Home Office

EU Settlement Scheme: Border Force guidance

Version 6.0

Contents

About this guidance

This guidance tells Border Force officers about dealing with individuals who either:

- hold pre-settled status or settled status under the EU Settlement Scheme (EUSS) or an EUSS family permit
- claim to have a Withdrawal Agreement right of permanent residence in the UK on the basis of qualifying activity for the relevant period, having previously been granted pre-settled status under the EUSS
- claim to be eligible for the EUSS but have not yet made an application
- have a pending EUSS application
- have a pending appeal or administrative review against an EUSS decision
- have previously been refused EUSS status

Detailed information on the EUSS can be found in the main EUSS guidance.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors you should contact your Regional Command and Control Unit and, if necessary, they will contact Border Force National Command Centre.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Review, Atlas and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **6.0**
- published for Home Office staff on **03 December 2025**

Changes from last version of this guidance

This version has been updated to reflect section 45 of the Border Security, Asylum and Immigration Act 2025 which came into force on 2 December 2025.
Previous guidance has been archived.

Related content
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Section 55 Duty

Section 55 of the Borders, Citizenship and Immigration Act 2009 places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum or nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. This duty is a primary consideration, although it does not prevent the consideration of other factors in cases involving children.

Child protection therefore remains a high priority for Border Force and as border control is a key line of defence against exploitation, you must exercise vigilance when dealing with children with whom you come into contact and identify children who may be at risk of harm.

As you have a duty of care when dealing with cases involving children, whether in family groups or unaccompanied, the decision making process you follow must take into account the needs and best interests of the child, and you must take action where it is appropriate and necessary to ensure the child is safe and well.

In addition, where you have child protection concerns about any child's safety or welfare, you must promptly refer to the relevant police contacts, and / or children's services as soon as possible. You must ensure that vulnerable children do not leave the primary control point without the approval of these agencies.

Although the section 55 duty only applies to children in the UK, officers based at juxtaposed locations must adhere to the spirit of the legislation. You must therefore make enquiries when you have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. Where appropriate, the French, Belgian or Dutch authorities in these locations should be able to provide you with assistance.

The specially trained safeguarding and modern slavery teams across Border Force are also there to support you by providing expert help in safeguarding matters, whilst working in close partnership with local agencies such as the police and social services. For further information you can refer to the Children travelling to the UK leaflet or the Change for children guidance.

Removal of an unaccompanied child

As part of our commitment to safeguarding children, and to act in accordance with our statutory duty under section 55, you must never remove an unaccompanied child from the UK without ensuring that safe and adequate reception arrangements have been made for that child. You must discuss any reception arrangements that are made with children's services in the UK or children's services in the country the child is travelling to.

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Definitions in this guidance

‘2000 Order’ means the Immigration (Leave to Enter and Remain) Order 2000.

‘Agreements’ means the EU Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss Citizens’ Rights Agreement.

A ‘Certificate of Application’ or ‘CoA’ is issued by the Home Office to confirm that the applicant has submitted a valid application under the EUSS. It does not confirm that the person has immigration status in the UK or a right to enter the UK, but it does confirm the temporary protection of their rights in the UK pending the outcome of their application and any administrative review or appeal.

‘EEA’ means all the countries of the European Union (EU), plus the other European Economic Area (EEA) countries (Iceland, Liechtenstein and Norway).

‘EEA national’ means an EU, other EEA or (for these purposes) Swiss national, other than an Irish national.

‘EEA Regulations 2016’ means the Immigration (European Economic Area) Regulations 2016.

‘EUSS’ means the EU Settlement Scheme.

‘Family member of an EEA national’ means a spouse, civil partner or durable partner of an EEA national, or a child or direct dependent relative in the ascending line of an EEA national or of their spouse or civil partner.

‘Islands’ means the Crown Dependencies of the Bailiwick of Guernsey, the Bailiwick of Jersey and the Isle of Man.

‘Joining family member’ is a ‘family member of an EEA national’ who was not themselves resident in the UK by the end of the transition period at 11pm on 31 December 2020, but (unless they were born or adopted since that date) was by then the ‘family member of an EEA national’ and that EEA national was resident in the UK by the end of the transition period and (with some exceptions) holds EUSS status on that basis. The family relationship must continue to exist when the family member seeks to join their EEA national sponsor in the UK.

The ‘grace period’ is the period from the end of the transition period at 11pm GMT on 31 December 2020 to the deadline of the end of 30 June 2021 for applications to the EUSS by EEA nationals and their family members resident in the UK by the end of the transition period.

‘Grace Period Statutory Instrument’ means the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020.

‘LOTR’ means leave granted outside the Immigration Rules.

A ‘Withdrawal Agreement right of permanent residence on the basis of qualifying activity for the relevant period’ is a right that EUSS pre-settled status holders acquire automatically under that Agreement (or under the EEA EFTA Separation Agreement) once the conditions for it are met (generally having been continuously resident in the UK for 5 years while undertaking a qualifying activity in accordance with the Agreement). Once acquired, then, by virtue of the direct effect of the Agreement in accordance with section 7A of the European Union (Withdrawal) Act 2018 and section 45 of the Border Security, Asylum and Immigration Act 2025 (and notwithstanding Article 13(4) of the 2000 Order), that right of permanent residence – like settled status granted under the EUSS – can only be lost through absence from the UK where this exceeds 5 consecutive years. This does not apply to Swiss citizens and their family members, as, under the Swiss Citizens’ Rights Agreement, they cannot automatically acquire a right of permanent residence.

An ‘in-country appeal’ is where an EEA national or their EEA or non-EEA national family member lodges an appeal against a decision relating to the EUSS while they are in the UK. Under section 78 of the Nationality, Immigration and Asylum Act 2002 (NIAA 2002), a person with a pending in-country appeal cannot be removed from the UK while the appeal is pending. This provision does not apply at a juxtaposed port.

An ‘out-of-country appeal’ is where an EEA national or their EEA or non-EEA national family member lodges an appeal against a decision relating to the EUSS or an EUSS family permit while they are outside the UK. Section 78 of the NIAA 2002 does not apply to a person with a pending out-of-country appeal, and they can be refused entry and removed from the UK while the appeal is pending.

‘Permission to enter’ means leave to enter, including that which derives from arrival in the UK with an entry clearance.

‘Permission to stay’ means leave to remain.

‘Physical status documentation’ means documentary evidence of a passenger’s status, which may include but is not limited to a vignette, permit or residence card.

‘Saved EEA Regulations’ means the EEA Regulations 2016 as saved and modified by the Grace Period Statutory Instrument, including where an EEA national or their family member was resident in the UK by 31 December 2020 and applied to the EUSS by 30 June 2021.

‘Temporary Protection’ means the person is deemed to have rights under Chapter 1 of Title II of Part Two of the Withdrawal Agreement (or the equivalent provisions in the other Agreements), until the final determination of their valid EUSS application (including any administrative review or appeal). Temporary Protection and deemed rights are confirmed through the issuing of a Certificate of Application.

The ‘transition period’ is the period from EU exit at 11pm GMT on 31 January 2020 until 11pm GMT on 31 December 2020 during which EU law continued to apply in the UK.

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General principles of the EU Settlement Scheme

The EU Settlement Scheme (EUSS) provides a basis, consistent with the Agreements, for European Economic Area (EEA) nationals who were resident in the UK before the end of the transition period at 11pm on 31 December 2020, and their family members, to apply for immigration status in order to remain in the UK. The EUSS family permit provides a basis by which some family members can join their EEA national family member in the UK.

The Immigration Rules for the EUSS and the EUSS family permit, contained in Appendix EU and Appendix EU (Family Permit) respectively, use the term 'EEA citizen' instead of EEA national.

For the purposes of the EUSS and the EUSS family permit, and where they were resident in the UK by the end of the transition period, a 'relevant EEA citizen' may apply to an EU, EEA or Swiss citizen (including an Irish citizen), as well as to certain dual British and EEA nationals (including a 'relevant naturalised British citizen') or a 'relevant person of Northern Ireland'.

For full details on the circumstances in which a person may be eligible for the EUSS and the deadlines for applications, see the main EUSS guidance.

Irish nationals

Irish nationals enjoy a right of residence in the UK that was not reliant on the UK's membership of the EU. They must not be refused admission unless they are subject to a deportation order, exclusion order or international travel ban.

This means that Irish nationals do not need to apply for status under the EUSS. Nonetheless, Irish nationals can make an application to the EUSS, should they wish to do so. If they do so, they will need to meet the relevant requirements in the same way as any other applicant.

Any family members (who are not Irish nationals or British citizens) who were resident in the UK by 11pm on 31 December 2020 are required to make an application for status under the EUSS in order to remain in the UK.

Relevant person of Northern Ireland

A family member of a relevant EEA citizen can also apply to the EUSS where they are the family member of a 'relevant person of Northern Ireland' (as defined in Annex 1 to Appendix EU).

A 'relevant person of Northern Ireland' is a person who both:

- is either:

    - a British citizen
    - an Irish citizen
    - a British citizen and an Irish citizen
- 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
    - otherwise entitled to reside in Northern Ireland without any restriction on their period of residence

Temporary Protection

Temporary Protection means that a relevant person has made a valid EUSS application (as evidenced by a Certificate of Application, which will be visible on Home Office systems) and is thereby deemed to have certain rights in the UK under the Agreements, until the final determination of that EUSS application (including any administrative review or appeal).

However, those rights do not include the right to enter the UK solely on the basis of the Certificate of Application. The person will usually need to provide additional evidence, as set out in this guidance, to show that they should be granted entry to the UK, pending the outcome of their EUSS application and any administrative review or appeal.

Temporary Protection is not a form of leave and therefore, as set out in this guidance, it may be appropriate to grant a period of Leave outside the Rules (LOTR) at the border to facilitate the entry of a person who would have Temporary Protection if in the UK. This may include where:

- an EEA national (or their EEA or non-EEA national family member) who was resident in the UK before the end of the transition period on 31 December 2020 has submitted a valid late application to the EUSS and provides evidence – of continuous residence in the UK since before the end of the transition period and (for a non-EEA national) of the relevant family relationship – showing that they are eligible for EUSS status
- an EEA national (or their EEA or non-EEA national family member) who was resident in the UK before the end of the transition period on 31 December 2020 has submitted a valid late application to the EUSS and has made an in-country appeal against an EUSS refusal decision which has not been certified - this means that they are not removeable from the UK (under section 78 of the NIAA 2002) - this does not apply at juxtaposed ports
- an EEA or non-EEA national who has applied to the EUSS as a joining family member has an in-date or (unless their EUSS application has been refused and they are awaiting the outcome of an administrative review or an out-of-country appeal) expired EUSS family permit, sponsored by the same EEA national as their pending valid application to the EUSS - for further guidance on assessing whether a joining family member – or a child or vulnerable adult travelling with them who has not applied to the EUSS – should be granted entry to the UK

whilst their EUSS application is pending, see pending valid EUSS application as a joining family member

- an EEA or non-EEA national who has applied to the EUSS as a joining family member and has made an in-country appeal against an EUSS refusal decision which has not been certified. This means that they are not removeable from the UK (under section 78 of the NIAA 2002). This does not apply at juxtaposed ports

Temporary Protection will also apply to a person who is in the UK and who has been refused EUSS leave and the saved EEA Regulations 2016 no longer apply to them because they failed to appeal by the deadline for that, but subsequently has a late appeal admitted by the Tribunal or a late administrative review accepted by the Home Office. This can be verified by checking Home Office systems or by correspondence from the Tribunal which is provided by the person or their representatives. In these circumstances the EUSS application is still treated as pending and, unless they have an in-country appeal, the evidential requirements at the border for pending valid applications apply for entry to the UK.

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Exceptions for serious criminality

In cases involving serious criminality, you may consider that it is not appropriate to grant entry, even if the individual would have Temporary Protection in the UK.

For individuals with a pending EUSS application, you must still consider their conduct under the public policy and public security test if it occurred before the end of the transition period at 11pm on 31 December 2020. This includes individuals who have been previously served with a deportation or exclusion decision taken on non-conducive grounds (for example, before becoming a family member of an EEA national).

The non-conducive test applies to any conduct which occurred from 1 January 2021.

Where you consider that the relevant test is met, you may refuse entry under Part Suitability of the Immigration Rules but must set out clearly in the decision that you have considered the public policy and public security test in respect of any conduct which occurred before the end of the transition period.

Scope to use a valid EEA or Swiss national identity card

The Agreements state that the UK can choose to stop accepting national identity cards for entry by relevant EU, other EEA and Swiss nationals after 31 December

2025 if they do not include a chip that complies with the applicable International Civil Aviation Organisation (ICAO) standards for biometric identification.

In the meantime, EU, other EEA and Swiss nationals who have pre-settled or settled status under the EUSS (or leave under the equivalent scheme in Guernsey, Jersey or the Isle of Man), or hold a valid EUSS family permit or a valid frontier worker permit, are an S2 Healthcare Visitor or are a Swiss national with a Service Provider from Switzerland visa, can use a valid EEA or Swiss national identity card for travel and entry to the UK until at least 31 December 2025. EEA national identity cards which comply with the ICAO standards for biometric identification will be accepted beyond 31 December 2025 for this cohort. The position in relation to EEA national identity cards which are not compliant with those ICAO standards will be communicated prior to 31 December 2025. EU, other EEA and Swiss nationals with a pending valid application under the EUSS (or under the equivalent scheme in Guernsey, Jersey or the Isle of Man) as a pre-end of transition period resident in the UK (or the Islands), or as a joining family member with a valid or expired EUSS family permit, can also use a valid EEA or Swiss national identity card for travel and entry to the UK until at least 31 December 2025.

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Holders of Pre-Settled or Settled Status

This page tells Border Force officers about pre-settled status (5 years' limited leave to enter or remain granted under Appendix EU) and settled status (indefinite leave to enter or remain granted under Appendix EU) issued under the EU Settlement Scheme (EUSS).

This section also covers passengers who, in some circumstances, may have acquired a Withdrawal Agreement right of permanent residence on the basis of qualifying activity for the relevant period, having previously been granted pre-settled status under the EUSS (including where a grant of pre-settled status may have since been varied to another form of leave).

Leave granted under the EUSS may be referred to as either EUSS leave or EUSS status and may also be referred to as 'pre-settled status' or 'settled status'.

There are no immigration conditions attached to leave granted under the EUSS (for example, in respect of employment, access to benefits and services, maintenance or accommodation), and as such EUSS leave cannot be cancelled for a breach of conditions. See cancellation of EUSS leave for further details.

Applicants to the EUSS with a continuous qualifying period of at least 5 years' continuous residence in the UK are granted settled status (although in some circumstances an individual may be eligible for such leave after completing a shorter continuous qualifying period of residence). Otherwise, applicants to the EUSS with a continuous qualifying period of less than 5 years' continuous residence in the UK are granted pre-settled status.

A High Court judgment in the Independent Monitoring Authority for the Citizens' Rights Agreement v SSHD in December 2022 found that a residence right under the Withdrawal Agreement does not expire if an individual with pre-settled status fails to make a second application to the EUSS and that a pre-settled status holder acquires the right of permanent residence under the Withdrawal Agreement (or under the European Economic Area (EEA) EFTA Separation Agreement) automatically once the conditions for it are met – an application for settled status is not required to obtain it.

A person with pre-settled status will have that status automatically extended shortly before it expires if they have not yet obtained settled status. However, the judgment also means that an individual with pre-settled status may have rights similar to settled status, having acquired the right of permanent residence under the Withdrawal Agreement (or under the EEA EFTA Separation Agreement) at the point they met the criteria for that (generally having resided continuously in the UK for 5 years while undertaking qualifying activity).

Process for establishing status at the border

Since 1 July 2021, all European Economic Area (EEA) nationals (except Irish nationals covered by section 3ZA of the Immigration Act 1971) seeking entry to the UK on the basis that they are protected by the Agreements are required to have applied to the EUSS or obtained an EUSS family permit, hold entry clearance as a Service Provider from Switzerland, or hold a frontier worker permit, unless they are seeking permission to enter as an S2 Healthcare Visitor or they wish to enter the UK on a temporary basis for another purpose which does not require entry clearance.

All other EEA nationals coming to the UK for a purpose requiring entry clearance are required to have obtained this **before** they travel.

Passengers granted leave under an EUSS operated by a Crown Dependency have the same rights to enter the UK as a passenger with leave under the UK EUSS and are likely to be able to prove this by a confirmation letter which may be physical or digital.

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Status issued under the EUSS is digital only. Where a non-EEA national was granted status under the EUSS by 31 October 2024, they were also issued with a biometric residence card (BRC), unless, at the date of their application, they held an in-date BRC issued under the EEA Regulations 2016.

Individuals with pre-settled or settled status under the EUSS (or those who previously held pre-settled status but have since varied this to another form of leave, for example, those with indefinite leave to enter or remain under Appendix Victim of Domestic Abuse; for further guidance see Victims of domestic violence: caseworker guidance) who have acquired a Withdrawal Agreement right of permanent residence based on qualifying activity for the relevant period will not have a document or digital status to evidence that right and their status will show as pre-settled or settled status (or another form of leave).

If an individual wishes to rely on such a Withdrawal Agreement right of permanent residence, for example, if they have indefinite leave to enter or remain other than settled status under the EUSS and have been absent from the UK for more than 2 but not more than 5 consecutive years since acquiring the right of permanent residence – which, by virtue of the direct effect of the Withdrawal Agreement (or the EEA EFTA Separation Agreement), can only be lost through absence from the UK where this exceeds 5 consecutive years – Border Force officers will need to conduct additional checks.

Acquisition of a Withdrawal Agreement right of permanent residence is most likely to be relevant for holders of pre-settled status who, following the grant of that status,

acquired a Withdrawal Agreement right of permanent residence based on qualifying activity for the relevant period and have not yet obtained settled status. However, holders of settled status may also want to rely on the date they acquired such a Withdrawal Agreement right of permanent residence which may be earlier than the date their settled status was granted.

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EU Settlement Scheme family permit holders

The EU Settlement Scheme (EUSS) family permit facilitates travel to, and entry into, the UK of an eligible family member of a relevant European Economic Area (EEA) citizen or (on the basis of an application made by 11:59pm on 8 August 2023 when the EUSS family permit closed to them) of a qualifying British citizen. Details of those eligible to apply for an EUSS family permit and the evidence required of the family relationship are set out in Appendix EU (Family Permit).

In all cases:

- the family member is required to meet the relevant suitability and eligibility criteria
- the relevant EEA citizen or qualifying British citizen must be resident in the UK or will be travelling to the UK within 6 months of the date of application
- the applicant must be accompanying that person to the UK or joining them in the UK within 6 months of the date of application

An EUSS family permit cannot be issued at the border as, to make a valid application, the application must be made online and considered by an Entry Clearance Officer.

If you require further information on the EUSS family permit, see EU Settlement Scheme: Family Permit and Travel Permit guidance.

EUSS family permit: at the border

An EUSS family permit is an entry clearance valid for 6 months from the date of decision on the application. When the individual arrives in the UK, the entry clearance has effect as (in that it automatically converts to) leave to enter under the 2000 Order for the period beginning on the date of the individual's arrival and ending on the expiry date of the EUSS family permit. They can enter and leave the UK as many times as they wish within this period.

If the individual presenting the EUSS family permit is the rightful holder and qualifies for entry, there is no need to endorse the EUSS family permit with an open date stamp.

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Once the EUSS family permit holder is in the UK, they may apply for EUSS leave. The deadline for their application to the EUSS is 3 months after their date of arrival in the UK (or before the expiry of any leave to enter having arrived with an EUSS family permit, where this is later). They can apply to the EUSS after that deadline where there are reasonable grounds for their delay in applying.

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EU Settlement Scheme travel permit holders

An EU Settlement Scheme (EUSS) travel permit provides a non-European Economic Area (EEA) national, who has leave under the EUSS but no longer holds an in-date biometric residence card and is unable to update their UKVI account whilst they are outside the UK, with an entry clearance which, together with a valid passport, will allow them to travel to the UK.

An applicant meets the eligibility requirements for an EUSS travel permit under rule FP6(3) of Appendix EU (Family Permit), where they satisfy the Entry Clearance Officer that, at the date of application, all of the following apply:

- they are a non-EEA national
- they have been granted indefinite or limited leave to enter or remain under Appendix EU, which has not lapsed or been cancelled, curtailed or revoked and which is evidenced by the Home Office reference number for that grant of leave
- they have both:
  - been issued with a 'relevant document' by the UK under the EEA Regulations, or with a biometric residence card by virtue of having been granted leave under Appendix EU
  - reported to the Home Office that that document or card has been lost or stolen or has expired
- they will be travelling to the UK within 6 months of the date of application

An EUSS travel permit is an entry clearance valid for 6 months from the date of decision on the application. However, unlike with the EUSS family permit, when the individual arrives in the UK, **this entry clearance does not have effect as leave to enter.** This is because the person already has leave under the EUSS. They can enter and leave the UK as many times as they wish before the expiry date of the EUSS travel permit.

If the individual presenting the EUSS travel permit is the rightful holder and qualifies for entry, there is no need to endorse the EUSS travel permit with an open date stamp.

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A non-EEA national who has EUSS leave and whose biometric residence card has been lost or stolen, or has expired, whilst they are overseas, may be encountered at the border without an EUSS travel permit. In such cases, EUSS leave will need to be confirmed at the border. If no such leave is held, you will need to consider guidance for arriving passengers who do not have leave.

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Frontier workers

A frontier worker is a European Economic Area (EEA) national who pursued an economic activity in the UK by the end of the transition period at 11pm on 31 December 2020 (by being employed or self-employed) and who continues to do so but is not primarily resident in the UK. Their travel to the UK can be occasional or ad hoc (for example once or twice a year, or to complete occasional contracts) or regular (for example working in the UK during the week and returning home at the weekend).

A frontier worker (unless they are an Irish citizen) is required to hold a frontier worker permit to enter the UK for work. This permit may be issued digitally or as a physical document. For further guidance, see frontier workers.

Certain family members of frontier workers are eligible to apply to the EU Settlement Scheme (EUSS). If they were not resident in the UK by the end of the transition period, they must obtain EUSS status or an EUSS family permit before they travel to the UK if they intend to stay in the UK for longer than 6 months or they are a visa national. They are not entitled to seek admission as a family member of a frontier worker at the border without having obtained prior permission, although they may seek permission to enter as a visitor if they are a non-visa national and intend to remain for 6 months or less.

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Refusing permission to enter

Part Suitability of the Immigration Rules does not apply to EU Settlement Scheme (EUSS) status holders, EUSS family permit holders, frontier workers, Service Providers from Switzerland, S2 Healthcare Visitors or individuals covered by the saved European Economic Area (EEA) Regulations.

Part Suitability does apply to EEA nationals who hold a permission under any other route, or who are seeking entry to the UK without prior entry clearance in any capacity.

Part Suitability applies to an individual who has Temporary Protection, but you must only apply it in accordance with the guidance on exceptions for criminality.

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Grounds for cancellation of leave

Settled status, pre-settled status or leave to enter acquired by virtue of having arrived in the UK with an EU Settlement Scheme (EUSS) family permit must be cancelled at the border where the person's presence in the UK is not conducive to the public good because of conduct committed after the end of the transition period at 11pm on 31 December 2020. These are also mandatory grounds for revoking a person's EUSS family permit.

Settled status or pre-settled status must be cancelled at the border (if it has not already been cancelled while the person was overseas) where both:

- the person is an excluded person, as defined by section 8B(4) of the Immigration Act 1971 – meaning they are subject to a United Nations or UK travel ban – because of their conduct committed before the end of the transition period, and the person does not fall within section 8B(5A) or 8B(5B) of that Act
- the cancellation is justified on grounds of public policy, public security or public health in accordance with regulation 27 of the European Economic Area (EEA) Regulations 2016 irrespective of whether those Regulations apply to that person (except that for 'a right of permanent residence under regulation 15' read 'indefinite leave to enter or remain', and for 'EEA decision' read 'a decision under Annex 3 of Appendix EU or (as the case may be) Annex 3 of Appendix EU (Family Permit)')

These are also mandatory grounds for revoking a person's EUSS family permit.

Settled status or pre-settled status must be cancelled at the border (if it has not already been cancelled while the person was overseas) where the person is an excluded person, as defined by section 8B(4) of the Immigration Act 1971 – meaning they are subject to a United Nations or UK travel ban – because of conduct committed after the end of the transition period, and the person does not fall within section 8B(5A) or 8B(5B) of that Act. These are also mandatory grounds for revoking a person's EUSS family permit.

Settled status, pre-settled status or leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit may be cancelled at the border where, in accordance with Annex 3 to Appendix EU or Annex 3 to Appendix EU (Family Permit), you are satisfied that it is proportionate to cancel that leave where either:

- the cancellation is justified on grounds of public policy, public security or public health in accordance with regulation 27 of the EEA Regulations 2016 irrespective of whether those Regulations apply to that person (except that for 'a right of permanent residence under regulation 15' read 'indefinite leave to enter or remain', and for 'EEA decision' read 'a decision under Annex 3 of Appendix EU or (as the case may be) Annex 3 of Appendix EU (Family Permit)'
- the cancellation is justified on grounds that, in relation to the relevant application under Appendix EU or Appendix EU (Family Permit), 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); and the **information, representation or documentation was material** to the decision to grant the applicant leave to enter or remain under Appendix EU or (as the case may be) an entry clearance under Appendix EU (Family Permit)

- their leave to enter was granted by virtue of having arrived in the UK with an EUSS family permit, and since that entry clearance was granted, there has been a change of circumstances that is, or would have been, relevant to that person's eligibility for entry clearance, such that their leave to enter ought to be cancelled - (note that this does not apply to leave granted under Appendix EU)
- they hold pre-settled status, and they cease to meet, or never met, the requirements of Appendix EU and have not acquired a Withdrawal Agreement right to reside permanently on the basis of qualifying activity for the relevant period. (Note that this does not apply to leave to enter granted by virtue of having arrived in the UK with an EUSS family permit)

From the end of the transition period at 11pm on 31 December 2020, you are no longer required to separately issue a refusal of admission under the EEA Regulations 2016 when cancelling EUSS leave. You may still need to consider refusing admission when cancelling leave acquired by virtue of arriving with an EUSS family permit.

If you decide that cancellation of leave is appropriate, you must also then consider refusing permission to enter under the Immigration Rules.

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Conducive to the public good

For further guidance on decisions that are conducive to the public good, see the non-conducive guidance.

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Withdrawal Agreement right of permanent residence

A High Court judgment in December 2022 found that, where a holder of pre-settled status is concerned, the right of permanent residence under the Withdrawal Agreement (or the EEA EFTA Separation Agreement) is acquired by them automatically once the conditions for it are met – a second application (for settled status) is not required to obtain it.

The judgment means that an individual with pre-settled status may have rights similar to settled status, having acquired the right of permanent residence under the Withdrawal Agreement (or the EEA EFTA Separation Agreement) at the point they met the criteria for it (generally having resided continuously in the UK for 5 years while undertaking qualifying activity). Furthermore, individuals with settled status may want to rely on the date on which they acquired a Withdrawal Agreement right of permanent residence based on qualifying activity for the relevant period.

All cancellation decisions must include consideration of whether the individual holds a Withdrawal Agreement right of permanent residence based on qualifying activity for the relevant period, **in order to make the decision using the correct grounds for cancellation.**

This does not apply to Swiss citizens or their family members who, under the Swiss Citizens' Rights Agreement, cannot automatically acquire a right of permanent residence and must instead apply for settled status.

Once acquired, then, by virtue of the direct effect of the relevant Agreement in accordance with section 7A of the European Union (Withdrawal) Act 2018 (and notwithstanding Article 13(4) of the 2000 Order), that right of permanent residence – like settled status granted under the EUSS – can only be lost through absence from the UK where this exceeds 5 consecutive years).

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Status obtained by deception

Where you encounter an individual with EUSS leave or leave acquired by virtue of having arrived in the UK with an EUSS family permit, but you have reason to suspect they obtained that leave or permit by deception, you must consider whether cancelling their leave is appropriate.

Cancellation may be justified, where cancellation is proportionate, on the grounds that the individual's status or permit, granted under Appendix EU or Appendix EU (Family Permit) to the Immigration Rules, was obtained by deception in accordance with paragraphs A3.2(b) of Appendix EU or A3.4(b) Appendix EU (Family Permit).

Paragraphs A3.2(b) and A3.4(b) apply if in relation to the individual's application for that leave or permit, and whether or not to the individual'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), and the information, representation or documentation was material to the decision to grant the individual leave to enter or remain under Appendix EU or entry clearance under Appendix EU (Family Permit).

Examples of false or misleading information, representations or documents include, but are not limited to the individual:

- providing false documentation, or using false information in order to acquire documentation, for example in respect of the individual's claimed period of continuous qualifying period of residence in the UK
- falsely declaring that they have been resident in the UK for a continuous qualifying period of 5 years
- falsely claiming a family relationship, dependence or retained right of residence that does not exist
- providing false identity and nationality documentation for an individual on whom the individual's eligibility for the scheme depends

You must have evidence to show that, whether or not to the individual's knowledge and on the balance of probabilities, the individual or a third party had provided false or misleading information, representations or documents, which were material to the decision to grant the applicant indefinite or limited leave to enter or remain under Appendix EU or entry clearance under Appendix EU (Family Permit). You must also consider whether a decision to cancel leave on this basis is proportionate.

You must not cancel leave on the basis of false or misleading information, representations or documents, or of non-disclosure of material facts, unless you are satisfied that deliberate dishonesty or deception is involved. This dishonesty or deception may either be on the part of the individual or a third party. You must put any allegation of dishonesty or deception to the individual to allow them the opportunity to provide a reasonable explanation. You must not cancel leave on the basis of a genuine error on the part of the individual or a third party, as such deception would not be deliberate.

Where you consider that a genuine error has been made, but where that error was material to the individual qualifying for leave, you may consider whether they have ceased to meet the rules (for pre-settled status holders) or there has been a change of circumstances (for EUSS family permit holders).

Where you are not satisfied on the balance of probabilities that false or misleading information, representations or documents were provided, you must not proceed to cancel EUSS leave or leave acquired by virtue of having arrived with an EUSS family permit.

False or misleading information, representations or documents

'False or misleading information, representations or documents' means information, representations or documents provided with the intention to deceive. This might have been, for example, in the application, in supporting documents or verbally at an interview conducted under Annex 2 to Appendix EU for the purpose of deciding

whether the applicant meets the eligibility requirements for indefinite or limited leave to enter or remain.

False document

A false document includes:

- a genuine document which has been altered or tampered with
- a counterfeit document (one that is completely false)
- a genuine document which is being used by an imposter
- a genuine document which has been fraudulently obtained or issued
- a genuine document which contains a falsified or counterfeit visa or endorsement

It will normally be appropriate to have a document examined by a forgery officer before taking any decision on the basis that it is false.

False identity

You may encounter an individual who has applied for or obtained EUSS leave in a false identity.

See types of deception.

False evidence of residence or length of residence

You may encounter an individual who has applied or obtained for EUSS leave in their genuine identity but provided false evidence that they were resident in the UK before the end of the transition period when in fact they were not, or provided false evidence that they had resided continuously in the UK for 5 years when in fact they had not.

Material to the decision

The false or misleading information, representation or documentation is material if it would have affected the individual's ability to meet the requirements of Appendix EU or Appendix EU (Family Permit), because discounting that information, representation or documentation would have meant that the individual would not have been granted the leave or entry clearance they were granted under Appendix EU or Appendix EU (Family Permit).

Where you are not satisfied that the deception was material to the decision to grant leave or entry clearance, you must not proceed to cancel the person's leave.

Proportionality

If you are satisfied that false or misleading information, representations or documentation was used and it was material to the decision to grant the leave or entry clearance, you must then consider whether cancellation of leave would be

proportionate, in light of all the known circumstances of the case and the available evidence.

Factors to consider in assessing the proportionality of your decision include:

- the seriousness of the deception
- whether the individual knew about the deception
- the impact on the individual and their family member or members, in particular any children under the age of 18, of a cancellation decision

Types of deception

Not a genuine EEA national

Where the individual obtained their EUSS leave as an EEA national but they are not a genuine EEA national, for example because they:

- obtained EUSS leave using a false document with the intention to deceive, for example, a false passport
- are an imposter
- obtained their EEA nationality by deception

It is likely to be appropriate to cancel their leave, provided that the cancellation decision is proportionate, and you are satisfied that they obtained the leave by deception.

In the case of an imposter, before taking the decision to cancel EUSS leave, you must seek to establish whether the rightful holder of the identity made the application before the imposter took possession of that identity. This may involve contacting the rightful holder, or comparing the photograph taken by the applicant during the application process with the individual at port. If you are not satisfied that the imposter fraudulently made the application, you must leave the EUSS leave in force (as it does not apply to them) but continue to consider refusing them admission and / or refusing them leave to enter.

Consideration of family members

In such cases, consideration must also be given to cancelling the leave of any family member who were granted EUSS leave or an EUSS family or travel permit, although they may be eligible for the EUSS in their own right or on another basis in which case the leave must not be cancelled. If the family members are not present at the border, you must complete a Curtailment referral form and email it to Status Review Unit.

Not a genuine family member

You may encounter an individual who has falsely claimed to be the family member of an EEA national (or otherwise falsely claimed to qualify on the basis of retained rights or derivative rights, for example, as a person with a Zambrano right to reside).

Change of circumstances

This ground for cancellation does not apply to holders of EUSS settled or pre-settled status. It only applies to leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit.

You must consider whether you are still required to issue a refusal of admission when cancelling leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit.

Where you are considering cancelling leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit, the cancellation of leave must be proportionate, having regard to all of the relevant facts and circumstances of the case.

The EUSS family permit holder may be joining a family member who is a relevant EEA citizen, an Irish citizen, a relevant person of Northern Ireland or a qualifying British citizen (QBC), as defined in Appendix EU (Family Permit).

For a change of circumstances to justify cancellation of leave, it must relate to the individual's ability to meet the eligibility requirements for an EUSS family permit. For example:

- the individual is no longer the family member of a relevant EEA citizen (or QBC)
- the relevant EEA citizen (or QBC) is neither resident in the UK nor intends to travel to the UK within 6 months of the original application for entry clearance
- the individual is neither joining a relevant EEA citizen (or QBC) present in the UK nor being accompanied by them
- the individual was granted an EUSS family permit as the spouse, civil partner or durable partner of a relevant EEA citizen (or QBC) and another individual has been granted leave to enter or remain as the spouse, civil partner or durable partner of the same relevant EEA citizen (or QBC)

Where cancellation is being considered on the basis that the relevant EEA citizen (or QBC) is outside the UK, consideration must be given to the reason for their absence. If they do not reside in the UK and have not accompanied the individual, cancellation may be justified and proportionate. However, you must consider whether there are circumstances that mean cancellation is not proportionate, for example if the relevant EEA citizen (or QBC) normally resides in the UK and has compelling compassionate reasons for being temporarily absent.

Ceasing to meet, or never met, the requirements of Appendix EU

It is only EUSS pre-settled status holders who are subject to a requirement that they must continue to meet the eligibility requirements for pre-settled status which they met at the date of application (except for any which relate to dependency as a child, dependent parent or dependent relative), or otherwise meet other eligibility

requirements for pre-settled status. This ground for cancellation does not apply to holders of EUSS settled status or leave to enter granted by virtue of having arrived in the UK with an EUSS family permit.

An individual does **not** cease to meet the requirements of Appendix EU if they cease to meet the eligibility requirements under which they were granted pre-settled status, but instead now meet alternative eligibility requirements (for example, an individual granted pre-settled status as a family member who now has a retained right of residence).

If you encounter an individual and it comes to your attention that they have pre-settled status and no longer meet the eligibility requirements of Appendix EU for this (for example, a non-EEA national granted pre-settled status and there has been a legal termination of the marriage or civil partnership, following which the person has ceased to be the family member of an EEA citizen, did not acquire a retained right of residence and is not otherwise eligible for pre-settled status), or never met the eligibility requirements (for example, they had their pre-settled status extended automatically but did not meet the requirements at the time), you may go on to consider the proportionality of cancelling their leave.

An individual who holds pre-settled status may cease to meet the requirements for that leave if, for example:

- they have not maintained their continuity of residence in the UK in accordance with the definition under Appendix EU of ‘continuous qualifying period’
- they are no longer the family member of a relevant EEA citizen (or of their spouse or civil partner) and do not meet the definition under Appendix EU of a ‘family member who has retained the right of residence’
- they no longer meet the definition under Appendix EU of a ‘person with a derivative right to reside’
- they no longer meet the definition under Appendix EU of a ‘person with a Zambrano right to reside’

In all such cases, you must also be satisfied that the individual does not meet any of the other eligibility requirements for pre-settled status under Appendix EU and that they did not acquire a Withdrawal Agreement right of permanent residence on the basis of qualifying activity for the relevant period before they stopped meeting the requirements for pre-settled status.

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In addition, cancellation must in all cases be proportionate, taking into account all of the relevant facts and circumstances of the case.

For further guidance refer to the main EUSS caseworker guidance.

Under rule EU4 of Appendix EU, where a person has been granted pre-settled status as a child, dependent parent or dependent relative, they do not need to continue to meet any eligibility requirement which related to their dependency, in order to retain that leave and remain eligible in due course for settled status (where they apply on the basis of the same family relationship).

For example, where a person has been granted pre-settled status on the basis of being a dependent parent of a relevant EEA citizen, they will not cease to be eligible for this status solely because they cease to be dependent on the relevant EEA citizen, and they will remain eligible in due course for settled status as a dependent parent of that relevant EEA citizen, where they apply on the basis of the same family relationship.

Therefore, you must not cancel EUSS pre-settled status of a child, dependent parent or dependent relative where the only change in circumstances relates to their dependency.

Proportionality

Any decision to cancel EUSS leave or leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit, on grounds which are not mandatory grounds for cancellation under Appendix EU or Appendix EU (Family Permit) **must be proportionate.**

Whether or not a decision is proportionate will depend on the specific facts and circumstances of the individual case. This individualised consideration must be explicitly referred to in the Notice of Cancellation of Leave that is served on the person.

To assess proportionality, you must balance on the one hand the justification for cancelling leave, including where applicable:

- the negative conduct of the individual
- where conduct that pre-dates the application subsequently comes to light, the extent to which it would have made a material difference to the outcome of the application, and the extent to which the individual deliberately concealed it
- the threat that the individual poses to the UK
- the extent to which the individual is personally responsible for or had knowledge of any deception
- the extent of any change in circumstances that may justify cancellation, or mean that the individual ceases to meet the eligibility requirements of the Rules, against the consequences that cancellation will have for the individual, particularly where it will result in them losing the right to reside in the UK, including but not limited to:
  - whether the individual can reasonably be regarded as resident in the UK
  - the length of time that the individual has resided in the UK, both in terms of duration and as a proportion of their life
  - the ties that the individual has to the UK, including family, work, study and private life
  - the ties that the individual has in their home country
  - the impact that the decision will have on others, paying particular regard to the section 55 duty in respect of the best interests of children
  - any specific compelling compassionate circumstances relating to the individual or their family
  - whether the circumstances provisionally justifying cancellation are likely to be temporary, for example where the family member an EUSS family permit holder is joining is only temporarily outside the UK

In order to be proportionate, the decision to cancel leave must be appropriate and necessary. It needs to be specific to the individual in question rather than based on general considerations or matters isolated from the facts of the case and must take into account all the relevant facts and circumstances of the case, including the consequences of cancellation for the individual.

Status Review Unit referrals

The Status Review Unit (SRU) is the team responsible for EUSS in-country curtailment decisions.

Where there is not sufficient evidence available to you at the border to cancel EUSS status, but you suspect there may be grounds to consider curtailment or conduct further investigations, you must refer the case by email to the SRU, in line with the guidance in this section, using the Curtailment referral form.

Referrals for false, misleading information, representations or documentation

When you are considering whether to refer for curtailment of EUSS leave on the grounds that it is proportionate to curtail leave due to false or misleading information, representations or documentation having been submitted in an application, or to any person to obtain a document in support of the application (in either case, whether or not to the applicant's knowledge), you must consider whether the false or misleading information, representation or documentation was material to the decision to grant the applicant that leave. If, regardless of the false or misleading information, representation or documentation, the holder would otherwise have been eligible for that leave, you must not refer for curtailment of EUSS leave.

Referrals for ceasing to meet, or never met, the requirements of Appendix EU

When considering whether to refer for curtailment on the grounds that the individual ceases to meet the requirements of Appendix EU, you must only make a referral to the SRU where both:

- the marriage or civil partnership of a pre-settled status holder has been legally terminated
- as a result of that divorce/dissolution the pre-settled status holder does not have a retained right of residence and does not satisfy any of the other eligibility criteria under Appendix EU

Under Appendix EU, it is not an eligibility requirement that the relationship be subsisting whilst a couple remain legally married or in a civil partnership. A referral to the SRU must not be made on the grounds that a spouse or civil partner has separated from their EEA national family member, if that marriage or civil partnership has not legally ended.

Where the individual does not meet the definition of a 'family member who has retained the right of residence', or any other eligibility criteria under Appendix EU, then you must consider referral to the SRU for curtailment of their leave where it is proportionate to do so.

Where there is evidence that an individual is party to a marriage, civil partnership or durable partnership of convenience (as defined in Annex 1 to Appendix EU), and the

relevant conduct commenced after 11pm on 31 December 2020, you must make a referral to the SRU for consideration of curtailment.

Related content
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Cancellation: appeal and administrative review rights

Usually, an individual does not have a right of appeal or administrative review in respect of a cancellation decision made on or after 6 April 2015. **However, where an individual has pre-settled or settled status under the EU Settlement Scheme (EUSS) or leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit, they will have a right of appeal against a decision to cancel that leave.**

There is no scope to apply for an administrative review of a decision made on or after 5 October 2023 – or, from 4 April 2024, made before 5 October 2023 – to cancel EUSS status or leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit.

Since 11pm on 31 January 2020, any decision to cancel EUSS leave or leave to enter acquired by virtue of having arrived in the UK with an EUSS family permit **attracts a right of appeal** under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (the Citizens' Rights Appeals Regulations). Where an individual has a right to appeal against the decision to cancel their leave, their deadline to do so is 14 calendar days in-country or 28 calendar days from overseas.

Where the cancellation decision was taken before 5 October 2023 and the person applied for an administrative review before 4 April 2024, the deadline for them to appeal against that cancellation decision does not commence until a notice informing them that the administrative review has been unsuccessful has been issued.

Appeal rights under the Citizens' Rights Appeals Regulations are generally exercisable in-country and suspensive of removal. Where a person has a suspensive, in-country appeal right under those regulations, they cannot be removed until that suspensive appeal right has been exhausted, even if other appeal rights that they have, for example under the European Economic Area (EEA) Regulations, are non-suspensive or have been exhausted.

In limited circumstances, an appeal right under those regulations is not suspensive of removal: where the cancellation decision is certified as having been taken in the interests of national security (under regulation 15), where a decision has been made to certify removal under regulation 16 (where there is an extant deportation decision or order) or where the cancellation decision is certified under regulation 16A (in cases of abuse of rights or fraud). **These case types will rarely occur at the border and you must not certify a cancellation decision without further consultation with the National Command Centre.**

For cancellation decisions taken at the border, there is no right to enter the UK, but an appeal right can be exercised from out of country.

Related content

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Administrative review

This page tells Border Force officers where there was a right to an administrative review. Only eligible EU Settlement Scheme (EUSS) decisions dated before 5 October 2023 carried a right to an administrative review, for which an application had to be made before 4 April 2024. From 4 April 2024, eligible EUSS decisions have a right of appeal only.

Right to an administrative review

There are some key differences between administrative reviews under Appendix AR and Appendix AR (EU). Further information can be found in the relevant guidance:

- EUSS Administrative Review guidance – for administrative reviews under Appendix AR (EU)
- Administrative Review guidance – for administrative reviews under Appendix AR

There was no right to an administrative review where leave was cancelled on grounds of public policy, public security or public health, or on grounds that cancellation is conducive to the public good.

Pending administrative review

Under Appendix AR (EU) applicants were permitted to submit new information or evidence with their administrative review application. Where they did, and the individual presents at the border, you must consider whether it shows that the applicant qualifies for a grant of leave (whether or not they qualified at the date of the decision to cancel leave) in line with the requirements for individuals with a pending application.
Unlike administrative reviews of other decisions, administrative reviews under Appendix AR (EU) are not treated as withdrawn if the applicant:

- requests their passport back so they can travel
- leaves the UK whilst their review is pending
- makes a further application under another immigration route

The administrative review application will be withdrawn where the applicant notifies UKVI or Border Force, in writing, that they wish to withdraw the application, or if they make a further application under Appendix EU or an application under Appendix EU (Family Permit).

Liability to removal

Rule AR(EU)4.1. of Appendix AR (EU) confirms that, where a person with a pending administrative review under that Appendix leaves the UK and is refused re-entry to the UK, they may be removed from the UK.

As such, individuals with a pending EUSS administrative review are to be considered in line with the requirements for individuals with a pending EUSS application.

Related content
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Deportation and exclusion

Deportation orders

European Economic Area (EEA) nationals and their family members may be subject to a deportation order issued under either the EEA Regulations or the Immigration Act 1971 (including where the individual is subject to automatic deportation under the UK Borders Act 2007).

The service of a deportation order automatically invalidates any leave or permission held, including EU Settlement Scheme (EUSS) leave.

A person served with a deportation order issued under the EEA Regulations before making an application to the EUSS will automatically be refused leave.

Where a person was served with a deportation order issued under the Immigration Act 1971 before making an application to the EUSS (for example, before becoming an EEA national or their family member), the conduct which gave rise to the deportation order will be considered as part of their EUSS application. If the conduct is not assessed as sufficiently serious to justify refusal on suitability grounds, the EUSS application may be granted. In such cases, the deportation order should normally have been revoked when the EUSS status was granted. If you encounter such an individual, and the deportation order has not been revoked, you **must** still allow them to proceed on the basis of their EUSS status, unless there are other grounds to consider the cancellation of that status and refer the case to Foreign National Offender Returns Command (FNO RC).

In all other cases, regardless of which type of deportation order has been issued, the individual must be considered in line with the guidance for their purpose and circumstances of entry, including mandatory refusal of permission to enter under paragraph SUI 2.1(c) of the Immigration Rules.

Exclusion orders and decisions

A decision to exclude a person from the UK is made either by:

- an exclusion decision: a personal decision of the Secretary of State, on the ground that it is conducive to the public good or, where applicable, on the grounds of public policy, public security or public health
- an exclusion order: on the grounds of public policy, public security or public health in accordance with regulation 27 and Schedule 1 of the Immigration (European Economic Area) Regulations 2016 (EEA Regulations 2016), or on conducive grounds under regulation 27A of those regulations

EEA nationals and their family members may be subject to an exclusion order or an exclusion decision.

An exclusion decision or an exclusion order does not automatically invalidate any existing leave which is held, but a decision to cancel such leave will normally be taken at the same time that an exclusion order is issued. If you do encounter an individual who is subject to an exclusion order or exclusion decision but has not had their existing leave cancelled, you must consider cancelling their leave on non-conducive grounds or on public policy or public security grounds, depending on when the conduct occurred and whether they are protected by the agreements.

Where an individual was excluded by way of an exclusion decision before making an application to the EUSS, the conduct which gave rise to the exclusion decision will be considered as part of their EUSS application. If the conduct is not assessed as sufficiently serious to justify refusal on suitability grounds, the EUSS application may be granted. In such cases, the exclusion decision should normally have been revoked when the EUSS status was granted. If you encounter such an individual, and the exclusion decision has not been revoked, you **must** still allow them to proceed on the basis of their EUSS status, unless there are other grounds to consider the cancellation of that status, and refer the case to FNO RC.

Where you encounter an individual who is subject to an exclusion order or decision, and they do not hold any form of leave and have no pending EUSS application, the individual must be considered for mandatory refusal of permission to enter under paragraph SUI 2.1(c) of the Immigration Rules.

Related content
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Lapsed leave for EU Settlement Scheme status holders

Lapsing of leave

Under Article 13(4) of the Immigration (Leave to Enter and Remain) Order 2000, where an individual holds settled status under the EU Settlement Scheme (EUSS), it will have lapsed if they have been outside the UK and Islands (other than on Crown service, as defined in Appendix EU, or as their accompanying spouse, civil partner, durable partner or child) for more than 5 consecutive years (or more than 4 consecutive years if they are a Swiss citizen or their family member). Appendix Returning Resident to the Immigration Rules applies where they wish to return to and settle in the UK.

Under Article 13(4) of the Immigration (Leave to Enter and Remain) Order 2000, where an individual holds pre-settled status under the EUSS, it will have lapsed if they have been outside the UK and Islands (other than on Crown service, as defined in Appendix EU, or as the accompanying spouse, civil partner, durable partner or child of a Crown servant) for more than 2 consecutive years by 21 May 2024, unless they had acquired a Withdrawal Agreement right of permanent residence before it lapsed (in which case, you should consider their absence as though they held settled status).

After 21 May 2024, where an individual holds pre-settled status under the EUSS, it will have lapsed if they have been outside the UK and Islands (other than on Crown service, as defined in Appendix EU, or as the accompanying spouse, civil partner, durable partner or child of a Crown servant) for more than 5 consecutive years (or more than 4 consecutive years if they are a Swiss citizen or their family member).

European Economic Area (EEA) nationals, excluding Irish nationals, who are not protected under the Agreements are required to meet the requirements under the Immigration Rules in the same way as non-EEA nationals. Where an individual whose leave has lapsed is seeking to enter the UK for purposes which require an entry clearance, for example, to work in the UK, but they do not hold one, they will be liable to be stopped at the border. Individuals without the necessary immigration permission for the activities they intend to undertake in the UK may be refused permission to enter at the border, which makes them liable for detention.

Related content
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Arriving passengers without a pending valid EU Settlement Scheme application or an EUSS family permit

This page tells Border Force officers about how to deal with arriving passengers without a pending valid EU Settlement Scheme (EUSS) application (as evidenced by a Certificate of Application) or an EUSS family permit.

Scope for late applications to the EUSS

Where a European Economic Area (EEA) national or their family member was resident in the UK by the end of the transition period at 11pm on 31 December 2020, the deadline for them to apply to the EUSS was 30 June 2021. Where, on 30 June 2021, they had leave under another immigration route or were exempt from immigration control, the deadline for them to apply to the EUSS will be the expiry date of that leave or within 90 days of ceasing to be exempt from immigration control.

Where an EEA or non-EEA national relies on being the joining family member of an EEA national who was resident in the UK by the end of the transition period at 11pm on 31 December 2020, the deadline for them to apply to the EUSS was 30 June 2021 (where the date on which they first arrived in the UK after 31 December 2020 was before 1 April 2021) or otherwise within 3 months of the date on which they first arrived in the UK after 31 December 2020.

Again, there is an exception if they had leave under another immigration route (or leave to enter granted by virtue of having arrived in the UK with an EUSS family permit) or were exempt from immigration control at the relevant deadline, in which case the deadline for them to apply to the EUSS was the expiry date of that leave or within 90 days of ceasing to be exempt from immigration control.

In line with the Agreements, a valid late application to the EUSS can be made, after the relevant deadline, where there are ‘reasonable grounds’ for the person’s delay in making their application, as outlined in the main EUSS caseworker guidance. The assessment of whether there are such reasonable grounds will be made by UKVI, in accordance with that guidance, where a late EUSS application is made, whether from overseas (where the person has the biometric passport, national identity card or UK-issued residence card required to apply online) or in the UK (where the person has an EUSS family permit or other permission to enter the UK).

For late applications made from 9 August 2023, where there are not reasonable grounds for the person’s delay in making their application to the EUSS, the application will be rejected by UKVI as invalid, the applicant will not be issued with a Certificate of Application and their eligibility for EUSS status will not be considered.

Border Force officers are not required to consider whether, in the case of an arriving passenger without a pending valid EUSS application or an EUSS family permit, there are reasonable grounds for them to make a valid late application to the EUSS.

Approach at the border and at juxtaposed ports

Where you encounter an EEA national or their family member at the border or at a juxtaposed port, who has not made a valid application to the EUSS (as evidenced by a Certificate of Application) and does not have an EUSS family permit, but **claims that they were resident in the UK by 31 December 2020**, you must establish if they otherwise qualify for permission to enter under the Immigration Rules. If they do not and you are satisfied that refusal would not be disproportionate, you may proceed straight to removal from the UK (or, at a juxtaposed port, from the Control Zone) after refusing them permission to enter.

It is **not** appropriate to facilitate entry to the UK for the purpose of making an application to the EUSS using immigration bail.

You may also encounter individuals who have not made a valid application to the EUSS (as evidenced by a Certificate of Application) and do not have an EUSS family permit, but who hold an **unexpired** document issued by the Home Office under the EEA Regulations 2016. This includes a registration certificate, residence card, document certifying permanent residence, permanent residence card or derivative residence card. **These documents no longer provide a basis in themselves for entry to the UK and you must establish if the person qualifies for permission to enter under the Immigration Rules.** If they do not qualify for entry under the Immigration Rules, and you are satisfied that refusal would not be disproportionate, you may proceed straight to removal from the UK (or, at a juxtaposed port, from the Control Zone) after refusing them permission to enter.

However, if, on the facts of an individual case, you are satisfied that there are sufficiently compelling, compassionate circumstances as to justify a grant of Leave Outside the Rules (LOTR), you may grant LOTR for 28 calendar days. You must advise the person that they must make a valid application to the EUSS within that period, or they will become an overstayer.

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This list is non-exhaustive, but circumstances which may mean that removal is disproportionate and LOTR could be considered based on compelling, compassionate circumstances include where:

- the best interests of a child would be met by allowing the individual to enter the UK to make a late EUSS application in-country (whether or not the individual

themselves is the relevant child), including the case of a child whose parents applied to the EUSS for themselves but did not apply for the child
- the individual is vulnerable and may require support in completing their EUSS application, particularly where they lack the mental or physical capacity to make the application themselves
- a vulnerable person is dependent on the presence of the individual in the UK

Children or vulnerable adults without a valid pending EUSS application or an EUSS family permit

You may encounter a child at the border, where their parent or parents or guardian has obtained EUSS status for themselves or has a valid pending EUSS application (based on continuous residence in the UK since before the end of the transition period and, where they are a non-EEA national, a relevant family relationship), but they have not applied to the EUSS for the child, who does not have an EUSS family permit.

Likewise, you may encounter a vulnerable adult at the border whose specific care or support needs mean that they are dependent on another adult who has EUSS status themselves (where they require it) and who should have applied to the EUSS on behalf of the vulnerable adult, who does not have an EUSS family permit.

In such cases, provided that you are satisfied as to the family relationship between the adult and the child (or the family or carer relationship between the 2 adults), you must treat the circumstances as sufficiently compelling (in light also, where a child is concerned, of the section 55 duty) as to warrant a grant of LOTR for the child or adult of 28 days.

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In cases where none of the relevant parties has made a valid application to the EUSS, you must continue to process them all in line with this guidance.

Joining family members without an EUSS family permit

A joining family member is an EEA or non-EEA national who was not themselves resident in the UK by the end of the transition period at 11pm on 31 December 2020, but (unless they were born or adopted since that date) was by then the close family member of an EEA national who (with some exceptions) holds EUSS status based on their residence in the UK by the end of the transition period.

The family relationship must continue to exist when the family member seeks to join their EEA national sponsor in the UK.

An individual may qualify as a joining family member based on the following relationships:

- spouse or civil partner
- durable partner
- direct descendant (such as child, grandchild) of the relevant sponsor (or of their spouse or civil partner) aged under 21
- direct descendant (such as child, grandchild) of the relevant sponsor (or of their spouse or civil partner) who is aged 21 or over and is dependent on the relevant sponsor (or on their spouse or civil partner)
- dependent relative in the ascending line (such as a dependent parent or grandparent) of the relevant sponsor (or of their spouse or civil partner)

For full details of how an individual qualifies as a joining family member, see the main EUSS guidance.

A joining family member can apply to the EUSS from overseas, where they have the biometric passport, national identity card or UK-issued residence card required to apply online.

Whether or not they can apply to the EUSS from overseas, a joining family member can apply for an EUSS family permit. This will enable them to come to the UK, where they can apply to the EUSS.

Illegal entry – ‘specified enforcement case’

A valid EUSS application as a joining family member cannot be made on or after 9 August 2023, if the person is a ‘specified enforcement case’ (that is an illegal entrant or an irregular arrival), as defined in Annex 1 to Appendix EU.

For further details see the main EUSS guidance.

At the border

Where an EEA or non-EEA national joining family member arrives at the border without a valid pending EUSS application (as evidenced by a Certificate of Application) or an EUSS family permit, you must first consider whether they qualify

for entry under the Immigration Rules. In some cases, the family member may in fact not intend to settle in the UK and may instead qualify for entry as a visitor.

Appendix EU permits a person in the UK as a visitor to apply to switch into the EUSS as a joining family member. However, this **does not** affect the provisions of the visitor rules, including the requirement that an individual seeking entry as a visitor must intend to leave the UK at the end of their visit. Where you identify an individual at the border who does not have an EUSS family permit (or hold, or have a valid pending application for, EUSS leave) and intends to settle in the UK as a joining family member, the visitor rules continue to apply and you must refuse them permission to enter under paragraph SUI 20.1 of the Immigration Rules.

In most cases, it will be appropriate to remove the individual and require them to obtain entry clearance or apply to the EUSS from overseas.

Where the joining family member is a child or vulnerable adult (and you are satisfied as to the relationship between them and the relevant sponsor), and their parent or parents or other family members hold EUSS leave, has a valid pending EUSS application (as evidenced by a Certificate of Application) or an EUSS family permit, you may treat this as sufficiently compelling to grant entry to the child or vulnerable adult.

Documents issued by the Crown Dependencies on an equivalent basis to the UK must be treated the same as those issued by the UK.

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Otherwise, you must refuse entry under paragraph SUI 20.1 of the Immigration Rules and proceed to remove the individual.

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Family member of a qualifying British citizen

From 11:59pm on 8 August 2023, the EUSS family permit closed to applications by a family member of a qualifying British citizen seeking to return to the UK with a British citizen who had been exercising their free movement rights in the EEA or Switzerland before the end of the transition period.

From 11:59pm on 8 August 2023, the EUSS also closed to new applications by a family member of a qualifying British citizen. Such a family member can now only apply to the EUSS where they already have pre-settled status on that basis or have been granted a relevant EUSS family permit.

Unless they satisfy another part of the Immigration Rules, a family member of a qualifying British citizen will **not** be entitled to enter the UK without an EUSS family permit and must be considered for refusal.

Exceptions to the requirement to grant LOTR

LOTR can be considered where there are sufficiently compelling, compassionate circumstances. You are **not** required to grant LOTR in order for an application to be made in-country when one of the following applies:

- individual is subject to a deportation order, exclusion order or exclusion direction
- the individual has been refused admission to the UK under the EEA Regulations 2016 and has not subsequently been admitted
- the individual has been served with a removal decision under the EEA Regulations 2016, which has not subsequently been withdrawn, and they have not subsequently been admitted
- the individual has previously had an EUSS application refused on suitability or eligibility grounds, or rejected as invalid, for example, for lack of reasonable grounds for the delay in applying or lack of proof of identity and nationality
- the individual previously held EUSS leave which has been cancelled, curtailed or revoked
- the individual has previously been served with a ‘28 Day Notice for EUSS’ by Immigration Enforcement and has still not made an EUSS application
- the individual has previously been granted immigration bail or LOTR at the border for the purpose of making an in-country application to the EUSS, and has not made an EUSS application

However, **you must consider each case on its own facts,** and – save where the person is subject to a deportation order, exclusion order or exclusion direction – may consider granting LOTR where there are good reasons to do so.

Individuals previously rejected or refused under the EUSS

Applications to the EUSS will be rejected where the individual does not make a valid application, which includes not providing the required proof of identity and nationality or there not being reasonable grounds for their delay in applying. Where you encounter at the border an individual who has previously had an EUSS application rejected, you will need to process the individual in line with the guidance relevant to their purpose in coming to the UK and their circumstances.

Applications to the EUSS may be refused on suitability and / or eligibility grounds. You can find the reasons for refusal on PEGA.

Where an individual has had their application to the EUSS refused on suitability grounds, they will have also generally have a previous negative immigration decision, such as a deportation order or refusal of admission, and where this is so (and that decision or order has not been withdrawn or revoked), you may continue to rely on this in order to refuse entry. If they have not had a previous negative decision (for example, their EUSS application was refused due to deception), you must consider the reasons for that refusal and assess their conduct against Part Suitability of the Immigration Rules.

Where an individual has had their application to the EUSS refused on eligibility grounds, this is likely to mean that they provided no or insufficient evidence of their qualifying residence in the UK and/or of the relevant family relationship, despite attempts by UKVI to contact them to obtain this. In such cases, you are not required to grant LOTR to enable a further in-country EUSS application to be made.

Long term residents and indefinite leave holders

EEA nationals and their family members who hold indefinite leave to enter or remain in the UK (ILE / ILR) other than under the EUSS are not required to apply to the EUSS and may continue to reside in the UK and cross the border in accordance with their existing leave. They may choose to apply to the EUSS if they wish to do so but will need to evidence reasonable grounds for their delay in making their application since the 30 June 2021 deadline applicable to them.

Where an individual presents at the border with evidence that they hold ILE / ILR other than under the EUSS, they **must** be allowed to proceed on the basis of that leave, **unless** there are grounds to believe that it may have been cancelled or revoked or have lapsed (through absence from the UK for more than 2 consecutive years).

Some EEA nationals or their family members without ILE / ILR may believe that they are not required to apply to the EUSS because they have lived in the UK for a long time. This is only true if they meet the Windrush criteria.

In all other cases, the individual must be considered as a person who has failed to apply to the EUSS by the 30 June 2021 deadline. Where you are satisfied that the individual has resided in the UK for a significantly long period of time, you may consider whether there are sufficiently compelling, compassionate circumstances as to mean that their removal is disproportionate such as to justify a grant of LOTR for 28 days rather than refusing entry.

Windrush cases

EEA nationals and their family members who have not applied to the EUSS may be entitled to assistance under the 'Windrush Scheme', depending on when they began residing in the UK and whether they obtained ILE / ILR.

Settled in the UK before 1 January 1973

The Immigration Act 1971 came into force on 1 January 1973 (the date on which the UK joined the European Economic Community). Any individual of any nationality who was settled in the UK on that date had ILR automatically conferred on them. Some Commonwealth citizens (which includes Cyprus and Malta) may also have a right of abode and may be entitled to apply for British citizenship. Because ILR was conferred on them automatically, many individuals never obtained documentary evidence of their status.

If you encounter an individual who claims to have resided in the UK since before 1 January 1973 but does not have documentary evidence of their status, you must consider them in line with the Windrush guidance.

This means that, provided you are satisfied based on the desk interview that they were settled in the UK before 1 January 1973, and they have not been absent from the UK for more than 2 consecutive years, you must land them as a returning resident, and no further grant of leave is required.

If you are satisfied that the individual was settled in the UK before 1 January 1973, but they have been absent from the UK for more than 2 consecutive years, their ILR will have lapsed. You should consider granting LOTR for 3 months on Code 1. An exception to this is where an individual who was absent from the UK for more than 2 consecutive years was subsequently re-granted ILE / ILR and has not been absent from the UK for more than 2 consecutive years since their most recent grant of ILE / ILR: in such cases you should land them as a returning resident and no further grant of leave is required.

In either case, you must advise the individual that they should obtain evidence of their status. They may choose to apply to the Windrush Scheme or (where they can evidence reasonable grounds for their delay in making their application since the 30 June 2021 deadline applicable to them) the EUSS.

For advice on applying see: Apply to the EU Settlement Scheme (settled and pre-settled status).

Arrived in the UK from 1 January 1973 to 31 December 1988, and obtained ILE / ILR

Any foreign national who arrived in the UK from 1 January 1973 to 31 December 1988, and at some stage obtained ILE / ILR, may be eligible for assistance under the Windrush Scheme if they do not have evidence of their ILE / ILR.

If you encounter an individual who claims to be part of this cohort, but does not have documentary evidence of their status, you must consider them in line with the Windrush guidance.

This means that provided you are satisfied based on the desk interview that they arrived in the UK from 1 January 1973 to 31 December 1988 and obtained ILE / ILR at some stage, and they have not been absent from the UK for more than 2 consecutive years since their most recent grant of ILE / ILR, you should land them as a returning resident and no further grant of leave is required.

If the individual claims to have a document proving their ILE / ILR, but has not carried it with them, you should advise them to carry it on future occasions when travelling in and out of the UK. You should also advise them that it may be easier for them to apply to the Windrush Scheme or the EUSS in order to prove their status when necessary.

If the individual does not claim to have a document proving their ILE / ILR, you must advise the individual that they should obtain evidence of their status. They may choose to apply to the Windrush Scheme or (where they can evidence reasonable grounds for their delay in making their application since the 30 June 2021 deadline applicable to them) the EUSS.

For advice on applying see: Apply to the EU Settlement Scheme (settled and pre-settled status).

If you are satisfied that the individual is part of this cohort but has been absent from the UK for more than 2 consecutive years at any stage (and they have not subsequently been re-granted ILE / ILR), their ILE / ILR will have lapsed, and they are not eligible for the Windrush Scheme. However, they may still qualify for the EUSS where they have reasonable grounds for their delay in applying. Such individuals must be considered as a person who has failed to apply to the EUSS by the 30 June 2021 deadline but based on their length of residence you may consider it appropriate to grant them LOTR for 28 days on Code 3 rather than refusing entry.

Other individuals claiming to hold ILE / ILR

Claims granted ILE / ILR since 2002

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If you are able to locate evidence that an individual holds ILE / ILR, you must treat them as a returning resident, and allow them to proceed, unless there are grounds to believe that their leave may have been cancelled or have lapsed. You should advise them that on future occasions they must carry evidence of their ILE / ILR, and that they may find it easier to apply for an eVisa under the No Time Limit process, or (where they can evidence reasonable grounds for their delay in making their application since the 30 June 2021 deadline applicable to them) they can apply to the EUSS.

If you are unable to locate evidence that an individual holds ILE / ILR, you must assess whether their account is credible. The longer ago that they claim ILE / ILR was issued, the more plausible that it is likely to be that it cannot be located on Home Office systems. An individual is also more likely to have been granted ILE / ILR when they were not a national of an EU Member State, so it may be relevant to consider whether the claimed date of grant is prior to the individual's country of nationality joining the EU.

If you are satisfied that the individual does hold ILE / ILR, you must treat them as a returning resident, and allow them to proceed, unless there are grounds to believe that their leave may have been cancelled or have lapsed. You should advise them that on future occasions they must carry evidence of their ILE / ILR, and that they may find it easier to apply for an eVisa under the No Time Limit process, or (where they can evidence reasonable grounds for their delay in making their application since the 30 June 2021 deadline applicable to them) they can apply to the EUSS.

If you are satisfied that the individual was granted ILE / ILR but has been absent from the UK for more than 2 consecutive years at any stage, their ILE / ILR will have lapsed. However, they may still qualify for the EUSS where they have reasonable grounds for their delay in making their application. Such individuals must be considered as a person who has failed to apply to the EUSS by the 30 June 2021 deadline and will need to demonstrate reasonable grounds for their delay in making their application.

If you are not satisfied that the individual has been granted ILE / ILR, you should treat them as a person who has failed to apply to the EUSS before the 30 June 2021 deadline.

Claims granted ILE / ILR before 2002

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Where an individual claims to have been granted ILE / ILR before 2002, but does not have a document to prove this, you must decide whether you are satisfied that they hold this status based on answers that they give at the desk interview and any supporting evidence about their life in the UK that they can provide. An individual is also more likely to have been granted ILE / ILR when they were not a national of an EU Member State, so it may be relevant to consider whether the claimed date of grant is prior to the individual's country of nationality joining the EU.

If you are satisfied that the individual does hold ILE / ILR, you must treat them as a returning resident, and allow them to proceed, unless there are grounds to believe that their leave may have been cancelled or have lapsed. You should advise them that on future occasions they must carry evidence of their ILE / ILR, and that they may find it easier to apply for an eVisa under the No Time Limit process, or (where they can evidence reasonable grounds for their delay in making their application since the 30 June 2021 deadline applicable to them) they can apply to the EUSS.

If you are satisfied that the individual was granted ILE / ILR but has been absent from the UK for more than 2 consecutive years at any stage, their ILE / ILR will have lapsed. However, they may still qualify for the EUSS where they have reasonable grounds for their delay in making their application. Such individuals must be considered as a person who has failed to apply to the EUSS by the 30 June 2021 deadline but based on their length of residence you may consider it appropriate to grant them LOTR for 28 days on Code 3 rather than refusing entry.

If you are not satisfied that the individual has been granted ILE / ILR, you should treat them as a person who has failed to apply to the EUSS before the 30 June 2021 deadline.

People who acquired EEA nationality after 31 December 2020

You may encounter an individual who presents an EEA passport or national identity card which was issued after 31 December 2020, but who has a prior UK immigration history in another nationality. Such individuals may have applied to the EUSS or claim that they are eligible and intend to apply.

In order to be eligible for the EUSS, or have any saved rights under the EEA Regulations, an individual must have been living in the UK as an EEA national by 31 December 2020 or be the relevant family member of such an EEA national. The burden of proof is on the individual to show that they were an EEA national at the relevant time or demonstrate that they benefit from Temporary Protection. You should note that, depending on the nationality law of a country, it is possible that an individual has been an EEA national since birth but only recently acquired a passport or national identity card. In such cases, the burden still remains on the individual to provide evidence that they were an EEA national at the relevant time.

In such cases, unless the individual otherwise qualifies for entry under the Immigration Rules, you may refuse permission to enter under paragraph SUI 20.1

(and any other relevant paragraphs), on the basis that the individual intends to settle in the UK without entry clearance.

Family member of an individual who does not require or cannot apply for EUSS status

There are certain categories of individuals resident in the UK by the end of the transition period at 11pm on 31 December 2020 who are not entitled to apply for EUSS status themselves (because they are a British citizen) or are not required to apply for it (because they are an Irish national or are currently exempt from immigration control), but their family members who are not British citizens or Irish nationals were required to apply for EUSS status (because they were resident in the UK by the end of the transition period) or are eligible to join them in the UK through the EUSS family permit route or an overseas EUSS application.

This includes eligible family members of:

- EEA nationals who are exempt from immigration control, where the family member is not also exempt
- Irish nationals
- relevant persons of Northern Ireland
- relevant naturalised British citizens (dual British-EEA nationals who are ‘Lounes cases’)
- dual British-EEA nationals who are ‘McCarthy cases’

The following deadlines apply:

Where the EEA or non-EEA national family member was residing in the UK by the end of the transition period at 11pm on 31 December 2020, they had until 30 June 2021 to apply to the EUSS, unless there are reasonable grounds for their delay in applying.

For joining family members, **there is no time limit for them to apply for an EUSS family permit**. Provided that the family relationship existed before 11pm on 31 December 2020 (including a durable partnership by then that has become a marriage or civil partnership since that date), or the family member is the spouse or civil partner of a Swiss national where that marriage or civil partnership took place before 1 January 2026, or the family member is a child born or adopted after 11pm on 31 December 2020, and provided that, in all cases, the family relationship continues to exist at the point the joining family member seeks to come to the UK, the family member can apply for an EUSS family permit to come to the UK at any time. This could include a family member who was previously resident in the UK with their sponsor but has been absent from the UK for too long to qualify for the EUSS based on their residence in the UK before the end of the transition period.

Once they have entered the UK, joining family members generally have 3 months from the date on which they first arrived in the UK after 31 December 2020 to apply to the EUSS (or before the expiry of any leave to enter having arrived in the UK with

an EUSS family permit, where this is later). They can apply to the EUSS after that deadline where there are reasonable grounds for their delay in applying.

Granting immigration bail to make a late application in-country

Until 4 July 2023 immigration bail was granted in some cases in order to allow an individual to make a late application to the EUSS in the UK.

Actions after a late application was made

Where an individual was granted immigration bail before 4 July 2023 to allow them to make a late EUSS application in-country, and they have submitted a valid application to the EUSS (as evidenced by a Certificate of Application), they will have Temporary Protection in the UK.

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Actions when no EUSS application was made

Where an individual was granted immigration bail before 4 July 2023 to allow them to make a late EUSS application in-country and did not make a valid application to the EUSS (as evidenced by a Certificate of Application) within 28 days, removal directions can be set.

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Related content
Contents

Arriving passengers with a pending valid EU Settlement Scheme application – overview

The action to take in respect of passengers arriving with a pending valid EU Settlement Scheme (EUSS) application (as evidenced by a Certificate of Application (CoA)) will depend on whether they have saved rights under the European Economic Area (EEA) Regulations 2016, have Temporary Protection or have neither.

The tables below provide an overview, but all cases must be considered in line with the detailed instructions in this guidance.

For EEA nationals

Individual claims they were resident in the UK by 31 December 2020

Pending valid in-time application (made by 30 June 2021), as evidenced by a CoA	**Pending valid late application, as evidenced by a CoA**	**No valid application pending**
No reason to doubt individual was continuously resident in the UK by 31 December 2020 and has remained so since **Action: admit (saved rights under EEA Regulations 2016)**	Evidence individual was continuously resident in the UK by 31 December 2020 and has remained so since **Action: grant LOTR (Temporary Protection)**	**Action: refuse and remove, unless compelling, compassionate circumstances apply**
Individual has a pending in-country EUSS appeal but no evidence they were continuously resident in the UK by 31 December 2020 and have remained so since **Action: grant LOTR (Temporary Protection)**	Individual has a pending EUSS in-country appeal, but no evidence they were continuously resident in the UK by 31 December 2020 and have remained so since **Action: grant LOTR (Temporary Protection)**	-
No evidence individual was continuously resident in the UK by 31 December 2020 and has	No evidence individual was continuously resident in the UK by 31 December 2020 and has	**Action: refuse and remove, unless compelling,**

Pending valid in-time application (made by 30 June 2021), as evidenced by a CoA	Pending valid late application, as evidenced by a CoA	No valid application pending
remained so since, and any pending EUSS appeal was made out-of-country **Action: refuse and remove, unless compelling, compassionate circumstances apply**	remained so since, and any pending EUSS appeal was made out-of-country **Action: refuse and remove, unless compelling, compassionate circumstances apply**	**compassionate circumstances apply**

'continuously resident in the UK by 31 December 2020 and has remained so since' means that (i) the individual was resident in the UK by 31 December 2020; and (ii) either before or since 31 December 2020, they have not been absent from the UK such as to break their continuity of residence. For further guidance see Evidence of continuous residence in the UK.

For non-EEA nationals

Individual claims they were resident in the UK by 31 December 2020

Pending valid in-time application (made by 30 June 2021), as evidenced by a CoA	Pending valid late application, as evidenced by a CoA	No valid application pending
Individual holds in-date or expired EEA BRC or expired EEA family permit, showing lawfully resident in the UK under EEA Regulations 2016 by 31 December 2020 (based on family relationship with same EEA national as pending EUSS application), and no reason to doubt individual was continuously resident in the UK by 31 December 2020 and has remained so since	Evidence individual was continuously resident in the UK by 31 December 2020 and has remained so since, and family relationship accepted **Action: grant LOTR (Temporary Protection)**	**Action: refuse and remove, unless compelling, compassionate circumstances apply**

Pending valid in-time application (made by 30 June 2021), as evidenced by a CoA	Pending valid late application, as evidenced by a CoA	No valid application pending
Action: admit (saved rights under EEA Regulations 2016)		
Individual has a pending in-country EUSS appeal, but no evidence they were continuously resident in the UK by 31 December 2020 and have remained so since, or of family relationship **Action: grant LOTR (Temporary Protection)**	Individual has a pending in-country EUSS appeal, but no evidence they were continuously resident in the UK by 31 December 2020 and have remained so since, or of family relationship **Action: grant LOTR (Temporary Protection**)	-
Evidence individual was continuously resident in the UK by 31 December 2020 and has remained so since, and family relationship accepted **Action: grant LOTR (Temporary Protection)**	No evidence individual was continuously resident in the UK by 31 December 2020 and has remained so since, or family relationship not accepted, and any pending EUSS appeal was made out-of-country **Action: refuse and remove, unless compelling, compassionate circumstances apply**	**Action: refuse and remove, unless compelling, compassionate circumstances apply**
No in-date or expired EEA BRC or expired EEA family permit (based on family relationship with same EEA national as pending EUSS application); no evidence individual was continuously resident in the UK by 31 December 2020 and has remained so since, or family relationship not accepted; and any pending EUSS appeal was made out-of-country	-	-

Pending valid in-time application (made by 30 June 2021), as evidenced by a CoA	Pending valid late application, as evidenced by a CoA	No valid application pending
Action: refuse and remove, unless compelling, compassionate circumstances apply		

'continuously resident in the UK by 31 December 2020 and has remained so since' means that (i) the individual was resident in the UK by 31 December 2020; and (ii) either before or since 31 December 2020, they have not been absent from the UK such as to break their continuity of residence. See below for further guidance.

For EEA and non-EEA nationals

Individual claims to be a joining family member

Pending valid application, as evidenced by a CoA	No valid application pending
Individual holds in-date EUSS family permit **Action: admit in line with EUSS family permit**	Individual holds in-date EUSS family permit **Action: admit in line with EUSS family permit**
Individual holds expired EUSS family permit, based on family relationship with same EEA national as pending EUSS application, which has not been refused **Action: grant LOTR (Temporary Protection)**	Individual holds expired EUSS family permit **Action: refuse and remove, unless compelling, compassionate circumstances apply**
Individual does not hold in-date EUSS family permit, but has a pending in-country EUSS appeal **Action: grant LOTR (Temporary Protection)**	**-**
Individual holds expired EUSS family permit, based on family relationship with same EEA national as pending EUSS application, but that application has been refused and individual is awaiting	**-**

Pending valid application, as evidenced by a CoA	No valid application pending
outcome of EUSS administrative review or out-of-country appeal **Action: refuse and remove unless compelling, compassionate circumstances apply**	
No EUSS family permit held, and any pending EUSS appeal was made out-of-country **Action: refuse and remove, unless compelling, compassionate circumstances apply**	No EUSS family permit held **Action: refuse and remove, unless compelling, compassionate circumstances apply**

Evidence of continuous residence in the UK

Where an EEA national has a pending valid in-time EUSS application (made by 30 June 2021 and evidenced by a Certificate of Application) and there is no reason to doubt they were continuously resident in the UK by 31 December 2020 and have remained so since, they will have a saved right of admission under the EEA Regulations 2016.

A non-EEA national will have a saved right of admission under the EEA Regulations 2016 where all of the following apply:

- they have a pending valid **in-time** EUSS application (made by 30 June 2021 and evidenced by a Certificate of Application), including where they have a pending EUSS administrative review or appeal (an in-country appeal or out-of-country appeal)
- they hold an in-date or expired EEA biometric residence card or expired EEA family permit, showing that they were lawfully resident in the UK under the EEA Regulations 2016 by 31 December 2020 (based on a family relationship with the same EEA national as the pending EUSS application)
- there is no reason to doubt they were continuously resident in the UK by 31 December 2020 and have remained so since

For further guidance see Pending valid in-time EU Settlement Scheme application.

Where you have reason to doubt an in-time applicant was continuously resident in the UK by 31 December 2020 and has remained so since, and where an EEA or non-EEA national with a pending valid **late** EUSS application (as evidenced by a Certificate of Application) claims that they were resident in the UK by the end of the transition period on 31 December 2020, the individual will need to satisfy you that they were resident in the UK by 31 December 2020 and that, either before or since 31 December 2020, they have not been absent from the UK such as to break their continuity of residence. The only exception to this evidence requirement is where the

individual has a pending in-country appeal against an EUSS decision on an in-time application which has not been certified. In these circumstances they should be admitted to the UK as a person with Temporary Protection, unless they are seeking entry at a juxtaposed port

Where the application has been certified under regulations 15(4), 16(3) or 16A(3) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, the individual will be liable to removal, unless there are compelling, compassionate circumstances which make such action inappropriate.

Continuously resident means that they have not been absent from the UK for more than 6 months in any 12-month period, subject to certain exceptions. The exceptions include an absence from the UK for up to 12 months for an 'important reason', such as study, vocational training, an overseas posting, pregnancy, childbirth, serious illness or domestic violence or abuse, or because of COVID-19. Further information can be found in the section on 'Qualifying residence' in the main EUSS guidance.

Once they have completed a 5-year period of continuous residence in the UK beginning by 31 December 2020, they do **not** have to maintain their continuity of residence on that basis.

You are not required to determine whether an individual is eligible for the EUSS. Where an individual has a Certificate of Application and can satisfy you by evidence provided or available that they were resident in the UK by 31 December 2020 and have not since been absent from the UK for more than 6 months (or that an exception applies), then, where they do not have a saved right of admission under the EEA Regulations 2016 (as set out above), you may grant them LOTR on the basis of Temporary Protection.

Where the pending EUSS application has been refused as ineligible on residence grounds and the individual is awaiting the outcome of an administrative review or an out-of-country appeal, then, if they can satisfy you by evidence provided or available that they were resident in the UK by 31 December 2020 and have not since been absent from the UK for more than 6 months (or that an exception applies), then, where they do not have a saved right of admission under the EEA Regulations 2016 (as set out above), you may grant them LOTR on the basis of Temporary Protection.

You can accept any credible evidence of UK residence. For further information see EUSS: Evidence of UK residence.

Otherwise, where you are satisfied that there is no evidence that the individual has been continuously resident in the UK since before the end of the transition period and they do not have a pending in-country appeal against an EUSS decision, they can be refused admission and removed, unless there are compelling, compassionate circumstances which make such action inappropriate.

Evidence of family relationship

Where a non-EEA national with a pending valid **in-time** or **late** EUSS application (as evidenced by a Certificate of Application) claims that they were resident in the UK by

the end of the transition period on 31 December 2020 as the family member of an EEA national resident in the UK by then, they will also need to satisfy you as to their family relationship to that EEA national. The only exception to this evidence requirement is where the individual has a pending in-country appeal against an EUSS decision which has not been certified, meaning that they are not removeable and are to be admitted to the UK as a person with Temporary Protection, unless they are seeking entry at a juxtaposed port.

Where the application has been certified under regulation 15(4), 16(3) or 16A(3) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, the individual will be liable to removal, unless it would be unlawful under section 6 of the Human Rights Act 1998.
You may accept an in-date or expired EEA biometric residence card or an expired EEA family permit as evidence of their family relationship to that EEA national where it was issued on the basis of it.

Where a non-EEA national has a pending valid **in-time** EUSS application and holds such a document showing that they were lawfully resident in the UK under the EEA Regulations 2016 by 31 December 2020 (based on a family relationship with the same EEA national as the pending EUSS application), they will have a saved right of admission. For further guidance see Pending valid in-time EU Settlement Scheme application.

Otherwise, you will need to be satisfied that the family relationship existed by 31 December 2020 and (unless a 5-year period of continuous residence in the UK has been completed on that basis or retained rights apply) that the relationship continues to exist.

You are not required to determine whether an individual is eligible for the EUSS. Where an individual has a Certificate of Application and can satisfy you by evidence provided or available of their family relationship to the EEA national by and since 31 December 2020, then, where they do not have a saved right of admission under the EEA Regulations 2016 (as set out above), you may grant them LOTR on the basis of Temporary Protection.

Where the pending EUSS application has been refused as ineligible on family relationship grounds and the individual is awaiting the outcome of an administrative review or an out-of-country appeal, then, if they can satisfy you by evidence provided or available of their family relationship to the relevant EEA national by and since 31 December 2020, then, where they do not have a saved right of admission under the EEA Regulations 2016 (as set out above), you may grant them LOTR on the basis of Temporary Protection.

You can accept any credible evidence of family relationship. For further details, see EUSS: evidence of relationship

Otherwise, where you are satisfied that the individual has no evidence of a relevant family relationship and they do not have a pending in-country appeal against an EUSS decision, they can be refused admission and removed, unless there are compelling, compassionate circumstances which make such action inappropriate.

Pending in-country EUSS appeal

Where an individual exercises their right of appeal from within the UK, section 78 of NIAA 2002 provides that they will not be removed whilst the appeal is pending, unless their appeal has been certified under regulation 15(4), 16(3) or 16A(3) of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. This does not apply to entry decisions made at a juxtaposed port.

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Pending EUSS applications and Temporary Protection: deportation and exclusion orders

You may encounter an individual who is subject to a deportation or exclusion order issued under the EEA Regulations 2016 who also has a pending valid EUSS application (as evidenced by a Certificate of Application).

The same considerations apply as with any other individual with a pending valid in-time or late EUSS application (as evidenced by a Certificate of Application).

However, the deportation or exclusion order may be relied on as evidence that the individual was not lawfully resident in the UK by 31 December 2020, as their lawful residence was terminated when the deportation order was served, or they have entered in breach of an exclusion order.

You are therefore not required to accept that such an individual has saved rights or Temporary Protection, unless they have a pending in-country EUSS or deportation appeal against such a decision which has not been certified. You must consider mandatory refusal of permission to enter under paragraph SUI 2.1(c) of the Immigration Rules and proceed to remove the individual whilst their EUSS application remains pending.

You may encounter an individual who is subject to a domestic deportation order or exclusion decision who also has a pending valid EUSS application (as evidenced by a Certificate of Application).

If the individual has a pending valid **in-time** EUSS application (made by 30 June 2021 and evidenced by a Certificate of Application), and was lawfully resident in the UK by 31 December 2020, they will be covered by the saved EEA Regulations. You must therefore assess whether their conduct which led to the deportation order, exclusion order or exclusion decision meets the conducive threshold or the public policy test, depending on when the conduct occurred. If the individual has been granted an EUSS family permit, EEA family permit or EEA Regulations residence card since the deportation order, exclusion order or exclusion decision was made, you should assume that the conduct was taken into consideration and assessed as not meeting the relevant test, unless evidence suggests it was not considered. If the conduct is sufficiently serious, you may refuse admission under regulation 23 of the EEA Regulations 2016, as saved. If it is not sufficiently serious, you must treat the individual as having a saved right of admission and allow them to proceed.

If the individual has a pending valid **late** EUSS application (as evidenced by a Certificate of Application), or is a joining family member with a pending valid application or an EUSS family permit, you must still assess whether their conduct which led to the deportation order, exclusion order or exclusion decision is sufficiently serious to meet the conducive threshold or the public policy test, depending on when the conduct occurred.

As with pending in-time applications, if the individual has been granted an EUSS family permit, EEA family permit or EEA Regulations residence card since the deportation order or exclusion, order or exclusion decision was issued, you should assume that the conduct was taken into consideration and assessed as not meeting the relevant test, unless evidence suggests it was not considered. If the conduct is sufficiently serious, you may refuse entry under paragraph SUI 3.1 of the Immigration Rules but must set out clearly in the decision that you have considered the public policy test in respect of any conduct which occurred before the end of the transition period. If it is not sufficiently serious, you must treat the individual as having Temporary Protection and grant them leave as necessary.

Where an individual with a pending EUSS application has been issued with a deportation order or exclusion decision made under the 1971 Act on non-conducive grounds in respect of conduct which occurred after the end of the transition period, the individual must be considered for mandatory refusal of permission to enter under paragraph SUI 2.1(c) of the Immigration Rules.

Related content
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Pending valid in-time EU Settlement Scheme application

An EU Settlement Scheme (EUSS) application is in-time where it was submitted by the applicable deadline. That deadline was 30 June 2021 where the individual relies on having been resident in the UK by 31 December 2020.

Certain saved provisions in the EEA Regulations 2016 will continue to apply to European Economic Area (EEA) nationals and their family members whilst they have a pending valid in-time application to the EUSS, where they were lawfully resident in the UK in accordance with those Regulations (as a qualified person or as a family member of a qualified person), or they or their family member had a right of permanent residence under those Regulations (unless they have since been absent from the UK for more than 5 consecutive years), by the end of the transition period at 11pm on 31 December 2020.

An application is to be treated as pending, and therefore the saved provisions in the EEA Regulations 2016 continue to apply, until one of the following occurs:

- the application to the EUSS is granted
- the application to the EUSS is refused and the deadline to appeal expires without an appeal being lodged
- the application to the EUSS is refused, an appeal against the refusal is dismissed, and the individual becomes appeal rights exhausted

The deadline to appeal against an EUSS refusal is, if the individual is in the UK, 14 days from the date the decision was sent. If the individual is outside the UK the person must appeal within 28 days of receipt of the decision. If an individual is returning to the UK from overseas and is between 14 and 28 days after their application to the EUSS was refused, they should be assumed to be within their appeal deadline.

Where an individual was also able to challenge the refusal by way of an administrative review (such as where the eligible decision was made before 5 October 2023 and they applied for administrative review before 4 April 2024), their appeal window does not commence until the scope for administrative review has been exhausted.

Once the appeal deadline has passed, an individual will lose their saved right of admission. However, if they subsequently lodge an appeal which is admitted by the Tribunal, their saved rights will resume until that appeal is finally determined, withdrawn or abandoned, or lapses. The same also applies to a person who lodged an administrative review out of time before 4 April 2024 which is accepted by the Home Office.

Pending valid in-time EUSS application from an EEA national claiming to be resident in the UK by 31 December 2020

In practice, you should accept that an EEA national with a pending valid in-time application to the EUSS has a saved right of admission, unless one of the following applies:

- they are subject to a deportation or exclusion order
- they are subject to an administrative removal decision, unless they have subsequently been granted admission or residence documentation
- they have been refused admission to the UK and have not subsequently been granted admission or residence documentation
- the application to the EUSS was made from overseas and you are satisfied that the individual was not resident in the UK by 31 December 2020 (unless they had acquired a permanent right of residence by that date)

Where you are satisfied than an individual is an EEA national who has saved rights, you may examine them if there are grounds to believe they may be denied admission under regulation 23 on the grounds of public policy, public security, or public health or the misuse of rights provisions, on non-conducive grounds where the conduct was committed after the end of the transition period, or on the basis that they are subject to an extant deportation or exclusion order.

You should not routinely test whether an individual with a pending in-time EUSS application was continuously resident in the UK by 31 December 2020 and has remained so since but may do so if you have specific concerns about the individual. This may include, for example, where the individual has previously been deported or removed from the UK.

If, however, you have evidence that the individual was not continuously resident in the UK by 31 December 2020 (for example, the individual admits this to be the case at interview, or their travel history shows they have never previously been to the UK) or has not remained so since, you may refuse entry under paragraph SUI 20.1 of the Immigration Rules and proceed to remove the individual, unless you consider there to be compelling, compassionate reasons why the individual should be admitted.

Where the individual has a pending in-country appeal against an EUSS decision which has not been certified, they are not removeable and are to be admitted to the UK as a person with Temporary Protection, unless they are seeking entry at a juxtaposed port.

For further guidance see Evidence of continuous residence in the UK.

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You should note that the Crown Dependencies will have specific arrangements in place for those who are eligible for their EUSS schemes but have not yet applied, and those arrangements may mean such individuals still require permission to enter the UK. For further guidance, see Common Travel Area (CTA) guidance.

Pending valid in-time EUSS application from a non-EEA national claiming to be resident in the UK by 31 December 2020

Where in respect of a non-EEA national claiming to be resident in the UK by 31 December 2020:

- they submitted a valid in-time application to the EUSS by 30 June 2021 (as evidenced by a Certificate of Application), including where they have a pending EUSS administrative review or appeal (an in-country appeal or out-of-country appeal)
- they hold an in-date or expired UK-issued biometric residence card, or an expired EEA family permit, showing that they were lawfully resident in the UK by 31 December 2020 (and based on a family relationship with the same EEA national as the pending EUSS application)
- there is no reason to doubt that they were continuously resident in the UK by 31 December 2020 and have remained so since

they will benefit from the saved EEA Regulations 2016 until such time as their EUSS application is finally determined. You can admit them to the UK based on those saved rights.

Where a non-EEA national has submitted a valid in-time EUSS application (as evidenced by a Certificate of Application) but does not hold an in-date or expired UK-issued biometric residence card, or an expired EEA family permit, they will **not** have a right of admission under the saved EEA Regulations 2016. This is because the saved regulation 11 of the EEA Regulations 2016, as amended, requires that a non-EEA national hold one of those documents in order to qualify for admission.

In such cases, where you are satisfied that the non-EEA national was continuously resident in the UK by 31 December 2020 and has remained so since, and you accept that they are the family member of the same EEA national as the pending EUSS application, you **must** treat them as having Temporary Protection.

For guidance on continuous residence in the UK, see Evidence of continuous residence in the UK.

For guidance on evidence of family relationship, see Evidence of family relationship.

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The grant of leave outside the rules (LOTR) is to facilitate their entry to the UK, and the length of their Temporary Protection will depend on how long their application to the EUSS (and any appeal) takes to determine. There is no limit to how many times an individual with Temporary Protection may be granted LOTR at the border.

Where there is no evidence that the non-EEA national was continuously resident in the UK by 31 December 2020 and has remained so since, but you accept that they are the family member of the same EEA national as the pending EUSS application, **you must** treat them as a joining family member arriving without entry clearance.

Where there is no evidence that the non-EEA national was continuously resident in the UK by 31 December 2020 and has remained so since, or you do not accept that they are the family member of the same EEA national as the pending EUSS application, you may refuse entry under paragraph SUI 20.1 of the Immigration Rules and proceed to remove the individual, unless you consider there to be compelling, compassionate reasons why the individual should be admitted.

Where the non-EEA national has a pending in-country appeal against an EUSS decision which has not been certified, they are not removeable and are to be admitted to the UK as a person with Temporary Protection, unless they are seeking entry at a juxtaposed port.

Related content
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Pending valid late EU Settlement Scheme application

Where an individual has made a valid late application to the EU Settlement Scheme (EUSS), as evidenced by a Certificate of Application, on or after 1 July 2021, based on being resident in the UK by 11pm on 31 December 2020, and their application (or any administrative review or appeal) remains pending, you **must** ask them to provide evidence that they were continuously resident in the UK by 31 December 2020 and have remained so since and (where they rely on being the family member of a European Economic Area (EEA) national resident in the UK by then) evidence of that family relationship.

For guidance on continuous residence in the UK, see Evidence of continuous residence in the UK.

For guidance on evidence of family relationship, see Evidence of family relationship.

Where the individual has already provided evidence of residence to Border Force on a previous occasion (for example, to enable immigration bail or leave outside the rules (LOTR) to be granted), they do not need to provide this evidence again, unless you now have reason to doubt the residence concerned.

Evidence of continuous residence in the UK by and since 31 December 2020 and, where appropriate, evidence of a family relationship, is also required where an individual has had their EUSS application refused (regardless of whether they applied in-time or late) and did not appeal by the deadline, but subsequently has an out-of-time appeal admitted by the Tribunal, or has had an out-of-time administrative review application accepted for consideration by the Home Office.

Where there is no evidence that the individual was continuously resident in the UK by 31 December 2020 and has remained so since, or you do not accept that they are the family member of the same EEA national as the pending EUSS application, you **must** refuse entry under paragraph SUI 20.1 of the Immigration Rules and proceed to remove the individual, unless you consider there to be compelling, compassionate reasons as to why the individual should be admitted.

Where the individual has a pending in-country appeal against an EUSS decision which has not been certified, they are not removeable and are to be admitted to the UK as a person with Temporary Protection, unless they are seeking entry at a juxtaposed port.

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Where the individual provides evidence of continuous residence by and since 31 December 2020 (and, where required, of the relevant family relationship), you **must** treat them as having Temporary Protection.

Individuals who have a pending valid application as a joining family member are subject to a separate consideration.

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The grant of LOTR is to facilitate entry to the UK and the length of Temporary Protection will depend on how long their application to the EUSS (and any appeal) takes to determine. There is no limit to how many times an individual with Temporary Protection may be granted LOTR at the border.

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Individuals with a pending late application to a Crown Dependency EUSS must be treated the same as those with a pending late application to the UK EUSS.

Late applications submitted after refusal of permission to enter

In most cases where an individual is refused permission to enter, they will be removed directly from port. However, where it is necessary to bail an individual pending removal, there is nothing to prevent them from applying to the EUSS whilst on bail. If they have submitted a valid EUSS application (as evidenced by a Certificate of Application), whether that late EUSS application will constitute a barrier to removal will depend on the individual circumstances of the case. You must

consider any new information or evidence provided by the individual since the refusal of permission to enter before deciding whether removal can proceed.

A valid late application will **not** normally be a barrier to removal where at least one of the following applies:

- it was established when refusing permission to enter that the individual was not continuously resident in the UK by and since 31 December 2020, and is not a joining family member (either on the basis that the individual themselves does not claim to meet these criteria, or because other evidence held by the Home Office proves this to be the case)
- the individual is subject to a deportation or exclusion decision
- the exceptions for criminality apply
- the individual is a joining family member but does not hold an EUSS family permit

Where the late application is not a barrier to removal, removal directions may be set, and absconder action commenced if the individual fails to comply with the requirements of their bail.

A valid late application **will** normally be a barrier to removal where information or evidence provided (including any new information or evidence provided as part of the application or since the refusal of permission to enter) establishes that the individual was in fact continuously resident in the UK by and since 31 December 2020. The individual should be advised that if they travel outside the UK whilst their application is still pending, they will be required to provide evidence of their eligibility for leave under the EUSS in order to be re-admitted. A valid late application which has been refused will also be a barrier to removal, where the person has a pending in-country appeal against that EUSS decision which has not been certified.

Related content
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Pending valid EU Settlement Scheme application as a joining family member

A family member of a European Economic Area (EEA) national resident in the UK by the end of the transition period at 11pm on 31 December 2020 who seeks to rely themself on being resident in the UK by then, was required to apply to the EU Settlement Scheme (EUSS) by 30 June 2021, unless there are reasonable grounds for their delay in making their application.

Where they are a joining family member, an application is considered as in-time if it is made by 30 June 2021 (where the date on which they first arrived in the UK after 31 December 2020 was before 1 April 2021) or otherwise within 3 months of the date on which they first arrived in the UK after 31 December 2020 (or before the expiry of their EUSS family permit, where this is later). A joining family member can also make a valid late application to the EUSS, after the applicable deadline, where there are reasonable grounds for their delay in applying.

A pending valid EUSS application as a joining family member (as evidenced by a Certificate of Application) does not of itself provide a basis for entry and is not a visa or entry clearance document as required by those seeking to live or work in the UK.

An individual with a pending valid EUSS application as a joining family member (which will have 'joiner' in the application title) who holds an in-date EUSS family permit, based on the same family relationship as the EUSS application, should be admitted in line with that EUSS family permit.

An individual with a pending valid EUSS application as a joining family member (which will have 'joiner' in the application title) with an expired EUSS family permit, based on the same family relationship as the EUSS application, can be granted them leave outside the rules (LOTR) on the basis of Temporary Protection, unless the EUSS application has already been refused and the individual is awaiting the outcome of an administrative review or an out-of-country appeal.

Where an individual with a pending valid EUSS application as a joining family member does not hold an in-date EUSS family permit based on the same family relationship as the EUSS application (or an expired EUSS family permit based on that family relationship and the EUSS application has not been refused), and compelling, compassionate circumstances do not apply, you must refuse entry under paragraph SUI 20.1 of the Immigration Rules and proceed to remove the individual.

Where an EUSS family permit holder applies to the EUSS during the validity of their family permit, and the family permit expires before their application is determined, their leave in-country will be extended by virtue of section 3C of the Immigration Act 1971.

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If an individual with section 3C leave leaves the UK before their valid EUSS application is determined, their section 3C leave will lapse. If they seek to re-enter the UK, you must grant them Leave Outside the Rules as a person with Temporary Protection.

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Refusing permission to enter

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Removal directions and appeals

All cancellations of EU Settlement Scheme (EUSS) leave or leave to enter acquired by virtue of arriving with an EUSS family permit will attract a right of appeal. Eligible decisions taken before 5 October 2023 were also challengeable by administrative review.

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