



Home Office

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HOCS Reference: MIN/0010566/20

19 November 2020

Dear Mr Piper,

Thank you for your email of 16 June to the Home Secretary about the EU Settlement Scheme (EUSS). I am replying as the Minister for Future Borders and Immigration. I am sorry for the considerable delay in responding to your email.

### COVID-19

You asked about the impact on continuous residence of the travel restrictions imposed during the COVID-19 pandemic. The Government recognises travel plans have been, and continue to be, severely disrupted. The impact of such disruption on individuals' continuity of residence is one of several issues the Home Office is working through and we are taking a pragmatic approach to ensure individuals are not penalised for issues arising from the COVID-19 pandemic which are beyond their control.

You specifically ask about the status of three groups of people potentially affected by COVID-19: those who have yet to apply for status under the EUSS, those who have already been granted pre-settled status, and those intending to apply for British citizenship.

For those intending to apply for status under the EUSS, or for settled status where they have already been granted pre-settled status, the EUSS already permits an absence (or absences) from the UK of up to six months in any 12-month period. The EUSS also allows for a single absence of up to 12 months in the five-year continuous qualifying period generally required before an applicant is eligible for settled status, where that absence is for an important reason. This includes, but is not limited to, serious illness and would cover absence required by being quarantined to protect public health. This is in line with EU law and is in accordance with the Withdrawal Agreement. Further guidance for EUSS applicants who have been affected by illness or travel restrictions due to COVID-19 will be published shortly.

For those who are intending to apply for British citizenship, the British Nationality Act 1981 reflects the principle citizenship should be acquired on the basis of a close and continuing connection with the UK. Those applying to naturalise as a British citizen must meet residence requirements based on a period of lawful residence in the UK (three years for the spouse or civil partner of a British citizen, and five years for others), including being settled, and without excess absences. However, there is discretion within the Act to overlook excess absences and we would normally do so where there are compelling or compassionate grounds, such as those related to Covid-19.

### Rights attached to pre-settled status

You raise a concern pre-settled status is not being considered a “right to reside” for the purposes of access to benefits. EEA citizens granted pre-settled status have secured their rights in UK law and so are able to access benefits and services in the UK on at least the same basis as they were before being granted that status. No one’s access to benefits is restricted or reduced by virtue of an application to the EUSS.

The letter from the Secretary of State for Work and Pensions to which you refer confirms those who hold pre-settled status can continue to access income-related benefits if they are exercising a qualifying EU Treaty right, which includes those with worker or self-employed status, and EEA citizens who have retained worker status after losing their job through no fault of their own. The long-standing requirement to be exercising a qualifying EU Treaty right to access income-related benefits is in line with EU law and aligned with Article 24 of the Free Movement Directive, to which Article 23 of the Withdrawal Agreement refers. Those with status under the EUSS have secured their right to reside under the Withdrawal Agreement in UK law and therefore can continue living their lives here broadly as they do now.

### Naturalisation

Turning to your questions on naturalisation, the requirements to naturalise as a British citizen have not changed and are as set out above.

As the EUSS is mainly concerned with continuous residence rather than lawful residence, there may be cases where nationality caseworkers need to satisfy themselves, in considering an application for British citizenship from an EEA citizen granted settled status under the EUSS, the person resided here lawfully during the relevant qualifying period. This is not a new requirement and is an assessment we have always made.

Guidance (<https://www.gov.uk/government/publications/naturalisation-as-a-british-citizen-by-discretion-nationality-policy-guidance>) sets out when we might exercise discretion where an applicant for British citizenship did not meet the lawful residence requirements. This includes where the breach was because the applicant did not meet an additional or implicit condition of stay, rather than illegal entry or overstaying. For example, where an EEA citizen did not have comprehensive sickness insurance (CSI). I am not aware of any case where an application for naturalisation has been declined purely on the grounds of the CSI requirement under the EEA regulations.

With regard to the rights of EEA citizens who have naturalised as a British citizen to be joined by their family members, the example you give is one in which an EEA citizen does not meet the EU law requirements to be a self-sufficient person (i.e. holding CSI) prior to naturalising so, consequently, their family members would not qualify for EUSS leave as the family member of a ‘relevant naturalised British citizen’. The EUSS reflects EU law on this matter – specifically the requirements of the judgment of the Court of Justice of the European Union (CJEU) in *Lounes* – and is in line with the Withdrawal Agreement.

Economically inactive dual EEA and British citizens who, prior to obtaining British citizenship, did not hold CSI throughout the relevant qualifying period of residence are not and never have been eligible to rely on the CJEU judgment in *Lounes*. This means they cannot sponsor their family members under either EU free movement law or for an EUSS application. Those family members may instead be eligible to apply under another part of the UK's domestic Immigration Rules.

In relation to the example you give, adult dependent relatives may apply under the family Immigration Rules if they can demonstrate, as a result of age, illness or disability, they require a level of long-term personal care which can only be provided in the UK by their sponsor here and without recourse to public funds.

EEA citizens wishing to remain in the UK permanently and sponsor relevant family members to join them here can do so under the EUSS. It is a matter of personal choice if they wish to naturalise as a British citizen and it is the responsibility of an applicant for British citizenship to understand the implications of doing so.

#### Ability of *Lounes* dual nationals to access their rights under the Withdrawal Agreement

Finally, you requested we create a process whereby *Lounes* dual nationals can apply for confirmation of their rights under the Withdrawal Agreement.

British citizens (including dual nationals) are exempt from the requirement to apply to the EUSS because they have the right of abode in the UK. Those with a right of abode do not require, and cannot be granted, limited or indefinite leave to enter or remain under the Immigration Act 1971 as they are already able to live in the UK without restriction. This means they cannot be granted status under the EUSS.

Although *Lounes* dual nationals are therefore unable to apply for residence status under the EUSS, they are not disadvantaged as a result of this. We have made specific provision in the Immigration Rules for the EUSS in Appendix EU so the relevant family members of a 'relevant naturalised British citizen' (i.e. a *Lounes* dual national) can apply to the EUSS even though the *Lounes* dual national cannot do so themselves.

In relation to your point on the European Health Insurance Card (EHIC), the Department for Health and Social Care is responsible for the administration of this system and will be able to advise on information required in order to secure an EHIC where a person has a right to one under the terms of the Withdrawal Agreement.

With my very best wishes.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Foster', with a period at the end.

**Kevin Foster MP**  
**Minister for Future Borders and Immigration**