

By email:

Mike Tapp MP, Parliamentary Under-Secretary of State (Minister for Migration and Citizenship)
Lord Hanson, Minister of State at the Home Office
EEA Citizens' Rights & Hong Kong Unit, Public.Enquiries@homeoffice.gov.uk

22 October 2025

Dear Minister,

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

On 4 September, we [wrote](#)¹ to the then Minister for Migration and Citizenship, Seema Malhotra MP, about Clause 42 of the Border Security, Asylum and Immigration Bill. We received a [reply](#)² from the Home Office on 29 September, to which we reply below.

We note that the [Home Office website](#)³ has not yet confirmed which Minister holds responsibility for the EU Settlement Scheme since your appointment on 6 September. Therefore, please accept our apologies if you are not the appropriate Minister for responding to this matter. If this is the case, we would be extremely grateful if you could forward this letter to the appropriate Minister.

We have corresponded with the Home Office on Clause 42 since May 2025.⁴ Below, we set out our understanding of the Home Office policy relating to pre-settled status under the EU Settlement Scheme that the Home Office alleges was granted in error. We explain why we consider this policy to be a breach of the Withdrawal Agreement.

It is essential to state at the outset that when the Home Office alleges that pre-settled status was granted in error, this does not necessarily mean that it was granted in error.

We are aware of several cases where the Home Office initially stated that someone's pre-settled status was granted in error, and this position was later reversed after the intervention of a legal adviser acting on behalf of the status holder. It is, therefore, hard to agree that the Home Office policy is only targeting cases where status was "*manifestly granted in error*" and that the "*cases in question involve a clear-cut error in the granting of pre-settled status*". If this were the case, we would assume the allegation that the status was granted in error would have been vindicated, rather than subsequently acknowledged as an incorrect assessment. Prior to legal adviser intervention, in the cases of which we are aware, the Home Office informed the status holders that their pre-settled status would be left to expire rather than be automatically extended. In these cases, the status holders were vulnerable and had found it difficult (before being represented by legal advisers) to respond to Home Office requests for evidence of their residence in the UK from almost five years ago. This evidence was required to challenge the Home Office assertion that their status had been granted in error.

¹ the3million.org.uk/sites/default/files/documents/t3m-ILPA-reply-HO-AmendmentsClause42-04Sep2025.pdf

² the3million.org.uk/sites/default/files/documents/HO-reply-t3m-ILPA-AmendmentsClause42-29Sep2025.pdf

³ <https://www.gov.uk/government/organisations/home-office>

⁴ All correspondence available at <https://the3million.org.uk/publication/2025092901>

the3million and ILPA's position is simple: residence rights secured through status under the EU Settlement Scheme **cannot** be removed or restricted without due process, meaning specifically without the procedural safeguards set out in the Withdrawal Agreement. These safeguards include (i) a right of appeal to challenge the legality of the decision and the specific grounds, facts and circumstances on which the Home Office intends to remove or restrict status, and (ii) a proportionality assessment covering the impact to the holder if their status is removed.

The policy of letting someone's pre-settled status expire, rather than cancelling or curtailing it, avoids both a right of appeal against the Home Office allegation that the status was granted in error, and a proportionality assessment.

The previous letters by the Home Office have made four concerning points:

1. **Circular argument:** The Home Office letters repeatedly state that Withdrawal Agreement (WA) safeguards are not applicable in cases which are outside the scope of the WA.

This is clearly a chicken-and-egg argument. It requires the Home Office to decide an outcome before the required due process. The safeguards set out in the WA are there **precisely** to safeguard against the Home Office **incorrectly** asserting that someone is outside the scope of the WA. This is also clear in cases where the Home Office asserts that status was obtained by fraud or deception, as even in these cases the WA is clear that procedural safeguards must be applied. Therefore, we can see no case in which the Home Office asserts status was granted in error, in which a person should be undeserving of the safeguards secured by the WA. Simply having some "*caseworking and direct engagement with the person concerned*" is no replacement for the safeguards set out in the WA.

2. **Alternative amendments to Clause 42:** The Home Office letters have on multiple occasions stated that our amendment to remove subsection (2)(c) of Clause 42 would result in the fact that someone's "*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.*"

If the Home Office believes this to be the case, then it should be straightforward for the Home Office and parliamentary counsel to amend Clause 42 in a different way that still ensures full WA safeguards are applied to the removal of pre-settled status granted in error.

Indeed, in Q5 of our letter of 4 September 2025, we invited the Home Office to do so. This was not addressed in the Home Office reply of 29 September.

3. **Right of appeal:** The Home Office letters have repeatedly stated that a right of appeal can be generated by making a **further** application to the EUSS, a refusal of which then comes with the right of appeal.

This is not the same as a right of appeal against the decision to restrict/remove someone's residence rights through allowing existing pre-settled status to expire, which is what the WA requires.

We also note that the extant pre-settled status could expire before the appeal (on a different decision) is heard. Furthermore, a new EUSS application does not assess the proportionality of refusing to grant status as the Appendix EU rules do not require this. This is why the appeal

right guaranteed by the WA extends to the removal of status, in order for the proportionality of that decision to be considered.

4. **Proportionality assessment:** The Home Office letters have suggested that the Home Office is applying proportionality in allowing someone's status to run to expiry rather than cancelling it. However, we maintain our view that the appropriate place for a proportionality assessment is in a decision that carries a right to an appeal and may be examined in such an appeal on the facts of the specific case, rather than through the application of a blanket policy.

We hope that the Home Office will reconsider its position on the policy of allowing pre-settled status to expire, without full WA safeguards, where it considers that status to have been granted in error. We would welcome the Government's urgent consideration of whether it can amend Clause 42, soon to be debated at Report Stage in the House of Lords, to ensure compliance with the WA.

Yours sincerely,

Monique Hawkins, Head of Policy and Advocacy, the3million

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