

By email: Seema Malhotra, Yvette Cooper

CC: IMA, SUG

22 November 2024

Dear Seema Malhotra MP,

**EU Settlement Scheme Cancellation Policy - Disproportionate Impact on Vulnerable Cohort**

We write to raise our significant concerns regarding the Home Office's policy, to cancel the leave of individuals with pre-settled status who have experienced a breakdown of their relationship, and the disproportionate impact it will have on non-EEA citizens and on women vulnerable to domestic abuse, undue loss of their rights, and subjection to the hostile environment.

**Background to EUSS and cancellations**

When the EU Settlement Scheme (EUSS) was launched in late 2018, the UK Government intended that those granted pre-settled status (PSS) under the EUSS would be given a time-limited permission to stay in the UK. Under the original policy design, each of these PSS holders would need to make a further immigration application (most often this would be another EUSS application) within five years or automatically lose all their rights to live in the UK and become undocumented, subject to the Hostile Environment policies and/or removal. The Government therefore considered that for every PSS holder, the Home Office would have the opportunity to examine evidence, and make a decision to extend or deny leave to remain at most five years after the initial grant of status.

The High Court judgment in the judicial review proceedings brought by the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA) has necessitated a change to this policy. PSS can no longer automatically expire, rather an explicit curtailment decision must be made to remove someone's PSS.

To date, the Government has implemented the judgment by automatically extending everyone's PSS shortly before it is due to expire (regardless of eligibility for the continued holding of this status) while at the same time simply stating that these extensions can be cancelled if the holder no longer meets the requirements for it. Despite the IMA judgment having been made almost two years ago, there is still no clarity or published guidance around any intended cancellation policy. Although not the subject of this letter, it must be noted that this mixed-message approach is leaving many PSS holders extremely insecure, especially those who may have had longer absences from the UK due to the Covid pandemic (and who are unable to benefit from the Covid-19 absences policy) but who have since returned to the UK and have picked up their lives again. With every passing day people become more embedded in their lives here, whether that is through their work, their children's school, their friendships or other connections within their community, and any eventual uprooting of their lives will be all the more harsh and inhumane.

**Cancellations of PSS for those whose relationships have broken down**

We write to you today about one area where the Home Office **has** implemented a policy of looking to cancel people's PSS, namely where marriages, civil partnerships or relationships have broken down.

This policy disproportionately targets vulnerable, often racialised, cohorts, does not appear to be an effective policy on its own terms, and suffers from serious process failures.

We understand that current policy is that since September 2023 there is an EUSS team within the Home Office's Status Review Unit (SRU), that is now processing referrals where status holders or their sponsor have informed the Home Office of their relationship breakdown, or referrals from other parts of the Home Office where a relationship breakdown becomes known. This includes notifications that were made since the EUSS was launched in 2018, and that have not triggered any status review until the EUSS SRU team was set up in 2023.

Both sponsors and status holders can make a notification through a page on the Home Office website - '**Visas when you separate or divorce**'<sup>1</sup>.

Although the page states that people with permission on the Hong Kong BN(O) route do not need to inform the Home Office about divorce or separation, it omits to state that EUSS status holders likewise also do not need to inform the Home Office about divorce or separation.

In the case of victims of domestic abuse, sponsors will often make such notifications as part of the abuse, exerting control over their victims by using the threat of the Home Office cancelling their immigration status.

### **Disproportionate impact of this policy on non-EEA citizens, and on women**

It appears this policy disproportionately targets cancellation of EUSS status of non-EEA citizens.

This partly flows from the fact that after divorce or termination of a civil partnership, unlike non-EEA citizens, EEA citizens do not need to prove any extra conditions (such as how long they were married or civil partners, how long they had lived in the UK, whether they had custody or right of access to a child, or whether they were the victim of domestic abuse) in order to retain residence rights.

It furthermore flows from the fact that this policy is only concerned with notifications of relationship breakdown, rather than looking at for example breaches of continuous residence which would affect EEA and non-EEA citizens equally. We understand that the Home Office is still awaiting ministerial direction on curtailment on the basis of breaches of continuous residence.

We also consider this policy to disproportionately impact women. A large majority of victims of domestic abuse are female. Male perpetrators of domestic abuse are known to exercise control over their female spouses by threatening with loss of their UK immigration status. There are foreign jurisdictions where male spouses are able to obtain a divorce without the knowledge or consent of their female spouse.

We have also understood from presentations from the Home Office that this status review policy is resulting in a decision to retain residence rights in over 90% of cases. Therefore this selected cancellation policy cannot be said to be effective or successful on its own terms.

### **Concerns around the process of status review**

We are extremely concerned around the process taken to review people's status under this policy. We list some of our most pressing concerns below:

- People can receive a 'minded to curtail' letter out of the blue, based on a notification that was made several years ago.

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<sup>1</sup> <https://www.gov.uk/visas-when-you-separate-or-divorce>

- People receiving such a ‘minded to curtail’ letter are given only 14 or 21 days to respond with evidence on having retained their residence rights. We note that the Curtailment Guidance<sup>2</sup> was recently updated to change this period from 14 to 21 days. We consider 21 days still to be far too short for such unexpected communications from the Home Office. In our view the Home Office should *never* cancel someone’s pre-settled status without having received a response to a ‘minded to curtail’ letter, and alternatively, we consider that a period of six months is a more fair and reasonable time period for a status holder to provide a response.

People are able to request more time, but unrepresented vulnerable people would likely not dare to assert this request, or not know how to go about doing so. Furthermore, the decision to grant more time is a discretionary one. Many vulnerable people may even have been originally helped by another person or charity / organisation to obtain EUSS status, and the request may have gone to that person / organisation’s email address if the status holder was unable to manage emails.

- The suggested evidence to demonstrate retained rights appears to exclusively focus on the length of time they were married / in a civil partnership, and the length of time they lived in the UK. It does not ask for evidence of the other ways to demonstrate retained rights, such as having custody over a child, having the right of access to a child that must take place in the UK, or being a victim of domestic abuse.
- Cases are selected for review even where the Home Office already has all the evidence available to them that the status holder would retain their rights after a relationship breakdown - for example where someone has filed evidence of being a victim of domestic abuse, either as part of their original pre-settled status application, attached to their pre-settled status application after its grant, or as sent to the Home Office in other forms of communication.
- Letters are sent that use incorrect terminology, such as referring to breakdown of a relationship where only divorce or termination of civil partnership is relevant. For those who are married or in a civil partnership, their EUSS rights are not affected by their relationship breaking down or ceasing to live together.
- Letters are sent that do not use clear, understandable language, and do not take into account that some recipients may even be entirely unaware that there has been a divorce - as there are overseas jurisdictions that allow male spouses to obtain divorces without their female partner’s knowledge.
- We have seen cases where the status review process appears to run alongside that individual’s pending application for settled status. The applicant has received extremely confusing sequences of Home Office communications namely having their pre-settled status questioned, being granted settled status and later being told they are allowed to keep their pre-settled status. Such communications do not contain any acknowledgement of the anxiety that will have been created.
- There is no published guidance on the proportionality assessment that must be made before status is cancelled as a result of relationship breakdown.

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<sup>2</sup> <https://www.gov.uk/government/publications/considering-immigration-status-and-deciding-enforcement-action>

## Questions

- Q1. How does the Home Office ensure that current EUSS cancellation efforts do not disproportionately affect:
- non-EEA citizens?
  - women?
- Q2. Has any equality impact assessment been carried out on the practice of seeking to cancel immigration status due to breakdown of relationships, before setting up the EUSS team within the Status Review Unit? If so, has this been published? If it has not been published, can you please share a copy with us?
- Q3. Would you agree to an urgent review of the process around cancellation of status review, and seek the expertise of organisations such as Rights of Women and other organisations that provide immigration advice?

Kind regards,

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Zoe Bantleman - Legal Director, Immigration Law Practitioners' Association

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