

Mobility: Immigration alert

March 2024



United Kingdom

The Immigration (Leave to Enter and Remain) (Amendment) Draft Order 2024

Executive summary

On 11 March 2024, the Immigration (Leave to Enter and Remain) (Amendment) Order 2024 (i.e., [Draft Order](#)) was laid before the UK Parliament for approval by resolution of each House of Parliament. If this draft legislation is approved and made a UK Statutory Instrument, changes will come into force regarding the lapse of leave for holders of pre-settled status who have acquired permanent residence but have not applied for settled status under the EU Settlement Scheme (EUSS).

Background

Currently, if a person with indefinite leave to enter or remain travels outside the UK, their leave lapses by operation of law if they remain outside the Common Travel Area (i.e., the open borders area comprising the UK, Ireland, the Isle of Man and the Channel Islands) for a continuous period of more than four years (in the case of Swiss nationals and their family members who are granted settled status under the EUSS), five years (in the case of all other persons who are granted settled status under the EUSS) or two years (in the case of all other individuals). Those who hold pre-settled status under the EUSS can only spend up to two consecutive years outside the UK without losing their leave.

Key developments

Article 2 of the Draft Order proposes an amendment to Article 13 (4)(za) of the Immigration (Leave to Enter and Remain) Order 2000 to remove references to “unlimited” leave granted under Appendix EU to the Immigration Rules. If the Draft Order is

approved, leave will no longer automatically lapse for holders of pre-settled status who have acquired permanent residence but have not applied for settled status if they remain outside the UK for more than two consecutive years. For these individuals, leave granted under Appendix EU will not automatically lapse unless they stay outside the UK for more than five consecutive years (or four years in the case of Swiss nationals and their family members), similar to the rules for holders of settled status.

Even if these changes are implemented, the UK Home Office may continue to have scope to cancel or curtail pre-settled status for those who have not acquired the right of permanent residence and are no longer eligible for pre-settled status because they exceeded the allowed periods of absence.

Impact on employers

If the Draft Order is approved, organizations that employ affected individuals are expected to benefit as these individuals may gain further evidence of their right to reside in the UK.

Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

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