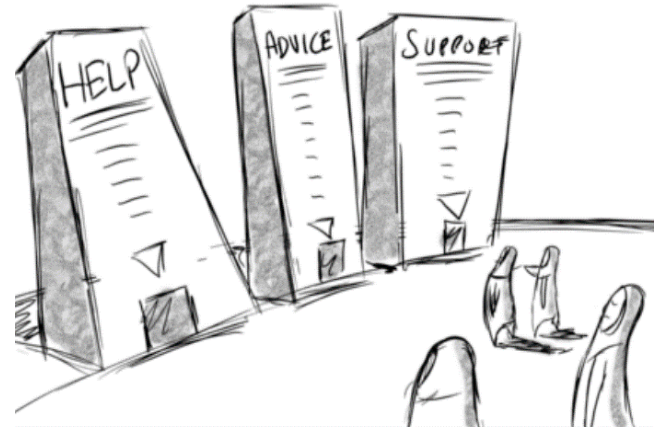




The status of EU nationals: emergency measures needed

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As the deadline for applications to the EU Settlement Scheme (30th June 2021) draws near, emergency measures are needed to ensure that many EU nationals are not wrongfully exposed to the hostile environment. This report covers some of the key risks that the deadline for applying to the EUSS scheme poses for EEA+ nationals. It outlines four key proposals to mitigate those risks.

Read the [full report](#).

Proposal 1: Avoiding the irreversible loss of rights with a substantive deadline:

"No-one will be left behind..." (Sajid Javid, Home Secretary 2019)

It is now clear, that there will be a significant minority of EEA nationals who fail to register by the deadline, and who will thus be 'left behind'. If they do not qualify as having a good reason for missing the deadline, they automatically and irreversibly lose their right to reside. They will then be subject to the hostile environment, and potentially to removal. Their complete loss of accrued rights is disproportionate for failure to comply with an administrative requirement.

The new guidance on reasonable grounds for late applications is expansive, including a range of circumstances that could prevent a vulnerable applicant from meeting the deadline. However, there are a number of worrying gaps. For example, while recent studies evidence a considerable number of EEA+ nationals unaware of the scheme, or of the deadline

(JCWI, 2021 and The Social Market Foundation 2020), it is not clear whether being unaware of the scheme will be considered a 'good reason' for a late application.

A Substantive Scheme:

A substantive scheme for EEA+ nationals: keeping a meaningful deadline, but avoiding irreversible losses of rights

Under this substantive scheme, applicants who meet the substantive conditions for the EUSS would be able to make a late application, but where the applicant does not provide a 'good reason' for a late application, they can pay a fixed sum application fee, like the late submission of tax returns. This would represent a proportionate penalty for missing a deadline.

A substantive scheme like this would:

- ✓ **Avoid** irreversible loss of residence rights.
- ✓ **Ensure** timely applications
- ✓ **Fund** the costs of administration for late applications
- ✓ **Protect** those with 'reasonable grounds' for a late application from fees
- ✓ **Avoid** long-term non-registration as status would be checked regularly



Proposal 2: Addressing the status gap

Even where an EEA national meets the EUSS criteria *and* has a ‘good’ reason for a late application, *and* actually makes a successful late application to the EUSS, there is currently no provision for them to retain a right to reside in the interim. Although they have not done anything ‘wrong’ they face a status cliff-edge. Employers and landlords may risk facing civil or criminal penalties for not dismissing or evicting them.

The Home Office must:

- (a) make provision for a **temporary right to reside from the end of the grace period**, to those eligible to apply late to the EUSS, whether or not they have yet applied, until such a time as the final EUSS decision is produced, to protect applicants, and employers and landlords.
- (b) **Remove the extra conditions** placed upon people who have made in-time applications but whose application has not been determined by the deadline to retain a right to reside and to access work and public services, as the delay is beyond their control.

Proposal 3: ensuring consistency in decision-making

We suggest that the Home Office trains all decision makers on working with late application requests, and monitors and moderates all late application decisions, to spot outliers and to ensure consistency in approach.

Proposal 4: addressing problems in the guidance

We have identified a number of gaps and problems in the guidance on late applications. This guidance should be updated to address the following issues:

1. Caseworkers should not be directed to examine the immigration histories of victims of abuse/slavery;
2. Children’s rights to make late applications should entail equivalent rights for their primary carers;
3. A lack of capacity should in itself be a good reason for a late application;
4. Pregnancy/ maternity at/around the deadline should be a good reason for a late application;
5. Having permanent residence, with or without a permanent residence document, should be a good reason for making a late application.

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The EU Rights and Brexit Hub provides research, advice, and support on EEA+ nationals rights in the UK post-Brexit. We can provide free second-tier advice to organisations working with EU nationals on access to welfare benefits and other public services. We are also collecting evidence on barriers to these services for EEA nationals. Find out more at our website: <https://www.eurightshub.york.ac.uk/>

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