

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 (EUSS).

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](https://publishing.service.gov.uk/guidance/6456244-guidance-for-euss-advisers-on-authorized-work-at-level-1).pub (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 Immigration and those registered at Level 1 (Limited to the EUSS).

Section 2:

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

Section 1

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

All Level 1 advisers (including those limited to the EUSS) are able to assist clients with the following applications:

- Applications for settled status by people who already have pre-settled status.
- Late applications by persons eligible for status under the EUSS where the application is likely to be classified as meeting the reasonable grounds threshold based on a straightforward presentation of the facts and supporting evidence.
- Straightforward applications from joining family members (where the relationship existed by the end of the transition period on 31 December 2020 and continues to exist and for future children).

Level 1 (Limited to the EUSS) advisers should refer to a higher-level provider applications where a joining family member is already in the UK (with the exception of a child born here) 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 an Administrative Review where an eligible decision was made before 5 October 2023, 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 an Administrative Review where the application was refused before 5 October 2023 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 rejected as invalid.

For decisions made from 5 October 2023, changes to Appendix AR and Appendix AR (EU) remove the scope for administrative review under the EUSS.

Reasonable Grounds

For EUSS applications made from 9 August 2023, the requirement to demonstrate reasonable grounds for the delay in applying has to be met for the application to be valid (under paragraph EU9 of Appendix EU). This means that where the Secretary of State considers there are not reasonable grounds for the delay, the application will be rejected as invalid, with no right of appeal or administrative review.

The Home Office has published non-exhaustive guidance on what may constitute reasonable grounds for the applicant's delay in applying to the EUSS. There must be reasonable grounds for their delay as a whole and not simply for their failure to meet the deadline applicable to them. This means that reasonable grounds for failing to apply to the EUSS by the relevant deadline is not sufficient, as the applicant will also have to provide information and evidence that there are reasonable grounds, in line with the published guidance, for their not having applied in the intervening period.

Examples of possible 'reasonable grounds' can be found at 'Reasonable grounds for delay in making an application' in [EU Settlement Scheme EU, other EEA, Swiss citizens and family members \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/publications/eu-settlement-scheme-eu-other-eea-swiss-citizens-and-family-members)

The OISC believes the following application types represent examples of late EUSS applications where a straightforward presentation of the facts and supporting evidence is likely to be sufficient to meet the reasonable grounds requirement, and the supporting evidence should be relatively simple to obtain. These applications are unlikely to need detailed representations to accompany the application:

- Late applications relating to persons who are or were children (including children in care and care leavers) at the relevant application deadline.
- Late applications relating to persons who lacked the physical or mental capacity to apply to the EUSS by the relevant deadline and have continued to do so since then.
- Late applications relating to persons who were exempt from immigration control if made within 90 days of the date on which the applicant ceased to be exempt. Appendix EU deems this in itself to be reasonable grounds for their failure to meet the relevant deadline if they choose to apply to the scheme after ceasing to be exempt from immigration control. A person applying after that 90-day period will need to demonstrate reasonable grounds for their delay in applying.
- Late applications based on existing limited leave to enter or remain if made before the expiry of that existing leave. A person applying after that will need to demonstrate reasonable grounds for their delay in applying.
- Late applications for applicants who hold existing indefinite leave to enter or remain granted under another part of (or outside) the Immigration Rules (or automatically under the Immigration Act 1971). The application deadline of 30 June 2021 applied to them. They will need to demonstrate reasonable grounds for their delay in applying.

The OISC no longer considers it appropriate for Level 1 advisers to make late applications based on the straightforward presentation of facts for a person whose reason for the delay in applying is solely based on lack of awareness of the EUSS, of the relevant deadline or of their eligibility to apply.

Section 2

Level 2 and Level 3 Immigration

Advisers registered at OISC Level 2 and/or or 3 in Immigration may assist clients with all applications related to the EUSS that can be conducted by Level 1 Immigration or Level 1 (Limited to the EUSS) 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 the delay may require detailed representations and evidence to accompany the application.

The OISC believes the following application types represent examples of late EUSS applications that are likely to be more complex in nature and/or require detailed written representations and evidence to accompany the application:

- Late applications by a person who is or has been a victim of modern slavery.
- Late applications by a person delayed in applying because they are or were a victim of domestic violence or abuse (or the family member of such a victim), or they are or were otherwise in a controlling relationship or situation which prevented them from applying earlier.

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 Counsel to represent clients in Judicial Review matters.