



Home Office

Concession to the family Immigration Rules for granting longer periods of leave and early indefinite leave to remain

Version 2

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About this guidance

This guidance tells you about the early indefinite leave to remain (ILR) concessions made to the family Immigration Rules, in particular those relating to young adults (aged 18 or above and under 25 years, as in the Private Life rules), for applicants seeking leave based on their private life under Part 7 of the Immigration Rules. The concessions aim to provide a shorter route to settlement (5 years) for those who were born in the UK or may have entered as minors and where it is considered inappropriate to expect them to complete 10-years limited leave before reaching settlement either within or outside of the family and private life rules.

This guidance applies to all decisions made from 20 October 2021.

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 Family Policy.

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 the Guidance Rules and Forms team.

Publication

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

- version 2
- published for Home Office staff on **20 December 2021**

Changes from last version of this guidance:

This guidance has been updated to clarify the qualification criteria for the concession.

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Background

This section explains the background to the longer periods of leave and early ILR concession.

As set out in the guidance [Family life \(as a partner or parent\), private life and exceptional circumstances](#) settlement in the UK is a privilege, not an automatic entitlement. Unless there are exceptional reasons, the expectation is that applicants should serve a probationary period of limited leave before being eligible to apply for ILR.

Generally, the family Immigration Rules provide for an applicant to apply for settlement after 5 years if they continue to meet all the requirements of their route. A 5-year probationary period provides time for applicants to integrate into society and demonstrate their commitment to settling in the UK. It also tests the genuineness of sponsoring relationships and prevents or deters abuse. This 5-year period is generally applied consistently across the Immigration Rules.

Where an applicant is unable to satisfy the requirements of a 5-year route, but they can show it would be unreasonable for a relevant child to leave, there are insurmountable obstacles to family life with a partner outside of the UK, or there are exceptional circumstances, they may qualify for leave on a route to settlement after 10 years. Applicants granted leave based on their private life will also be on a 10-year route to settlement. The 10-year route generally serves as an incentive to encourage compliance with the core requirements of the Immigration Rules and encourage integration into society. The longer timeframe signals that a person should not benefit from the same entitlement as those who are compliant.

However, for some cases the public interest factors which underpin the 10-year settlement policy – namely, the need to serve a longer probationary period before qualifying for settlement, and the principle of encouraging lawful compliance – may be less relevant. In particular, this may be the case for those applicants who were either born in the UK or entered as children (below the age of 18), but are now young adults, who cannot be considered responsible for any previous non-compliance with immigration laws and are fully integrated into society in the UK. For these individuals it will not usually be proportionate to expect them to have to complete a longer (10-year) route to settlement. Where that is the case, they should be able to settle after 5 years' continuous leave.

The aim of this concession is to prevent an individual, who is eligible for leave under the private life rules and who has been living here continuously since childhood, having to fulfil a period of leave before settlement that is disproportionate in their circumstances. It is expected that eligible individuals will make an application for leave to remain or further leave to remain under the private life rules. Once received, the application will be considered under those rules but with discretion to grant indefinite leave to remain, as opposed to 30 months temporary leave, to those who have already completed five years leave under the appropriate family or private life rules. While it is expected that an initial grant on a family or private life route would be before the age of 25 (to be in accordance with the private life rules), the applicant's

age at the time of the application to which this discretion applies need not be under 25.

For children aged under 18, the current Private Life rule will still apply as in their case the circumstance of having spent time in the UK as a child but now having to apply as an adult does not apply. In their case the presumption is that they are seeking to live in the UK as dependents of their parents. Similarly, the concession does not apply to those applying for leave or further leave as adult dependents of an adult or part of a family unit, for example when the parent, guardian or family member on whom they are dependent is applying, or is eligible to apply, under Appendix FM. They can be expected to continue to be granted leave in line with their parent, guardian or family member on who they are dependent.

The best interests of children

Considerations made under this concession must treat the best interests of any affected children as a primary, but not the only, consideration, in accordance with our duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children in the UK. This guidance and the Immigration Rules it covers form part of the arrangements for ensuring that we give practical effect to these obligations.

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Criteria for all applications made under the concession

This section sets out the criteria an applicant must meet in order to have their application considered under the early ILR concession.

To be eligible to be considered under this concession an applicant must (at the date of application):

- Be aged 18 years or above and meet the criteria set out in paragraph 276ADE(1)(v) by having spent at least half of his/her life living continuously in the UK (discounting any period of imprisonment) or has met the criteria set out in paragraph 276ADE(1)(v) in a previous application for leave to remain;
- Have either been born in or entered the UK as a child;
- Have held limited leave on the basis of family life or private life, for example under Appendix FM, Part 7 or granted outside the Immigration Rules, for a continuous period of five years, disregarding any period of overstaying where paragraph 39E of the Rules applies; and
- Be eligible for further leave to remain under paragraph 276ADE(1) of the Immigration Rules (or, having previously qualified under paragraph 276ADE(1)(v), be eligible for further leave to remain under paragraph 276BE) and have made an application under those rules

Where these criteria apply the following consideration should take place:

Length and type of leave consideration

In accordance with the policy guidance on Longer and Shorter periods of leave found at page 82 of the guidance [Family life \(as a partner or parent\), private life and exceptional circumstances](#), where an applicant meets the above criteria and requests an early grant of ILR the following factors should be considered:

These include (but are not limited to) the following:

- the person's age when they arrived in the UK
- the length of their residence in the UK (including unlawful residence)
- the strength of their connections and integration to the UK
- whether unlawful residence in the past was the result of non-compliance on the part of the applicant or their parent/guardian whilst the applicant was under the age of 18
- efforts made to engage with the Home Office and regularise status
- any leave currently held and length of continuous lawful leave
- any period of any continuous leave held in the past
- whether (and the extent to which) limited leave to remain will have a detrimental impact on the person's health or welfare

When considering these factors, decision makers must weigh the individual facts of each case against the public interest factors mentioned above (at page 4): the need for 10-year route applicants to serve a longer probationary period before qualifying for settlement, and the principle of lawful compliance.

Where one or a combination of these factors (at page 6) apply, a decision maker should consider the claim in the round and whether it remains proportionate to expect the applicant to have to complete a longer (10-year) route to settlement. Taken together, these factors may form a particularly exceptional or compelling reason to grant leave for a period longer than 30 months or ILR.

For example, where an applicant can show that they have held 5 years' limited leave and that previous non-compliance with immigration requirements was not of their own choice or responsibility, because their overstaying was as a child or young adult under the age of 25, it may be appropriate to grant ILR on an exceptional basis.

When to consider

In accordance with the Family life guidance, where an applicant specifically requests a longer period of leave than 30 months, or ILR, and provides reasons as to why they think a longer period of leave or ILR is appropriate in their case, this must be considered.

If the decision is made not to grant more than 30 months or ILR the reasons for this decision must be set out in the decision letter.

Caseworkers will also have discretion to consider an early grant of ILR in cases where it has not been specifically requested but the applicant is clearly eligible to be considered under this concession. However, this is not a requirement in all cases. In cases where discretion is applied the decision letter should explain why the outcome has been reached.

Applications outside the criteria

Applications from applicants who meet all the criteria to be considered under this concession except for that requiring them to have held limited leave for a continuous period of five years, may be granted limited leave for 30 months, as set out in the private life rules, on a five-year route to settlement.

For all other applications for longer periods of leave or ILR the existing policy remains in place and applicants will be required to demonstrate particularly exceptional or compelling reasons to grant leave for a longer period or ILR.

How to apply

This is not an application for ILR, so Applicants should use the private life LTR forms. It is not necessary to use a settlement form in order to be considered under this concession. Applicants may use the free text box on the application form to explain any exceptional circumstances relevant to the application that they wish to be considered.

Applicants will be eligible for a fee waiver under the normal arrangements for fee waivers when applying for leave under the private life rules and will not be subject to the public interest factor of financial independence.

Applicants paying the application fee and immigration health surcharge will be refunded the cost of the immigration health surcharge if ILR is granted under the concession.

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