

By email:

Seema Malhotra MP, Parliamentary Under-Secretary of State for Migration and Citizenship and  
Parliamentary Under-Secretary of State for Equalities

EEA Citizens' Rights & Hong Kong Unit, [Public.Enquiries@homeoffice.gov.uk](mailto:Public.Enquiries@homeoffice.gov.uk)

4 September 2025

Dear Minister,

**Clause 42 of Border Security and Asylum Bill: Procedural safeguards when allowing EUSS pre-settled status granted in error to expire**

We are writing to follow-up on the correspondence on Clause 42 of the Border Security, Asylum and Immigration Bill (BSAIB). You will recall that on 2 June 2025 you responded to our briefing on amendments we would like to see made to Clause 42 BSAIB.<sup>1</sup> We replied to your response and to a letter from the Home Office minister to the House of Lords, on 26 June 2025.<sup>2</sup> On 9 July 2025, we received a reply from the EEA Citizens' Rights & Hong Kong Unit.<sup>3</sup>

As we have set out in our briefings and in our letter, the primary concern of the3million and ILPA is that any individual who holds pre-settled status under the EUSS who stands to lose that status, should only lose their status after Withdrawal Agreement-compliant procedural safeguards have been applied.

When the Home Office cancels, curtails or revokes an individual's pre-settled status, Annex 3 of Appendix EU ensures the application of procedural safeguards as set out in the Withdrawal Agreement. This means that the Home Office decision is taken after a proportionality assessment, and the decision comes with a right of appeal.

In contrast, when the Home Office asserts that someone's pre-settled status was originally granted in error, and informs the individual that their pre-settled status will not be extended once it reaches its expiry date (in other words, the pre-settled status is left to expire), Withdrawal Agreement procedural safeguards are not applied.

First, there is no right of appeal against the decision to allow status to expire. Rather, as confirmed by both of the Home Office letters of 2 June and 9 July, a right of appeal must be artificially generated from a different decision, which, if refused, will attract a right of appeal. This different decision can be the result of the pre-settled status holder making a further application to the EUSS, or the refusal of a family member's EUSS application where the Home Office considers that their sponsor was granted EUSS status in error. In either case, the decision being appealed is not a decision to remove existing status, it is a decision not to grant new status. This distinction will clearly have a significant impact on the rules and legislation that are relevant to the appeal against that particular decision. Fundamentally, there is no right of appeal against the assertion itself - which may or may not be correct - that pre-settled status has been granted in error. Furthermore, complications will arise because the pre-settled status in question can expire before the appeal (of a different decision) is heard.

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<sup>1</sup> [the3million.org.uk/sites/default/files/documents/HO-reply-t3m-ILPA-AmendmentsClause42-02Jun2025.pdf](https://the3million.org.uk/sites/default/files/documents/HO-reply-t3m-ILPA-AmendmentsClause42-02Jun2025.pdf)

<sup>2</sup> [the3million.org.uk/sites/default/files/documents/t3m-ILPA-reply-HO-AmendmentsClause42-26Jun2025.pdf](https://the3million.org.uk/sites/default/files/documents/t3m-ILPA-reply-HO-AmendmentsClause42-26Jun2025.pdf)

<sup>3</sup> [the3million.org.uk/sites/default/files/documents/HO-reply-t3m-ILPA-AmendmentsClause42-09Jul2025.pdf](https://the3million.org.uk/sites/default/files/documents/HO-reply-t3m-ILPA-AmendmentsClause42-09Jul2025.pdf)

Second, there is no mandatory proportionality assessment applied in relation to the decision to allow status to expire. It is notable that neither the Home Office response of 2 June nor 9 July addressed this proportionality point, despite our briefing and our letter of 26 June raising this whenever we set out the need for procedural safeguards.

We, therefore, respectfully request answers to the following questions:

- Q1. Does the Home Office accept that there is no right of appeal against the specific decision to allow a person's leave to expire, on the basis of an assertion that pre-settled status was granted in error, and as such there is no appeal right dedicated to establishing the accuracy or otherwise of this assessment?
- Q2. Is a Withdrawal Agreement compliant proportionality assessment applied by the Home Office before notifying a pre-settled status holder that their status was granted in error and that their status will not be extended after its expiry date?
- Q3. If a proportionality assessment will be applied:
- a. Please provide a copy of the relevant caseworker guidance that directs the caseworker to apply a proportionality assessment before notifying a pre-settled status holder that their status was granted in error and that their status will not be extended after its expiry date.
  - b. What factors will be taken into account for this proportionality assessment, and what information will be requested from the status holder in order to assess whether it is proportionate to allow their status, granted in error by the Home Office, to expire?
- Q4. If a proportionality assessment is not applied, does the Home Office accept that it will be acting in breach of the Withdrawal Agreement in cases where it transpires that the Home Office wrongly asserted that an individual's pre-settled status was originally granted in error?
- Q5. In our letter of 26 June we clarified that there may be situations where it is legitimate for the Home Office to remove pre-settled status granted in error, and that as such our aim in respect of subsection 2(c) is to ensure that such decisions are subject to a Withdrawal Agreement compliant process that fully considers the proportionality of this outcome. In your letter of 9 July, your concern about removing subsection 2(c) from Clause 42 BSAIB was that this would prevent the removal of status in any situation where someone was granted status in error. It therefore seems possible to amend subsection 2(c) to allow that pre-settled status can be removed where appropriate, but also to put in place appropriate safeguards to ensure this is a just outcome that complies with our international treaty with the EU. Accordingly, will the Home Office agree to work with us to find another way of amending Clause 42 BSAIB to ensure that all pre-settled status holders will benefit from full Withdrawal Agreement-compliant procedural safeguards before their status is lost, even in cases where the Home Office alleges that the status was granted in error?

Yours sincerely,

Monique Hawkins, Head of Policy and Advocacy, the3million

Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association (ILPA)