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31 October 2025

Dear Monique Hawkins and Zoe Bantleman,

Thank you for your correspondence of 22 October about clause 42 of the Border Security, Asylum and Immigration Bill. We value your continued engagement with us on this provision. Your correspondence has been passed to the EEA Citizens' Rights & Hong Kong Unit for a response.

We appreciate your support of clause 42 and its intention to provide legal clarity for the 'true cohort' of EU citizens and their family members with EU Settlement Scheme (EUSS) status who are in scope of the Withdrawal Agreement (WA) that it is the source of their rights in the UK. We are therefore grateful for the time and consideration you have given to the clause and respond below to the points in your letter.

The Home Office does not conclude that a person's pre-settled status was granted in error without due process. The person will have been given every opportunity through our engagement with them to show that they meet the relevant requirements of Appendix EU and that their pre-settled status was granted correctly, and will have failed to do so.

As you know, the Government is concerned that removing subsection (2)(c) from clause 42 would treat those granted pre-settled status in error as WA beneficiaries as a matter of domestic law. This would mean that their pre-settled status could not be curtailed, or allowed to expire, on the basis that it had been granted in error, as there is no WA basis for doing so. This would give them unwarranted preferential treatment over those whose EUSS application was correctly refused.

Subsection (2)(c) does not affect the WA-compliant appeal rights already in place for the EUSS under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020. We continue to believe that it would not be appropriate for a person with no basis of qualification under the EUSS to be given WA rights in the UK by statute. They are already

able to test their qualification under the EUSS by means of the statutory appeal rights available to them following the refusal of a valid EUSS application.

As set out in our letter of 29 September, a person granted pre-settled status in error can access an appeal right through a further valid application to the EUSS which, if refused, will give rise to a right of appeal. Where that further application is made before their pre-settled status expires, they will retain that status pending the outcome of their appeal, by virtue of section 3C of the Immigration Act 1971. Likewise, any family member who is relying on a sponsor whose pre-settled status was granted in error and has their application refused will also have a right of appeal against that decision. Nothing in subsection (2)(c) of clause 42 changes this.

Consequently, our position remains that we do not consider it would be appropriate to create an additional right of appeal for these error cases, beyond those WA-compliant appeal rights which, notwithstanding the fact that they are outside the scope of the WA and of clause 42, are already available to the person (and to any family member) under the EUSS.

Where the assessment of proportionality is concerned, such a safeguard is not applicable in cases which are outside the scope of the WA and clause 42. We maintain that it cannot be disproportionate to allow a person's pre-settled status to expire where they had no entitlement to that limited leave in the first place. That is also the approach taken with grants of limited leave in error in other immigration routes. It allows the person to continue to enjoy a basis of stay in the UK, and the right to work here, for the remaining period of that leave, during which they can apply for leave to remain in the UK under any immigration route available to them.

Every potential error case is reviewed on a case-by-case basis and, if it is assessed that the applicant's pre-settled status (or their sponsor's EUSS status) may have been granted in error, the applicant is given an opportunity to show that it was not and that they (or their sponsor) qualify for that status. Where the potential error concerns their sponsor's EUSS status and our engagement with the applicant does not show that it was granted correctly, the sponsor is also contacted and given the same opportunity to show that they qualify for that status.

In ensuring equal treatment for EU citizens and their family members with EUSS status, clause 42 will give legal effect to what has been UK policy from the outset of the EUSS. In doing so, it will also ensure, via subsection (2)(c), that the EUSS does not confer directly enforceable WA rights in the UK on a person who should not have them.

Thank you once again for taking the time to write to the Home Office.

Yours sincerely,

EEA Citizen Rights & Hong Kong Unit
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