

Guidance for OISC Advisers on the provision of advice and services related to the EU Settlement Scheme



This guidance document provides advice for OISC regulated organisations regarding work permitted at each Level in relation to the EU Settlement Scheme post 30 June 2021.

This guidance should be read alongside the 2021 version of the Guidance on Competence and supplements the earlier [Guidance for EUSS advisers on authorised work at Level 1.pub](https://publishing.service.gov.uk) (publishing.service.gov.uk).

The Guidance has been divided into two sections:

Section 1:

Work that can be conducted by advisers registered at Level 1 and those registered at Level 1 limited to EUSS.

Section 2:

Work that can be conducted by advisers registered at Level 2 & Level 3 in Immigration.

Section 1

Level 1 Immigration and Level 1 (Limited to EUSS).

From the 1 July 2021 all Level 1 advisers (including those limited to EUSS) will be able to assist clients with the following applications:

- Applications for settled status for people who already have pre-settled status.
- Late applications for persons eligible for status under the EU Settlement Scheme where the application is likely to be classified as meeting the reasonable grounds threshold based on a straightforward presentation of facts.
- Straightforward applications from joining family members (where the relationship was formed by the end of the Transition Period and continues to exist and for future children*).
- Applications for Administrative Review where new information or evidence has been obtained in support of the application.

*Level 1 limited to EUSS should refer applications where joining family members are already in country (with the exception of children born in country) and applications from durable partners and other 'dependent relatives' where they may not have relevant documents or there has been a material change in circumstances.

Level 1 Immigration advisers may additionally deal with applications for Administrative Review where an eligible decision has been made, and the applicant believes that the original caseworker has made an error or not followed the published guidance.

Level 1 Immigration advisers should not however deal with any applications for Administrative Review where the application was refused on the basis of credibility or a fundamental issue of genuineness of documents, or relationships. Such applications should be referred to a higher-level provider.

There is no right to an administrative review where an application has been refused on suitability grounds or the application rejected as invalid.

The Home Office has published non-exhaustive guidance on what may constitute 'reasonable grounds' for failing to apply to the EUSS by the relevant deadline.

Examples of 'reasonable grounds' can be found at pages 31 – 44 [EU settlement scheme \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The OISC believes the following application types represent examples of late applications under Appendix EU where a straightforward presentation of the facts is likely to be sufficient to meet the reasonable grounds requirement, and documentation to support the application should be relatively simple to attain. These applications are unlikely to need detailed legal representations to accompany the application.

- Late applications relating to persons who are or were children (including children in care and care leavers) as of the relevant application deadline.
- Late applications relating to persons who have, or had, physical or mental capacity and/or care or support needs as of the relevant application deadline.
- Late applications relating to persons who had a serious medical condition (or was undergoing significant medical treatment) in the months before, or around the time of, the relevant application deadline.
- Late applications based on prior exemption from immigration control if made within 90 days from the date on which the applicant ceased to be exempt or post 90 days where the applicant can provide a reasonable explanation for the late application. *
- Late applications based on existing limited leave to enter or remain if made before the expiry of existing leave, or within a reasonable period after the leave expired and the applicant can provide a reasonable explanation for the late application. *
- Late applications for applicants who hold indefinite leave to enter or remain granted and can provide a reasonable explanation - for example being unaware of their eligibility to apply. *
- Late applications for persons who held a valid biometric residence card or other residence document issued under the EEA Regulations and can provide a reasonable explanation - for example because they were unaware that they needed to apply to the EU Settlement Scheme.*
- Late applications made where other compelling practical or compassionate reasons, such as vulnerability, homelessness, personal circumstances etc, should be considered by UKVI and can be clearly evidenced. *

**The ability to make late applications based on the straightforward presentation of facts is likely to diminish in time for some applications. Post 2021 the OISC will re-consider whether it remains appropriate for Level 1 Immigration and Level 1 (limited to EUSS) advisers, to continue to assist clients with some of these late applications.*

Section 2

Level 2 and Level 3 Immigration

Advisers registered at OISC Level 2 and 3 in Immigration may assist clients with all applications related to the EU Settlement Scheme that can be conducted by Level 1 Immigration advisers.

In addition, Level 2 and 3 Immigration advisers may deal with more complex late EUSS applications where evidence may be more difficult to obtain, or where missing the deadline may require detailed legal representations to accompany the application.

The OISC believes the following application types represent examples of late applications under Appendix EU, which are likely to be more complex in nature and/or require detailed written representations to accompany the application.

- Late applications made by persons who are or have been victims of modern slavery.
- Late applications made by persons who are or have in an abusive or controlling relationship or situation.

Level 2 advisers may lodge appeals on initial grounds. Substantive appeals work, including paper appeals and making representations to, or before courts or tribunals, should be undertaken by Level 3 advisers.

Only Level 3 advisers authorised in Judicial Review Case Management are permitted to instruct council to represent clients in Judicial Review matters.