

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
- News release of 17 July 2023 from Independent Monitoring Authority: ima-citizensrights.org.uk/news_events/ima-responds-to-home-office-plans-to-implement-judgment-following-judicial-review/
- Q&A about “EUSS Reforms” added on 9 August 2023 to the Independent Monitoring Authority website: [FAQs - Independent Monitoring Authority](https://www.ima-citizensrights.org.uk/faq)
- Changes made since August 2023 to the Gov.UK EU Settlement Scheme webpages [What you'll get](https://www.gov.uk/eu-settlement-scheme/what-youll-get) and [Switch from pre-settled to settled status](https://www.gov.uk/eu-settlement-scheme/switch-from-pre-settled-to-settled-status)
- Various presentation by the Home Office to different groups including Safeguarding User Group, Future Borders and Immigration Systems Legal Migration User Experience Advisory Group, EU Delegation Monitoring Network, EUSS Alliance Network
- Government press release of 21 May 2024: <https://www.gov.uk/government/news/home-office-confirms-changes-to-the-eu-settlement-scheme>
- News release of 21 May 2024 from Independent Monitoring Authority: https://ima-citizensrights.org.uk/news_events/ima-welcomes-home-office-decisions-on-measures-to-implement-landmark-judgment/
- High Court judgment of December 2022 in IMA v SSHD: <https://www.bailii.org/ew/cases/EWHC/Admin/2022/3274.html>
- Change made to the Immigration (Leave to Enter and Remain) (Amendment) Order 2024: <https://www.legislation.gov.uk/ukxi/2024/663/made>

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The questions are grouped into the following sections:

1. General questions about the EU Settlement Scheme changes since 2023
2. Current process: Automatic extensions of pre-settled status
3. Absences from the UK
4. Automatic lapsing of pre-settled status after two/five years absence from the UK
5. Possible future process: Automatic upgrades from pre-settled to settled status
6. Decisions to cancel pre-settled status
7. Permanent residence rights

1. GENERAL QUESTIONS ABOUT THE EU SETTLEMENT SCHEME CHANGES SINCE 2023

1.1	<p>I have pre-settled status but should now be eligible for settled status. <u>Can I still go ahead and make an application for settled status?</u></p>	<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>
1.2	<p><u>I have pre-settled status.</u></p> <p><u>What will these changes mean to me?</u></p>	<p>Unless you make an application for and are granted settled status between now and when your pre-settled status expires, your pre-settled status may be extended automatically by the Home Office.</p> <p>Currently, the Home Office is operating a process of automatically extending people’s pre-settled status for a period of time, a month or so before it expires. See section 2 for more details about this process.</p> <p>The Home Office have also said that at some point in the future, they will move to a process of automatic upgrades from pre-settled to settled status. We do not have any confirmed details of when this process will start or how exactly it will work - but see section 5 for what this might look like.</p>

<p>1.3</p>	<p>My pre-settled status is expiring in April 2025, and I'm not yet eligible to apply for settled status.</p> <p><u>I was recently refused a permanent contract at my work</u> because my employer is not confident that I'll be allowed to stay in the UK beyond April 2025.</p> <p>What do the changes mean to me?</p>	<p>In December 2022, the High Court ruled that pre-settled status should not expire just because an individual has not made a further application to the EU Settlement Scheme.</p> <p>In July 2023, the Home Office announced that it would start extending people's pre-settled status by two years shortly before it was due to expire.</p> <p>Since then, we have been advocating to the Home Office that they need to make further changes. Even if people's pre-settled status was set to expire many months or even a few years in the future, they were still being disadvantaged by the fact that their status showed an expiry date to employers, landlords and other people checking their status.</p> <p>In May 2024, the Home Office announced that it would address this issue, in two ways:</p> <ul style="list-style-type: none"> • When people log into View & Prove, they will still see their pre-settled status expiry date. However, when they share their status with an employer / landlord or someone else by using a share code, that employer / landlord / someone else will not see that the status expires (i.e. the expiry date will not be shown to them). • Employers, landlords and letting agents only need to carry out one check on a pre-settled status holder and will not be required to conduct a further right to work or rent check where the individual remains in their employment or as part of that tenancy agreement. <p>The Home Office have confirmed that the View & Prove changes for employers and landlords was implemented by 13 June 2024. Updated guidance for employers and landlords was issued on 21 June 2024.</p> <p>Therefore, you should not encounter the same problem again, of being refused a permanent contract. Please report the impact you suffered at https://www.the3million.org.uk/report-it.</p>
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1.4	<p>Even though my pre-settled status isn't expiring for another 11 months, <u>I wasn't able to rent the flat I had found.</u></p> <p>This was because the letting agency demanded a minimum 12-month contract, and they wouldn't let me sign one because of my status expiry date even though I tried to explain to them it would be extended.</p> <p>What do the changes mean to me?</p>	<p>The Home Office has listened to our concerns about this widespread problem.</p> <p>See question 1.3 for details of the changes they have made to address this.</p> <p>Please report the impact you suffered at https://www.the3million.org.uk/report-it.</p>
2. CURRENT PROCESS: AUTOMATIC EXTENSIONS OF PRE-SETTLED STATUS		
2.1	<p>I arrived in the UK in August 2018. I was granted pre-settled status in August 2019 and have been living in the UK ever since.</p> <p>When I log in to view my status, it says that <u>it will expire in August 2024.</u></p> <p><u>What will happen to my pre-settled status?</u></p>	<p>In August 2023, you became eligible to apply for settled status. However, unless you apply for, and are granted, settled status between now and August 2024, your pre-settled status should be automatically extended sometime in July 2024. See question 2.3 for how long this extension will be.</p> <p>At the start of each month, the Home Office extends the pre-settled statuses that are due to expire by the end of the following month, meaning that extensions take place between one and two months before the original expiry date.</p> <p>If your status expires in August 2024, this means that your pre-settled status should be extended at the start of July 2024.</p>

<p>2.2</p>	<p>I arrived in the UK in August 2018. I was granted pre-settled status in November 2020 and have been living in the UK ever since.</p> <p>When I log in to view my status, it says that <u>it will expire in November 2025.</u></p> <p><u>What will happen to my pre-settled status?</u></p>	<p>In August 2023, you became eligible to apply for settled status. If you do apply and are granted settled status, you should be able to use View & Prove to evidence the additional rights that come with settled status.</p> <p>We do not know if the automated extensions of pre-settled status will still be happening by the time your status expires in November 2025. The Home Office have said there will be a process for automatically upgrading some people from pre-settled status to settled status at some point in 2024. We do not have any confirmation of when or whether this automatic upgrade process will start in 2024. See section 5 for more information.</p>
<p>2.3</p>	<p><u>If pre-settled status is extended, how long is it extended for?</u></p>	<p>When automatic extensions of pre-settled status started in the autumn of 2023, they were initially two-year extensions.</p> <p>In May 2024, the Home Office announced (see here) that they “will change the duration of pre-settled status extensions from 2 to 5 years.”</p> <p>The Home Office have said that they will start implementing 5-year extensions as soon as possible and expect that to be later in 2024.</p>
<p>2.4</p>	<p>I have received a two-year extension to my pre-settled status, but I hear people will now get five-year extensions.</p> <p><u>Will the Home Office extend my status for another three years?</u></p>	<p>When automatic extensions of pre-settled status started in the autumn of 2023, they were initially two-year extensions.</p> <p>In May 2024, the Home Office announced (see here) that they “will change the duration of pre-settled status extensions from 2 to 5 years.”</p> <p>When we asked the Home Office if people who have already received a two-year extension will now have their extension changed to a 5-year extension, they said that they are still considering their approach to this, but that the other changes they announced (meaning employers and landlords no longer see the pre-settled status expiry date and do not need to recheck status - see questions 1.3 and 1.4) will mean that there is no disadvantage to those who have a 2-year extension.</p>

2.5	<p><u>Will everyone’s pre-settled status be automatically extended?</u> Or will there be some kind of evaluation of people’s circumstances before it’s extended? If so - what is this evaluation?</p>	<p>To date, the Home Office has been applying pre-settled status extensions automatically without any checks on whether individuals continue to meet the criteria for pre-settled status. They have also confirmed that the extensions will apply to all pre-settled status holders, whether covered by the Withdrawal Agreement or not. These extensions are taking place one to two months before the original expiry date.</p> <p>We cannot say that the current policy of granting extensions to all pre-settled status holders nearing the end of their initial grant of status will continue indefinitely, or indeed how long it will continue at all. See section 5 on the possibility of a more complex evaluation process in the future.</p> <p>Moreover, the Home Office webpages (What you’ll get and Switch from pre-settled to settled status) have been changed to state “<i>The Home Office may cancel the extension if they think you no longer meet the requirements for it, for example because you’ve been outside the UK for more than 6 months in a 12 month period. There are some exceptions.</i>” See section 6 for Q&A on the cancellation of status.</p>
2.6	<p><u>When do extensions of pre-settled status take place?</u> On the day of expiry, or a set period before?</p>	<p>Currently, at the start of each month, the Home Office extends the pre-settled statuses that are due to expire by the end of the following month, meaning that extensions will take place between one and two months before the original expiry date.</p> <p>For example, at the start of July 2024, they will extend the pre-settled status of those whose status is due to expire before the end of August 2024.</p> <p>This process may change later in 2024, see section 5 on the possibility of a more complex process in the future.</p>
2.7	<p><u>Will I be told when my pre-settled status is extended?</u> 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>	<p>The extensions are reflected in people’s digital status, so that when you log into View & Prove you should see your new pre-settled status expiry date. See questions 1.3 and 1.4 on what will be visible to employers, landlords and other agents who need to check your status.</p> <p>You should be notified directly by email (and post in some circumstances) once the extension has taken place.</p>

2.8	<p><u>I have pre-settled status which is about to expire. It doesn't look like it's been extended yet.</u> 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?</p>	<p>While the policy of automated extensions is in place, pre-settled status should be extended at the beginning of the month before the month in which the status is due to expire. If your status is expiring this month and it has not been extended, we would strongly encourage you to contact the Settlement Resolution Centre, your MP, the IMA and the3million (Report-It! or contact us).</p>
2.9	<p><u>My pre-settled status is close to expiry, but it hasn't been extended yet.</u> 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>	<p>You should point your employer towards the Government's press releases (July 2023 here and May 2024 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> <p>Soon, the Home Office should implement its change such that the expiry date is no longer visible to your employer when they check your share code - see question 1.3.</p>
2.10	<p><u>My pre-settled status should have been extended by now, but it hasn't and is now showing as expired.</u> 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>	<p>We encourage you to contact the Settlement Resolution Centre to ask for information on your status.</p> <p>We understand that current Home Office policy is that all pre-settled status holders will receive an automatic extension of their pre-settled status.</p> <p>In our view, if someone deliberately does not receive an automatic extension, then this constitutes a decision. As with other decisions under the EU Settlement Scheme, people should then have their right to challenge the decision protected by the Withdrawal Agreement, and be able to submit an appeal.</p> <p>It is important to keep your contact details, especially your email address, up to date on your digital status (also known as 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>

2.11	<p>I have pre-settled status which is due to expire next month. A few months ago, <u>I applied for settled status, but I am still waiting for a decision on that application.</u> Will my pre-settled status be automatically extended, even though I have a pending application for settled status?</p>	<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 extension applied to the pre-settled status, which should happen at the start of the month before the month in which your status was due to expire. If the settled status application is successful, this grant will replace the extended pre-settled status.</p> <p>Once a more complex process of automatic upgrades is in place 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. See section 5 for more information on the future process of automatic upgrades.</p>
2.12	<p><u>When someone's pre-settled status is extended, do all their rights remain the same?</u> 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?</p>	<p>Yes, all the rights that pre-settled status holders have stay the same when their pre-settled status is extended.</p> <p>However, the person also gains additional permanent residence rights once they have met the requirements of the Withdrawal Agreement for five years - even if they have not applied for or been granted settled status. See section 7 for information about permanent residence rights.</p>

2.13	<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 still be able to be automatically extended?</p>	<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>The Home Office has confirmed that the current process of pre-settled status extensions will be applied automatically without any checks on whether individuals continue to meet the criteria for pre-settled status, and that they will be applied to all types of pre-settled status – including family members – whether covered by the Withdrawal Agreement or not.</p> <p>However, see section 5 for information on the more complex process that may be introduced in future.</p> <p>Also note that the Home Office website (What you’ll get and Switch from pre-settled to settled status) has been changed to state “<i>The Home Office may cancel this extension if they think you no longer meet the requirements for it.</i>” See section 6 for Q&A on the cancellation of status.</p>
2.14	<p>I am the Spanish spouse of a Dutch citizen. He moved to the UK in 2020, and I joined him in February 2021 - after the end of the Brexit transition period. We both now have pre-settled status, but even though I am an EU citizen, 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?</p>	<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>The Home Office has confirmed that the current process of pre-settled status extensions will be applied automatically without any checks on whether individuals continue to meet the criteria for pre-settled status, and that they will be applied to all types of pre-settled status – including family members – whether covered by the Withdrawal Agreement or not.</p> <p>However, see section 5 for information on the more complex process that may be introduced in future.</p> <p>Also note that the Home Office website (What you’ll get and Switch from pre-settled to settled status) has been changed to state “<i>The Home Office may cancel this extension if they think you no longer meet the requirements for it.</i>” See section 6 for Q&A on the cancellation of status.</p>

<p>2.15</p>	<p>I am a non-EU citizen and had to do a paper application for pre-settled status, because I applied as the <u>family member of a dual EU-British citizen [Lounes dual national]</u>. Will my pre-settled status still be able to be automatically extended?</p>	<p>Whether someone’s pre-settled status is extended 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>The Home Office has confirmed that the current process of pre-settled status extensions will be applied automatically without any checks on whether individuals continue to meet the criteria for pre-settled status, and that they will be applied to all types of pre-settled status – including family members – whether covered by the Withdrawal Agreement or not.</p> <p>However, see section 5 for information on the more complex process that may be introduced in future.</p> <p>Also note that the Home Office website (What you’ll get and Switch from pre-settled to settled status) has been changed to state “<i>The Home Office may cancel this extension if they think you no longer meet the requirements for it.</i>” See section 6 for Q&A on the cancellation of status.</p>
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<p>2.16</p>	<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 [Surinder Singh route], and I had to apply through a paper application. Will my pre-settled status be automatically extended?</p>	<p>Surinder Singh family members of British nationals 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>However, the Home Office has stated that the current process of pre-settled status extensions will apply to <i>all</i> pre-settled status holders – including family members – whether covered by the Withdrawal Agreement or not.</p> <p>Furthermore, the IMA states explicitly on its website:</p> <p><i>Will the extension apply to holders of PSS on the basis of Zambrano or Surinder Singh routes, even though those routes will be closed for future applications to EUSS?</i></p> <p><i>The extension will be applied to everyone who holds PSS status, including those who applied via the Zambrano and Surinder Singh routes.</i></p> <p>However, see section 5 for information on the more complex process that may be introduced in future.</p> <p>Also note that the Home Office website (What you'll get and Switch from pre-settled to settled status) has been changed to state “<i>The Home Office may cancel this extension if they think you no longer meet the requirements for it.</i>” See section 6 for Q&A on the cancellation of status.</p>
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2.17	<p>I was granted pre-settled status as the non-EU carer of a British citizen [Zambrano carer], and I had to apply through a paper application. Will my pre-settled status be automatically extended?</p>	<p>Zambrano carers of British nationals 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>However, the Home Office has stated that the current process of pre-settled status extensions will apply to <i>all</i> pre-settled status holders, whether covered by the Withdrawal Agreement or not.</p> <p>Furthermore, the IMA states explicitly on its website:</p> <p><i>Will the extension apply to holders of PSS on the basis of Zambrano or Surinder Singh routes, even though those routes will be closed for future applications to EUSS?</i></p> <p><i>The extension will be applied to everyone who holds PSS status, including those who applied via the Zambrano and Surinder Singh routes.</i></p> <p>However, see section 5 for information on the more complex process that may be introduced in future.</p> <p>Also note that the Home Office website (What you'll get and Switch from pre-settled to settled status) has been changed to state "<i>The Home Office may cancel this extension if they think you no longer meet the requirements for it.</i>" See section 6 for Q&A on the cancellation of status.</p>
2.18	<p>I have pre-settled status which is due to expire next month. Two years ago, I applied for settled status and received a refusal. I requested an Administrative Review, and I am still waiting for a decision on that review. Will my pre-settled status be automatically extended, even though I have a refusal for settled status?</p>	<p>The Home Office has informed us that under the current process of automated extensions, 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 extension applied to the pre-settled status. An application being pending includes situations where someone has received a refusal but has gone on to request an Administrative Review, or has submitted an appeal to the Immigration Tribunal.</p> <p>If the refusal is ultimately overturned, and settled status is granted, then this grant will replace the extended pre-settled status. If the refusal is ultimately upheld, the Home Office may examine your pre-settled status grant to see whether it should be cancelled, subject to a right of appeal.</p> <p>See also section 6 for Q&A on the cancellation of status.</p>

2.19	What happens when my two- or five-year extension comes to an end? Will my pre-settled status be extended again at that point?	<p>We asked the Home Office whether there will be repeated 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> <p>See section 5 for information on the more complex process that may be introduced in future.</p> <p>The Home Office website (What you'll get and Switch from pre-settled to settled status) has been changed to state <i>"The Home Office may cancel this extension if they think you no longer meet the requirements for it, for example because you've been outside the UK for more than 6 months in a 12 month period. There are some exceptions."</i> See section 6 for Q&A on the cancellation of status.</p>
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2.20	Will my pre-settled status extension count towards my qualifying residency period for settled status?	<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 by 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 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 broken, and some people would have had to apply for another grant of pre-settled status to be able to build up five years' continuous residence in the UK. For these people, this automated extension means they don't need to make a separate application. However, they will still need to provide suitable evidence that their absence was covered by the exemption if they make an application for settled status. • 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 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 by 31 December 2020, their pre-settled status would have expired without having built up five years' continuous residence in the UK. For these people, an extension will help to build up a qualifying residence period, because that new period of continuous residence will have started by 31 December 2020.
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3. ABSENCES FROM THE UK

<p>3.1</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 automatically extends your pre-settled status, then this will remove the need for you to make an application yourself for a second grant of pre-settled status and allow you to build up five years of residence to qualify for settled status.</p> <p>You will need to provide suitable evidence that your absence was covered by the exemption if you make an application for settled status.</p> <p>See also question 2.20.</p>
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<p>3.2</p>	<p>I have pre-settled status, but <u>I have broken my continuity of residence</u> because I had a long (15 month) absence, which wasn't related to Covid, in 2021/2022. <u>Will my pre-settled status be extended</u> even though I've broken my continuity of residence?</p>	<p>Current Home Office policy of pre-settled status extensions shortly before its expiry is being applied to everyone, regardless of any checks on whether they continue to meet the criteria of pre-settled status - see question 2.5.</p> <p>However, if you have broken your continuity of residence, then there is a possibility that eventually the Home Office will make a decision to withdraw your status.</p> <p>The Home Office website on the EU Settlement Scheme says <i>"The Home Office may cancel the extension if they think you no longer meet the requirements for it, for example because you've been outside the UK for more than 6 months in a 12 month period. There are some exceptions."</i></p> <p>For more information, see section 5 on the more complex process that may be introduced in future, and section on 6 on cancellation of status.</p> <p>We would strongly recommend you seek legal advice to discuss alternative UK immigration routes. See our website https://www.the3million.org.uk/useful-links for some details of qualified immigration advisors.</p>
<p>3.3</p>	<p>I have pre-settled status, but <u>I have broken my continuity of residence</u> because I had a long (15 month) absence, which wasn't related to Covid, in 2022/2023. <u>My pre-settled status has been extended - does this mean I can now eventually apply for settled status?</u></p>	<p>Under current EU Settlement Scheme policy, if you have broken your continuity of residence after 31 December 2020 (and you are not a joining family member), you will not become eligible to apply for settled status, even if your pre-settled status is extended.</p> <p>However, if you have broken your continuity of residence, then there is a possibility that eventually the Home Office will make a decision to withdraw your status.</p> <p>The Home Office website on the EU Settlement Scheme says <i>"The Home Office may cancel the extension if they think you no longer meet the requirements for it, for example because you've been outside the UK for more than 6 months in a 12 month period. There are some exceptions."</i></p> <p>For more information, see section 6 on cancellation of status.</p> <p>We would strongly recommend you seek legal advice to discuss alternative UK immigration routes. See our website https://www.the3million.org.uk/useful-links for some details of qualified immigration advisors.</p>

<p>3.4</p>	<p>I have pre-settled status. <u>I recently applied for settled status but got refused</u> because I'd broken my continuous residence. However, I was allowed to keep my pre-settled status until it expires.</p> <p><u>Will I get an extension of my pre-settled status?</u></p>	<p>Current Home Office policy of pre-settled status extensions shortly before its expiry is being applied to everyone, regardless of any checks on whether they continue to meet the criteria of pre-settled status - see question 2.5. This therefore also applies to people in your situation who have existing pre-settled status even though their application for settled status has been refused.</p> <p>However, if you have broken your continuity of residence, then there is a possibility that eventually the Home Office will make a decision to withdraw your status.</p> <p>For more information, see section 5 on the more complex process that may be introduced in future, and section 6 on cancellation of status.</p>
<p>3.5</p>	<p>I have pre-settled status and <u>I have maintained continuous residence for four years. I recently mistakenly applied too early for settled status but got refused</u> 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 should be automatically extended.</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>See also section 5 on the more complex process that may be introduced in future which will include auto-upgrades to settled status.</p>

4. AUTOMATIC LAPSING OF PRE-SETTLED STATUS AFTER TWO/FIVE YEARS ABSENCE FROM THE UK

4.1

Can my pre-settled or settled status automatically lapse if I am out of the UK for too long?

Yes, this is determined by the “Immigration (Leave to Enter and Remain) Order 2000” (LTERO). The LTERO allows Border Force officers to refuse admission to someone returning to the UK if they establish that person’s immigration status has lapsed through being out of the UK for too long.

Before 21 May 2024, the LTERO made provision for pre-settled status to automatically lapse after a continuous absence from the UK of two years, and for settled status to automatically lapse after a continuous absence from the UK of five years (or four for Swiss citizens and their family members).

On 21 May 2024, this was changed so that pre-settled status holders can now also be absent for five years (or four for Swiss citizens and their family members) before their status lapses.

This change was made to comply with a High Court ruling which said that people with pre-settled status can automatically acquire permanent residence rights, after which they are allowed to be absent for five years (four years for Swiss citizens and their family members) before losing their rights. It is important to stress that this does not change absence rules for those pre-settled status holders who have not yet acquired permanent residence rights or a five-year continuous residence qualifying period for settled status.

<p>4.2</p>	<p>I have read online that from 21 May 2024, holders of pre-settled status will no longer lose their status after a two year absence, but instead only after a five year absence.</p> <p><u>Does that mean that the rules about six-month absences are no longer important</u>, and I can still get settled status despite a long absence that broke my continuous residence?</p>	<p>This change was brought in because the High Court ruled that someone with pre-settled status can acquire permanent residence rights under the Withdrawal Agreement even if they have not yet applied for, or been granted, settled status. See section 7 on permanent residence rights.</p> <p>However, it is very important to realise that this does not change the eligibility rules for those who have not yet acquired permanent residence rights. In order to acquire permanent residence rights, or to be eligible for settled status, people have to demonstrate (usually) five years’ continuous residence that started by 31 December 2020. This means not having been absent for more than 6 months in any 12-month period, with some exceptions.</p> <p>If you have broken your continuity of residence, you are at risk of having your pre-settled status withdrawn (even if the Home Office applies an automated extension at some point).</p> <p>For more information, see section 5 on the more complex process that may be introduced in future, and section 6 cancellation of status.</p> <p>We would strongly recommend you seek legal advice to discuss alternative UK immigration routes. See our website https://www.the3million.org.uk/useful-links for some details of qualified immigration advisors.</p>
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<p>4.3</p>	<p>I have pre-settled status and have been out of the UK for a little over two years.</p> <p><u>Has my pre-settled status automatically lapsed?</u></p>	<p>This depends on the exact dates of your absence, and whether you had achieved permanent residence rights before leaving the UK.</p> <p>If you had already achieved permanent residence rights before leaving the UK, then the direct effect of the Withdrawal Agreement means that you will not have lost your pre-settled status. See section 7 on permanent residence rights.</p> <p>On 21 May 2024, the law was changed so that pre-settled status automatically lapses after an absence from the UK of five years (or four years in the case of Swiss citizens and their family members). Previously, pre-settled status lapsed sooner, namely after an absence of only two years.</p> <p>If you had already been out of the UK for two years by 21 May 2024, then this change of legislation does not apply to you, and your pre-settled status will already have lapsed, and you are at risk of being refused entry into the UK.</p> <p>If on the other hand you had been out of the UK for <i>less than two</i> years on 21 May 2024, you will benefit from the changed law, and your pre-settled status will only lapse after a five-year absence.</p> <p>Note that the eligibility rules on permanent residence and settled status have not changed (see question 7.1).</p>
<p>4.4</p>	<p>I have pre-settled status, valid until early 2026. However, I left the UK in March 2021, so I have been out of the UK for over three years. <u>Will my pre-settled status be extended even though the Government website implies I have lost my pre-settled status?</u> 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>For the time being, everyone’s pre-settled status is being extended - see question 2.5.</p> <p>However, unless you had already achieved permanent residence rights before leaving the UK, then your long absence means that there is a possibility that eventually the Home Office will make a decision to withdraw your status.</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 five (previously two) years (see question 4.1).</p> <p>For more information, see section 6 on cancellation of status.</p> <p>We would strongly advise you to seek legal advice from a qualified immigration advisor - see our website https://www.the3million.org.uk/useful-links.</p>

4.5	I have pre-settled status and <u>I have left the UK. Does this mean I can stay outside the UK</u> for longer before coming back to the UK?	<p>Even if you are granted an 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. See question 4.1 for more details.</p> <p>We would strongly advise you to seek legal advice from a qualified immigration advisor - see our website https://www.the3million.org.uk/useful-links.</p>
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5. POSSIBLE FUTURE PROCESS: AUTOMATIC UPGRADES FROM PRE-SETTLED TO SETTLED STATUS

5.1	<p>The Government said in its July 2023 press release that it will <u>automatically convert as many eligible pre-settled status holders as possible to settled status</u> once they are eligible for it, without them needing to make an application. <u>How will this process work?</u></p>	<p>We understand that the Home Office is aiming towards a process where they are “<i>where possible, either converting eligible pre-settled status holders to settled status without them needing to apply to the EUSS, or curtailing pre-settled status where an individual has ceased to meet the relevant requirements and we consider that it is proportionate to do so.</i>” (See a letter from the Home Office to the European Affairs Committee of 21 May 2024).</p> <p>We do not have any confirmed details of exactly how this automated upgrade process might work. Previously the Home Office had said that this process will commence at some point in 2024. <u>We do not know whether or when in 2024 this will happen.</u></p> <p>In 2023, the Home Office wrote to all EUSS status holders and said:</p> <p style="text-align: center;"><i>“Plans for pre-settled status holders to have their status switched to settled status automatically, where the Home Office holds the information to do this</i></p> <p style="text-align: center;"><i>In addition to the automatic 2-year extension of pre-settled status, the Home Office also plans to take steps during 2024 to start to automatically switch as many eligible pre-settled status holders as possible to settled status without them needing to make an application. <u>Automated checks of pre-settled status holders against government-held information</u> would check for example their ongoing continuous residence in the UK.”</i></p> <p>We do not have confirmation of what the “government-held information” includes. The current EUSS application process already checks National Insurance numbers (NINos) against HMRC and DWP records, to look for automated evidence of a 5-year period of residence (see here for more information). We would expect that similar checks will also form part of the automated upgrade checks, and that for example, an EU citizen pre-settled status holder with a full 5-year employment history making National Insurance contributions would be eligible for an automatic upgrade to settled status (if they had supplied their NINo in their original pre-settled status application). There have also been some discussions around the possibility of using border data in a positive way, to decide for example that</p>
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		<p>someone whose border data does not show absences of breaking continuity of residence can also be granted settled status. Therefore, depending on what data is looked at, and how the process is ultimately designed, it may well be possible that other cohorts also receive an automatic upgrade to settled status - but we simply do not know enough about this at the moment.</p> <p>There will be some circumstances in which someone’s pre-settled status will need to be extended even if they are not yet eligible for an upgrade to settled - see question 2.20 for circumstances where this could arise.</p> <p>As can be seen from the above quote, the Home Office also intends to curtail (this means removing status which is referred to in this document as cancelling) pre-settled status from persons who no longer meet the “relevant requirements”. We understand this to mean where the Home Office identifies that someone has spent too much time outside of the UK and has broken their continuous residence, the Home Office will cancel their status. If the Home Office wants to cancel pre-settled status from someone, then Home Office guidance sets out that they need to write to the status holder informing them of the reasons they think the individual is no longer entitled to the status (e.g. that the Home Office thinks that have broken their continuous residence), and to give them the opportunity to provide information and/or evidence to show that they are still entitled to the status. The Home Office can only cancel pre-settled status if it would be proportionate to do so. (However, it is not entirely clear what the legal definition of proportionate is)</p> <p>If the Home Office decides to cancel someone’s status, then that decision will come with the right of appeal to the Immigration Tribunal, allowing the person to argue to an independent judge that the Home Office has made the wrong decision in trying to cancel their status.</p>
5.2	<p><u>I did not supply a National Insurance number when I applied for pre-settled status.</u> Will I be able to provide one now to the Home Office, to help run these automated checks?</p>	<p>We do not believe it will be possible to add a National Insurance (NI) number (either to the previous pre-settled status application, or in another way) in order to ensure its use in the automated pre-settled to settled upgrade checks. However, as set out in question 5.1, the checks using the NI number may perhaps not be the only way of obtaining a grant of settled status.</p>
5.3	<p><u>Who will not be automatically converted to settled status,</u> even though they have been here for five years?</p>	<p>We do not have any confirmed details on how or when the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work.</p>

5.4	<p><u>Will border entry / exit records be used</u> in the checks for automated upgrade from pre-settled to settled status?</p>	<p>We understand that the Home Office is considering whether to consider border entry / exit records in their checks for automated upgrades, but this is not confirmed. See question 5.1 for some further details on a possible process.</p>
5.5	<p><u>How often will the automated checks for eligibility for settled status be performed?</u> Will they be done weekly, monthly, annually, every two years?</p>	<p>We do not have any confirmed details on how or when the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work.</p>
5.6	<p><u>How will the automated process consider absences that fall under exemptions</u> (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>We do not have any confirmed details on how or when the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work.</p> <p>While we do not have any confirmed details, as per the Home Office guidance if they consider that someone has broken their continuity of residence through longer absences, they would write out to the status holder to ask them about these absences and to provide evidence. This is why it is important to keep contact details on your digital status (also known as your UKVI account) up to date so that the Home Office can contact you.</p> <p>Of course, just because the Home Office thinks someone has broken their continuity of residence, that might not necessarily be the case. People will need to respond to the Home Office however, especially to provide evidence about extended absences that could fall within exemptions. If this situation applies to you, we would advise you to seek legal advice from a qualified immigration advisor - see our website https://www.the3million.org.uk/useful-links.</p> <p>Separately, the status holder can submit an application for settled status as soon as they are eligible, and attach residence evidence and evidence explaining longer absences.</p>

5.7	<p><u>When the automated system refuses settled status, will it provide a reason why?</u> Will it ask for more information to reconsider the decision?</p>	<p>We do not have any confirmed details on how or when the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work.</p> <p>When an automated check for potential eligibility from pre-settled to settled status is run, this is not considered an application. Although the process can result in a grant of settled status, if the automated check does not return a positive indication of five years' continuous residence, this will not be a refusal.</p> <p>If a person is not upgraded to settled status, it may be that the Home Office will consider whether to cancel their status - see question 5.1.</p>
5.8	<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 <u>my child is too young to have an NI number</u>. 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>We do not have any confirmed details on how or when the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work.</p> <p>Unfortunately we do not know how the Home Office will deal with automated upgrades for family members including children.</p>
5.9	<p>Given the High Court ruling, <u>I don't think it's fair that the automatic upgrades from pre-settled to settled status will only start happening from 2024</u>, and that people who are eligible earlier need to make an application for settled status.</p>	<p>Firstly, we still do not have any confirmed details on when (or whether) in 2024 the automated upgrade process will be implemented. Please see question 5.1 for more details.</p> <p>However, to address the question, 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) that started by 31 December 2020, they have the rights associated with permanent residence, even if the automated upgrade process is not yet in place - see section 7.</p>

5.10	<p>I've got pre-settled status and have been here for five years. <u>Will I get a message from the Home Office that they've considered me for an automatic upgrade</u> but they can't upgrade me unless I add more evidence of residence?</p>	<p>We do not have any confirmed details on how or when the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work.</p> <p>Once the automatic upgrade process is implemented, and the Home Office finds it cannot automatically grant you settled status, it is likely that they will contact you and ask you for evidence that you are still eligible for status under the EU Settlement Scheme. This is why it is important to keep your contact details up to date in your digital status (also known as your UKVI account).</p> <p>Separately, you can make an application for settled status and provide evidence of your five years' residence, without waiting for the Home Office to start implementing their automatic upgrade process.</p>
5.11	<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 <u>my pre-settled status is on the basis of being a joining family member</u>. 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 (with the exception of children under 21 years old) 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 do not have any confirmed details on how the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work. In particular, we have not been given any details whether the automated upgrade checks will consider family relationships as well, especially where these family members are not related by birth.</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>

5.12	<p>I am a non-EU citizen, and <u>I was granted pre-settled status as a family member of an EU citizen.</u> 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 (with the exception of children under 21 years old) 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 do not have any confirmed details on how the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work. In particular, we have not been given any details whether or how the automated upgrade checks will include checking family relationships, especially where these family members are not related by birth.</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>
5.13	<p>I had to do a paper application for pre-settled status, because <u>I applied as the family member of a dual EU-British citizen [Lounes dual national].</u> Will my pre-settled status be considered for an automated upgrade to settled status?</p>	<p>In order to be eligible for settled status, family members of Lounes dual nationals (with the exception of children under 21 years old) must not only have five years continuous residence, but also remain a family member of the sponsoring Lounes dual national citizen (unless they have retained a right of residence - see more information here).</p> <p>We do not have any confirmed details on how the automated upgrade process will be implemented. Please see question 5.1 for an outline of how the process might work. In particular, we have not been given any details whether or how the automated upgrade checks will include checking family relationships, especially where these family members are not related by birth.</p> <p>Therefore, we do not know at present whether the pre-settled status of family members of Lounes dual nationals will be considered for automatic upgrades to settled status.</p>
5.14	<p>I was granted pre-settled status as the <u>family member of a British citizen with whom I lived in the EU before December 2020 [Surinder Singh route]</u>, 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>Although Surinder Singh pre-settled status holders will be covered by the current pre-settled status extension policy (see question 2.16), we currently do not know whether the automated upgrade from pre-settled to settled status will cover Surinder Singh status holders.</p>

5.15	<p>I was granted pre-settled status as the <u>non-EU carer of a British citizen [Zambrano carer]</u>, 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>Although Zambrano pre-settled status holders will be covered by the current pre-settled status extension policy (see question 2.17), we currently do not know whether the automated upgrade from pre-settled to settled status will cover Zambrano status holders.</p>
5.16	<p>I have pre-settled status, and I have tried to upgrade to settled status before - but that <u>upgrade application was refused</u>. Will I still be considered for an automated upgrade to settled status?</p>	<p>We are not sure how exactly the process would apply in your case. However, as Home Office decisions to refuse upgrade applications from pre-settled to settled status currently do not result in the Home Office cancelling the existing pre-settled status (in other words if you are refused settled status your pre-settled status carries on), your status should still be assessed by any process that is put in place in the future by the Home Office. This is because you must be told by the Home Office the reasons why they intend to cancel your pre-settled status based on the process set out in question 5.1.</p>

6. DECISIONS TO CANCEL PRE-SETTLED STATUS

6.1	<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>However, it then goes on to say <i>“The Home Office may cancel your pre-settled status if they think you no longer meet the requirements for it, for example because you’ve been outside the UK for more than 6 months in a 12-month period. There are some exceptions.”</i></p> <p>What does this mean for me? This makes me extremely anxious that my status may be taken away.</p>	<p>Previous wording on this webpage caused a lot of confusion, since many people thought it meant that even if they no longer met the requirements for pre-settled status, they could keep it indefinitely. That is not the case. If people no longer meet the requirements (see question 6.2) then even if their pre-settled status is extended via the automated extension process, at some point there is a possibility that the Home Office will decide that their status should be cancelled.</p> <p>The updates to the webpage about cancellation of pre-settled status have caused further confusion and anxiety, because people worry that suddenly their pre-settled status could be cancelled without them even realising it.</p> <p>Our view is that pre-settled status can only be cancelled by way of a Home Office decision, which must be notified to the status holder. (We therefore strongly recommend keeping contact details on your digital status updated). The Withdrawal Agreement ensures that people have the right to challenge such a decision, by submitting an appeal to the Immigration Tribunal, allowing the person to argue to an independent judge that the Home Office has made the wrong decision in trying to cancel their status.</p> <p>If your pre-settled status is cancelled, we would advise you to immediately seek legal advice from a qualified immigration advisor - see our website https://www.the3million.org.uk/useful-links.</p>
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<p>6.2</p>	<p>I have pre-settled status. Many of the Q&As in this document refer to pre-settled status being cancelled if the Home Office think people “<u>no longer meet the requirements for it</u>”.</p> <p><u>What does this mean?</u></p>	<p><u>Breaking continuity of residence</u></p> <p>Pre-settled status can be cancelled 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 by submitting an appeal.</p> <p>Unless someone with pre-settled status has already acquired permanent residence rights (see section 7), or a five year continuous residence qualifying period for settled status, maintaining continuity of residence 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 acquire permanent residence rights, or to upgrade to settled status, since the requirement for settled status is that continuity of residence started by 31 December 2020. In other words, a person cannot begin a new period of continuous residence after 31 December 2020.</p> <p>The exception to this is joining family members, who would be able to restart a period of continuous residence from scratch, as long as their EU sponsor (who was in the UK by 31 December 2020) has maintained their continuous residence, or has settled status / permanent residence rights.</p> <p><u>Lapsing of pre-settled status</u></p> <p>Once a pre-settled status holder leaves the UK for more than two (or five years - see section 4), then not only does that mean in most cases they are unable to ever apply for settled status, as they will break their continuous residence, it also means their pre-settled status may be lost by automatically lapsing. (In some cases however, there may be a possibility that the Home Office accepts that the long (over two year) absence is due to Covid, in which case the Home Office will have decided that they have not broken their continuous residence. The applicant may need to make a new application for pre-settled status to extend their leave. We would strongly recommend getting legal advice if you are in this situation).</p> <p>Again, 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 by 31 December 2020) has maintained their continuous residence, or has settled status / permanent residence rights.</p>
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<p>6.3</p>	<p>On the Government website about upgrading from pre-settled to settled status, it says <i>“If you do not switch to settled status, your pre-settled status will be extended by 2 years shortly before it’s due to expire. [...] The Home Office may cancel this extension if they think you no longer meet the requirements for it.”</i></p> <p>So the Home Office can extend my status one day and then cancel my status altogether the next day? How am I supposed to feel safe that I can build my life here in the UK?</p>	<p>The Home Office have indicated in various places (on their website, in Lord Murray of Blidworth’s letter to the Home Affairs Committee, and in meetings) that they are looking at ways of checking whether a person continues to meet the criteria for pre-settled status. In a letter of 21 May 2024, the Home Office said they intend to move to a process which includes <i>“curtailing pre-settled status where an individual has ceased to meet the relevant requirements and we consider that it is proportionate to do so.”</i></p> <p>We do not have any confirmed details of how this process might work, but see question 5.1 for more information.</p> <p>Although these plans are not confirmed, we strongly recommend keeping your contact details on your digital status updated.</p>
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7. PERMANENT RESIDENCE RIGHTS

7.1

What are permanent residence rights
and what is the difference between
permanent residence and settled status?

The Withdrawal Agreement sets out that once a Withdrawal Agreement beneficiary has five years of continuous lawful residence, they have permanent residence [PR] rights.

Before the High Court judgment of December 2022, people could only access these PR rights if they applied for and were granted settled status. However, the judge ruled that those who had already had pre-settled status would acquire their PR rights as soon as they had those five years of continuous lawful residence that started by 31 December 2020, regardless of whether they had made a further application for settled status under the EU Settlement Scheme. (Joining family members can start their continuous lawful residence after 31 December 2020).

As it is currently interpreted in UK law, the definition of continuous lawful residence means that it is not enough to have simply *lived* in the UK for 5 years. Rather it means that people should have had 5 years of exercising EU free movement rights, by for example working, studying or being self-sufficient.

If someone with pre-settled status can demonstrate therefore that they have been exercising free movement rights in the UK for 5 years, they have permanent residence rights. This guidance sets out the details of when someone is considered to have permanent residence rights: <https://www.gov.uk/government/publications/european-economic-area-nationals-qualified-persons>

Settled status on the other hand can be granted by having simply *lived* in the UK for 5 years (again this must have started by 31 December 2020, except for joining family members).

Even if you have PR rights, you may find it more convenient to have a grant of settled status, in order to have more straightforward proof with which to access various rights in the UK.

If you are not sure whether you have permanent residence rights, we recommend you speak to an immigration advisor - see our website <https://www.the3million.org.uk/useful-links>.

7.2	<p>The judgment said that people should have their permanent residence rights recognised automatically. How has this been implemented?</p>	<p>Over the last year, policy documents and legislation has been gradually updated to take into account that people can access various rights by being able to demonstrate permanent residence rather than only by a grant of settled status.</p> <p>For example:</p> <ul style="list-style-type: none"> ● being allowed to leave the UK for 5 years (or 4 for Swiss citizens and their family members) without losing status (see question 7.3) ● being able to naturalise as a British citizen (see question 7.4) ● your child being allowed to register as a British citizen (see question 7.5) ● having a baby born automatically British (see question 7.6) ● fulfilling the ‘right to reside’ test for accessing help from the state (see question 7.7)
7.3	<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 (four years for Swiss citizens and their family members) without losing your residence rights. See question 7.1 for more details on permanent residence rights.</p> <p>The “Immigration (Leave to Enter and Remain) Order 2020” was changed with effect from 21 May 2024 such that pre-settled status only lapses automatically after an absence of five years (four for Swiss citizens and their family members). See section 4 for more details on this.</p>

<p>7.4</p>	<p>I have pre-settled status, and I believe I <u>reached permanent residence rights</u> 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 <u>I want to apply for British citizenship</u>, 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 21 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></p> <p>See question 7.1 for more details on permanent residence rights.</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. See our website https://www.the3million.org.uk/useful-links for some details of qualified immigration advisors.</p>
<p>7.5</p>	<p>I have pre-settled status, and <u>my baby was born in the UK just before I reached five years of continuous residence</u>. 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 21 July 2023 to include having a permanent residence right under the Withdrawal Agreement for the purposes of <i>“Requirements for registration under section 1(3)”</i>.</p> <p>This means there are now circumstances where a child, born in the UK 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 have permanent residence rights - see question 7.1 for more details.</p> <p>We recommend you get legal advice to carefully consider your individual circumstances. See our website https://www.the3million.org.uk/useful-links for some details of qualified immigration advisors.</p>

7.6	<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, and can I therefore apply for a British passport for my baby?</p>	<p>The caseworker guidance on the Automatic acquisition of British citizenship was updated on 21 November 2023 to take account of the High Court judgment. This means that a child, born in the UK to someone who has permanent residence under the Withdrawal Agreement, is born British and therefore eligible for a British passport. See question 7.1 for more information on permanent residence.</p> <p>We recommend you get legal advice to carefully consider your individual circumstances. See our website https://www.the3million.org.uk/useful-links for some details of qualified immigration advisors.</p>
7.7	<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>The DWP should therefore accept permanent residence rights under the Withdrawal Agreement (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 clarify the impact of the judgment.</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 the 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 that started by 31 December 2020. 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 - see our website https://www.the3million.org.uk/useful-links.</p>