. Of this group, around 81% (1.9 million) were estimated to be in employment, around 5% (0.1 million) were estimated to be unemployed<sup>81</sup> and around 14% were estimated to be classified as economically inactive, including some who may be aged 16-21 and in study.
258. Therefore, a large proportion of resident EEA citizens should be able to evidence their UK residence using the automated Application Programming Interface employment or self-employment checks available under the EUSS to those applicants who choose to provide their National Insurance number. The remainder, particularly those aged 65 or over, may not be economically active and their UK residence may be evidenced through other government data provided by the automated checks (such as State Pension payments) or by documentary evidence.
259. Such an approach is justified as it is a proportionate means of achieving a legitimate aim. The approach of using the automated checks reduces the overall administrative burden on applicants in general, with testing showing that around three-quarters of applicants did not have to submit any documentary evidence of UK residence, consistent with the streamlined, user-friendly application process required by the agreements.<sup>82</sup> Some of the remaining applicants will also have to provide less evidence of UK residence as a result of the automated checks than they would otherwise have done.

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<sup>79</sup> Home Office analysis of [Annual Population Survey April 2018 – March 2019](https://www.nomisweb.co.uk/articles/1167.aspx): <https://www.nomisweb.co.uk/articles/1167.aspx>

<sup>80</sup> ONS ‘Labour Market Overview, UK: November 2020’. See Table A12. Note this data is presented for EU27 nationals, and as such includes Irish nationals and does not include nationals of Iceland, Liechtenstein, Norway or Switzerland. As data is from the period July-September 2020, outcomes may be impacted by Covid-19.

<sup>81</sup> Note this differs from the unemployment rate, which would refer to the total estimated to be unemployed as a proportion of all those who are economically active. The figure quoted here provides an estimate of those EU27 nationals estimated to be working age and unemployed as a share of the total EU27 working age population.

<sup>82</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-public-beta-testing-phase-report/eu-settlement-scheme-public-beta-testing-phase-report>

260. By way of mitigation, where applicants to the EUSS over the age of 65 are concerned, who may be disadvantaged as they may find it more difficult to evidence their UK residence via the automated checks through employment, the State Pension and New State Pension are included in the DWP data used to verify UK residence via the checks. This will ease the evidential burden on those not working but in receipt of a State Pension. As receipt of a State Pension is contingent upon having made National Insurance contributions for a number of years, it is sufficient, on its own, to evidence eligibility for settled status under the EUSS, where other criteria are met. An applicant in receipt of a State Pension does not have to provide any further information or evidence about their UK residence.

## Sex

261. We have considered what impact the approach to evidencing the continuous qualifying period of residence may have on the protected characteristic of sex. The estimated resident population of EEA citizens (excluding Irish nationals) is roughly half male and half female, and similar proportions make up the population estimated to be in employment.<sup>83</sup>

262. The automated checks in the application process where the applicant chooses to provide their National Insurance number do not cover some state payments (Working Tax Credit, Child Benefit and Child Tax Credit) that women may be more likely to qualify for. Though the pay as you earn and self-assessment tax records of those receiving these payments are covered by the automated checks, which, together with the benefits payments in scope, may cover the same residence period, this could put women at a particular disadvantage as they are more likely to be receiving these state payments.

263. However, such an approach is justified as it is a proportionate means of achieving a legitimate aim. The approach of using the automated checks reduces the overall administrative burden on applicants in general, with testing showing that around three-quarters of applicants did not have to submit any documentary evidence of UK residence, consistent with the streamlined, user-friendly application process required by the agreements.<sup>84</sup> Some of the remaining applicants will also have to provide less evidence of UK residence as a result of the automated checks than they would otherwise have done.

264. The exclusion from the automated checks of Working Tax Credit, Child Benefit and Child Tax Credit is necessary as their payment does not provide

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<sup>83</sup> Home Office analysis of [Annual Population Survey April 2018 – March 2019](https://www.nomisweb.co.uk/articles/1167.aspx):  
<https://www.nomisweb.co.uk/articles/1167.aspx>

<sup>84</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-public-beta-testing-phase-report/eu-settlement-scheme-public-beta-testing-phase-report>



reliable evidence of UK residence. The residence requirements for Tax Credits mean that this data may not be an appropriate indicator of an applicant's presence in the UK for the purpose of establishing their continuous residence and eligibility for status under the EUSS.<sup>85</sup> Child Benefit indicates lawful UK residence at the point at which it is initially claimed, but does not reliably confirm ongoing residence as it can continue to be claimed even if the claimant leaves the UK. Therefore, Tax Credit and Child Benefit payments are not used to confirm UK residence through the automated checks.

265. To include such data would undermine the reliability of the automated checks, and result in people who are not (or have not been) continuously resident in the UK being granted an incorrect status under the EUSS. The policy is therefore justified as a proportionate means of achieving a legitimate aim in order to maintain the wider benefit of the automated checks and to protect the overall integrity of the EUSS.
266. In order to mitigate any potential disadvantage, we accept a very wide range of documentary evidence of residence (which can be uploaded as part of the online application process), such as utility bills, telephone bills, Council Tax bills, TV licence bills, letters from employers, doctors, schools, or charities, bank statements and mortgage agreements. We anticipate this flexibility and the range of acceptable evidence of residence will be helpful to women who are in receipt of the state payments not covered by the automated checks.
267. Furthermore, building on our experience of applications for documentation under the EEA Regulations, where a woman who uses her maiden name for employment, banking or other purposes may have more difficulty evidencing her qualifying period of residence, we have developed the automated checks under the EUSS to accommodate maiden names so as to maximise their coverage.

### *Pregnancy and maternity*

268. The automated checks may provide sufficient evidence of UK residence for pregnant women or those on maternity leave depending on the individual's circumstances. However, it is possible that those sharing this protected characteristic may be put at a particular disadvantage by the automated checks as a result of more limited data on employment, potentially as a result of absences from work. This may result in pregnant women and/or those on maternity leave being more likely to need to provide documentary

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<sup>85</sup> Tax Credits can be claimed jointly, including where one partner is in the UK and the other partner and children are living in the EEA or Switzerland. Therefore, they are not an appropriate indicator of the applicant's continuous residence in the UK:

<https://revenuebenefits.org.uk/tax-credits/guidance/how-do-tax-credits-work/who-can-claim/#Ordinary%20residence>



evidence of UK residence, which may mean that they are subject to a more onerous application process.

269. However, such an approach is justified as it represents a proportionate means of achieving a legitimate aim. The approach of using the automated checks reduces the overall administrative burden on applicants in general, with testing showing that around three-quarters of applicants did not have to submit any documentary evidence of UK residence, consistent with the streamlined, user-friendly application process required by the agreements.<sup>86</sup> Some of the remaining applicants will also have to provide less evidence of UK residence as a result of the automated checks.
270. We have mitigated the impact on applicants who are pregnant or on maternity leave by including Maternity Allowance within the automated checks, which counts for a month of UK residence for each month it is received. In addition, pregnant women and new parents can, like all applicants to the EUSS, rely on a very wide range of documentary evidence of UK residence, which may include a hospital or doctor's letter associated with the pregnancy, birth or childcare.

### *Disability*

271. There were around 280,000 disabled (as defined by the Equality Act 2010) EEA citizens (excluding Irish citizens) resident in the UK and aged 16 or over between April 2018 and March 2019, of whom 160,000 were in employment, with an employment rate (for those aged 16-64) of around 67% – compared with the estimated overall employment rate for EEA citizens of around 82%.<sup>87</sup>
272. The automated checks may therefore put a particular disadvantage people who share the protected characteristic of disability because they may find it more difficult to evidence their UK residence through the automated checks, as a smaller proportion of this cohort are in employment, and the application process may therefore be more onerous for them.
273. However, such an approach is justified as this policy is a proportionate means of achieving a legitimate aim. The approach of using the automated checks reduces the overall administrative burden on applicants in general, with testing showing that around three-quarters of applicants did not have to submit any documentary evidence of UK residence, consistent with the streamlined, user-friendly application process required by the agreements.<sup>88</sup>

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<sup>86</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-public-beta-testing-phase-report/eu-settlement-scheme-public-beta-testing-phase-report>

<sup>87</sup> Home Office analysis of [Annual Population Survey April 2018 – March 2019](https://www.nomisweb.co.uk/articles/1167.aspx):  
<https://www.nomisweb.co.uk/articles/1167.aspx>

<sup>88</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-public-beta-testing-phase-report/eu-settlement-scheme-public-beta-testing-phase-report>

Some of the remaining applicants will also have to provide less evidence of UK residence as a result of the automated checks.

274. We have attempted to mitigate any potential disadvantage suffered by this cohort by including Disability Living Allowance, Employment and Support Allowance, Incapacity Benefit, Personal Independence Payment, Attendance Allowance and Severe Disablement Allowance within the automated checks, together with Carer's Allowance for carers receiving that.
275. Disabled applicants can, like all applicants to the EUSS, also rely on a very wide range of documentary evidence of UK residence, which may include a hospital or doctor's letter and letters from support organisations, local authorities and charities.

**(ii) Continuous qualifying period of residence for those on a posting overseas on Crown service**

276. EEA citizens on a posting overseas on Crown service (as a member of HM Forces, as an employee of the UK Government or of the Devolved Administrations or as a permanent member of the British Council), or their spouse, civil partner, durable partner or child accompanying such a person on a posting overseas, can count the period of that posting towards their continuous qualifying period of UK residence under the EUSS. This scope is not available to EEA citizens and their family members in respect of other job postings overseas, though, in line with the Free Movement Directive, a single absence from the UK and Islands of up to 12 months within the five-year period of continuous residence generally required for settled status under the EUSS is permitted for an EEA citizen on an overseas posting.
277. It may be argued that this policy puts at a particular disadvantage those who share the protected characteristic of sex (i.e. women). This is because HM Forces personnel may be more likely to be male.<sup>89</sup> However, we do not believe that HM Forces personnel are comparable to other overseas employees given the unique status of HM Forces personnel in immigration law and the various exemptions from immigration control provided for them under section 8 of the Immigration Act 1971. Additionally, the nature of their role means that members of HM Forces may have little or no choice about being posted overseas (or the timing of this), unlike employees of other organisations.
278. Where the Crown servant population overseas contains a particular concentration of any group with a protected characteristic that would benefit from those provisions, there is the potential for indirect discrimination against

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<sup>89</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/763676/1\\_October\\_2018\\_Biannual\\_Diversity\\_Statistics.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/763676/1_October_2018_Biannual_Diversity_Statistics.pdf)

other groups with protected characteristics. However, data was not available to make such a comparison.

279. Nonetheless, were an argument to be made that such treatment under the EUSS did constitute indirect discrimination against people who share a protected characteristic, such indirect discrimination would be justified as this policy represents a proportionate means of achieving a legitimate aim. The Government requires those posted overseas on Crown service to perform a number of vital security, diplomatic and administrative functions. Were the standard continuous qualifying period of residence rules in the EUSS applied to those on a posting overseas on Crown service (or to those accompanying such a person), such postings would need to be time-limited in order to avoid breaking continuity of UK residence for the purposes of EUSS qualification, potentially undermining the performance of these crucial functions. Such an approach would also not reflect the value which the Government places on the contribution to Crown service made by EEA citizens.
280. As outlined above, the continuous qualifying period of residence policy under the EUSS does include mitigations for those with a protected characteristic in certain circumstances. For example, a single absence from the UK and Islands of up to 12 months within the five-year period of continuous residence generally required for settled status under the EUSS is permitted in some cases, such as pregnancy, childbirth, serious illness, study or vocational training, as well as for an overseas posting.
281. Further mitigation has been put in place for those with the right of permanent residence in the UK under the EEA Regulations. In line with the agreements, they will remain eligible for settled status under the EUSS where they have not been absent from the UK and Islands for more than five consecutive years, which is generous when compared with the period of more than two years' absence from the UK after which, in line with the Free Movement Directive, the right of permanent residence lapses.

### **(iii) Online application process**

282. To make the application process for the EUSS as simple and streamlined as possible for EEA citizens and their family members, as the agreements require, we have implemented a predominantly online application process for EUSS applicants (except for those applying on the basis of derivative rights, where additional requirements under EU law have to be shown to be met who are required to apply on a paper application form, see below).
283. A paper application form is also available (from the Settlement Resolution Centre, open seven days a week) in certain circumstances where our assisted digital provider has confirmed that the applicant cannot apply online, even with their support, or where the applicant seeks in exceptional circumstances to rely on alternative evidence of identity and nationality. In the case of the EUSS family permit and travel permit, the application process is exclusively online, as it is for other entry clearance applications.

284. This may put at a particular disadvantage those applicants, such as older people or those who are disabled, who may find it harder to use an online application process because they are not regular internet users or have accessibility needs. The Office of National Statistics (ONS) survey of 'Internet users, UK: 2019' found that 47% of those aged over 75 were recent internet users, compared with 83% of those aged 65 to 74, 99% of those aged 16 to 44 and 93.2% of those aged 55 to 64.<sup>90</sup> Older applicants may therefore be put at a particular disadvantage because they are less familiar with using the internet, or have less ready access to it, and may therefore find the online application process harder to complete and in some cases something they are unable to complete without support.
285. The digital application process may also put at a particular disadvantage some disabled people with accessibility needs. The ONS survey of 'Internet users, UK: 2019' found that the proportion of recent internet users was lower for disabled adults, at 78%, compared to those who were not disabled, at 95%. However, there was little difference in the age group of 16-24, where 98% of those who were disabled and 99% of those who were not were recent internet users.<sup>91</sup>
286. The approach of relying primarily on an online application process may also potentially put at a particular disadvantage those sharing the protected characteristics of gender<sup>92</sup> or ethnicity or race<sup>93</sup>.
287. The policy is, however, considered to be justified as a proportionate means of achieving a legitimate aim as, overall, it enables a simple and streamlined application process (as required by the agreements) and enables the Home Office to consider millions of applications over a relatively short period as efficiently as possible and make best use of the staff resources (around 1,500 staff) working on the scheme. Other options, such as having a paper-based application process for all applicants, would not achieve this aim.
288. To help mitigate any disadvantage suffered as a result of this approach a number of steps have been taken. In light of our consultation with the EUSS user group on vulnerable groups, which involves representatives of community groups, local government and the Devolved Administrations, and

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<sup>90</sup> ONS; Internet Users in the UK: 2019:

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

<sup>91</sup> ONS; Internet Users in the UK: 2019:

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

<sup>92</sup> See, for example, How the EU Settlement Scheme Affects Women and Girls, NPC,

<https://www.thinknpc.org/resource-hub/how-the-eu-settlement-scheme-affects-women-and-girls/>, page 2, which estimates that 66% of non-internet users among the EU population are women.

<sup>93</sup> See, for example, Unsettled Status 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? The Migration Observatory, <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>, page 23 where lack of IT skills is cited as a barrier to accessing the EUSS.

as part of a strategy in respect of potential applicants to the EUSS who may need particular assistance,<sup>94</sup> several measures have been introduced, including:

- Grant funding: £9 million made available in 2019-20 to organisations<sup>95</sup> across the UK – now 72 – to help them support vulnerable people to apply to the EUSS, with a further £8 million available in 2020-21 to support this work;
- Application content and guidance: including simple-to-follow guidance on gov.uk and in leaflets and with some guidance embedded in the online application process;
- Assisted digital support: a supplier providing free assistance with making an online application to those who cannot access or who struggle to use technology. This support is available over the telephone and (subject currently to COVID-19 related restrictions) at locations, such as libraries, across the country;
- Settlement Resolution Centre: staff have been trained to recognise signs of potential vulnerability and handle applicants sensitively according to their needs;
- Proactive mobile team: pop-up events have been delivered in locations where we could engage with and offer in-person support in making an application to the EUSS to otherwise hard-to-reach people; and
- Paper applications: the option to apply using a paper application form where the individual cannot apply online and cannot be supported to do so.

289. We also provide for an administrative review to be made on a paper form where the original application was made on a paper form.

290. The EUSS provides for paper application forms to be submitted by e-mail where a Home Office e-mail address is specified on the application form. This may benefit vulnerable or at-risk people (including older applicants or those with a disability) as it can assist charities and other third parties working with vulnerable or at-risk people to help them apply to submit the application form by e-mail rather than by post, where they have helped the applicant to complete a paper application form.

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<sup>94</sup> See, for example, Unsettled Status 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? The Migration Observatory, <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020>, for a summary of groups potentially affected.

<sup>95</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>

**(iv) Paper application form for those applying on the basis of a derivative right to reside in the UK**

291. Individuals applying on the basis of a derivative right to reside in the UK – ‘Chen’, ‘Ibrahim and Teixeira’, ‘Zambrano’, ‘Surinder Singh’ and ‘Lounes’ cases, as described above – are required to apply using a paper application form, as they have to show that additional requirements under EU law are met. Given the relatively small numbers of these cases, our assessment to date is that including those additional requirements in the online application form would risk making that form disproportionately long and complicated for the vast majority of applicants using it, for whom those additional requirements are irrelevant. However, we will continue to keep that assessment under review and in the meantime are committed to making the paper application forms used by these derivative rights cases as straightforward as possible. Nevertheless, applying using a paper application form as opposed to an online form will necessarily be more onerous and take longer.
292. The numbers of people potentially applying to the EUSS on the basis of a derivative right to reside in the UK is difficult to ascertain because those people are not currently required to apply for documentation under the EEA Regulations, but we expect the numbers to be relatively low in light of the relatively small number of applications for such EEA documentation (for example, in 2018 there were around 2,000 applications for derivative right documents under the EEA Regulations, compared with more than 240,000 applications for residence documentation from EEA citizens and their family members).<sup>96</sup> This is borne out by the published statistics so far on EUSS applications: to 30 June 2020, there were 700 applications from ‘Chen’ cases, 130 applications from ‘Ibrahim and Teixeira’ cases, 2,890 applications from ‘Zambrano’ cases and 3,480 applications from family members of British citizens (‘Surinder Singh’ and ‘Lounes’ cases).
293. As the large majority of people potentially applying to the EUSS on the basis of a derivative right to reside in the UK are likely to be non-EEA citizens (including in light of applications for EEA documentation on that basis), requiring these applicants to use a paper application form may put persons who share the protected characteristic of race (i.e. non-EEA citizens) at a particular disadvantage by subjecting them to a more onerous and lengthy application process when compared to those who do not share this characteristic, the majority of whom can apply online.
294. However, this policy is justified as a proportionate means to achieve the legitimate aim of being able to give appropriate consideration to these complex cases, whilst trying to make the application process for them as straightforward as possible. These applicants will necessarily need to submit

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<sup>96</sup> <https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-march-2020>

more information and evidence in support of their application, as their eligibility depends on more than simply UK residence and their family relationship, and a more detailed consideration is needed from caseworkers to ascertain that an applicant is eligible under the EUSS through one of these routes. Accommodating these categories in the online application form would in our assessment (though we will continue to keep this under review) mean adding considerable complexity to the online form which would adversely impact all other applicants.

295. The information required in order to assess eligibility under the EUSS for these categories cannot be gained from automated checks of HM Revenue & Customs and Department for Work and Pensions data and, as a result, we do not consider that the online form built for the overwhelming majority of EUSS cases is suitable for those applying on the basis of a derivative right to reside in the UK, or that it can be effectively modified to accommodate such cases without impacting on the overall efficiency of the EUSS application process. The additional eligibility requirements that need to be met in derivative rights cases, and the information and evidence needed to demonstrate eligibility, mean that in our assessment (though we will continue to keep this under review in light of experience of the operation of the EUSS in relation to these categories) they are better suited to a bespoke paper application form which is easier for applicants in these categories to navigate.
296. To mitigate any disadvantages faced by those using a paper form to apply on the basis of a derivative right to reside in the UK, we have designed these forms so that, in accordance with the procedural requirements in the agreements, they are asking for the minimum information and evidence required to make a decision. The same approach is taken to caseworking (e.g. the opportunity for the applicant to correct errors and omissions, support for applicants in providing the right evidence and discretion in favour of the applicant where appropriate to minimise administrative burdens) and support is available for applicants (e.g. through the Settlement Resolution Centre), as for those applying to the EUSS online.

#### **(v) Applications to the EUSS from outside the UK**

297. Applications to the EUSS can be made from outside the UK where the person has the required 'proof of entitlement to apply from outside the UK'. This is defined in Annex 1 to Appendix EU as, in the case of an EEA citizen, their valid passport or their valid national identity card (where this contains an interoperable biometric chip) – unless the Secretary of State agrees to accept alternative evidence of entitlement to apply from outside the UK where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons; and, in the case of a non-EEA citizen, their valid 'specified relevant document' (i.e. a biometric residence card issued under the EEA Regulations or under the EUSS) – unless the Secretary of State agrees to accept alternative evidence of entitlement to apply from outside

the UK where the applicant is unable to produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.

298. These applications are generally made online (and support is available for applicants overseas by telephone or e-mail through the Settlement Resolution Centre and the assisted digital service). However, those unable to complete the online application even with assisted digital support, or due to technical issues that make the online application process unavailable, may apply on a paper form. We also require applications made from outside the UK to be made on a paper form by those groups who are required to apply on a paper form in-country (those relying on a derivative right to reside in the UK and those seeking to rely on alternative evidence of their identity and nationality).
299. We are aware of 47 countries whose domestic legislation prevents a national of that country sending an identity document overseas<sup>97</sup> and accept that this may make it harder for people who live in these countries (and who may share the protected characteristic of race) and who wish to apply to the EUSS from overseas to do so on a paper application form, thus putting them at a particular disadvantage when compared to applicants in other countries who can apply either online or where necessary on a paper form. However, any disadvantage suffered, resulting from restrictions put in place by other governments, is justified in that this policy is a proportionate means of achieving the legitimate aim of offering the scope where necessary to apply on a paper form to applicants throughout the rest of the world.
300. The alternative considered to avoid any disadvantage being suffered by affected nationalities was not to offer scope to apply where necessary on a paper form to any overseas applicants. This alternative was rejected as we wished to make the EUSS as accessible as possible to overseas applicants. In addition, the circumstances of those relying on a derivative right to reside in the UK (e.g. as an EEA citizen child continuing in education here, as the primary carer of a British citizen or as the family member of a British citizen who has returned with them to the UK after living in the EEA) are likely to mean that the person will be applying to the EUSS within the UK.
301. We anticipate that the number of applicants who would be disadvantaged as a result of government restrictions in their country on sending an identity document overseas to be relatively small. By way of a rough guide, nationals of these countries accounted for approximately 17% of applications for registration certificates, documents certifying permanent residence and

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<sup>97</sup> HM Passport Office; International Submission Routes and Local Services Policy



residence cards (including permanent residence cards) made in the UK under the EEA Regulations in 2018.<sup>98</sup>

#### **(vi) Application process only in English**

302. The application process for the EUSS and the EUSS family permit and travel permit is only available in English. This may put certain nationalities, where competence in English is generally lower, at a particular disadvantage compared to other nationalities where competence is higher.<sup>99</sup> It also may put at a particular disadvantage applicants to the EUSS who share the protected characteristic of age and who are very young or are older applicants, as both these factors may affect uptake of English.<sup>100</sup> This disadvantage could make it more difficult for such applicants to apply to the EUSS.
303. Whilst we acknowledge there is potential disadvantage we consider that such an approach is justified as this policy is a proportionate means of achieving the legitimate aim of providing an accessible and legally accurate application process at an efficient cost to the taxpayer. Furthermore the online application form is regularly updated in response to feedback so it would be particularly challenging to translate it into multiple languages and ensure it remained accurate.
304. We have attempted to mitigate the impact of these constraints by providing guidance for EUSS applicants in all official EEA languages and in Welsh,<sup>101</sup> and by providing visual instructions in the form of videos, diagrams and process maps. These languages have been selected on the basis that they are likely to be the most commonly spoken amongst applicants. Additionally, support is available in completing the application form from the community organisations being grant funded by the Home Office, from the Settlement Resolution Centre and from our assisted digital provider.

#### **(vii) Evidence of immigration status online**

305. The Home Office is developing a border and immigration system which is digital by default for all migrants, which over time means we will increasingly replace physical and paper-based products for all immigration routes with accessible, easy-to-use online and digital services. Many people already use digital services to access banking, claim benefits or pay their taxes. The Home Office is working closely with other government departments, notably the Department of Health and Social Care, the National Health Service, the

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<sup>98</sup> <https://www.gov.uk/government/statistical-data-sets/immigration-statistics-data-tables-year-ending-march-2020>

<sup>99</sup> <https://www.ethnicity-facts-figures.service.gov.uk/uk-population-by-ethnicity/demographics/english-language-skills/latest>

<sup>100</sup> <https://migrationobservatory.ox.ac.uk/resources/briefings/english-language-use-and-proficiency-of-migrants-in-the-uk/>

<sup>101</sup> <https://www.gov.uk/government/collections/eu-settlement-scheme-translated-information-materials>

Department for Work and Pensions and HM Revenue & Customs, to enable people to demonstrate their immigration status and access the services for which they are eligible in the simplest and most secure way possible.

306. Those who are granted status under the EUSS are provided with written notification of their UK immigration status, by e-mail or post, which they can keep for their own records if they wish. However, that status is granted in a secure digital form, and the written notification provides instructions on how to access that immigration status online and the support available to help the person do so if they need it. They can access their immigration status information online using a range of devices, including smartphones, tablets, laptops or desktop computers.<sup>102</sup> They can also share digital access to this information securely with a third party, such as an employer or landlord, when they need to evidence their immigration status.
307. This may put at a particular disadvantage certain protected groups (as considered below) who may find it harder to use digital services because they are not regular internet users. The Office for National Statistics (ONS) survey of 'Internet users, UK: 2019' found that 47% of adults aged over 75 were recent internet users, compared with 83% of those aged 65 to 74, 99% of those aged 16 to 44 and 93.2% of those aged 55-64.<sup>103</sup> Older applicants may be disadvantaged because they are less familiar with using online services and may find it harder to access or demonstrate their status as a result.
308. Digital evidence of status may place at a particular disadvantage people from the Roma community, estimated at around 200,000 people in 2012,<sup>104</sup> as highlighted in some recent reports,<sup>105</sup> which point to a lack of IT skills and access to technology as two important barriers to Roma people accessing the EUSS and using their digital status.

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<sup>102</sup> The online 'view and prove' service through which EUSS status holders can access their digital immigration status information is secured by two-factor authentication. This means information can only be accessed following successful authentication (the status holder has to provide their date of birth and the number of the passport or other identity document which they used in applying to the EUSS or of a replacement document, where they have updated the service with this number) and verification by means of a one-time code that is sent to the status holder's e-mail address or mobile number. More information is available at:

<https://www.gov.uk/view-prove-immigration-status>

<sup>103</sup> ONS; Internet Users in the UK: 2019:

<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

<sup>104</sup> Unsettled Status 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? The Migration Observatory, <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020>

<sup>105</sup> 'Statement on the impact of EU Settlement Scheme digital-only status on the Roma Community in the UK', Roma Support Group:

[https://www.romasupportgroup.org.uk/uploads/9/3/6/8/93687016/statement\\_on\\_the\\_impact\\_of\\_the\\_eu\\_settlement\\_scheme\\_digital\\_only\\_status\\_on\\_roma\\_communities\\_in\\_the\\_uk\\_final.pdf](https://www.romasupportgroup.org.uk/uploads/9/3/6/8/93687016/statement_on_the_impact_of_the_eu_settlement_scheme_digital_only_status_on_roma_communities_in_the_uk_final.pdf); 'Unsettled status – 2020: Which EU citizens are at Risk of Failing to Secure their Rights after Brexit?' The Migration Observatory

<https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>

309. In addition, online-only evidence of immigration status may place women at a particular disadvantage, as they have been identified as being over-represented in many of the groups identified as vulnerable;<sup>106</sup> and are over-represented amongst non-internet users.<sup>107</sup> It may also place at a particular disadvantage some disabled people with accessibility needs: the ONS survey of 'Internet users, UK: 2019' found that 18% of disabled adults had never used the internet.<sup>108</sup>
310. We have considered the impact of the absence of a physical biometric immigration document and a wholly online service on those with disabilities. We are designing the service to meet government accessibility requirements and ensuring the service works on the most commonly used assistive technologies, including screen magnifiers, screen readers and speech recognition tools. We have tested the service with users with access needs and users with visual impairments. We have tested how the service works with a range of software (e.g. screen readers) and, to date, it is performing well. A statement setting out how the services meets the accessibility standards, and any remedial action to be undertaken was published on 22 September 2020.<sup>109</sup> This includes information on how users can report accessibility issues so that these can be investigated and resolved by the technical teams. Support is available via the Settlement Resolution Centre for users who may require additional assistance, and we are exploring additional support options for those using our online services.
311. The difficulties this may present, including to vulnerable groups, has been examined by the House of Commons Exiting the European Union Committee and in several research papers<sup>110</sup> and has been the subject of several Parliamentary Questions.<sup>111</sup> These include potential difficulties in accessing housing, employment and services in light of the steps to be taken in order to check the online immigration status information.

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<sup>106</sup> 'How the EU Settlement Scheme affects Women and Girls', NPC <https://www.thinknpc.org/resource-hub/how-the-eu-settlement-scheme-affects-women-and-girls/>; 'Unsettled Status – 2020: Which EU citizens are at Risk of Failing to Secure their Rights after Brexit?' The Migration Observatory <https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020/>

<sup>107</sup> 'How the EU Settlement Scheme affects Women and Girls', NPC <https://www.thinknpc.org/resource-hub/how-the-eu-settlement-scheme-affects-women-and-girls/>

<sup>108</sup> ONS: Internet Users in the UK: 2019: <https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>

<sup>109</sup> <https://eu-settled-status-enquiries.service.gov.uk/accessibility-statement/>

<sup>110</sup> House of Commons, Exiting the European Union Committee, 'The progress of the UK's negotiations on EU withdrawal: the rights of UK and EU citizen'

<https://publications.parliament.uk/pa/cm201719/cmselect/cmexeu/1439/1439.pdf>; Public Law Project, 'Digital Immigration Status: A Monitoring Framework', <https://publiclawproject.org.uk/wp-content/uploads/2020/10/PLP-Report-Digital-Immigration-Status.pdf>

<sup>111</sup> For example: <https://questions-statements.parliament.uk/written-questions/detail/2020-01-08/1420>; <https://questions-statements.parliament.uk/written-questions/detail/2020-05-18/48558>

312. The policy is, however, considered to be justified as it is a proportionate means of achieving a legitimate aim. We have designed our digital services and products to be easy to use, along with support for those who need it and, as described above, with reasonable adjustments where these are required, in order to provide a better overall level of service. Evidence of immigration status online cannot be lost, stolen, damaged or tampered with in the way a physical document can. A physical document can also be controlled by another person, such as a perpetrator of domestic violence or abuse or of modern slavery. While concerns may be raised that a third party may seek to do the same with online access to immigration status, processes are in place to help individuals regain access to their online information in the rare scenario where a third party refuses to permit access.<sup>112</sup> Online access to immigration status information allows individuals to view information about their immigration status whenever they wish and means they can allow a third party, such as an employer or a landlord, to have secure, time-limited access to their immigration status to confirm relevant information about their entitlements.
313. Making immigration status information accessible online also simplifies matters for employers, landlords and service providers, who no longer have to consider a very wide range of identity and status documents, which, even if the document is genuine and not damaged, can be difficult to interpret to establish that the holder has the appropriate immigration status in the UK.<sup>113</sup> In addition, making immigration status information accessible online enables information to be tailored for specific purposes. For example, status holders choosing to share information with an employer will share only the data that is relevant to their employment permissions and conditions.
314. By way of mitigation, as a transitional measure, an EEA citizen can continue to use their passport or national identity card to evidence their immigration status in the UK until 30 June 2021. The Home Office also recognises the need to deliver a service that reflects the diverse needs of all users and that vulnerable people may need additional support. There is also assistance available from the Settlement Resolution Centre.

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<sup>112</sup> Status holders are advised on the log in screen of the service to contact the Settlement Resolution Centre if they no longer have access to the mobile number or email address needed to access the service. Our staff will complete the necessary security authentication steps over the phone in order to be certain that they are speaking to the status holder. Once authentication is complete, we will arrange for the log in details to be manually reset with the new credentials provided by the status holder.

<sup>113</sup> The ‘view and prove’ service is popular with users. In the period from April to June 2020, there were over 400,000 views on the ‘view and prove’ service by migrants. In the same period, there were over 100,000 views of EUSS status by organisations checking status. Feedback so far on the online immigration status service has been positive. Users find it simple and easy to use and user satisfaction scores are over 80%, similar to those for other digital government services, such as the DVLA services for renewing driving licences and paying vehicle excise duty:

<https://www.gov.uk/government/publications/visas-and-citizenship-data-august-2020>

315. In addition, there is a wide range of support available online, over the telephone and (subject currently to COVID-19 related restrictions) in person to help people apply to the EUSS<sup>114</sup> and in particular to support vulnerable and at-risk groups, including through the assisted digital service and through the 72 community organisations across the UK being grant-funded by the Home Office.<sup>115</sup> A number of these directly support the Roma community for example. There is also specialist support available through these organisations for those with disabilities, children and women. Support in applying to the EUSS has been provided by them throughout the coronavirus pandemic to some of the most vulnerable in society, including victims of human trafficking or domestic abuse, those with severe mental health conditions, those without a permanent address and those who are elderly or isolated.

#### **(viii) Application fees**

316. We have considered whether not charging application fees for the EUSS, as compared with the application fees applicable under other immigration routes, constitutes indirect discrimination on race grounds. There is the potential for those sharing the protected characteristic of race to be put at a particular disadvantage. We consider this to be justified given the exceptional circumstances of the UK's exit from the EU, the need to balance the rights of individuals who have lived in the UK for an extended period exercising EU law rights with the need to bring them within the domestic immigration system after the end of the transition period, and the need for a smooth transition to the new points-based immigration system.

#### **(ix) Administrative review fee**

317. As set out above, we will continue to charge an £80 fee where an applicant seeks an administrative review of a decision under the EUSS to refuse their application on eligibility grounds or grant them pre-settled status where they consider that they qualify for settled status. We have considered whether this fee indirectly discriminates against those with protected characteristics.

318. It could be argued that those with certain protected characteristics may find it harder to pay the fee and are therefore put at a particular disadvantage by the policy. The groups potentially affected include disabled applicants, older (retired) people or women, who have lower employment rates and lower incomes relative to other groups of EUSS applicants.<sup>116</sup> These groups could therefore be at a disadvantage because of more limited access to redress.

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<sup>114</sup> <https://www.gov.uk/help-eu-settlement-scheme>

<sup>115</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>

<sup>116</sup> <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/employmentintheuk/november2020>

319. We consider that any indirect discrimination that may be argued to arise is justified as this policy represents a proportionate means of achieving a legitimate aim. The policy of charging a fee is a legitimate means of ensuring that the extra administration involved in reconsidering an application is borne by the Home Office only where the original decision was in error. To mitigate any adverse impacts, where an administrative review leads to the original decision being withdrawn due to a caseworking error (or the application for an administrative review is rejected because it is invalid), the fee will be refunded.
320. By way of further mitigation, any disadvantage is minimal because under the EUSS an individual can make any number of further applications or provide additional evidence free of charge. Income is therefore not a barrier to a fresh consideration as the applicant has a choice whether to pay for an administrative review or to submit a new, free application. We therefore consider the risk of any disadvantage being suffered to be low.
321. Given the flexibility of the EUSS in supporting applicants to provide sufficient evidence or allowing them to provide additional evidence free of charge in a new application to the EUSS, we consider it is fair to retain the £80 fee if they provide at the administrative review stage new evidence which they did not provide to the original decision-maker and which is the sole basis on which the original decision is withdrawn.

**(x) Change of identity**

322. If a change of identity occurs after an application to the EUSS has been made, the new identity must be proven with evidence before the Home Office can recognise the change.
323. This approach potentially places at a particular disadvantage those who share the protected characteristic of gender reassignment. This is because those who share that protected characteristic are more likely to need to change their identity on official documents than those who do not share it, so they are disadvantaged by being more likely to have to produce particular evidence in order to get their official documents in their current identity. They may also be disadvantaged because official documentation evidencing a change of identity that is the result of gender reassignment is less likely to be available in countries which do not legally recognise a gender change.
324. In addition, this approach also potentially disadvantages those who share the protected characteristic of sex. This is because women are likely to change their name, and therefore their identity, more frequently (as a result

of marriage)<sup>117</sup> and are therefore more likely to have to provide this additional evidence, which makes the application process more onerous.

325. However, such an approach is justified on the basis that this policy is a proportionate means of achieving a legitimate aim. It is important that the Home Office verifies any changes of identity, including name and gender. Any person who has made an application to the Home Office for any form of immigration status must provide evidence of their identity in order to establish who they say they are and that they are only using one identity in seeking and holding UK immigration status. This ensures that personal data cannot be misused by anyone who is not the true data owner to facilitate identity-related offences.
326. To ensure the policy is no more onerous for applicants to the EUSS than absolutely necessary, a variety of evidence may be submitted to verify identity, including a valid passport and (for EEA citizens) a valid national identity card. There is also scope for alternative evidence of identity to be provided in applying to the EUSS where the applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.
327. The Home Office has issued Interim Guidance,<sup>118</sup> with the approval of the Government Equalities Office, to clarify to Home Office staff how to handle applications to the EUSS from transgender applicants who must have their immigration history checked, how to handle applications from applicants with sex markers other than 'male' or 'female' in their documentation and what evidence is required in different circumstances when a holder of status under the EUSS transitions from one gender to the other.
328. To mitigate the impact on those whose country does not legally recognise gender change, and therefore will not allow individuals to update their national identity documents with their new, preferred identity, this guidance allows the applicant to provide evidence that alignment of their identity document in this regard is impossible. This must be in the form of official correspondence from the government of the home country or from the respective embassy or consulate in the UK. For individuals for whom approaching their home government in any capacity may be dangerous, staff have been instructed to make an assessment on a case-by-case basis and escalate to their manager where necessary. In addition, an applicant for a change of gender can present:

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<sup>117</sup> In 2016, research by YouGov found that the majority of women (59%) would like to take their spouse's surname upon marriage:

<https://yougov.co.uk/topics/lifestyle/articles-reports/2016/09/13/six-ten-women-would-like-take-their-spouses->

<sup>118</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919615/euss-interim-guidance-gender-identity-and-sex-markers-on-documents-v1.0-ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919615/euss-interim-guidance-gender-identity-and-sex-markers-on-documents-v1.0-ext.pdf)



- a Gender Recognition Certificate; or
- a medical note, signed and on headed paper, confirming that they are transitioning or have transitioned to another gender and evidence that clearly indicates that they are living in their acquired gender for all purposes, such as tax, employment or education records; a letter from national, regional or local government; a driving licence; or bank statements.

**(xi) Application of EU law public policy, public security or public health test to conduct committed before the end of the transition period**

329. As outlined above, the conduct of EEA citizens and their EEA citizen or non-EEA citizen family members is not subject to UK criminality thresholds until after the end of the transition period. Their conduct committed before then is subject to the EU law public policy, public security or public health test, both in respect of meeting the suitability criteria of the EUSS and in relation to cancellation or curtailment of status under the EUSS.
330. We do not, however, believe that non-EEA citizens who are not eligible to apply to the EUSS are comparable to EEA citizens and their family members who are eligible, as the latter have different rights as a result of the agreements. The policy reflects the UK's exit from the EU, which gives rise to the need to balance the rights of individuals who have lived in the UK for an extended period exercising EU law rights with the need to protect the public against foreign criminals, together with the importance of aligning the treatment of EEA citizens and their family members with that of non-EEA citizens as far as possible from the end of the transition period, taking into account key differences in the nature of their immigration rights and the rules that apply to them.
331. To the extent that the application of the EU law public policy, public security or public health test may be argued to result in indirect discrimination against non-EEA citizens who are not eligible to apply to the EUSS, we consider this policy is justified on the basis that it is proportionate and in pursuit of a legitimate aim of protecting the public.

*Age*

332. In assessing the impact on the protected characteristic of age, we have taken account of the age composition of the prison population in England and Wales. The prison population figures for the year ending 30 September 2020 show that the largest number of those serving a prison sentence fall within the age range of 30 to 39. The second largest group is 40 to 49 year olds, followed closely by 25 to 29 year olds.<sup>119</sup> Assuming they have a similar age profile, those affected by the policy proposal set out above are therefore

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<sup>119</sup> <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2020>



most likely to fall within the age bands identified above, with fewer young people (under 21 years) being affected. To the extent this policy might be argued to amount to indirect discrimination in respect of age against non-EEA citizens who are not eligible to apply to the EUSS, we consider it reasonable and justified on the basis that it is proportionate and in pursuit of the legitimate aim of protecting the public.

### *Disability*

333. People in prison are more likely to suffer from mental health problems than those in the community.<sup>120</sup> That research suggests that of adults in prison in England and Wales in 2016-17 many had mental health issues. It also refers to data held by NHS England which indicates that 10% of the prison population were receiving treatment for mental illness and this did not include those waiting for treatment. Insofar as the policy may be argued to indirectly discriminate against those non-EEA citizens not eligible to apply to the EUSS with a disability, including those with a mental health condition, we consider that the policy is justified on the basis that it is proportionate and in pursuit of a legitimate aim of protecting the public.

### *Race*

334. The policy may indirectly discriminate on the grounds of nationality insofar as non-EEA citizens who are not eligible to apply to the EUSS may be subject to deportation, exclusion or refusal or cancellation of leave for conduct in respect of which EEA citizens and their family members may be subject to a different outcome as a result of the different threshold. However, we consider that any difference in treatment is justified by the fundamental differences in how EEA citizens and their family members and non-EEA citizens are treated within the immigration system, as set out above. There are clear benefits to the public from taking a tougher approach in respect of criminality and non-conducive conduct, insofar as we are able to do so by applying the UK criminality thresholds. We consider that this approach is justified on the basis that it is proportionate and in pursuit of a legitimate aim of protecting the public.

## **3c – Impacts on protected characteristics not covered by the issues above**

### **(i) Age**

335. There is nothing, at the present time, beyond the consideration in sections 3a(xi) and (xii) and 3b(i), (iii), (vi), (vii), (ix) and (xi) above, to indicate that the EUSS will have differential impacts in relation to the protected characteristic of age.

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<sup>120</sup> <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubacc/400/400.pdf>

336. Further guidance for Home Office staff is being developed on how to deal with applications from adult applicants with care or support needs and how to support those making applications in such cases. Adults with care or support needs may include adults lacking the mental capacity to make their own decisions or with broader care or support needs such as those who may be residing in a residential care home, or receiving care and support services in their own home, with long-term physical or mental health or disability issues. Someone who holds power of attorney for an individual may make any necessary application for immigration status (including under the EUSS) on their behalf as a result of the power of attorney or as a result of their general duty to act in the best interests of the individual. The guidance will provide more information about how to deal with applications to the EUSS in such circumstances or where another appropriate third party is involved, such as a friend, carer, social worker, support worker or legal representative.

#### **(ii) Disability**

337. There is nothing, at the present time, beyond the consideration in sections 3b(i), (iii), (ix) and (xi) above, to indicate that the EUSS will have differential impacts in relation to the protected characteristic of disability.

#### **(iii) Gender reassignment**

338. There is nothing, at the present time, beyond the consideration in section 3b(x) above, to indicate that the EUSS will have differential impacts in relation to the protected characteristic of gender reassignment.

#### **(iv) Marriage and civil partnership**

339. The protected characteristic of marriage and civil partnership has been considered at all relevant stages of EUSS policy development and implementation: impacts have been assessed in sections 3b(i) and (ii) above. We have considered, in particular, impacts in relation to name changes that may be associated with this status, including in relation to the automated checks of UK residence. We have also considered that married women (and women generally) are less likely to be employed outside the home, and therefore may have more difficulty providing evidence of their UK residence. As set out there, we believe the flexibility of the arrangements in place mitigates any potential disadvantage, and that the approach taken is justified as a proportionate means of achieving a legitimate aim in respect of each issue examined.

#### **(v) Pregnancy and Maternity**

340. There is nothing, at the present time, beyond the consideration in sections 3b(i) and (ii) above, to indicate that the EUSS will have differential impacts in relation to the protected characteristic of pregnancy and maternity.

## (vi) Race

341. In addition to the consideration in sections 3a(i), (ii), (iii), (iv), (v), (vi), (vii), (ix) and (x) and 3b(iii), (iv), (v), (vi), (vii) and (viii) above, relating to the differential impacts of the EUSS in relation to the protected characteristic of race, we have identified that around 15% of EUSS applications contain a supporting document in a foreign language. In around 10% of such cases the Home Office is able to establish the applicant's eligibility from other evidence, but in the remaining 90% the document is needed to establish the applicant's eligibility. We may, consistent with the agreements, require the applicant to provide a certified English translation of the document, or a Multilingual Standard Form to accompany the document, where this is necessary for the purposes of deciding whether the applicant qualifies for settled status or pre-settled status under the EUSS or for an EUSS family permit.<sup>121</sup>
342. This requirement may be more likely to affect non-EEA citizen family members relying on their family relationship to an EEA citizen (whereas EEA citizen family members can rely on their own residence here as an EEA citizen). This may make the application process more onerous for non-EEA citizens (and therefore those who share the protected characteristic of race) and put them at a particular disadvantage.
343. However, any disadvantage that is created is justified as this policy represents a proportionate means of achieving the legitimate aim of ensuring that status is granted where appropriate and the risk of abuse is reduced. Translations enable the Home Office to understand all the information and evidence presented by the applicant in order properly to assess their eligibility.
344. Alternative options were considered, such as providing an in-house translation service for EUSS applications. Caseworkers do use translation services where appropriate, but the volume and range of applications to the EUSS would place unmanageable demands on an in-house translation service that would have an impact on the resources available for the delivery of the EUSS as a whole. Caseworkers' time is also better used elsewhere to the benefit of applicants, such as in engaging with them to help them, where necessary, to establish their eligibility for status.
345. In order to mitigate any potential impact, a certified translation or Multilingual Standard Form will be required only where necessary to assist in ensuring that the applicant is eligible and obtains the status for which they qualify and only in respect of the required evidence of family relationship (or certain

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<sup>121</sup> A Multilingual Standard Form replaces a legalised translation of a birth, death or marriage certificate in other EU countries. More information is available at: <https://www.gov.uk/government/publications/order-a-multilingual-standard-form-msf-for-a-birth-death-or-marriage-abroad/order-an-msf-for-a-birth-death-or-marriage-abroad>

required evidence of qualification for an EUSS family permit), and not other forms of evidence.

**(vii) Religion or belief**

346. In order for a spouse of an EEA citizen to apply for status under the EUSS neither they nor the EEA citizen may have another spouse, civil partner or a durable partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person's relationship with that party. In addition, an EEA citizen who holds EUSS status cannot sponsor a non-EEA citizen for an EUSS family permit as their spouse, if either they or the non-EEA citizen have another spouse, civil partner or a durable partner with (in any of those circumstances) immigration status in the UK or the Islands based on that person's relationship with that party.
347. It may be argued that this policy puts at a particular disadvantage religions or beliefs which practise polygamy by preventing the formation of their households in the UK. There may also be other examples of religious practices, or those based on particular beliefs, which result in a marriage failing to be recognised under the law of England and Wales, Scotland or Northern Ireland or of the Islands, such as certain types of proxy marriage. The argument may be put forward that UK law favours Christian marriages over those of other religions.
348. The policy of requiring that a marriage is valid under UK law (or that of the Islands) and not polygamous is in line with wider government policy and justified as a proportionate means of achieving a legitimate aim, in that it ensures that the EUSS adheres to wider government policy to ensure the institution of marriage is protected and the formation of polygamous households in the UK is prevented.

**(viii) Sex**

349. In addition to the consideration in sections 3b(i), (ii), (iii), (iv), (vii) and (ix) above, relating to the differential impacts of the EUSS in relation to the protected characteristic of sex, we have identified that women may have greater difficulty accessing the documents that may help them to make an application to the EUSS. This is because women are more likely to be subject to domestic violence or abuse or be in controlling or coercive relationships.<sup>122</sup> If they are unable to obtain or provide evidence to support their application, this may impact their ability to obtain the status under the EUSS for which they are eligible.
350. The requirement for evidence to establish identity and nationality and UK residence (and, where relevant, family relationship) is justified as a

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<sup>122</sup>

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018#prevalence-of-domestic-abuse>

proportionate means of achieving a legitimate aim, as it is necessary to confirm eligibility for the EUSS and ensure those with a protected right of residence under the agreements are able to access it. To mitigate any disadvantage caused by this policy, we have ensured a core element in the delivery of the EUSS is that those who are most vulnerable are supported to obtain status. We have put in place a comprehensive vulnerability strategy, to ensure that we deliver a scheme which is accessible, and which handles marginalised or at-risk applicants with sensitivity and flexibility, according to their needs.

351. Practical support is available for those with a range of needs, including victims of domestic violence or abuse or of human trafficking. We awarded £9 million in 2019-20 in grant funding to 57 voluntary and community sector organisations across the UK<sup>123</sup> to support vulnerable EEA citizens in applying to the EUSS, including victims of domestic violence or abuse. We have provided a further £8 million for such work in 2020-21, with 72 organisations across the UK now being funded by the Home Office to deliver such support.
352. The Home Office recognises that some applicants to the EUSS may lack documentary evidence in their own name for various reasons and works flexibly with applicants to help them evidence their continuous qualifying period of residence from the evidence available to them, where (if they choose to provide their National Insurance number) the evidence of UK residence provided by the automated checks does not suffice.
353. The Home Office also provides scope for alternative evidence of their identity and nationality where the applicant cannot provide the required document – a valid passport, national identity card (for EEA citizens) or biometric residence card or biometric residence permit (for non-EEA citizens) – due to circumstances beyond their control or to compelling practical or compassionate reasons. This includes where an applicant is prevented from providing the required document by an abusive or controlling partner.
354. The EUSS also goes beyond the requirements of the Free Movement Directive and the agreements in the access to status which it provides for the victims of domestic violence or abuse and their family members. This is intended to ensure that no one who would otherwise be eligible for status under the EUSS loses their right to reside in the UK as a result of domestic violence or abuse.

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<sup>123</sup><https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>

### **(ix) Sexual orientation**

355. There is nothing, at the present time, to indicate that the EUSS will have differential impacts in relation to the protected characteristic of sexual orientation.

### **3d – Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it**

356. As set out above, the EUSS is designed in such a way as to be accessible to all resident EEA citizens and their family members, including those who share a particular protected characteristic, as a means of advancing equality of opportunity between persons who share a protected characteristic and persons who do not share it.

357. Nearly 4 million grants of status under the EUSS have already been made, to 31 October 2020. In order to ensure that resident EEA citizens and their family members understand how, and by when, to apply to the EUSS, the Home Office has delivered a £4 million marketing campaign to encourage resident EEA citizens and their family members to apply to the scheme, and further such activity is planned. It has also put in place a comprehensive communications and engagement plan, using all available channels to reach our audiences, such as marketing, presentations, e-mail updates, toolkits and webinars.

358. Alongside this activity, we have also undertaken extensive engagement and outreach with stakeholder groups, including employers, local authorities and community organisations. We are also working in partnership with representatives of vulnerable groups and other experts to make sure everyone knows what they need to do and has the right level of support.

359. Consideration has been given in the design of the EUSS to the differing needs of groups that share protected characteristics. Working with stakeholders we have ensured that the EUSS is accessible to applicants with particular needs, including but not limited to those who share a relevant protected characteristic.

360. We believe that much of the analysis above relating to the Home Office's due regard to the need to eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010 is also relevant to this limb of the public sector equality duty. This is because we consider in our prior analysis many issues relevant to equality of opportunity including:

- removing or minimising disadvantages suffered by persons who share a relevant protected characteristic;

- steps taken to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and
- steps taken to encourage persons who share a relevant protected characteristic to participate in activity in which participation may be disproportionately low.

361. For example, we consider, in section 3b(iii) above, how the online application process may impact on those with a disability. This involves a consideration of specific aspects of the public sector equality duty that are required under this limb. There is a consideration of how alternative policy might remove or minimise disadvantages suffered by disabled people. The analysis also explains the steps taken to meet the needs of disabled people where they are different from those who do not share the protected characteristic of disability and how they might be supported to apply to the EUSS.

362. In the case, for example, of the protected characteristic of sex we consider, in section 3b(x) above, how the policy to establish identity may be more onerous for women because they are more likely to change their name than men, typically after marriage. In that analysis we justify the need to require evidence of identity and explain how the impact is mitigated to encourage access for this group.

363. We regularly review the performance of the EUSS through published statistics to try to identify under-participation amongst any groups which share a protected characteristic covered by this limb of the public sector equality duty. For example, we are reflecting on what the available data tells us about the numbers of those aged under 18 or over 65 who have so far applied to the EUSS to consider how we can best tailor and target further communications and engagement activity to encourage those eligible for the EUSS in those age groups to apply and to help them to do so. This will include communications aimed at ensuring parents apply on behalf of their children eligible for the EUSS.

364. However, it is acknowledged that this analysis is challenging given the availability of data on the resident population eligible for the scheme. Figures in the EUSS statistical publications refer specifically to applications made to the EUSS and cannot be directly compared with other data sets such as the Office for National Statistics (ONS) estimates of the resident population of EEA citizens in the UK.

365. Although it may seem that a simple comparison of numbers of EUSS applications and the ONS population estimates (broken down by characteristic) may reveal participation rates, the existing data sets cannot be used as a proxy for estimating the proportion of eligible people who have

applied to the EUSS.<sup>124</sup> This is because, whilst there is a broad overlap in the population covered by the two sets of statistics, there are still important differences in coverage, accuracy and timing. EUSS data includes non-EEA citizen family members and eligible EEA citizens not resident in the UK. None of these are usually included in ONS estimates of the resident EU/EEA citizen population. Furthermore, the population estimates do not take account of people's migration intentions and will include people who have come to the UK for a range of purposes, including some who have no intention to settle in the UK.

366. Nevertheless, the Annual Population Survey, from ONS, provides the best source of data for EEA citizens (excluding Irish citizens) resident in the UK. Comparing EUSS intake to resident population estimates may provide a relative illustration across areas, nationalities or groups of people resident in the UK and therefore whether particular cohorts have yet to apply to the EUSS in broadly the numbers which might be expected, and we are reflecting on what we can learn from the available data to inform and target further communications and engagement activity.

### **3e – Foster good relations between persons who share a protected characteristic and persons who do not share it**

367. The EUSS is intended to support the transition of resident EEA citizens and their family members to UK immigration status as smoothly and easily as is practicable. The policy intention is to provide certainty as soon as possible, enabling them to continue their established lives here with minimal disruption, and helping, among other things, to foster good relations between resident EEA citizens and their family members and others living in the UK, including between persons who share a protected characteristic and persons who do not share it.
368. The EUSS applies equally to all resident EEA citizens (save to reflect differences in the agreements and bespoke arrangements for Irish citizens and people of Northern Ireland, as discussed above). No additional criteria need to be met by Croatian, EU2 (Bulgaria, Romania) or EU8 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and

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<sup>124</sup> Source:

(1) Home Office, EU Settlement Scheme statistics:

<https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>

(2) ONS, Population by Country of Birth and Nationality:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/dataset/populationoftheunitedkingdombycountryofbirthandnationality>

(3) ONS, Technical Note on the difference between ONS population estimates by nationality and Home Office EU Settlement Scheme statistics:

<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/noteonthedifferencebetweenonspopulationestimatesbynationalityandhomeofficeeuropeanunionsettlementschemestatistics/2020-02-24>



Slovenia) citizens who were previously subject to transitional restrictions by virtue of their country's accession agreements with the EU.

369. Throughout the development and delivery of the EUSS, the Government's messaging has been positive in recognising the contribution to the UK of resident EEA citizens and their family members and encouraging them to exercise their right to stay here. This clear messaging is intended to tackle prejudice and promote understanding. The EUSS also fosters good relations between people who share the protected characteristic of race by facilitating the differentiation of EEA citizens resident in the UK by the end of the transition period, and their family members, who have rights under the agreements, and those EEA citizens newly arriving in the UK after that point, therefore enabling the introduction of the Government's new global points-based immigration system from the end of the transition period. The new system will determine eligibility for status in the UK based on an individual's skills and potential contribution rather than where they come from, and treat foreign nationals of all races in a fairer and more equal way.

#### **4. Best interests of the child**

370. Age is a protected characteristic under the public sector equality duty in section 149 of the Equality Act 2010, and we have carefully considered the impact of the EUSS on children. The provision made has regard to Article 3 of the UN Convention on the Rights of the Child and reflects the duty on the Secretary of State to take account of the need to safeguard and promote the welfare of children in the UK in carrying out her immigration, asylum and nationality functions, as reflected in section 55 of the Borders, Citizenship and Immigration Act 2009.
371. Children who are within the scope of the agreements will be able to secure their rights of residence in the UK through the EUSS. The Government is committed to ensuring that the application system under the EUSS is user-friendly and streamlined for all applicants, including children. Caseworkers will be looking for reasons to grant applications under the EUSS, not reasons to refuse – exercising discretion in favour of applicants where appropriate, to minimise administrative burdens. Where there are reasonable grounds for an application to the EUSS not having been made by 30 June 2021 by a person resident here by the end of the transition period, they will be given a further opportunity to apply. This will include where a parent, guardian or local authority has not made the application on their behalf.
372. Individuals are not required to pay a fee when applying for status under the EUSS – ensuring that there is no financial barrier, including for children and other vulnerable groups wishing to stay. Additional protections are in place through the EUSS's vulnerability strategy, which is being implemented in partnership with vulnerable group representatives, local authorities and other experts, and which uses a range of methods to reach and support all those eligible to apply under the EUSS. We are paying particular attention to how

we communicate about the EUSS to children and are working with the University of Liverpool to provide age-appropriate communications materials.

373. The Home Office is also providing extensive support to local authorities, in light of their statutory responsibilities for looked after children and care leavers, to ensure these children and young people, like other vulnerable groups, get UK immigration status under the EUSS, and the secure evidence of this status which the scheme provides. This includes:

- guidance for local authorities (and, in Northern Ireland, health and social care trusts) on their role in making or supporting applications to the EUSS in respect of eligible looked after children and care leavers;<sup>125</sup>
- regular teleconferences specifically for local authority staff responsible for making applications to the EUSS, in order to support them and provide a direct point of contact for them within the Home Office;
- a new burdens assessment and resulting funding allocation, to ensure local authorities with responsibilities for carrying out specific duties in relation to looked after children and care leavers are adequately funded to do this work;
- the support available from the Settlement Resolution Centre and the network of 72 organisations across the UK being grant-funded by the Home Office, with £17 million available over 2019-2021, to help vulnerable people to apply to the scheme.<sup>126</sup> This network includes several organisations working to support vulnerable children and young people, including those in care and care leavers, to make their application to the EUSS; and
- a survey of local authorities and health and social care trusts to establish the numbers of looked after children and care leavers eligible for the EUSS and to help focus further joint work to ensure this cohort obtain status under it.<sup>127</sup>

374. The section 55 duty in the 2009 Act is unaffected by the UK's exit from the EU. As now, it will continue to require the Secretary of State to make arrangements to ensure that all immigration functions take account of the need to safeguard and promote the best interests of children who are in the

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<sup>125</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-looked-after-children-and-care-leavers-guidance>

<sup>126</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens>

<sup>127</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-home-office-looked-after-children-and-care-leavers-survey-2020>

UK. Section 55 imposes a statutory duty on the immigration authorities in the same way that domestic legislation, through the Children Act 2004 and equivalent legislation across the UK, requires all public authorities to take into account the need to safeguard and promote the best interests of a child in exercising their functions, including decisions that affect that child.

375. The Home Office has issued statutory guidance on the application of the section 55 duty to immigration functions.<sup>128</sup> This guidance sets out the framework that has been created to ensure that we give practical effect to our obligations under section 55. In addition, caseworkers must also have regard to the EUSS caseworker guidance which sets out how the section 55 duty is considered and contains bespoke guidance on dealing with applications concerning children.<sup>129</sup> Where a child or children in the UK will be affected by the decision, the immigration authorities must have regard to their best interests in making the decision.
376. Caseworkers must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child. All decisions must demonstrate that the child's best interests have been considered as a primary, but not necessarily the only, consideration. Decisions must demonstrate that consideration has taken place of all the information and evidence provided concerning the best interests of a child in the UK.

## **5. Family Test**

377. In accordance with the public sector equality duty, we have conducted this equality assessment of the policy for the EUSS. The additional Family Test, as reflected in guidance issued by the Department for Work and Pensions (DWP),<sup>130</sup> is designed to support strong and stable family relationships among those families legally resident in the UK. The EUSS will enable resident EEA citizens and their family members to obtain the UK immigration status which they will need in order to remain here lawfully and permanently now that the UK has left the EU.
378. We have therefore considered the Family Test questions identified in the DWP guidance.

### **(i) What kinds of impact might the policy have on family formation?**

379. The impact will not be significant. The EUSS will replace, with leave granted under UK immigration law, the basis under EU law on which EEA citizens and their family members can reside in the UK. It ensures that families living together in the UK are able to continue to do so, and provides scope for

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<sup>128</sup> <https://www.gov.uk/government/publications/every-child-matters-statutory-guidance>

<sup>129</sup> <https://www.gov.uk/government/publications/eu-settlement-scheme-caseworker-guidance>

<sup>130</sup> <https://www.gov.uk/government/publications/family-test-assessing-the-impact-of-policies-on-families>

those living apart at the end of the transition period to be reunited in the future.

**(ii) What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring relationships or the onset of a long-term health problem?**

380. The impact, if any, will not be significant. The EUSS will replace, with leave granted under UK immigration law, the basis under EU law on which EEA citizens and their family members can reside in the UK. Those who do not make an application to the EUSS by the deadline of 30 June 2021 where there are reasonable grounds for this will be given a further opportunity to apply.

**(iii) What impacts will the policy have on all family members' ability to play a role in family life, including with respect to parenting and other caring responsibilities?**

381. No impact. The DWP guidance suggests that this question is mainly aimed at possible impacts on work/family life balance. This is not relevant to the EUSS. The online application process can be completed in as little as 15 minutes.

**(iv) How does the policy impact on families before, during and after couple separation?**

382. No impact. The EUSS will replace, with leave granted under UK immigration law, the basis under EU law on which EEA citizens and their family members can reside in the UK. In doing so, it will reflect their existing rights under the Free Movement Directive to retain the right of residence in the UK following the termination of a marriage or civil partnership.

**(v) How does the policy impact on families most at risk of deterioration of relationship quality and breakdown?**

383. The impact, if any, will not be significant. The EUSS will replace, with leave granted under UK immigration law, the basis under EU law on which EEA citizens and their family members can reside in the UK. In doing so, it will reflect their existing rights under the Free Movement Directive to retain the right of residence in the UK following the termination of a marriage or civil partnership, save that the EUSS goes beyond the requirements of the Free Movement Directive and the agreements in the access to status which it provides for the victims of domestic violence or abuse and their family members. This is intended to ensure that no one who would otherwise be eligible for status under the EUSS loses their right to reside in the UK as a result of domestic violence or abuse.

## **6. Summary of the evidence considered in demonstrating due regard to the public sector equality duty**

The principal sources of evidence drawn on are set out below:

### **(i) International instruments and government papers**

- Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, 19 October 2019:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840655/Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840655/Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)
- Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as endorsed by leaders at a special meeting of the European Council on 25 November 2018:  
[https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/759019/25\\_November\\_Agreement\\_on\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_from\\_the\\_European\\_Union\\_and\\_the\\_European\\_Atomic\\_Energy\\_Community.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/759019/25_November_Agreement_on_the_withdrawal_of_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_from_the_European_Union_and_the_European_Atomic_Energy_Community.pdf)
- Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union:  
[https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/766995/Agreement\\_on\\_arrangements\\_between\\_Iceland\\_the\\_Principality\\_of\\_Liechtenstein\\_the\\_Kingdom\\_of\\_Norway\\_and\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_following\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_from\\_the\\_European\\_Union\\_.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/766995/Agreement_on_arrangements_between_Iceland_the_Principality_of_Liechtenstein_the_Kingdom_of_Norway_and_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_following_the_withdrawal_of_the_United_Kingdom_from_the_European_Union_.pdf)
- Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Citizens' Rights following the Withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement:  
[https://gov.uk/government/uploads/system/uploads/attachment\\_data/file/767003/Agreement\\_between\\_the\\_United\\_Kingdom\\_of\\_Great\\_Britain\\_and\\_Northern\\_Ireland\\_and\\_the\\_Swiss\\_Confederation\\_on\\_citizens\\_rights\\_following\\_the\\_withdrawal\\_of\\_the\\_United\\_Kingdom\\_from\\_the\\_European\\_Union\\_and\\_the\\_Free\\_Movement\\_of\\_Persons\\_Agreement.pdf](https://gov.uk/government/uploads/system/uploads/attachment_data/file/767003/Agreement_between_the_United_Kingdom_of_Great_Britain_and_Northern_Ireland_and_the_Swiss_Confederation_on_citizens_rights_following_the_withdrawal_of_the_United_Kingdom_from_the_European_Union_and_the_Free_Movement_of_Persons_Agreement.pdf)
- 8 December 2017 Joint Report from the negotiators of the EU and the UK Government on progress during phase one of negotiations on the UK's

withdrawal from the EU:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/665869/Joint\\_report\\_on\\_progress\\_during\\_phase\\_1\\_of\\_negotiations\\_under\\_Article\\_50\\_TEU\\_on\\_the\\_United\\_Kingdom\\_s\\_orderly\\_withdrawal\\_from\\_the\\_European\\_Union.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/665869/Joint_report_on_progress_during_phase_1_of_negotiations_under_Article_50_TEU_on_the_United_Kingdom_s_orderly_withdrawal_from_the_European_Union.pdf)

- 26 June 2017 Command Paper (Cm 9464), 'The United Kingdom's Exit from the European Union: Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU':  
<https://www.gov.uk/government/publications/safeguarding-the-position-of-eu-citizens-in-the-uk-and-uk-nationals-in-the-eu>

## **(ii) Government research publications**

- 'Internet Users in the UK: 2019'  
<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2019>
- Home Office Analysis of Annual Population Survey April 2018 – March 2019:  
[Annual Population Survey April 2018 – March 2019:  
https://www.nomisweb.co.uk/articles/1167.aspx](https://www.nomisweb.co.uk/articles/1167.aspx)

This is Home Office analysis of an Office for National Statistics produced dataset.<sup>131</sup>

## **(iii) External publications**

- 'Unsettled Status 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?' The Migration Observatory:  
<https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-2020>
- 'Unsettled Status? Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit?' The Migration Observatory:  
<https://migrationobservatory.ox.ac.uk/resources/reports/unsettled-status-which-eu-citizens-are-at-risk-of-failing-to-secure-their-rights-after-brexit/>

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<sup>131</sup> Data based on analysis of Annual Population Survey is subject to uncertainty and provides estimates only. Information is provided for the resident population only and as such may not be comprehensive of all who may apply for the EUSS as – for example – arrivals and departures of resident EEA citizens from April 2019 to December 2020 could affect volumes under the EUSS, and analysis does not account for family members of EEA citizens (and other groups). As such, the characteristics presented from the resident population is used as an indication of characteristics of applicants under the EUSS. As a sample survey of UK households it is subject to sampling variation and weighting processes, and coverage of communal establishments is limited meaning some groups (for example, recent arrivals in hotels/hostels whilst establishing residence, or international students in halls of residence who are only included in the sampling frame if they have UK resident parents) are likely to be undercounted. Estimates presented note where coverage is of EEA or EU nationals and whether Irish nationals are included or excluded. Estimates presented are rounded. Data is previously unpublished.

- 'How the EU Settlement Scheme Affects Women and Girls', NPC:  
<https://www.thinknpc.org/resource-hub/how-the-eu-settlement-scheme-affects-women-and-girls/>
- 'Children left out? Securing children's rights to stay in the UK beyond Brexit', Coram Children's Legal Centre:  
[https://www.childrenslegalcentre.com/wp-content/uploads/2020/06/CCLC-Children-left-out\\_July-2020\\_final.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2020/06/CCLC-Children-left-out_July-2020_final.pdf)
- 'Uncertain futures: the EU settlement scheme and children and young people's right to remain in the UK', Coram Children's Legal Centre:  
[https://www.childrenslegalcentre.com/wp-content/uploads/2019/03/EUSS-briefing\\_Mar2019\\_FINAL.pdf](https://www.childrenslegalcentre.com/wp-content/uploads/2019/03/EUSS-briefing_Mar2019_FINAL.pdf)
- 'Digital Immigration Status: A Monitoring Framework', Public Law Project:  
<https://publiclawproject.org.uk/wp-content/uploads/2020/10/PLP-Report-Digital-Immigration-Status.pdf>
- 'Quick and Uneasy Justice', Public Law Project:  
<https://publiclawproject.org.uk/wp-content/uploads/2019/07/Joe-Tomlinson-Quick-and-Uneasy-Justice-Full-Report-2019.pdf>
- 'Statement on the impact of EU Settlement Scheme digital-only status on the Roma Community in the UK', Roma Support Group:  
[https://www.romasupportgroup.org.uk/uploads/9/3/6/8/93687016/statement\\_on\\_the\\_impact\\_of\\_the\\_eu\\_settlement\\_scheme\\_digital\\_only\\_status\\_on\\_roma\\_communities\\_in\\_the\\_uk\\_final.pdf](https://www.romasupportgroup.org.uk/uploads/9/3/6/8/93687016/statement_on_the_impact_of_the_eu_settlement_scheme_digital_only_status_on_roma_communities_in_the_uk_final.pdf)
- 'Not so straightforward', Greater Manchester Immigration Aid Unit:  
<https://gmiau.org/not-so-straightforward/>

#### **(iv) Other sources drawn on in monitoring of protected characteristics**

- The Equality and Human Rights Commission Technical Guidance on the public sector equality duty (for England):  
<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance>
- Consistent with that guidance, this Policy Equality Statement draws on evidence of the impact of the EUSS policy on people who share a protected characteristic through a combination of statistical data and qualitative sources. The guidance makes clear that where a body subject to the public sector equality duty does not have sufficient information in-house, it can also use external sources.
- In line with the UK's obligations under the agreements, the Home Office has sought to keep the application process for the EUSS as short and

simple as possible, and to avoid any unnecessary administrative burdens, by only asking applicants for information relevant to the decision:

- Their nationality is relevant to their eligibility (if they are not a resident EEA or Swiss citizen, they will need to be the family member of such a person); their age (if they are a child under the age of 21) is relevant to whether they may be eligible for settled status without the five years' continuous UK residence generally required. The data collected which is relevant to these protected characteristics is published.<sup>132</sup>
- Information regarding EUSS applicant ethnicity, race or disability is not captured as part of the application process. It is not relevant to the applicant's eligibility under the scheme.
- The online application process does not generally ask for the sex of the applicant, because it is not relevant to the applicant's eligibility under the scheme. It only does so where the applicant states on the form that they are a non-EEA citizen who does not have a valid biometric residence card, as their sex will be recorded on the biometric residence card issued to them under the EUSS if they are granted status under it.
- Where a person uses the identity verification app to verify their identity in applying to the EUSS, relevant personal details contained in the biometric chip in their passport, national identity card or biometric residence card are transferred to the Home Office. This will include their sex where those details contain this information. Where the identity document being used by the applicant does not hold this information, the applicant is not asked to provide it and that data field on the application is left empty. We do not currently publish breakdowns by sex of EUSS applicants as the data is not deemed to be of sufficient quality for our Official Statistics releases. We will continue to keep this point under review.
- In addition to the published data relevant to the protected characteristics of applicants to the EUSS above, the following qualitative sources of information about the reach and operation of the EUSS, including as it affects those who do and do not share a protected characteristic have been drawn upon:
  - Feedback from applicants and from those supporting them, in particular to the Settlement Resolution Centre (whose staff respond to questions from those applying to the EUSS or looking to do so) and to

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<sup>132</sup> <https://www.gov.uk/government/collections/eu-settlement-scheme-statistics>



caseworkers working with applicants, where necessary, to help them to establish their eligibility under the scheme.

- 72 organisations across the UK<sup>133</sup> which are being grant funded by the Home Office to help reach vulnerable or at-risk people and support them (more than 200,000 so far) in applying to the EUSS. This network of organisations is a valuable source of information and advice on the reach and accessibility of the EUSS, including by those who may share a protected characteristic.
- The User Groups for the EUSS established by the Home Office to engage with relevant stakeholders about the design, development and operation of the scheme – in particular, that on vulnerable groups (which includes representatives from voluntary and community organisations working with such groups, from local government and from the Devolved Administrations) and that comprised of consular representatives of the EU27 embassies and high commissions in the UK and others.
- Analysis relevant to these issues produced by external experts such as the Migration Observatory, as referenced in this Policy Equality Statement.
- The research and analysis underpinning the development and targeting of the paid marketing and other public communications by the Home Office about the EUSS.

Links to published sources may provide notes or limitations to be aware of when interpreting information presented in this Policy Equality Statement.

European Migration and Citizens' Rights Unit  
Border, Immigration & Citizenship Policy & International Group  
Home Office  
November 2020

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<sup>133</sup><https://www.gov.uk/government/publications/eu-settlement-scheme-community-support-for-vulnerable-citizens/list-of-organisations>