

Immigration Team
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31st July 2020

EU Settlement Scheme Inspection
Independent Chief Inspector of Borders and Immigration
5th Floor
Globe House
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London
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Sent via email to euss3@icibi.gov.uk

Dear Sirs

Response to the Call for Evidence – EU Settlement Scheme

We write in response to the Call for Evidence in pursuance of the inspection of the EU Settlement Scheme to date. This document represents the collaborated views of members of our specialist team of immigration barristers. We are a 40-strong team with extensive experience before the Immigration Tribunals and higher courts, with several senior members of our team having been practicing in the field of immigration law for in excess of 20 years. We are ranked as a leading Band 3 set by the Legal 500 and several of our members are singled out for their expertise.

We would like to highlight the following issues and observations from our engagement with the EUSS which, in our experience, require improvement.

What is working well

- For those who are tech-savvy, the process for applying using the app is relatively quick and straightforward.
- As the EUSS only concerns evidence of residence, rather than the exercise of Treaty Rights, it is a less cumbersome application process for many and the scope is wider. What remains unclear is whether the evidence leading to Settled Status will have any knock-on effect on applications for naturalisation.
- The scope as to who can apply is widening which is a positive development, for example to include relevant persons from Northern Ireland.

What is not working well

Problems in communication

- It is our sense that there is a generalised failure to communicate to the wider public the mandatory nature of the EUSS for EU citizens and their family members. Several communities are unaware of the requirements, and a number of community groups have had to arrange their own information sessions
- It is our understanding that the official government leaflets on the EUSS have been mistranslated in some languages, with the effect that the mandatory nature of the Scheme has been lost. For example, in some languages the word 'must' has been mistranslated as 'can'.
- Lack of clarity about who might be required or able to apply. Whilst the scope has widened there is still a lot of confusion, for example in relation to the definition of who is a "dependent relative".
- Lack of clarity prior to application as to what documents are required, which leads to delay in already uncertain times.
- There is concern that many who are in fact entitled to settled status instead accept the offer of pre-settled status rather than challenge and defend their entitlement to settled status.

Technological difficulties

- For those of an older generation, or those who are less tech-savvy or with less access to technology, the application is much less straightforward and can be problematic. Information about how to apply other than using the app is not readily available.

Issues with Documentation

- For elderly applicants, particularly those who have been in the UK for many decades, frequently face difficulties with their records being accessed via HMRC/DWP. For example, those who have retired many years ago.
- Applications from dependent relatives require the Applicant already hold a 'relevant document' which is defined in the Appendix as one which was issued under the EEA Regulations. There is the potential, with the deadline set for the EUSS, for dependent relatives who should be entitled to pre- or settled status, to lose out and become 'illegal'. It seems to us that there is no reason why the checks carried out under Regulation 17 should not also be carried out under the EUSS. The absence of those checks leads to an unnecessary additional layer of complexity for applicants.
- The fact that successful applicants do not receive paper-copy residence cards (akin to BRPs) has caused concern for many applicants we have assisted

- For those who need ID documents, the current difficulties arising out of the COVID-19 pandemic has caused further delay and difficulties.

Statistical issues

- There is concern that the statistics do not properly reflect those who chose to reapply with new evidence rather than challenge decisions, therefore leading to double counting of the number of actual applications made.

We are also keen to stress the importance of assessing the potential wider impact of COVID-19 on the effectiveness and accessibility of the EUSS programme, and the timescales in which applicants have to submit applications in light of this.

We hope that this feedback is of assistance and are available to discuss matters further if any further input is desired.

Yours faithfully

Goldsmith Chambers Immigration Team