

Law Centre NI response to the Independent Monitoring Authority call for evidence on the EU Settlement Scheme (EUSS)

About Law Centre

1. Law Centre NI (LCNI) promotes social justice by providing specialist legal services to advice organisations and disadvantaged individuals in Northern Ireland. We provide legal advice, casework, training and policy services in immigration, employment and social security. The Law Centre is a second-tier membership advice organisation but also provide services directly to members of the public.
2. Our immigration service seeks to prioritise migrants in situations of vulnerability e.g. asylum seekers, refugees, victims of human trafficking, victims of domestic violence, etc. The Law Centre's Migrant Justice Project adopts a blend of legal, policy and community engagement tools to assist migrants secure durable immigration solutions and to address barriers and challenges associated with precarious immigration status. Our employment service provides legal advice and representation to migrant workers including persons subject to labour exploitation and forced labour. Our social security service has particular expertise in relation to migrants' eligibility to social security including complex right to reside or cross border issues.
3. The Law Centre seeks to influence immigration policy at a regional and UK level, directly informed by our legal experience. We are members of the NI Strategic Migration Partnership, the Department of Justice's NGO Engagement Group on Human Trafficking, the Anti Trafficking Monitoring Group, the Home Office Asylum Stakeholders Forum and the Refugee & Asylum Forum.

About this response

4. Our knowledge of EUSS stems from our own experience of advising and/or assisting clients with EUSS application and from our experience of advising frontline organisations.
5. This response is largely adapted from a submission we recently prepared for the NI Affairs Committee's inquiry into the experiences of migrants in NI.

EU Settlement Scheme (EUSS)

a) What has worked well

6. We consider the online EUSS application process is a significant improvement compared to traditional paper-based Home Office applications. Many applicants have been able to apply to the EUSS without assistance: this is to be welcomed. The approach of EUSS casework, whereby caseworkers proactively get in touch with applicants where necessary, is also welcome.

b) Issues and concerns

7. However, LCNI has identified a number of issues relating to the operation of the EUSS as follows.
8. Due to the *De Souza* case, eligibility to EUSS is wider in NI than in GB. Specifically, family members of 'relevant persons of Northern Ireland' may be eligible to apply; this includes family members of British or dual British/Irish citizens.¹ Awareness of this provision appears to be relatively low including by staff at the EUSS Resolution Centre.
9. A key concern for our clients is the lack of physical documentation provided by the EUSS process. EUSS applicants are doubtful that an email is sufficient in terms of providing their status and are anxious that it might not be accepted by prospective employers, decision makers, etc.
10. While many EUSS decisions are made promptly, delay is not uncommon. As of 31 March 2021, almost 200,000 applications remained pending.² This is a significant figure and concerning given the proximity of the EUSS deadline. Delay is particularly common in cases involving third country family members and/or criminality. If an EUSS application is refused, the applicant has remedies such as a new application, administrative review and/or appeal to the First Tier Tribunal. However, the *absence* of a decision can be stressful for EUSS applicants and denies them an effective remedy.
11. Obtaining biometric appointments has proved to be difficult for some (third country) EUSS applicants. Appointments must be booked online, however, appointment slots are not always readily available. It is stressful and time consuming for applicants to find and book slots.
12. Satisfying the EUSS identity requirements can be difficult for applicants whose ID is held by a different section of the Home Office. There does not seem to be a process in place whereby documents that are already being held by UK Visas & Immigration (UKVI) can be provided to the EUSS unit for verification.

¹ See [Statement of Changes in the Immigration Rules](#) May 2020.

² As of 31 March 2021, 5,301,470 applications had been submitted. 4,977,740 applications had been concluded. Of these, 53% (2,623,720) were granted settled status, 44% (2,173,270) were granted pre-settled status and 3% had other outcomes (including 55,950 refused applications, 60,170 withdrawn or void applications, and 64,580 invalid applications). This means that 197,110 applications remained pending. [EU Settlement Scheme quarterly statistics, March 2021 - GOV.UK \(www.gov.uk\)](#)

13. Working in partnership with the criminal justice charity NIACRO, LCNI has raised concerns with the NI Justice Minister about the barriers experienced by prisoners in NI in accessing the EUSS. The barriers are numerous and are compounded by Covid-19 restrictions.³ The effect of these barriers is that few NI prisoners have been able to submit EUSS applications. The Law Centre welcomes the publication of Home Office guidance which recognises that there may be ‘reasonable grounds’ for which persons released from prisons after the EUSS deadline may make a late application to the scheme.⁴ The Home Office has committed to ‘work closely with the HM Probation and Probation Service’ to ensure that persons in custody can apply to the EUSS.⁵ This work must be prioritised.
14. Although in general it is easier to contact the EUSS Resolution Centre compared to other Home Office decision maker units, difficulties do still arise. EEA applicants who have contacted the Law Centre report long periods of being on hold – up to one hour – waiting to be connected by telephone to a person at the Resolution Centre. One Law Centre advice caller informed us that he sent his national identity card to the Home Office by regular post. Two weeks later, the applicant received an email from EUSS requesting him to send his card, which would indicate that the card had not been received. The applicant contacted the EUSS Resolution Centre and was advised that EUSS was unable to confirm whether the document had arrived: such confirmation can only be provided if documents are sent by registered mail. At the time of writing, this case had not been resolved.

c) Recommendations

15. The Law Centre recommends that:

- i. the Home Office works with NI stakeholders, including government departments, to raise awareness of ‘relevant person of NI’ provision;**
- ii. a physical option – similar to the Biometric Residence Card – is available to EUSS applicants;**
- iii. delays in EUSS decision making are addressed so as to provide EUSS applicants with an effective remedy;**
- iv. measures are adopted to ensure that EUSS can obtain copies of and/or verification of documents held by other sections of the Home Office;**
- v. the Home Office works with the NI Prison Service and/or Probation Service to ensure that:**

³ Barriers include: prisoners do not have access to smartphones or computers that would allow them to complete the EUSS application online; prisoners do not hold on their person the necessary identity documents and/or additional support documents that are necessary to complete the application; other logistical issues within the prison setting around bio-metric evidence collection; application form only available in English; no access to specialist immigration advice in prison system, etc.

⁴ Home Office, ‘[EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)’ Version 12.0, 21 May 2021, p 39.

⁵ Written Question tabled by Claire Hanna MP on 12 March UIN 167972. [Response provided on 17 March 2021](#)

- i) **prisoners can apply to EUSS from custody**
- ii) **persons leaving prison are informed of and can avail from the 'late application' provision.**

Conclusion

- vi. The Law Centre welcomes the opportunity to provide evidence to the Independent Monitoring Authority.

18 June 2021

**For further information please contact Liz Griffith, Senior Research & Policy Officer, Migration Justice Project, LCNI:
Email : elizabeth.griffith@lawcentreni.org
Telephone : 028 9024 4401**