Home Office

Indefinite leave to remain: calculating continuous period in UK

Version 15.0

Contents

About this guidance

This guidance tells you how to calculate the 5 year continuous lawful period in the UK requirement for applicants applying for settlement (indefinite leave to remain). It also covers accelerated settlement in relevant categories.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you, or you think that the guidance has factual errors, then email the Economic Migration Policy Team.

Border Force officers can also email BF OAS enquiries.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on), or have any comments about the layout or navigability of the guidance, then you can email Guidance – making changes.

Clearance

Below is information on when this version of the guidance was cleared:

- version 15.0
- published for Home Office staff on 06 April 2017

Changes from last version of this guidance

This version removes references to obsolete routes.

It replaces the Indefinite leave to remain: calculating continuous period in UK modernised guidance version 14.0 which has been withdrawn and archived.

Related content

Contents
Changes to this guidance
Contact

Safeguard and promote child welfare

Categories covered by this guidance

This section tells you which categories of leave are covered by this guidance.

The following categories are covered by this guidance:

- representative of an overseas business (paragraph 150 of the Immigration Rules)
- UK ancestry (paragraph 192)
- retired person of independent means (paragraph 269)
- domestic workers in private households (paragraph 159G)
- the following sub-categories of the points-based system:
  - Tier 1 (Exceptional talent) (paragraph 245BF)
  - Tier 2 (General) (paragraph 245HF)
  - Tier 2 (Sportsperson) (paragraph 245HF)
  - Tier 2 (Minister of religion) (paragraph 245HG)
  - Tier 2 (Intra-company transfers) (ICT) granted under the rules in place before 6 April 2010 (paragraph 245GF)
  - Tier 5 (International agreement) – private servants in diplomatic households granted entry under rules in place before 6 April 2012 only (paragraph 245 ZS)

It covers the following routes which allow accelerated settlement:

- Tier 1 (Entrepreneur) (paragraph 245DF)
- Tier 1 (Investor) (paragraph 245EF)

It also covers the following categories that are now closed for entry to the UK and extension of leave:

- airport-based operational staff of overseas-owned airlines (paragraph 184)
- highly-skilled migrant programme (paragraph 135G)
- Tier 1 (General) (paragraph 245CD)

Related content

Contents

Categories where the continuous period is not 5 years

This section tells you which categories need less than the full 5 year period when calculating continuous lawful leave.

The continuous period may be less than 5 years provided the criteria are met, in the following work categories:

Tier 1 (Entrepreneur)
Tier 1 (Entrepreneur) applicants may qualify for indefinite leave to remain after 3 or 5 years, depending on their level of business activity.

Tier 1 (Investor)
(Paragraph 245EF and appendix A, table 9). Applicants may qualify for indefinite leave to remain after 2, 3 or 5 years, depending on their level of investments.

Applications under the Highly Skilled Migrant Programme (HSMP) Judicial Review
This is for applicants qualifying under the HSMP judicial review (paragraph 135G and 245CD). Applicants may qualify for indefinite leave to remain after 4 years if they applied to the HSMP before 3 April 2006, or 5 years if they applied between 3 April 2006 and 7 November 2006.

Nationality applications
The limits set out in this guidance apply to applications for indefinite leave to remain (ILR) only. The assessment of absences for nationality applications is different. Lengthy absences taken during the continuous period for ILR can impact on the applicant's ability to meet the residency requirements for nationality.

Separate guidance is available.

Long residence
This guidance does not apply to the continuous period requirement in long residence cases. Separate guidance is available.

Related content
Contents

How to determine if the continuous period is spent lawfully in the UK

This section tells you how to decide if the continuous period is spent lawfully in the UK.

The applicant must not have spent any of their time in the UK without valid leave to enter or remain.

You must refuse indefinite leave to remain (ILR) if the applicant does not meet the continuous period requirement set out in the Immigration Rules.

The continuous period requirement is the minimum amount of time which a migrant must spend in employment or being active in the UK economy before being eligible to qualify for ILR.

You must assess if the applicant has spent the required minimum time period in the UK, as well as whether they meet all of the other requirements for ILR set out in the Immigration Rules.

When you calculate if an applicant has met the continuous period requirement, you must examine how many days absence from the UK they have accrued.

The applicant must provide reasons for these absences in all categories except bereaved partner. The majority of applicants are also required to provide evidence of the absence. Evidence is not required from applicants in the following categories:

- Tier 1 (Investor) (paragraph 245EF)
- Tier 1 (Entrepreneur) (paragraph 245DF)
- Tier 1 (Exceptional talent) (paragraph 245BF)
- highly skilled migrants (who fall under the HSMP Forum judgment)

The Secretary of State retains discretion under the Immigration Act 1971 to grant leave outside the rules in exceptional cases.

Definition of the UK

For immigration purposes, ‘UK’ means Great Britain and Northern Ireland only.

It does not include the Crown dependencies of the:

- Channel Islands
- Isle of Man

However, paragraph 1(1) of schedule 4 to the Immigration Act 1971 states that, as the Crown dependencies form part of the Common Travel Area, leave granted there is treated as if it had been granted in the UK.

You can include time spent in the Crown dependencies in a category equivalent to any category of leave covered by this guidance toward ILR in the UK, provided it meets the Immigration Rules requirements.

You must treat any time spent in the Crown dependencies during the continuous period with leave not covered by this guidance as an absence from the UK.

Any time spent working off shore on the UK continental shelf, beyond the 12 mile zone defined as UK territorial waters, does not count toward the continuous qualifying period for ILR, for example on ships or oil rigs. You must count this as an absence from the UK.

Related content
Contents
Breaks in continuous lawful period

The Crown dependencies: Bailiwicks of Jersey and Guernsey, and the Isle of Man

This section tells you when time spent in the Crown dependencies will not break continuity when you calculate if the applicant has met the continuous period requirement.

The Bailiwick (jurisdiction) of Guernsey covers other Channel Islands including Sark and Alderney.

Applicants must meet the continuous residence and, as appropriate, continuous employment requirements for indefinite leave to remain (ILR), during time spent in the Crown dependencies.

They must also have complied with the terms of their leave. This means they must:

- not have breached the conditions of their stay
- be free from convictions in the Crown dependencies

Time spent in a Crown dependency in a qualifying category counts towards the continuous residence period.

Related content
Contents

Routes of entry to the Crown dependencies

This section tells you about the routes of entry for the Crown dependencies.

The routes of entry to the Crown dependencies are broadly similar to the UK, but there are some important differences. You must take these into account when you assess if you can count Channel Islands or Isle of Man leave towards the continuous period for indefinite leave to remain (ILR) in the UK.

The main differences are that Guernsey and Jersey continue to operate the work permit system and pre-PBS routes for:

- business persons
- investors and writers
- artists categories

The table below shows:

- which leave categories each of the islands has or has had
- if they are still open or closed to new entrants

Leave category	Guernsey	Jersey	Isle of Man
Work permit holder	Yes (open)	Yes (open)	Yes (closed)
Overseas domestic worker – Private household	No	Yes (open)	Yes (open)
UK ancestry	Yes (open)	Yes (open)	Yes (open)
Minister of religion	Yes (open)	No	Yes (closed)
Businessperson	Yes (open)	Yes (open)	Yes (closed)
Investor	Yes (open)	Yes (open)	Yes (closed)
Writer, Composer, Artist	Yes (open)	Yes (open)	Yes (closed)
Highly skilled migrant	No	No	Yes (closed)
Tier 1 (General)	No	No	Yes (closed)
Tier 1 (Investor)	No	No	Yes (open)
Tier 1 (Entrepreneur)	No	No	Yes (open)
Tier 1 (Exceptional talent)	No	No	Yes (open)

Tier 2 (Intra-company transfer)	No	No	Yes (open)
Tier 2: • (General) • (Sportsperson) • (Minister of religion)	No	No	Yes (open)

Some employment permitted on a work permit in Guernsey and Jersey would not be permitted in the UK under PBS. For example, short term and seasonal work in the hospitality and entertainment sectors, such as waiters.

Below are some similarities and differences to take into account when you consider if you can count leave spent in the Crown dependencies towards the continuous period.

Jersey issues work permits in any category.

In Guernsey:

- work permits are issued in the following sectors:
  - finance
  - health
  - education
  - veterinary
  - export industry
  - hotel and catering

- other sectors are considered on a case by case basis if there is an economic need for the post to be filled by a migrant worker

Both Jersey and Guernsey:

- have a resident labour market test
- require the migrant worker's salary to be the going rate
- have an English language and Knowledge of Life test at the ILR stage

Related content
Contents

Continuous residence: does time spent in the Crown dependencies count?

This section tells you how to consider if time spent in the Crown dependencies can be counted towards the continuous residence requirement.

The Immigration Rules state the requirements for time spent in the Crown dependencies to be counted towards the continuous residence period for indefinite leave to remain (ILR) in the categories covered by this guidance.

Relevant parts of the Immigration Rules

Section of the rules	What it applies to
Part 5 – paragraph 128A is relevant to:	• UK ancestry • overseas domestic workers

Part 6A (PBS) the relevant rules are:	• 245BF – Tier 1 (Exceptional Talent)
	• 245CD(k) and 245CD(l) – Tier 1 (General)
	• appendix A, table 6, line 3 – Tier 1 (Entrepreneur)
	• appendix A, table 9, lines 3 and 4 – Tier 1 (Investor)
	• 245GF(i) – Tier 2 (Intra-company transfer)
	• 245HF(h) – Tier 2:
	  ○ (General)
	  ○ (Sportsperson)
	  ○ (Minister of religion)

You may count time spent in the Crown dependencies towards the 2, 3, 4 or 5 year qualifying period (depending upon category of leave) for ILR in the UK if the applicant has met the following requirements:

- the applicant must:
  - be present in the UK
  - apply for ILR in the UK
- the applicant's most recent period of leave must:
  - have been granted in the UK
  - be in the category in which they are applying for ILR
- you can only count Channel Islands and Isle of Man leave towards ILR if it was granted in the same type of category, or one equivalent to, one specified by the requirement for ILR in the UK: see table below
- if the applicant has been granted leave for employment in a Crown dependency, it must have been for the same type of leave that would be granted in the UK: for examples see table below.
- the continuous residence and, where applicable, continuous employment requirements in paragraphs 128A, 200A and 245AAA also apply to Channel Islands and Isle of Man leave: you must apply the continuous residence and

continuous employment requirements to the time spent in the Crown dependency as you would if the leave had been in the UK. The applicant must:

- provide information about periods of absence
  - the reasons for them or more information, see exceptional cases
  - not have outstanding convictions in the Crown dependency
- leave in the Channel Islands and Isle of Man must have been lawful with no breaches of their conditions of stay

Official – sensitive: Start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: End of section

Examples of equivalent leave

Category applying for ILR in UK	**Any Crown dependency leave**
Tier 1 (Entrepreneur)	Must be as: • an entrepreneur • a business person (in Guernsey or Jersey since 30 June 2008) • an innovator
Tier 2 (General)	Must be as a: • qualifying work permit holder • member of the operational ground staff of an overseas-owned airline • minister of religion • representative of an overseas business • representative of an overseas newspaper • Tier 1 migrant (other than Tier 1 (Post study work)) • highly skilled migrant • innovator • Tier 2 (General) • Tier 2 (Sportsperson) • Tier 2 (Minister of religion)

Category applying for ILR in UK	Any Crown dependency leave
	• Tier 2 (Intra-company transfer) • businessperson in Guernsey or Jersey since 30 June 2008 or as a work permit holder You must refer to the codes of practice in appendix J of the Immigration Rules. For sportspersons, including coaches, they must have been: • internationally established at the highest level • employed because they have made a significant contribution to the development of their sport at the highest level

Related content
Contents

Related external links
Part 5 of the Immigration Rules
Part 6 of the Immigration Rules
Part 6A of the Immigration Rules

Absences which will not break continuity in the continuous period

This section tells you when absences will not break continuity when calculating if the continuous period requirement has been met.

Period between the issue of entry clearance and entering the UK

The period between entry clearance being issued and the applicant entering the UK may be counted toward the qualifying period. Any absences between the date of issue and entry to the UK are considered an allowable absence. This period will count towards the 180 days allowable absence in the relevant 12 month period. The applicant does not need to provide evidence to demonstrate the reason for delayed entry.

If the delay is more than 180 days, you can only include time after the applicant entered the UK in the continuous period calculation.

Entry to the United Kingdom through Ireland

Applicants who entered through Ireland, and therefore have not passed through immigration control, cannot demonstrate their date of entry to the UK using their passport. Alternative evidence to demonstrate this can include, but is not limited to:

- a copy of a travel ticket showing the date of arrival
- independent evidence of activity following entry, such as:
  - a letter from an employer stating when the applicant started their employment in the UK
  - a tenancy agreement from a landlord stating when the applicant started living a UK address

180 whole days absence

No more than 180 days' absences are allowed in any of the 5, 4, 3 or 2 consecutive 12 month periods, depending on the category, preceding the date of the application for indefinite leave to remain (ILR).

You must only include whole days in this calculation. Part day absences, for example, less than 24 hours, are not counted. Therefore if the applicant had a single absence during the 12 month period and arrived in the UK on day 181, the period would not exceed 180 days.

Calculating the specified continuous period

Applicants can submit a settlement application up to 28 days before they would reach the end of the specified period. However, the specified continuous period is always counted backwards from the date the ILR application is submitted. For example, if an applicant would have reached the end of a specified 5 years with leave in a qualifying route on 30 November 2016 and they apply on 11 November 2016, the consecutive periods would be as follows:

- year 1 – 11 November 2015 to 12 November 2016
- year 2 - 11 November 2015 to 12 November 2014
- year 3 - 11 November 2014 to 12 November 2013
- year 4 - 11 November 2013 to 12 November 2012
- year 5 - 11 November 2012 to 12 November 2011

The applicant may not have had leave in a qualifying route for up to 28 days at the start of Year 5 (in this example, between 11 November 2011 and 29 November 2012). This is acceptable.

Allowable absences

Absences must be for a reason consistent with the original purpose of entry to the UK, or for a serious or compelling reason in the following categories:

- work permit holder
- representative of an overseas business
- employee of overseas governments (except those exempt from control) or the United Nations (UN) or other international organisation of which the UK is a member
- airport-based operational staff of overseas-owned airlines
- domestic workers in private households

And the following sub categories of the points-based system:

- Tier 1 (General)
- Tier 2 (Intra-company transfer)
- Tier 2 (General)
- Tier 2 (Minister of religion)
- Tier 2 (Sportsperson)
- Tier 5 (Temporary worker – International Agreement) (private servants in diplomatic households granted under rules in place before 6 April 2012 only)

In the categories below, absences must be for reasons connected with the applicant's purpose for being in the UK or for serious or compelling reasons:

- UK ancestry
- retired person of independent means

The applicant must provide evidence as explained below.

For the Tier 1 (Investor), Tier 1 (Entrepreneur), Tier 1 (Exceptional talent) and highly skilled migrant (applying under the HSMP Forum judicial review) categories, there is no requirement to give a reason for absences if they do not exceed 180 days in any of the 5, 4, 3 or 2 consecutive 12 month periods of the continuous period, depending on the category.

Absences linked to reason for being in the UK – evidential requirements

For all other categories, absences must be consistent with, or connected to, the applicant's sponsored or permitted employment or the permitted economic activity being carried out in the UK - for example, business trips or short secondments.

This also includes any paid annual leave which must be assessed on a case by case basis and should be in line with UK annual leave entitlement for settled workers. For example, the statutory leave entitlement is 5.6 weeks' paid holiday each year, which for workers who work a 5 day week is 28 days' paid leave. However, many employers provide 25 or 30 days' paid leave a year, plus bank holidays.

Short visits outside the UK on weekends or other non-working days are consistent with the basis of stay and do not break the continuity of leave. You must count such absences towards the 180 day limit.

Evidence in the form of a letter from the employer which sets out the reasons for the absences, including annual leave, must be provided. Where short visits outside the UK, on weekends or other non-working days have taken place, evidence from the employer should be provided to confirm the applicant's normal working pattern and show the absences occurred during a non-working period. Tier 1 (General) applicants who are self-employed or in business must provide a letter of explanation of their business-related absences.

However, time spent away from the UK for extended periods, particularly if the business no longer exists, would not be allowed.

Interim caseworker action – missing evidence

If an applicant is required to provide specified documents from their employer explaining their absences and fails to do this, and the absences do not exceed 30 working days plus statutory public holidays per annum (for example, such absences are likely to be consistent with paid annual leave), you can choose, having regard to all the circumstances of the case, to consider the application without this documentation.

You still need evidence where the absences in a 12 month period (as defined above) exceed 30 working days plus statutory public holidays.

Absences for serious or compelling reasons – evidential requirements

Serious or compelling reasons will vary but can include:

- serious illness of the applicant or a close relative
- a conflict
- a natural disaster, for example, volcanic eruption or tsunami

The applicant must provide evidence in the form of a letter which sets out the reason for the absence with documents of support. For example:

- medical certificates
- birth or death certificates
- evidence of disruption to travel arrangements

Employment outside of the UK

If the absences are connected to other employment outside the UK, which demonstrates the UK employment is secondary, these are not permitted absences, and the continuous period requirement is broken. Absences due to employment, whether related to the applicant's job in the UK or not, count towards the 180 day maximum each year.

Absences due to the Ebola Crisis

On 6 April 2014 the Immigration Rules were amended to discount any absences from the UK from counting towards the 180 day limit, where the absence was due to the applicant assisting with the Ebola crisis which began in West Africa in 2014.

This covers all Tier 1 and Tier 2 applicants. ILR applicants should provide evidence from their sponsor (if applicable), employer or similar organisation to confirm that the absence was related to the Ebola crisis.

Holidays taken on the conclusion of employment

Where an applicant's continuous residence period includes time spent as a Tier 2 migrant or a work permit holder, annual leave can include a short holiday taken on conclusion of employment, if the applicant made an immigration application to work for a new employer within 60 days of the conclusion of the previous employment.

Related content

Contents

Tier 2 (General), (Minister of Religion) and (Sportsperson) ILR Requirements

Full-time service overseas as a member of HM armed forces reserve

This section tells you how to consider time spent overseas during the continuous period of residence, as a member of Her Majesty's (HM) armed forces reserve.

Under Section 4(1) of the Reserve Forces Act 1996, non-Economic European Area (EEA) national members of the following reserve forces of HM armed forces may be enlisted to serve overseas:

- Royal Fleet reserve, Royal Naval reserve, Royal Marines reserve
- Army reserve, Territorial Army
- Air Force reserve, Royal Auxiliary Air Force

The enlistments concerned are permanent, full-time service that lasts for about 9 months and include a period of pre-operation training overseas.

The Reserve Forces (Safeguard of Employment) Act 1985 requires, where the reservist is in civilian employment before service the:

- employer consents to the deployment
- reservist is re-employed after service by the same employer

Under the Armed Forces Covenant, no member of HM armed forces is to be disadvantaged because of their service.

This means any periods of permanent, full time reserve service must be disregarded and treated as though it had been spent in their relevant employment, for the purpose of calculating the continuous residence period for indefinite leave to remain (ILR), on any of the work-related routes.

The applicant must provide evidence in the form of a letter from the:

- armed force concerned, which confirms the deployment and the dates
- employer, which confirms the applicant's release for reserve service and their date of re-employment

Related content
Contents

Breaks in the continuous lawful period

This section tells you about breaks in the continuous lawful period.

The continuous period in the UK must be lawful. This means the applicant must have spent the qualifying period here continuously with leave to enter or remain and must not have breached their leave conditions. An example of this would include by taking employment other than that permitted by their work permit or certificate of sponsorship.

You can only disregard breaks in the period of lawful residence in certain circumstances.

A break in the continuous period may occur just before the ILR application is made or at any point where leave expired during the continuous period claimed. The relevant rules you must apply depend on the Immigration Rules in place at the time the break occurred.

In most cases a period of overstaying will already have been considered and accepted by the caseworker who handled the previous leave to remain applications and so you must not reconsider this. If the migrant's leave expired and was then followed by a subsequent grant of entry clearance, the reasons for the delay will not have been assessed, as this was not relevant to the entry clearance decision. How to consider this is covered in more detail later in this guidance.

Breaks of leave in applications submitted before 24 November 2016

During this period, the Immigration Rules allowed you to disregard a period of overstaying of up to 28 days before the application was made which led to the next grant of leave.

The 28 day period of overstaying is calculated from the latest of the:

- end of the last period of leave to enter or remain was granted
- end of any extension of leave under sections 3C or 3D of the Immigration Act 1971
- point a migrant is deemed to have received a written notice of invalidity, in line with paragraph 34C or 34CA of the Immigration Rules, in relation to an in-time application for leave to remain

In the following exceptional circumstances you can disregard applications made more than 28 days after the expiry of leave:

- serious illness where the migrant or their representative are unable to submit the application in time. This must be supported by appropriate medical documentation
- travel or postal delays which mean the migrant or their representative are unable to submit the application in time

- inability to provide necessary documents. This only applies to exceptional or unavoidable circumstances beyond the migrant's control, for example:
  - the Home Office being at fault in the loss of, or delay in returning, travel documents
  - delay in obtaining replacement documents following loss as a result of theft, fire or flood. These must be supported by evidence of the date of loss and the date replacement documents were sought

For ILR you must disregard any period spent in the consideration of applications for leave to remain where the application was made (not decided) no more than 28 days after the expiry of leave, but before 24 November 2016.

Breaks of leave in applications submitted after 24 November 2016

Applications submitted after this date may have a period of overstaying disregarded if the application is made:

- within 14 days of the applicant's previous leave expiring and there is a good reason beyond their or their representative's control, provided in or with the application, why the application could not be made in time
- within 14 days of:
  - the refusal of the previous application for leave
  - the expiry of any leave which has been extended by section 3C of the Immigration Act 1971
  - the expiry of the time-limit for making an in-time application for administrative review or appeal (where applicable)
  - any administrative review or appeal being concluded, withdrawn or abandoned or lapsing

If there are good reasons beyond the applicant's control which prevented them from applying in time, they must submit evidence of these with their application. All cases must be decided on their merits.

There is further information in the overstayer guidance.

60 day breaks in employment

Where the applicant has a break in employment and applies for further leave as a Tier 2 migrant or a work permit holder to work for a new sponsor or on a new work permit within 60 days of the end of the employment with the previous sponsor or permitted employer, you must disregard this period for ILR.

Also, where the applicant has made a successful application to switch into a Tier 1 category during the 60 day period, for the purpose of calculating the permitted absences the applicant will be considered to have been a Tier 1 migrant from the date of that application. For the purpose of paragraph 245AAA (b) the applicant will have had Tier 1 leave from that date.

Related content

Contents

Continuation of lawful leave during absences from the UK

This section tells you about lawful leave which continues whilst absent from the UK.

The continuous period is only maintained in certain circumstances. The relevant rules you must apply depend on the Immigration Rules in place at the time the break occurred.

Pre 24 November 2016

The continuous period is maintained if the applicant:

- leaves the UK with or without valid leave, but applies for new entry clearance within 28 days of their leave expiry date, is granted and re-enters the UK using that entry clearance
- leaves the UK with valid leave and re-enters the UK whilst that leave remains valid

If the applicant's leave expires whilst they are outside the UK and they apply for new entry clearance more than 28 days after their previous leave expires, the continuous period is broken and leave is not aggregated.

On or after 24 November 2016

The continuous period is maintained if the applicant:

- leaves the UK with valid leave, applies for entry clearance before their leave expires, is granted and re-enters the UK using that entry clearance
- applies for new entry clearance within 14 days of their leave expiry date, one of the circumstances below applies, their application is granted and they re-enter the UK using that entry clearance.

The circumstances are that:

- there was a good reason beyond the control of the applicant or their representative why the application could not be made in time
- the application was made following the refusal of an in-time application and within 14 days of:
  - the refusal of the previous in-time application
  - the expiry of any leave extended by section 3C of the Immigration Act 1971 (please note that 3C leave lapses when an applicant leaves the UK)
  - the expiry of the time-limit for making an in-time application for administrative application for administrative review or appeal (where applicable)
  - any administrative review or appeal being concluded, withdrawn, abandoned or lapsing

Where an applicant has had a break in their leave while outside of the UK, the entry clearance officer is unlikely to have considered the reason, as any break would be

irrelevant to the entry clearance application. As a result, you must consider the reason as part of the ILR application. The SET(O) form requests that migrants provide evidence demonstrating why previous applications were submitted while they did not have valid leave. Each break must be decided on its merits. There is further information on this type of consideration in the overstayer guidance.

If an applicant's leave expires whilst they are outside the UK and they apply for new entry clearance more than 14 days after their previous leave expires, for any reason, the continuous period is broken and leave is not aggregated. The continuous period would also be broken where the gap is within 14 days but you do not consider the reasons provided to be sufficiently compelling.

Breaks of leave and allowable absences

For any acceptable breaks of leave, the period spent outside of the UK will count towards the 180 days allowable absence. This includes any time:

- while their leave remains valid
- after the expiry of their leave
- while the entry clearance application was under consideration
- before they entered the UK once entry clearance had been granted

Related content
Contents

Exceptional cases

This section tells you about the exceptional circumstances when you can grant the applicant indefinite leave to remain (ILR) outside the rules when their continuous leave is broken.

Absences of more than 180 days in each consecutive 12 month period before the date of application (in all categories) will mean the continuous period has been broken. However, you may consider the grant of indefinite leave to remain (ILR) outside the rules if the applicant provides evidence to show the excessive absence was due to serious or compelling reasons.

The applicant must provide evidence in the form of a letter which sets out full details of the compelling reason for the absence and supporting documents.

Serious or compelling reasons will vary but can include:

- serious illness of the applicant or a close relative
- a conflict
- a natural disaster, for example, volcanic eruption or tsunami

Absences of more than 180 days in any 12 month period for employment or economic activity reasons are not considered exceptional.

You can only apply discretion when it has been authorised at senior executive officer (SEO) level.

Time spent overseas due to pregnancy, or maternity, paternity or adoption-related leave is treated the same way as any other absence, that is, within the 180 days in any 12 months.

If someone is exempt from immigration control they cannot by definition be in the UK unlawfully. Therefore, if an applicant has for a period of time while in the UK held exempt status, that period is lawful.

If a requirement for ILR is that an applicant must have held lawful residence in the UK that includes time spent in the UK with exempt status. Exempt status is not a grant of leave, so where the rules specifically require leave to be held, that requirement will not be met by an applicant having exempt status.

Deemed leave granted for a period of 90 days under Section 8A(b) of the Immigration Act (1971), from the day the applicant stops being exempt, can be counted towards the continuous period for ILR.

If the rules say the applicant must hold a specific category of leave, only time spent in this category will count towards the continuous period for ILR.

Work permit holders must have been employed continuously in the UK throughout the 5 years, under the terms of their work permit, or in the employment for which

they were granted leave to enter or remain. However, you must not consider the continuous period to be broken provided that, during a break in employment, they applied within 60 days of the end of their previous employment for:

- a new work permit and/or leave as a work permit holder
- leave as an employee under any provisions of part 5 of the Immigration Rules

Related content
Contents