

the3million
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By email:

The Rt Hon Liz Kendall MP - Secretary of State for the Department of Work and Pensions

CC to:

The Rt Hon Wes Streeting MP - Secretary of State for Health and Social Care

The Rt Hon Sir Stephen Timms MP - Minister of State (DWP)

Stephen Kinnock MP - Minister of State (DHSC)

Seema Malhotra MP - Minister for Migration and Citizenship

25th October 2024

Dear Secretary of State

We write to express our concern at reports of DWP decision makers being unaware of the Home Office's transition to a fully digital eVisa immigration system, and curtailing benefits access as a result.

The transition to a fully digital immigration system by 31st December 2024 will affect around 4 million migrants living lawfully in the UK. The hard deadline of 31st December 2024 exists because that is the day at which all physical biometric documents are set to expire. Biometric Residence Cards / Permits (BRCs/BRPs) have a validity date which extends to no later than that date, despite the fact that for most people, their leave to remain in the UK will continue to be valid until after that cut off date.

A lack of knowledge of the significance of that expiry date on physical documents appears to be the cause of much confusion on the part of your decision makers.

We are extremely concerned about the likelihood of similar confusion arising after 31st December 2024 in other government departments, which provide or sponsor essential services including the NHS, and local authorities (housing and social services). Migrants are at risk of being denied services that they are entitled to as decision makers do not know how to properly check a person's immigration status and entitlements. We are deeply concerned that this could lead to another Windrush-style scandal.

In this letter we urge you to:

- provide essential training on the eVisa rollout and its significance for your decision makers;
- provide clear guidance for your decision makers on the eVisa rollout;
- make that guidance publicly available;
- commit to not suspending support for individuals during the re-verification of their immigration status;
- commit to meeting with us to discuss these urgent and emerging issues in greater depth.

The invitation to individuals to create their eVisa UKVI account was only extended to all on 6th August 2024. Many individuals struggle with the complicated application process. The government's provision of grants to organisations for the purpose of providing assistance with setting up those digital accounts is indicative of the recognised complexity of the process.

Government communications regarding the necessity to make the shift have been piecemeal and inadequate, and many people (especially those who have lived in the UK for a long time) remain entirely unaware of the need to make the shift, as confirmed by many organisations working in the sector.

This digital-only system is deeply flawed, prone to glitches and errors, leaving people frequently unable to prove their status and assert their rights. Those who are less digitally literate are excluded by a process that they are unable to grapple with. Many have experienced an unwillingness to engage with the technical processes required of the system on the part of those tasked with checking immigration status (including landlords, prospective employers, and airline counter check-in staff).

We have seen this in the many problems reported by those with status under the EU Settlement Scheme, and anticipate that similar problems will arise for others across different immigration categories as the roll out of digital status is expanded. These concerns were set out comprehensively in an August 2024 letter to the Home Secretary from the Immigration Law Practitioners' Association (ILPA), cosigned by the3million and several others.¹ Those affected will be individuals of varied nationalities and are likely to often be from racialised and marginalised backgrounds. The possibility of another Windrush-style scandal is foreseeable, as highlighted by The Guardian in a March 2024 article which reported that database errors had affected the status of 76,000 people.²

Issues with the DWP

The Home Office assures us that it has been in clear communication internally with other government departments, to ensure that relevant decision makers are aware of the shift.

Against that backdrop, we are alarmed at reports, made to us and to other advocacy and advice organisations working in the sector, of decisions being taken by DWP to curtail people's access to welfare support because of misunderstandings about the transition to digital immigration status and the fact that physical immigration documents show an expiry date of 31st December 2024. One such example:

- A survivor of torture was granted refugee status on 1st March 2021 for 5 years. His BRP is only valid until 31st December 2024. He is in receipt of Personal Independence Payment (PIP). On 10th March 2024 he received a letter from the DWP confirming his ongoing entitlement to PIP. That letter did not mention any imminent eligibility review of his entitlement.

On 2nd July 2024, he received another letter, stating that his PIP will end on 31st December 2024.

¹ <https://the3million.org.uk/publication/2024081901>

²

<https://www.theguardian.com/uk-news/2024/mar/14/home-office-immigration-database-errors-hit-more-than-76000-people>

No reason from the DWP was given. The letter simply states *“If you still need help with your daily living or mobility you will need to claim PIP again”*.

Migrants Organise wrote to the DWP about this. In a letter dated 3rd September 2024 the DWP apologised and corrected the error, but this has still prompted an immediate substantive eligibility review of his entitlement.

The following are further examples of the kind of erroneous curtailment decisions which have been reported to us:

- A refugee family was recently granted status and applied for Universal Credit in January 2024. A Universal Credit eligibility assessment determined that the family has a right to reside and is entitled to Universal Credit, having passed the Habitual Residence Test. The decision letter however also states that they will need to review the decision on 31st December 2024 (see attached at Annex C).
- A person with indefinite leave to remain (ILR) was told by the DWP that she needed to reapply for attendance allowance and pension credit, as it is currently due to end in December. This person is severely disabled, cannot move without severe pain, and she is primarily housebound. She has had to go out to two Citizens Advice appointments to try and sort out her DWP benefits. The advisor assisting her figured out that the problem was her BRP card expiry date, and so helped her to set up an eVisa, as the individual does not have a smartphone or email address. Her advisor reported to us: *“She was in so much pain she cried several times, and this ALL could have been avoided if the DWP were properly informed about BRP expiry dates and the eVisa transition but they clearly are not. I have attempted several times to contact the DWP and escalate to management but “their systems are all down” for the second day in a row.”*
- Another person reported: *“I had problems providing evidence of my newly acquired ILR to DWP who cut my benefits when my residence [card] expired. I cannot have my benefits reinstated and backdated.”*

The above examples show a clear lack of understanding about the significance (or lack thereof) of the expiry of BRP/BRCs. In the past, for people without indefinite leave to remain, the end date on a BRP/BRC would have coincided with the end date of a person’s leave. However this has not been the case for some time and we are concerned that steps have not been taken to change the way the DWP operates in line with those changes.

An FOI (attached at Annex A) from April 2024 revealed that 3,270 PIP claims are scheduled to end on 31st December 2024, compared to 750 which are scheduled to end on 30th December 2024. This again suggests that many claims are scheduled to be reviewed likely based on a mistaken belief that the person’s entitlement is ending.

There is significant concern at present that individuals are unable to obtain replacement BRPs.³ If the individual does not have any other ID documents (e.g. certain refugees), there is currently no mechanism for them to obtain an eVisa. It is vital that those decision makers, who are required to check immigration status, are properly informed, in order to ensure that people are not denied access to their rights. We have received a number of examples of where this harm has occurred:

- An advisor reported that they had a client who was released from prison and became homeless. Police lost his BRP, though he has indefinite leave to remain. He is temporarily being supported but needs to prove his status to access benefits.
- Another advisor reports trying to assist an individual who has recently been granted refugee status. The individual was sent a BRP in the post but it never arrived, as Royal Mail delivered it to the wrong address. The advisor reported it missing but the individual is unable to apply for a replacement BRP anymore (due to the Home Office ceasing to accept further requests for new BRPs) and he cannot apply for an eVisa because he does not have a passport. The individual is currently therefore unable to apply for benefits or housing. His asylum support has been terminated but he cannot work or claim benefits.

Urgent review and guidance required

We call on you to immediately provide clear guidance to decision makers and provide mandatory training around eVisas and the transition process. **It is essential that DWP benefits assessors and decision makers understand that the expiry date on a person's Biometric Residence Permit or Card (BRP/BRC) (which can be no later than 31st December 2024) does not necessarily equate to the validity period of that person's leave to remain.**

That guidance **must be made public**, so that affected individuals can access it both to understand their own rights and to draw it to the attention of those decision makers who unwittingly act in breach.

There are a number of ways that decision makers can check a person's immigration status, as set out in Annex B to this letter, one of which is the Application Programming Interface (API) between the Home Office and the DWP which should render checks of physical documents redundant.

Decisions to short-stop welfare support have serious consequences for the individuals affected, including destitution, street homelessness, and denial of life-saving treatments and care provision. We urge you to take immediate steps to ensure that DWP decision makers are fully informed of the eVisa transition process and what it means for their decision making.

Verifying whether someone continues to have leave to remain should entail a simple immigration status check. It should not be used as a trigger for prematurely reopening substantive reassessment of investigations into a person's eligibility for welfare support - a process that can be onerous and distressing for individuals.

3

<https://www.gov.uk/government/publications/biometric-information/biometric-reuse-accessible#replacement-of-damaged-lost-or-stolen-brps-and-brcs>

All of the above would be in line with the Public Sector Equality Duties, and duties to provide assistance and adjustments to prevent both direct and indirect discrimination under section 13 and 19 of the Equality Act 2010, particularly on the grounds of nationality, race or disability.

We and many other organisations in the sector are working hard to ensure that any problems regarding access to essential public services as a result of the eVisa rollout are recorded and reported, in order to feed in to positive changes. We want to ensure that those affected can also access legal advice, including in relation to making claims for damages (under the Human Rights Act and Equality Act), when breaches occur. Sadly there are many such instances.

Similar issues with other government departments

We are concerned that there is a similar lack of understanding of the eVisa transition process among local authorities, housing officers and other decision making bodies, leading them to potentially exclude people from support to which they are legally entitled.

One of the most harmful aspects of the Hostile Environment policy is the way in which third parties and public authorities are frequently expected to verify individuals' immigration status. At the same time, the immigration system is extremely complex and changes are often introduced haphazardly, as in this case with the transition to eVisas. It is for that reason that we are copying your colleagues with responsibility for those areas into this letter.

Please take immediate action to ensure that your decision makers are fully informed of the eVisa transition and understand its implications for their decision making. We likewise call on you to commit to not suspending or denying this vital support to individuals whilst clarifying their immigration status. Simple steps such as these will help to avoid another Windrush-style scenario.

We would welcome the opportunity to meet with you to discuss these concerns and the most appropriate ways forward, to avoid further harm being caused to vulnerable individuals by the effects of this period of transition.

Yours sincerely

Kezia Tobin, Head of Policy and Advocacy, the3million
Brian Dikoff, Legal Officer, Migrants Organise
George O'Neill, Chief Executive, Cardinal Hume Centre
Claudia Glyn, Coordinator and Trustee, Southampton and Winchester Visitors Group
Mona Bani, Executive Director, Revoke CIC
Luke Piper, Head of Immigration, Work Rights Centre
Tanya Goldfarb, Head of Business Immigration Team - Bindmans LLP & ILPA Trustee
Leyla Williams, Deputy Director, West London Welcome
Jan Foster & Denise Cann, Doncaster Conversation Club
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Maria Wilby, Operational Lead, Refugee, Asylum Seeker and Migrant Action RAMA
 Thomas Martin, City of Sanctuary Sheffield
 Mel Steel, Director, Voices in Exile
 Iain Palmer, Counsel, Brighton Housing Trust
 Jo Wilding, University of Sussex Migration Law Clinic
 Lauren Scott, CEO, Refugees at Home
 Ros Gowers, Coordinator, Evesham Vale Welcomes Refugees
 Jean Demars, Director, Public Interest Law Centre
 Alison Stanley, Senior Consultant, Bindmans LLP
 Alan Robertson, CEO, Lewisham Refugee and Migrant Network (LRMN)
 James Roberts, Shropshire Supports Refugees
 Tigs Louis-Puttick, Director, Reclaim The Sea
 Jude Hawes, Citizens Advice Staffordshire North & Stoke-on-Trent
 Indre Lechtimiakyte, Abercrombie, Legal and Migrant Support Manager, Samphire
 Zoe Bradley, CEO, Citizens Advice Bournemouth Christchurch and Poole
 Victoria Marks, Director, Anti Trafficking and Labour Exploitation Unit
 Avril Sharp, Policy Officer, Kalayaan
 James Adamson, Legal Adviser and Centre Manager, Penrith and Eden Refugee Network (PERN)
 Shelagh Linde & Jessica Rusling, Caseworkers, Support for Wigan Arrivals Project
 Becky Hellewell, Head of Support & Immigration, St. Augustine's Centre
 Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association (ILPA)
 Eiri Ohtani, Director, Right to Remain
 Norman Minter, Chair, Waltham Forest Migrant Action
 Zoe Dexter, Housing and Welfare Manager, Helen Bamber Foundation
 Ellie Williams, Asylum Seeker and Refugee Support Worker, Shropshire Supports Refugees
 Jennie Watts, Gloucestershire Action for Refugees and Asylum Seekers (GARAS)
 Diana Baxter, Partner, Wesley Gryk Solicitors LLP
 Catherine Hartley, Vice Chair, Southampton and Winchester Visitors Group (SWVG)
 Shameem Ahmad, CEO, Public Law Project
 Muhunthan Paramesvaran, Partner, Wilson Solicitors LLP
 Rachel Balabanoff, Coordinator, The Care Rights Project
 Lydia Martin, Deputy Head of Projects, New Europeans UK
 Cecilia Petre, Co-CEO, The Romanian and Eastern European Hub
 Denise McDowell, Chief Executive, Greater Manchester Immigration Aid Unit
 Anna Yassin, Migrant Services and Advocacy Manager, Glass Door Homeless Charity
 Noelia Martinez, Chief Executive Officer, Citizens Rights Project
 Owen Parker, Researcher, University of Sheffield
 Becky Moore, CEO, Hackney Migrant Centre (HMC)
 Abi Brunswick, Director, Project 17
 Nicole Masri, Senior Legal Officer, Rights of Women
 Kate Smart, CEO, Settled
 Nicholas Cassidy, Manager, Omagh Ethnic Communities Support Group (OECSG)
 Irene Austin, Chair, Herts Welcomes Refugees
 Shazia Yousaf, Parker Rhodes Hickmotts Solicitors
 Esme Kemp & Rosie Cava-Beale, The Hummingbird Refugee Project

Eddie Campbell, CEO, Essex integration project of DNA Networks
Christopher Desira, Director, Seraphus
Nelli Shevchenko, Counsel, Seyfarth Shaw UK LLP
Leon Elliott, Policy and Research Coordinator, NACCOM (No Accommodation Network)
Lesley Kemp, Solicitor, Helen Smith Immigration
Claire Hall, Head of Strategic Litigation, Child Poverty Action Group
Alex Kaleniuk, Immigration Lawyer, Alexandra Kaleniuk Immigration Consulting Ltd
Jacqueline Penlington, Solicitor, Stevens & Bolton LLP
Radha Ruskin & Jill Lundquist, Immigration Team Supervisors, Bristol Citizens Advice
Marina Dunajeva, CEO, Integration Support
Mehreen Khattak, Immigration Lawyer, Mulgrave Law
George Rosenberg, Immigration Lawyer, George Rosenberg Law Ltd.
Nichola Carter, Carter Thomas Solicitors
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Annex A



Department
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[DWP Website](#)

Our Ref: FOI2024/20312

Date: 9 April 2024

Dear

Thank you for your Freedom of Information (FoI) request received on 10 March. You wrote:

“How many PIP awards are scheduled to end (or be reviewed) on either 30/12 or 31/12/2024? I understand this to be information which would not surpass the £600 cost limit specified in the Act.”

DWP Response

We confirm that we hold the information you have requested.

In England and Wales there are 1,240 PIP Award Reviews scheduled to be processed on 30 December 2024 and 1,860 scheduled to be processed on 31 December 2024. There are 750 claims that have an expected end date on 30 December 2024 and 3,270 claims that have an expected end date on 31 December 2024.

The Award Review (AR) processed date serves solely to prompt the initiation of an AR form to the customer on that day.

Notes:

- Source: PIP Computer Systems (PIPICS).
- Figures are for England and Wales only.
- Figures have been rounded to the nearest 10.
- This is unpublished data. It should be used with caution and may be subject to future revision.

If you have any queries about this letter, please contact us quoting the reference number above.

Yours sincerely,

DWP Central Freedom of Information Team
Department for Work and Pensions

Annex B

GUIDE: HOW TO CHECK IMMIGRATION STATUS

All Home Office issued Biometrics Residence Permits/Cards expire on 31st December 2024.

This relates only to the expiry of the physical proof of status rather than the date that the person's leave to remain in the UK expires. An sample BRP showing the expiry of 31st December 2024 is below:



How to check a person's immigration status

- **Direct check using the Home Office API**

Even as long ago as 1st July 2021, Home Office guidance on Using a UKVI account⁴ included the following wording:

“Some government departments and public authorities can automatically access your immigration status information. Currently, this includes the Department for Work and Pensions (DWP), HM Revenue and Customs (HMRC) and NHS England and Wales.

You do not need to share your status to be able to access these services. Departments will confirm your identity and then access the information directly.

If the organisation does need to see your status, they'll inform you and you'll be able to use the View and Prove service to share your immigration status information with them.”

4

<https://webarchive.nationalarchives.gov.uk/ukgwa/20210701173831/https://www.gov.uk/guidance/using-your-uk-visas-and-immigration-account>

In light of this API, there should only rarely be a need to conduct a further, separate check of a person's immigration status.

There will be times when an individual has renewed their passport but hasn't updated their UKVI account with the new passport details, at which point the API check may not work. In those instances only, alternative means of checking immigration status below should be used.

- **View and Prove**

Where no successful API check has been carried out, as per the guidance posted above, decision makers can request individuals to generate and provide a share code through the View and Prove system.

As above, however, there are real concerns that the eVisa system will sometimes result in errors and return false or inconclusive results. We urge your decision makers not to curtail support on the grounds of immigration status until and unless they are sure that the individual no longer has valid leave to remain. If an individual asserts that the View and Prove system is returning an incorrect check or in the event that View & Prove is not working for any reason, decision makers are urged to try and verify the individual's leave to remain using alternative means.

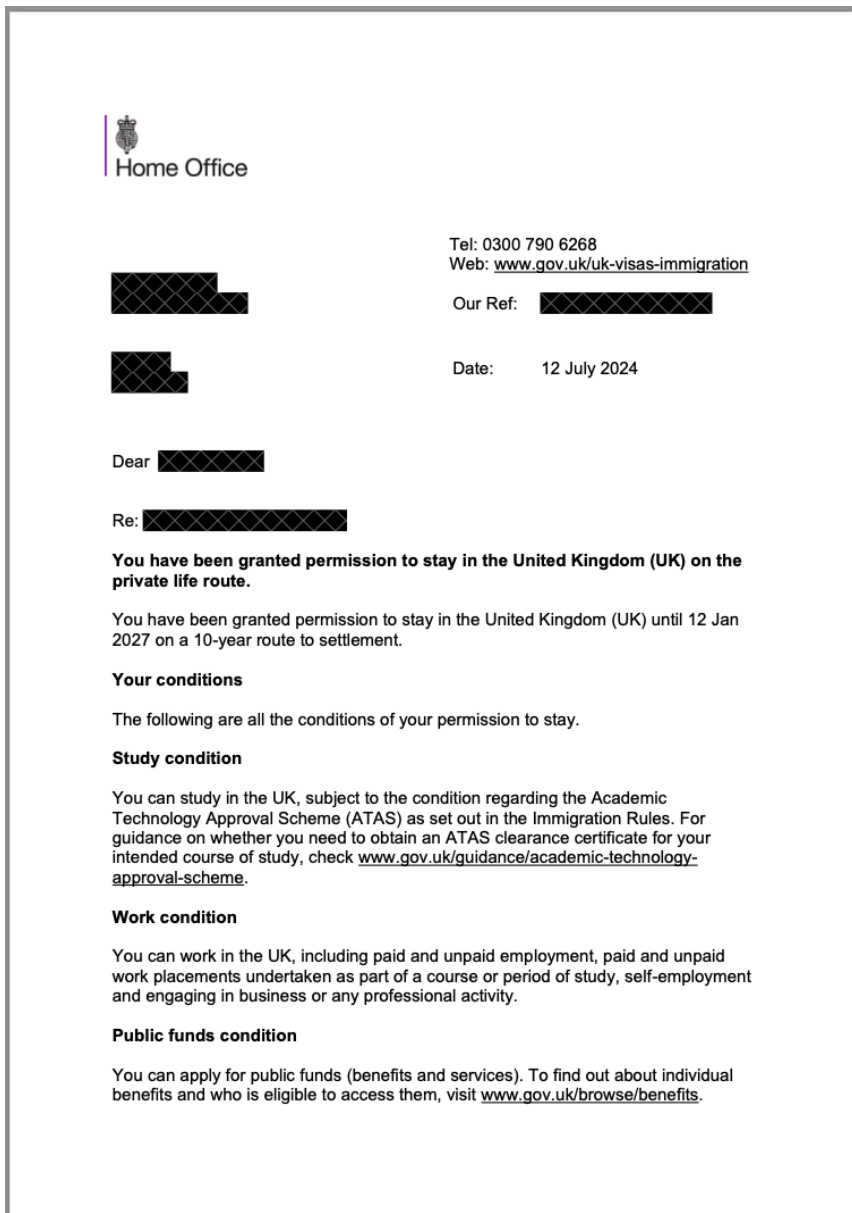
- **Contacting the Home Office via their dedicated Status Verification and Enquiries Checking (SVEC) service**

While there does not appear to be a publicly available page on the SVEC, it is our understanding that this is a service available to Employers, Landlords, NHS agencies and others, and therefore presumably must also be available to DWP and other government departments.

- **Asking individuals to show their grant of status letter**

When the Home Office grants an individual status following an application, they will be provided with a decision or grant letter.

The letter will be dated and *should* indicate the length of time that leave to remain has been granted for, or specify an expiry date. Note that decision letters do not always indicate the expiry date of the leave to remain. An example letter is below:




- **Asking for information from legal advisor**


Some individuals, including those who are digitally excluded or illiterate, might struggle to use the View & Prove system.

If those individuals have a legal advisor, such as a solicitor or a charity that assisted them obtain their status, we recommend that you ask them to contact their legal advisor to provide proof of the individual's status.

Annex C

DWP Decision letter indicating review on 31 December 2024





FREEPOST DWP
Universal Credit Full Service


If you call us, please have the answers to your security questions ready

www.gov.uk/universalcredit

Telephone: 0800 328 5644
Textphone: 0800 328 1344

Your Universal Credit claim

Habitual residence test decision

Dear 

We have decided that you have a right to reside and are habitually resident in the UK as:

Non-EEA Limited leave to remain

We will need to review this decision on 31/12/24 .

How we made this decision

We have used all the information we have about you, including:

- information provided in your Universal Credit application
- information provided during your habitual residence test interview
- any other information you have provided

If you want a more detailed explanation of this decision, or need more information, call us on **0800 328 5644**.

What happens next

We will review your claim and then let you know if you will get Universal Credit.

9/1/24

Use your journal to contact us if you have any questions.

You can also call us on the number above. To speak to an agent in Welsh, please call: **0800 328 1744**.

We have many different ways we can communicate with you.

If you would like Braille, British Sign Language, a hearing loop, translations, large print, audio or something else please tell us using the phone number at the top of this letter.

Please turn over

Universal Credit is operated by the Department for Work and Pensions

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