

Questions on the Home Office implementation of IMA High Court Judgment

The answers to these questions are based on:

- Government press release of 17 July 2023: www.gov.uk/government/news/enhancements-to-the-eu-settlement-scheme-confirmed
- Government Statement of Changes of 17 July 2023: www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1496-17-july-2023
- News release from Independent Monitoring Authority: ima-citizensrights.org.uk/news_events/ima-responds-to-home-office-plans-to-implement-judgment-following-judicial-review/
- Article by Chris Desira from Seraphus - www.linkedin.com/pulse/sweeping-transformations-eu-settlement-scheme-todays-statement
- Very short meeting organised by the Home Office FBIS (Future Borders and Immigration Systems) Engagement Team on 18 July 2023, where a Home Office representative presented some slides and held a brief Q&A session.

With thanks to Chris Benn from [Seraphus](https://www.seraphus.com/) for his time in reviewing this Q&A document.

1. AUTOMATIC EXTENSION OF PRE-SETTLED STATUS BY TWO YEARS

1.1	I have pre-settled status, but should now be eligible for settled status. Can I still go ahead and make an application for settled status?	<p>Yes, people can still apply for settled status when they qualify.</p> <p>Usually people need five years of continuous residence to be eligible for settled status, but there are some limited situations where settled status can be obtained earlier - see https://www.gov.uk/settled-status-eu-citizens-families/settled-status-less-than-5-years.</p> <p>The questions following in this document are for those who do not make an application themselves.</p>
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<p>1.2</p>	<p>I arrived in the UK in August 2018. I was granted pre-settled status in December 2018, and have been living in the UK ever since.</p> <p>When I log in to view my status, it says that it will expire in December 2023.</p> <p>What will these changes mean to me?</p>	<p>Unless you apply for, and are granted, settled status between now and December 2023, your pre-settled status should be automatically extended by two years to December 2025.</p> <p>We do not know exactly how long before December 2023 this extension will take place, but the Home Office has at various times indicated it would perhaps be ‘a matter of weeks’, or ‘one or two months’ before people’s original expiry date.</p>
<p>1.3</p>	<p>I arrived in the UK in August 2018. I was granted pre-settled status in March 2020, and have been living in the UK ever since.</p> <p>When I log in to view my status, it says that it will expire in March 2025.</p> <p>What will these changes mean to me?</p>	<p>In August 2023, you will become eligible to apply for settled status. If you do apply and are granted settled status, you should be able to use View & Prove proof to evidence the additional rights that come with settled status.</p> <p>If you do not apply, then at some time in 2024 the Home Office is going to start running automated upgrade checks of all pre-settled status holders where a National Insurance (NI) number was originally provided in the pre-settled status application. They will check this NI number against HMRC and DWP records and if they find evidence of five years of residence, the Home Office will offer you an ‘automatic’ upgrade of settled status. If they do not find evidence of five years of residence, nothing will happen as a result of this automatic upgrade check. We do not have any details of when this automatic checking process will start.</p> <p>We understand they will run these checks periodically, so even if they don’t find five years’ residence evidence during one check, they may do so in a later check.</p> <p>Separately, you are able to make an application yourself once you can evidence five years’ residence. If you did not provide a NI number when you applied for pre-settled status, then you will have to make the application yourself if you want to have the security of settled status to evidence your rights.</p> <p>If your status is not considered for an automatic upgrade to settled status, then at some time before your status expires (we do not know exactly when), your pre-settled status should be extended by two years to March 2027, and you should receive a notification from the Home Office about this.</p>

1.4	Will everyone's pre-settled status be automatically extended for two years? Or will there be some kind of evaluation of people's circumstances before it's extended? If so - what is this evaluation?	<p>To date, we have not been given any indication whether there will be any criteria to determine who is eligible for the pre-settled status extension. A Home Office representative told us that extensions will begin in September when the first grants of pre-settled status are due to expire.</p> <p>They said <i>"Changes will ensure nobody with pre-settled status will lose their immigration status because they have not made a second application to the EU Settlement Scheme."</i> However, a strict reading of this could still include the possibility that someone with pre-settled status will lose their immigration status for reasons other than not making a second application to the EU Settlement Scheme. (See question 1.17 for more details)</p>
1.5	My pre-settled status expires in February 2026. I read the Government's news release, so will my pre-settled status be extended in September 2023 by two years to expire in February 2028?	<p>No, the extension of pre-settled status only happens shortly before that pre-settled status is due to expire, and only if that person has not been granted settled status in the meantime.</p> <p>So if you have not been granted settled status (either through an automatic upgrade or an application you have made yourself), then shortly before February 2026, your pre-settled status should be extended by two years to February 2028.</p>
1.6	The Government said in its press release that it will automatically extend the status of people with pre-settled status by two years before it expires if they have not obtained settled status. When will they do this - will this just be on the day of extension, or a set period before?	<p>We did not receive a precise answer to this question - the Home Office has at various times said 'a matter of weeks', or 'one of two months' before the original expiry date.</p> <p>Obviously for those whose pre-settled status expires in September, it is likely that an extension will happen rather closer to the expiry date.</p>
1.7	Will I be told when my pre-settled status is extended? If so, will I be told before, or afterwards? And how will I be told? Will I get an email or text, or will it only show up if I log into View & Prove?	<p>We were only told <i>"Individuals will be notified directly"</i>, so we do not have more precise answers to these questions. The Home Office statement says that the two year extension will be <i>"reflected in the person's digital status"</i>, which we take to mean in View & Prove.</p>

1.8	[ASKED AT SOME POINT IN THE FUTURE] I have pre-settled status which is about to expire. It doesn't look like it's been extended yet. How will I know whether to just wait a bit longer for the automatic extension to happen, or whether something has gone wrong and I need to chase the Home Office?	We do not have clarity on what will happen in these circumstances. We would encourage anyone who experiences this from September 2023 onwards to contact the3million (Report-It! or contact us).
1.9	[ASKED AT SOME POINT IN THE FUTURE] My pre-settled status is close to expiry but it hasn't been extended yet. My employer doesn't believe me when I tell them it will be automatically extended, so they want to terminate my job. What are my rights against this discrimination?	<p>You should point your employer towards the Government's press release (here), as well as this Code of Practice for employers on how to avoid discrimination when carrying out right to work checks.</p> <p>We also encourage you to contact the Settlement Resolution Centre, your MP, the IMA and the3million (Report-It! or contact us).</p>
1.10	[ASKED AT SOME POINT IN THE FUTURE] My pre-settled status should have been extended by now, but it hasn't and has now expired. My employer has told me that they intend to terminate my contract. What options do I have to challenge the Home Office and the fact they have not extended my pre-settled status?	<p>We encourage you to contact the Settlement Resolution Centre to ask for information on your status.</p> <p>We do not have any details about the circumstances in which someone with pre-settled status might not receive an automatic two-year extension of their pre-settled status.</p> <p>In our view, if someone does not receive an automatic two-year extension, then this constitutes a decision. As with other decisions under the EU Settlement Scheme, people should then have their rights to challenge the decision protected by the Withdrawal Agreement, and be able to submit an administrative review and/or appeal.</p> <p>We have not received any information about this from the Home Office however.</p> <p>It is important to keep your contact details, especially your email address, up to date on your UKVI account. This is because the Home Office is likely to only communicate decisions via email.</p> <p>We also encourage you to contact your MP, the IMA and the3million (Report-It! or contact us).</p>

1.11	I have pre-settled status which is due to expire next month. A few months ago I applied for settled status, but I am still waiting for a decision on that application. Will my pre-settled status be automatically extended by two years, even though I have a pending application for settled status?	<p>The Home Office has informed us that where an application for settled status is pending at the point where the pre-settled status is due to expire, there will be an automatic two year extension applied to the pre-settled status. If the settled status application is successful, this grant will replace the extended pre-settled status.</p> <p>Once automatic upgrades are in place in 2024 it may even be the case that an automatic upgrade to settled status is offered before your own application is considered, in which case we assume your separate application becomes void.</p>
1.12	When pre-settled status is extended by two years, do all their rights remain the same? I mean for example the right to work in the UK, to use the NHS for free, to enrol in education or study in the UK, access public funds such as benefits and pension if eligible , and to travel in and out of the UK?	Yes, all the rights that pre-settled status holders have stay the same if their pre-settled status is extended.
1.13	I am the Spanish spouse of a Dutch citizen. He moved to the UK in 2020, and I joined him a year later. We both now have pre-settled status, but my pre-settled status is on the basis of being a joining family member. Will my pre-settled status still be able to be automatically extended by two years?	<p>In order to remain eligible for rights under the Withdrawal Agreement and status under the EU Settlement Scheme, in most cases family members have to remain a family member until they have permanent residence rights (there are some situations where a family member will “retain a right of residence” even if they stop being a family member - see more information here).</p> <p>To date, we have not been given any indication whether there will be any criteria to determine who is eligible for the pre-settled status extension. A Home Office representative told us that extensions will begin in September when the first grants of pre-settled status are due to expire.</p> <p>They said “<i>Changes will ensure nobody with pre-settled status will lose their immigration status because they have not made a second application to the EU Settlement Scheme.</i>” However, a strict reading of this could still include the possibility that someone with pre-settled status will lose their immigration status for reasons other than not making a second application to the EU Settlement Scheme. (See question 1.17 for more details)</p>

1.14	<p>I am a non-EU citizen and had to do a paper application for pre-settled status, because I applied as the family member of a dual EU-British citizen [<i>Lounes dual national</i>]. Will my pre-settled status still be able to be automatically extended by two years?</p>	<p>Whether someone’s pre-settled status is extended by two years or not should not depend on whether they applied online or using a paper application form.</p> <p>However, in order to remain eligible for rights under the Withdrawal Agreement and status under the EU Settlement Scheme, in most cases family members have to remain a family member until they have permanent residence rights (there are some situations where a family member will “retain a right of residence” even if they stop being a family member - see more information here).</p> <p>To date, we have not been given any indication whether there will be any criteria to determine who is eligible for the pre-settled status extension. A Home Office representative told us that extensions will begin in September when the first grants of pre-settled status are due to expire.</p> <p>They said “<i>Changes will ensure nobody with pre-settled status will lose their immigration status because they have not made a second application to the EU Settlement Scheme.</i>” However, a strict reading of this could still include the possibility that someone with pre-settled status will lose their immigration status for reasons other than not making a second application to the EU Settlement Scheme. (See question 1.17 for more details)</p>
1.15	<p>I was granted pre-settled status as the family member of a British citizen that I lived with in the EU before December 2020 [<i>Surinder Singh route</i>], and I had to apply through a paper application. Will my pre-settled status be automatically extended by two years?</p>	<p>Surinder Singh applicants are not covered by the Withdrawal Agreement, even though they were eligible to apply to the EU Settlement Scheme [EUSS].</p> <p>The High Court judgment relates to people who are protected by the Withdrawal Agreement, therefore the Home Office is not obliged by the judgment to automatically extend the pre-settled status of those who were granted EUSS status outside the Withdrawal Agreement.</p> <p>There is nothing in the Government’s press release or other information released by the Home Office that indicates Surinder Singh status holders will not be included in the automated two-year extensions.</p>

1.16	<p>I was granted pre-settled status as the non-EU carer of a British citizen [<i>Zambrano carer</i>], and I had to apply through a paper application. Will my pre-settled status be automatically extended by two years?</p>	<p>Zambrano applicants are not covered by the Withdrawal Agreement, even though they were eligible to apply to the EU Settlement Scheme [EUSS].</p> <p>The High Court judgment relates to people who are protected by the Withdrawal Agreement, therefore the Home Office is not obliged by the judgment to automatically extend the pre-settled status of those who were granted EUSS status outside the Withdrawal Agreement.</p> <p>There is nothing in the Government’s press release or other information released by the Home Office that indicates Zambrano status holders will not be included in the automated two-year extensions.</p>
1.17	<p>I have pre-settled status. Many of the Q&As in this document refer to losing pre-settled status for “reasons other than not making a second application to the EU Settlement Scheme.”</p> <p>What are these reasons?</p>	<p>Pre-settled status can be removed where a person breaks continuity of residence or because of criminal conduct. A decision to take away pre-settled status must be communicated to the status holder with the reasons for decision. The decision to take away pre-settled status can be challenged either by administrative review or by appealing (in some cases using both).</p> <p>Maintaining continuity of residence while having pre-settled status means not being absent from the UK for more than 6 months out of every 12 (with some exemptions for longer absences for an ‘important reason’, or for some absences related to Covid - see this Gov.UK website for more details: https://www.gov.uk/guidance/coronavirus-covid-19-eu-settlement-scheme-guidance-for-applicants).</p> <p>When continuity of residence is broken, it means that it is no longer possible to upgrade to settled status, since the requirement for settled status is continuity of residence that started before 31 December 2020. In other words, a person cannot begin a new period of continuous residence after 31 December 2020.</p> <p>Joining family members would be able to restart a period of continuous residence from scratch, as long as their EU sponsor (who was in the UK before 31 December 2020) has maintained their continuous residence, or has settled status.</p> <p>Once a pre-settled status holder leaves the UK for more than two years, then not only does that mean they are unable to ever apply for settled status, as they will break their continuous residence, it also means their pre-settled status is lost. Again however, the exception to this is joining family members who can restart the process of coming to the UK by applying for pre-settled status or an EUSS Family Permit - as long as their EU sponsor (who was in the UK before 31 December 2020) has maintained their continuous residence, or has settled status.</p>

2. AFTER THE 2-YEAR EXTENSION

2.1	<p>What happens when the two-year extension comes to an end? Will my pre-settled status be extended again for another two years at that point?</p>	<p>We asked the Home Office whether there will be repeated two-year extensions of pre-settled status, but all we were told was that they will set out details in due course about what happens after the initial extension. The point of the High Court judgment is that someone’s pre-settled status cannot expire if they continue to meet the requirements of the Withdrawal Agreement, and therefore the Home Office is under an obligation to honour this.</p>
2.2	<p>Will the two year extension count towards the qualifying residency period for settled status?</p>	<p>It is important to understand that the High Court judgment has not changed anything regarding the eligibility rules for settled status. Unless you are a joining family member, you will need to have five years’ continuous qualifying residence that started before 31 December 2020. Therefore if your continuous residence was broken at some point after 31 December 2020, this extension does not help to build up a qualifying residency period.</p> <p>There are some circumstances however, where the two year extension will count towards the qualifying residency period for settled status:</p> <ul style="list-style-type: none"> ● Where someone had an absence related to COVID that was longer than 12 months, and which falls within the Government’s exemptions for a longer absence relating to Covid. In such cases, continuous residence will be paused rather than stopped, and some people would have had to apply for another grant of pre-settled status to be able to meet the five-year criteria. For these people, this automated two-year extension means they don’t need to make a separate application. ● Joining family members who obtain pre-settled status from abroad, and then travel to the UK would find that their pre-settled status expires before they are able to build up five years’ continuous residence in the UK. For these people, the automated two-year extension means they don’t need to make a second pre-settled status application just to reach the five year point. ● Where someone was granted pre-settled status in, for example, 2019, then broke their continuity of residence with a long absence in 2019/2020, but returned to the UK before 31 December 2020, their pre-settled status will expire without having five years continuous residence. For these people, a two-year extension will help to build up a qualifying residence period, because that new period of continuous residence will have started before 31 December 2020.

2.3	<p>Is the pre-settled status extension a one-off event or will it be recurring? My pre-settled status ends in November 2023 and I don't qualify for settled status due to broken residency. I would need at least two such extensions to qualify.</p>	<p>Under current EU Settlement Scheme policy, if you have broken your continuity of residence after 31 December 2020 you will not become eligible to apply for settled status, even if your pre-settled status is extended.</p> <p>We would strongly recommend you seek legal advice to discuss whether you have broken your continuous residency and if so, potential alternative UK immigration routes.</p>
<p>3. AUTOMATIC UPGRADE TO SETTLED STATUS</p>		
3.1	<p>The Government said in its press release that it will automatically convert as many eligible pre-settled status holders as possible to settled status once they are eligible for it, without them needing to make an application. I have pre-settled status, how do I know whether I will be automatically converted once I've been here for five years?</p>	<p>If you did not supply a National Insurance (NI) number when you applied for pre-settled status, then we understand from the Home Office that you will not be considered for an automatic upgrade from pre-settled to settled status.</p> <p>If you did supply a NI number, then your account should be periodically included in the check for automated upgrades. The Home Office will check your NI number against HMRC and DWP records, in the same way as they do when someone applies for status under the EU Settlement Scheme. See this GOV.UK page for more information on these automated checks.</p> <p>If these checks return evidence of five years' residence, then you should be offered an automatic upgrade to settled status without you needing to make an application.</p> <p>If they do not, then nothing happens as a result. Not being automatically upgraded is not the same as the Home Office saying you have not been in the UK for five years, it is only that the records do not show that you have been here for five years. You would separately be able to make an application for settled status under the EU Settlement Scheme when you can evidence five years' residence. Furthermore, your pre-settled status should be extended by two years before it expires.</p>
3.2	<p>I did not supply a National Insurance number when I applied for pre-settled status. Will I be able provide one now to the Home Office, to help run these automated checks?</p>	<p>We do not know whether it will be possible to add a National Insurance number (either to the previous pre-settled status application, or in another way) in order to ensure being included in the automated pre-settled to settled upgrade checks.</p>

3.3	Who will not be automatically converted to settled status, even though they have been here for five years?	<p>In our meeting, we were told <i>“We plan to undertake automated checks against government-held information, for example in respect of their ongoing continuous residence.”</i></p> <p>We were also told that they would use the same automated checks (as are used when people apply for status under the EU Settlement Scheme) involving National Insurance (NI) numbers against HMRC and DWP databases - see this GOV.UK page for more information on the automated checks.</p> <p>We therefore assume that people who did not supply a National Insurance (NI) number when they applied for pre-settled status will not be able to have their pre-settled status considered for an automatic upgrade to settled status (unless the Home Office introduces a process to add a National Insurance (NI) number).</p> <p>People who did supply an NI number should be included in regular checks to see if they are eligible to be offered an automatic upgrade to settled status.</p> <p>We do not have any information on what other checks will be included before someone can be offered an automatic upgrade to settled status.</p> <p>However, the Home Office have also stated in their Press Release of 17 July 2023 that <i>“Safeguards will be in place to ensure that settled status is not wrongly granted.”</i> We have not been given any information about what these safeguards entail.</p>
3.4	Will border entry / exit records be used in the checks for automated upgrade from pre-settled to settled status?	We do not know whether border entry / exit records will be used in the checks for automated upgrade from pre-settled to settled status.
3.5	How often will the automated checks for eligibility for settled status be performed? Will they be done weekly, monthly, annually, every two years?	We do not know how often these checks will be run, but the Home Office did indicate that these checks would be run with some regularity, and against the whole cohort of pre-settled status holders, not just those whose pre-settled status is due to expire.

3.6	<p>How will the automated process consider absences that fall under exemptions (such as up to 12 months for an important reason, or longer for COVID related reasons)? Will it automatically refuse the settled status, or will it ask for a reason for the absence, or request more evidence? Or will the application then need to be considered individually by a caseworker?</p>	<p>When an automated check for potential eligibility from pre-settled to settled status is run, this is not considered an application. It therefore does not result in a 'decision' to grant or refuse.</p> <p>We understand that the automated check returns a 'Yes' or 'No' to the question - is there evidence of continuous residence for five years. If the check returns 'No', nothing will happen, the status holder will not be contacted for more evidence, and this does not constitute a refusal. However, if the check returns 'Yes' then the status holder will be contacted to offer them an upgrade to settled status.</p> <p>Separately, a pre-settled status holder will be considered for a two-year extension of their pre-settled status close to the expiry of that pre-settled status. Also separately, the status holder can submit an application for settled status and attach residence evidence and evidence explaining longer absences.</p>
3.7	<p>When the automated system refuses settled status, will it provide a reason why? Will it ask for more information to reconsider the decision?</p>	<p>When an automated check for potential eligibility from pre-settled to settled status is run, this is not considered an application. It therefore does not result in a 'decision' to grant or refuse.</p> <p>As such, if the automated check does not return a positive indication of five years' continuous residence, nothing will happen, and the status holder will not be contacted.</p>
3.8	<p>My child and I both have pre-settled status. I supplied a National Insurance (NI) number when I applied for pre-settled status, but my child is too young to have an NI number. If the automated check can upgrade me to settled status, what will happen to my child's status? Surely they are then also entitled to settled status?</p>	<p>The automated checks are not yet in place, and are only due to start running at some time in 2024. The Home Office told us that they are looking into ways of granting children settled status despite not having a National Insurance number.</p> <p>We were not given any further details on this however. We assume this will only be possible if a child's application was linked to a parent's application at the time they obtained pre-settled status.</p>

3.9	<p>I am a non-EU family member and I have pre-settled status. Based on my records, I will be eligible for settled status from August, 2023.</p> <p>Will I get an automatic update to settled status next month (in August 2023)? The Government statement sounds like the automatic conversion of pre-settled to settled status will start in 2024, and the High Court ruling was clear that people should automatically get settled status without the need for a second application.</p>	<p>As you point out, the automated upgrade checks will only start some time in 2024, so you will not get an automatic update to settled status in August 2023. You can of course submit an application for settled status, as having settled status can make it easier to prove the rights associated with permanent residence.</p> <p>The High Court ruling did not say that people should automatically get settled status without the need for a second application, rather it was that people should automatically have the Withdrawal Agreement rights associated with permanent residence (once eligible) without the need for a second application.</p> <p>This means that pre-settled status holders who can demonstrate five years' of continuous exercising EU free movement rights (rather than simply five years of residence) since before 31 December 2020, can assert permanent residence rights. Some examples of this would include having the right to be absent from the UK for up to five years without losing their residence rights, or accessing welfare benefits on the same terms as British citizens.</p>
3.10	<p>Given the High Court ruling, I don't think it's fair that the automatic upgrades from pre-settled to settled status will only start happening from 2024, and that people who are eligible earlier need to make an application for settled status.</p>	<p>It is important to realise that the High Court judgment means that as soon as someone has five years of continuous exercising EU free movement rights (rather than simply five years of residence) since before 31 December 2020, they have the rights associated with permanent residence, even if the automated upgrade process is not yet in place.</p>

<p>3.11</p>	<p>I have pre-settled status, and I believe I reached permanent residence rights under the Withdrawal Agreement over a year ago, since I have been working in the UK continuously for over six years now.</p> <p>I applied for settled status a while ago because I wanted to apply for British citizenship, but am still waiting for a decision.</p> <p>Do these changes mean anything for me, and my eligibility for British citizenship?</p>	<p>The Naturalisation caseworker guidance was updated on 21st July 2023, to include the following condition for being ‘free from immigration restrictions’: “<i>hold an automatic right to reside in the UK permanently under the terms of the Withdrawal Agreement, having previously been granted LTE/R (pre-settled status) under the EUSS. Please refer to the qualified persons guidance to assess whether a Withdrawal Agreement right to permanent residence is held.</i>” To have a Withdrawal Agreement right to permanent residence, people usually need to have exercised treaty rights (rather than simply be present in the UK) for a continuous period of five years that started before 31 December 2020.</p> <p>This means that those pre-settled status holders who can prove they were free from immigration restrictions for a year (or simply free from immigration restrictions if married to a British citizen) are eligible to apply for naturalisation as a British citizen without needing to first obtain settled status.</p> <p>We recommend you get legal advice to carefully consider your individual circumstances.</p>
<p>3.12</p>	<p>I have pre-settled status, and my baby was born in the UK just before I reached five years of continuous residence. I understand that my baby wasn’t born British, but can I register my baby as a British citizen now that I do have five years of continuous residence?</p>	<p>The Registering children as British citizens: caseworker guidance was updated on 21st July 2023 to include having a permanent residence right under the Withdrawal Agreement for the purposes of “Requirements for registration under section 1(3)”.</p> <p>This means there are now circumstances where a child, born to parents with pre-settled status, can be registered as a British citizen. This will be once a parent with pre-settled status can prove they had been exercising treaty rights for five years (and therefore were free from immigration restrictions).</p> <p>We recommend you get legal advice to carefully consider your individual circumstances.</p>
<p>3.13</p>	<p>I have pre-settled status, and my baby was born in the UK just after I reached five years of continuous residence, but before I was able to apply for settled status. Is my baby British?</p>	<p>The caseworker guidance on the Automatic acquisition of British citizenship has not been updated in light of the High Court judgment. However the implication of the High Court judgment is that it must be updated such that a child, born in the UK to someone who is free from immigration restrictions, is born British.</p> <p>We recommend you get legal advice to carefully consider your individual circumstances.</p>

3.14	<p>I have pre-settled status, and I believe I reached permanent residence rights under the Withdrawal Agreement. I have not yet been granted settled status. Do I still need to worry about not being absent for more than six months out of every twelve?</p>	<p>Once you have permanent residence rights under the Withdrawal Agreement, even if you do not yet have settled status, you have the right to be absent from the UK for up to five years without losing your residence rights.</p> <p>If you have not already applied for settled status, you might like to consider doing so, in order to make it easier to prove those rights.</p> <p>Please be aware that having permanent residence rights requires exercising treaty rights for five years. This is not the same as the requirements for settled status under the EU Settlement Scheme, which is a simpler requirement of having lived in the UK for five years. If you are not sure whether you have permanent residence rights, we recommend you speak to an immigration advisor.</p>
3.15	<p>I have pre-settled status, and I believe I reached permanent residence rights under the Withdrawal Agreement last year in 2022. I have not yet been granted settled status.</p> <p>I stopped working earlier this year, and when I tried to apply for welfare benefits, I was refused because DWP said I did not have a right to reside.</p> <p>Does the High Court judgment change anything?</p>	<p>Having permanent residence rights under the Withdrawal Agreement is a 'right to reside' for the purposes of welfare benefits. Once someone acquires permanent residence rights, they no longer have to continue to exercise treaty rights, so it does not matter if they are no longer working.</p> <p>If you are in this situation and have been refused benefits, we recommend that you ask for a mandatory reconsideration. You could also contact Work Rights Centre - see https://www.workrightscentre.org/.</p> <p>If you have not already applied for settled status, you might like to consider doing so, in order to make it easier to prove those rights.</p> <p>Please be aware that having permanent residence rights requires exercising treaty rights for five years. This is not the same as the requirements for settled status under the EU Settlement Scheme, which is a simpler requirement of having lived in the UK for five years. If you are not sure whether you have permanent residence rights, we recommend you speak to an immigration advisor.</p>
3.16	<p>I've got pre-settled status and have been here for five years. Will I get a message from the Home Office that they've considered me for an automatic upgrade but they can't upgrade me unless I add more evidence of residence?</p>	<p>We understand from the Home Office that you would not receive such a message.</p> <p>Rather, you would only receive a message from the Home Office if they are able to offer you an automatic upgrade.</p> <p>If you are not offered an automatic upgrade, this does not constitute an immigration decision.</p>

3.17	<p>The Government said in its press release that “Safeguards will be in place to ensure that settled status is not wrongly granted.” What does this mean, and what are these safeguards?</p>	<p>We have not been given any details from the Home Office about what these safeguards are. However, the purpose of such safeguards could be to avoid offering settled status to someone where the automated checks returned a “false” positive indication of five years’ continuous residence, but in fact the person has not been resident for five continuous years.</p> <p>In general with UK immigration rules it is the case that there may be implications if someone obtains a status that they are not eligible for. This may have repercussions on future visa or citizenship applications.</p>
3.18	<p>I am the Spanish spouse of a Dutch citizen. He moved to the UK in 2020, and I joined him a year later. We both now have pre-settled status, but my pre-settled status is on the basis of being a joining family member. Will my pre-settled status be considered for an automated upgrade to settled status?</p>	<p>In order to be eligible for settled status, joining family members must not only have five years continuous residence, but also remain a family member of the sponsoring EU citizen (unless they have retained a right of residence - see more information here).</p> <p>We have been told that the automated checks will use National Insurance (NI) numbers to check residence, but we have not been given any details whether the automated upgrade checks will consider family relationships as well.</p> <p>Therefore we do not know at present whether the pre-settled status of joining family members will be considered for automatic upgrades to settled status.</p>
3.19	<p>I am a non-EU citizen, and was granted pre-settled status as a family member of an EU citizen. Will my pre-settled status be considered for an automated upgrade to settled status?</p>	<p>In order to be eligible for settled status, non-EU citizens must not only have five years continuous residence, but also remain a family member of the sponsoring EU citizen (unless they have retained a right of residence - see more information here).</p> <p>We have been told that the automated checks will use National Insurance (NI) numbers to check residence, but we have not been given any details whether the automated upgrade checks will consider family relationships as well.</p> <p>Therefore we do not know at present whether the pre-settled status of non-EU citizens will be considered for automatic upgrades to settled status.</p>

3.20	<p>I had to do a paper application for pre-settled status, because I applied as the family member of a dual EU-British citizen [<i>Lounes dual national</i>]. Will my pre-settled status be considered for an automated upgrade to settled status?</p>	<p>In order to be eligible for settled status, non-EU citizens must not only have five years continuous residence, but also remain a family member of the sponsoring EU citizen (unless they have retained a right of residence - see more information here).</p> <p>We have been told that the automated checks will use National Insurance (NI) numbers to check residence, but we have not been given any details whether the automated upgrade checks will consider family relationships as well.</p> <p>Therefore we do not know at present whether the pre-settled status of non-EU citizens will be considered for automatic upgrades to settled status.</p>
3.21	<p>I was granted pre-settled status as the family member of a British citizen that I lived with in the EU before December 2020 [<i>Surinder Singh route</i>], and I had to apply through a paper application. Will my pre-settled status be considered for an automated upgrade to settled status?</p>	<p>Surinder Singh applicants are not covered by the Withdrawal Agreement, even though they were eligible to apply to the EU Settlement Scheme [EUSS].</p> <p>The High Court judgment relates to people who are protected by the Withdrawal Agreement, therefore the Home Office is not obliged by the judgment to automatically extend the pre-settled status of those who were granted EUSS status outside the Withdrawal Agreement.</p> <p>We currently do not know whether the automated upgrade from pre-settled to settled status will cover Surinder Singh status holders.</p>
3.22	<p>I was granted pre-settled status as the non-EU carer of a British citizen [<i>Zambrano carer</i>], and I had to apply through a paper application. Will my pre-settled status be considered for an automated upgrade to settled status?</p>	<p>Zambrano applicants are not covered by the Withdrawal Agreement, even though they were eligible to apply to the EU Settlement Scheme [EUSS].</p> <p>The High Court judgment relates to people who are protected by the Withdrawal Agreement, therefore the Home Office is not obliged by the judgment to automatically extend the pre-settled status of those who were granted EUSS status outside the Withdrawal Agreement.</p> <p>We currently do not know whether the automated upgrade from pre-settled to settled status will cover Zambrano status holders.</p>

4. ABSENCES

<p>4.1</p>	<p>I had a long absence due to Covid, which was longer than 12 months. I believe that it will be counted as an acceptable absence according to the Government's Coronavirus (COVID-19): EU Settlement Scheme - guidance for applicants - but it will have paused my continuity of residence. In my case this means my pre-settled status will expire before I am able to gain five years of residence. I was previously told that I would need to apply for another grant of pre-settled status, to give me time to build up five years of residence.</p> <p>Do these changes mean that I now don't need to apply for another grant?</p>	<p>If the Home Office extends your pre-settled status by two years, then this will remove the need for you to make an application yourself for a second grant of pre-settled status.</p>
<p>4.2</p>	<p>I have pre-settled status but I have broken my continuity of residence because I had a long (15 month) absence, which wasn't related to Covid, in 2021/2022. Will my pre-settled status be extended even though I've broken my continuity of residence?</p>	<p>We do not know whether any eligibility checks will be performed when deciding whether to extend someone's pre-settled status.</p> <p>All we have been told by the Home Office is that <i>"nobody with pre-settled status will lose their immigration status because they have not made a second application to the EU Settlement Scheme."</i></p> <p>However, a strict reading of this could still include the possibility that someone with pre-settled status will lose their immigration status for reasons other than not making a second application to the EU Settlement Scheme. (See question 1.17 for more details)</p>

4.3	<p>I have pre-settled status but I have broken my continuity or residence because I had a long (15 month) absence, which wasn't related to Covid, in 2021/2022. My pre-settled status has been extended by two years - does this mean I can now eventually apply for settled status?</p>	<p>Under current EU Settlement Scheme policy, if you have broken your continuity of residence you will not become eligible to apply for settled status, even if your pre-settled status is extended.</p> <p>We would strongly recommend you seek legal advice to discuss alternative UK immigration routes.</p>
4.4	<p>I have pre-settled status but I have been out of the UK for over two years. Will my pre-settled status be extended even though the Government website implies I have lost my pre-settled status? The website says: <i>"If you have pre-settled status, you can spend up to 2 years in a row outside the UK, the Channel Islands or the Isle of Man without losing your status."</i></p> <p>I left the UK in March 2021, but my pre-settled status is valid until early 2026. Does this mean I can now come back to the UK again, and my pre-settled status will be extended until 2028?</p>	<p>We do not know whether any eligibility checks will be performed when deciding whether to extend someone's pre-settled status.</p> <p>All we have been told by the Home Office is that <i>"nobody with pre-settled status will lose their immigration status because they have not made a second application to the EU Settlement Scheme."</i> However, a strict reading of this could still include the possibility that someone with pre-settled status will lose their immigration status for reasons other than not making a second application to the EU Settlement Scheme. (See question 1.17 for more details)</p> <p>Current UK Immigration law says that people will have lost their pre-settled status <i>by automatic operation of the law</i> once they have left the UK for more than two years. However, this is a point of difference between the UK and the EU. The EU's position is that someone must receive a decision from the Home Office in order to lose their immigration status.</p> <p>We would advise you to seek legal advice from a qualified immigration advisor.</p>
4.5	<p>I have pre-settled status and have left the UK. Does this mean I can stay outside the UK for another two years before coming back to the UK?</p>	<p>Even if you are granted a two-year extension of pre-settled status, there are still rules in place about how long you can be outside the UK before losing your UK immigration status.</p> <p>We would advise you to seek legal advice from a qualified immigration advisor.</p>

<p>4.6</p>	<p>I have pre-settled status. I recently applied for settled status, but got refused because I'd broken my continuous residence. However, I was allowed to keep my pre-settled status until it expires.</p> <p>Will I get a two-year extension of my pre-settled status?</p>	<p>We understand from the Home Office that people in your situation will still get the automated extension of their pre-settled status by two years, and that this extension will happen shortly before their pre-settled status expires.</p> <p>However, we do not have this confirmed in writing.</p>
<p>4.7</p>	<p>I have pre-settled status and have maintained continuous residence. I recently applied for settled status, but got refused because I did not have five years of continuous residence when I applied. However, I was allowed to keep my pre-settled status until it expires.</p> <p>What will happen to my pre-settled status now?</p>	<p>In this situation, the fact that you were refused should not impact on your ability to qualify for settled status in the future once you have built up five years of continuous qualifying residence.</p> <p>What will happen to your pre-settled status depends on what point you build up your five years of continuous qualifying residence.</p> <p>If you do not accrue five years of continuous qualifying residence before your pre-settled status expires, your pre-settled status will be automatically extended for two years.</p> <p>If you accrue five years of continuous qualifying residence before your pre-settled status expires you can make an application for settled status.</p> <p>If you do not apply for settled status, from 2024 the Home Office is going to start running upgrade checks of all pre-settled status holders where a National Insurance (NI) number was originally provided in the pre-settled status application. They will check this NI number against HMRC and DWP records and if they find evidence of five years of residence, the Home Office will offer you an 'automatic' upgrade of settled status. If they do not find evidence of five years of residence, nothing will happen as a result of this automatic upgrade check. We do not have any details of when this automatic checking process will start.</p> <p>If you cannot be automatically upgraded to settled status, you can make an application for settled status once you accrue five years of continuous qualifying residence.</p>

5. OTHER

5.1	<p>On the Government website about upgrading from pre-settled to settled status, it says <i>“If you’re not eligible for settled status because you spent more than 6 months outside the UK in a 12-month period, you’ll keep your pre-settled status.”</i></p> <p>Does this mean I’ll keep my pre-settled status forever, even if I am not eligible for settled status?</p>	<p>The wording on this webpage causes a lot of confusion, and it is not clear what the legal meaning of it is.</p> <p>The Home Office has currently only committed to extending pre-settled status once, and we do not know whether there are any eligibility criteria attached to these automated extensions.</p> <p>On future repeated extensions the Home Office has only said they will set out details in due course. Therefore we do not know whether future extensions will be subjected to different eligibility criteria.</p> <p>Furthermore, the UK immigration rules state that those who leave the UK for more than two continuous years lose their UK immigration status.</p> <p>We would advise you to seek legal advice from a qualified immigration advisor.</p>
5.2	<p>I have pre-settled status. Does this mean I can’t apply for settled status now?</p>	<p>No, it does not. As soon as you are able to evidence five years of residence, you can go ahead and submit an application for settled status.</p>
5.3	<p>The judgment also said that people should have their permanent residence rights recognised automatically. How has this been implemented?</p>	<p>The changes to the EUSS rules announced on 17 July do not address this.</p> <p>The Home Office told us that where appropriate other departments should already be implementing the judgment directly.</p> <p>For example, nationality guidance has been updated (see questions 3.11 - 3.12).</p> <p>The DWP should accept permanent residence rights (five years of exercising treaty rights) as a right to reside for the purpose of welfare benefits, although we have yet to see any changes to DWP guidance to reflect this.</p>