

EU Settlement Scheme

Is the pre-settled status upgrade as simple as the Home Office claim?

You may have heard that the Home Office has recently announced changes to the EU Settlement Scheme (EUSS). One of these changes advertises an effortless immigration status upgrade for clients with pre-settled status who have lived in the UK for 5 years.

Though it sounds straightforward, we have looked at the guidance and advise clients to take caution, as the promise of an automatic upgrade may not be as simple as it seems...



What is pre-settled status?

Pre-settled status is an immigration status granted to individuals from the EU, Switzerland, Norway, Iceland or Liechtenstein who were living in the UK by 31 December 2020. Holders of pre-settled status are allowed to live in the UK for up to 5 years.

Most holders of pre-settled status will already be in the UK under this pathway, as the deadline for most people to apply was 30 June 2021. However, applicants who are family members of existing holders of pre-settled status, or individuals who can prove reasonable grounds for making a delayed application, can also apply for pre-settled status after the deadline.

What happens when your pre-settled status is due to expire?

Previously, at the expiry of your 5-year residence period, you were required to make a formal application to the Home Office for settled status. After that, you were permitted to remain in the UK indefinitely. If you did not make a formal application, your permission to reside in the UK would expire.

What are the changes?

The Home Office have introduced an automatic assessment process with effect from January 2025.

Anyone with pre-settled status who is approaching the end of their 5-year residence period will now receive an email confirming that the end of their residence period is approaching and they will be considered for an automatic conversion into settled status. The Home Office will then assess government records and grant an automatic upgrade to anyone that has clearly been in the UK for last 5 years. There is no longer a need to make a formal application.

In theory, if you have been in the UK for 5 years with pre-settled status, you do not need to take any action in order to be upgraded to settled status.

The change is inspired by a High Court decision in February 2023 where it was found that people with pre-settled status should not lose protection over their residence rights simply because of the failure to make a further application within the timeframe.

What is the catch?

We understand that the automatic assessment process works by checking records held by government bodies such as HMRC, DWP and the NHS – and for many people such records are easily established.

However, many of our clients have incredibly busy lives, often travelling between different jurisdictions, with fluctuating tax liabilities and private access to healthcare and travel. In reality, for these types of clients, the paper trail could make it look like you haven't been in the UK continuously.

The potential risks could be severe – not only might you miss the automatic upgrade, leaving minimal time to make an application to upgrade to settled status, there is a chance that the Home Office System could interpret you as not being resident in the UK when you needed to be.



How we can help

If you have pre settled status we would recommend that you take caution with the Home Office's promise and consider making a voluntary application as usual. This can ensure that your rights of residence in the UK continue seamlessly and smoothly, without any stress at all.

With over 25 years of experience, our Immigration team are well placed to help you, so please do get in touch.

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