



Rt Hon Dame Diana Johnson DBE MP
Chair, Home Affairs Select Committee
House of Commons
London
SW1A 0AA

21 May 2024

Dear Dame Diana,

REFORMS TO THE EU SETTLEMENT SCHEME

I am writing to update you on the changes being made to the EU Settlement Scheme (EUSS). These changes support the practical implementation of the High Court judgment in the judicial review proceedings brought by the Independent Monitoring Authority for the Citizens' Rights Agreements (IMA).

In its judgment, the High Court found that the underlying Withdrawal Agreement residence right of a person with pre-settled status does not expire for failure to make a second application to the scheme and a pre-settled status holder automatically acquires the right of permanent residence under the Withdrawal Agreement once the conditions for it are met.

The UK's domestic legislation (namely section 7A of the European Union (Withdrawal) Act 2018, inserted by section 5 of the European Union (Withdrawal Agreement) Act 2020), provides for the incorporation of the Withdrawal Agreement into UK law. This means that the rights under the Withdrawal Agreement, as interpreted by the High Court, are, and always have been, available to citizens.

Our implementation of the judgment has therefore focused on ensuring that it continues to be easy for citizens, government departments and third parties, such as employers and landlords, to evidence their rights, or to check that they are in place.

Since September 2023, we have been extending, by two years, the pre-settled status of those who had not switched to settled status before the original expiry date of their pre-settled status grant. This ensures that no pre-settled status holder loses their ability to easily evidence their rights because they have not made a further application to the EUSS. Later this year, we intend also to move to an approach where we are, 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. This will support our aim of aligning people's EUSS status with their underlying rights.

We also recently amended the Immigration (Leave to Enter and Remain) Order 2000 to provide for all EUSS status holders' leave to lapse after an absence from the UK of more than five consecutive years. This ensures that pre-settled status holders who have automatically acquired a Withdrawal Agreement permanent residence right can benefit

from the longer absence protection and this addresses the inconsistency between the Order and the rights under the Withdrawal Agreement, as clarified by the IMA judgment.

We therefore believe our legal framework to be compliant with the judgment. However, we have continued to work closely with the IMA on implementation to ensure that the changes we have made work in practice. Having listened to concerns raised by the IMA about some of the potential implications of our proposals, we have decided to make some further changes to support our implementation.

Changes to Home Office online checking services

The Home Office will remove the pre-settled status expiry date from the digital profiles shown to third parties, including employers and landlords, via the suite of online checking services (Right to Work, Right to Rent and View and Prove). The requirement to carry out a repeat check on pre-settled status holders for those conducting Right to Work and Right to Rent checks will also be removed from the Right to Work and Right to Rent checking services.

Changes were made to Home Office guidance for employers and landlords and the information displayed when undertaking a check using the online services in October 2023 to reflect the judgment, clarifying that a person's rights do not expire for failure to make a second application to the EUSS. However, we accept that there is a risk that the continued visibility of an expiry date on the online checking services, and the requirement to re-check status, may adversely impact pre-settled status holders in practice. These changes will provide clarity to third parties and help avoid that risk.

We expect these changes to be made, and the relevant guidance to be updated, in the next few weeks. We are also considering if amendments to related legislation are required to clarify these changes.

Changing the length of pre-settled status extensions

We will also change the duration of pre-settled status extensions from two to five years. This will provide additional assurance to pre-settled status holders of their continuing rights, in light of the judgment.

The EUSS has been a great success, with 5.7 million people obtaining a grant of status through the scheme. We have gone above and beyond our obligations under the Withdrawal Agreement, and equivalent agreements with the other EEA states and Switzerland, and are pleased that so many of our family, friends, and neighbours have obtained the status they need to remain in the UK. As set out above, we consider our legal framework to be compliant with the judgment and these changes, alongside the changes we had already made to the EUSS, will ensure that citizens can continue to easily exercise their rights in practice.

A copy of this letter will be placed in the Libraries of both Houses.

With best wishes,

Yours ever,

A handwritten signature in blue ink, appearing to be 'Tom Pursglove', written in a cursive style.

Tom Pursglove MP
Minister of State for Legal Migration and the Border