



Home Office

Indefinite leave to remain: calculating continuous period in UK

Version 16.0

Contents

Contents.....	2
About this guidance.....	3
Contacts	3
Clearance	3
Changes from last version of this guidance	3
Categories covered by this guidance	4
Categories where the continuous period is not 5 years.....	5
How to determine if the continuous period is spent lawfully in the UK	6
Absences which will not break continuity in the continuous period	8
Period between the issue of entry clearance and entering the UK	8
Entry to the United Kingdom through Ireland.....	8
180 whole days absence	8
PBS dependents.....	8
Calculating the specified continuous period.....	9
Allowable absences	9
Absences linked to reason for being in the UK – evidential requirements	10
Interim caseworker action – missing evidence	10
Absences for serious or compelling reasons – evidential requirements	11
Employment outside of the UK	11
Absences due to economic or humanitarian crisis.....	11
Holidays taken on the conclusion of employment.....	11
Full-time service overseas as a member of HM armed forces reserve.....	12
Breaks in the continuous lawful period	13
Breaks of leave in applications submitted before 24 November 2016	13
Breaks of leave in applications submitted after 24 November 2016	14
Continuation of lawful leave during absences from the UK	15
Pre 24 November 2016.....	15
On or after 24 November 2016	15
Breaks of leave and allowable absences.....	16
Exceptional cases	17

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 16.0
- published for Home Office staff on 11 January 2018

Changes from last version of this guidance

This version:

- removes references to equivalent routes in the Crown Dependencies. Information on leave held in the Crown Dependencies has been moved to Common Travel Area guidance and will be published in due course
- makes changes to the section covering 180 days' absence in a 12 month period
- removes the Tier 2 rule covering gaps in employment of 60 days
- adds PBS dependents as a category covered by this guidance.

It replaces the Indefinite leave to remain: calculating continuous period in UK modernised guidance version 15.0 which has been withdrawn and archived.

Related content

[Contents](#)

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 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 245ZS](#))
- PBS dependent partners ([paragraph 319E](#)) and PBS dependent children ([paragraph 319J](#))

It covers the following routes which allow accelerated settlement:

- Tier 1 (Entrepreneur) ([paragraph 245DF](#))
- Tier 1 (Investor) ([paragraph 245EF](#))
- Tier 1 (Exceptional talent) ([paragraph 245BF](#))

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)

(Paragraph 245DF and appendix A, table 6)

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.

Tier 1 (Exceptional Talent)

([Paragraph 245BF](#))

Tier 1 (Exceptional Talent) applicants can be endorsed under exceptional promise criteria and exceptional talent criteria. Those granted under the talent criteria are able to apply for indefinite leave to remain after 3 years. Accelerated settlement was introduced on 11 January 2018 but applies retrospectively to applicants already in the route. Applicants endorsed under the exceptional promise criteria qualify after 5 years.

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 in an equivalent category as an absence from the UK.

Details of equivalent categories can be found in the Common Travel Area guidance that will be published in due course.

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](#)

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 continuous 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 a consecutive 12 month period.

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.

PBS dependants

You must not include any absence from the UK during periods of leave granted under the Rules in place before 11 January 2018 towards the 180 days allowable absences. For example, if a dependant's qualifying period includes initial leave

granted from 1 January 2015 to 31 December 2017, and an extension granted from 1 January 2018 to 31 December 2019, you must not count any absences before 1 January 2018.

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.

You must calculate the relevant qualifying period by counting backward from whichever of the following is most beneficial to the applicant:

- the date of application
- the date of decision
- any date up to 28 days after the date of application

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)

The applicant must provide evidence as explained below.

For the categories below, there is no requirement to give a reason for absences if they do not exceed 180 days in a consecutive 12 month period:

- Tier 1 (Exceptional talent)
- Tier 1 (Entrepreneur)

- Tier 1 (Investor)
- UK ancestry
- Retired person of independent means
- Highly skilled migrant (applying under the HSMP Forum judicial review)
- Points-Based System dependants

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, should 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 economic or humanitarian crisis

On 11 January 2018 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 a national or international economic or humanitarian crisis, such as 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 a 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 a successful immigration application to work for a new employer.

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 in the:

- 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 that, where the reservist is in civilian employment:

- Before service the employer consents to the deployment
- The 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.

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 either:

- 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 either:

- 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 a 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 may also consider granting outside the rules if an applicant provides a letter setting out reasons why they believe changes to how the 180 days are counted will cause them exceptionally harsh consequences. From 11 January 2018, the rules refer to absences in any 12-month period, whereas previously they referred to absences in separate consecutive 12 month periods.

Decisions will vary depending on individual circumstances, but relevant factors may include:

- when the periods of leave making up the continuous period were granted in relation to the rules change of 11 January 2018
- the level and pattern of the applicant's absences from the UK during each of those periods of leave
- whether the consequences of a refusal would be exceptionally harsh, for example whether it would not be possible for them to qualify for settlement at a later date because they would be unable to apply for further extensions

You can only apply discretion when it has been authorised at senior executive officer 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.

Related content

[Contents](#)