

This guidance is based on the Immigration Rules



Indefinite leave to remain – calculating continuous period in UK

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Indefinite leave to remain – calculating continuous period in UK

About this guidance

<p>About this guidance</p> <p>Categories where the continuous period is not five years</p> <p>How to determine if the continuous period is spent lawfully in the UK</p> <p>The Crown dependencies - Bailiwicks of Jersey and Guernsey, and the Isle of Man</p> <p>Absences which may be disregarded</p> <p>Breaks in the continuous lawful period</p> <p>Continuation of lawful leave during absences from the UK</p> <p>Exceptional cases</p>	<p>This guidance tells you how to calculate the five year continuous lawful period in the UK requirement for an applicant in the following categories.</p> <ul style="list-style-type: none">• 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), and• the following sub-categories of the points-based system:<ul style="list-style-type: none">○ Tier 1 (Exceptional talent) (paragraph 245BF)○ Tier 2 (General) (paragraph 245HF)○ Tier 2 (Sportsperson) (paragraph 245HF)○ Tier 2 (Minister of religion) (paragraph 245HF)○ 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). <p>It also covers the following categories that are now closed for entry to the UK and extension of leave:</p> <ul style="list-style-type: none">• work permit holder (paragraph 134)• representative of an overseas newspaper, news agency or broadcasting organisation (paragraph 142)• employee of overseas governments (except those exempt from control) or the United Nations or other international organisation of which the UK is a member (paragraph 167)• minister of religion, missionary or member of a religious order (paragraph 176)• airport-based operational staff of overseas-owned airlines (paragraph 184)• business person (paragraph 209)• innovator (paragraph 210G)	<p>In this section</p> <p>Changes to this guidance</p> <p>Contact</p> <p>Information owner</p> <p>Links to staff intranet removed</p>
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- investor (paragraph 230)
- writer, composer or artist (paragraph 238)
- highly-skilled migrant programme (paragraph 135G)
- private servants in diplomatic households (paragraph 158)
- person established in business under a European Community (EC) Association Agreement (paragraph 222)
- Tier 1 (General) (paragraph 245CD) is closed for entry to the UK but leave may be extended under this route.

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

Contacts – This page tells you who to contact for help if your senior caseworker or line manager cannot answer your question.

Information owner – This page tells you about this version of the guidance and who owns it.

Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.

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Changes to this guidance

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This page lists changes to the indefinite leave to remain – calculating continuous period in UK guidance, with the most recent at the top.

Date of the change	Details of the change
28 August 2013	Change request: <ul style="list-style-type: none">• Continuation of lawful leave during absences from the UK:<ul style="list-style-type: none">○ second paragraph, third bullet point removed.
25 July 2013	Six month review by the modernised guidance team and change request: <ul style="list-style-type: none">• Absences which will not break continuity in the continuous period:<ul style="list-style-type: none">○ fifth paragraph, final sentence has been amended○ new seventh paragraph• Continuation of lawful leave during absences from the UK:<ul style="list-style-type: none">○ second paragraph, first bullet point new• Minor housekeeping changes.

Related links

[Continuation of lawful leave during absences from the UK](#)

See also

[Contact](#)

[Information owner](#)

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		<p>For previous changes to this guidance you will find all earlier versions in the archive.</p> <p>See related link: ILR – calculating continuous periods - archive.</p>		
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Indefinite leave to remain – calculating continuous period in UK

Categories where the continuous period is not five years

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exceed 450 days during the qualifying period or 90 days in the final year of that period.

Lengthy absences taken during the continuous period for ILR can impact on the applicant's ability to meet the residency requirements for nationality. For more information on nationality please see link: [Naturalisation at discretion](#).

Long residence

This guidance does not apply to the continuous period requirement in long residence cases. Separate guidance is available and must be referred to, see related link: [Long residence and private life](#).

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Indefinite leave to remain – calculating continuous period in UK

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

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discretion can be considered in respect of the requirement to demonstrate a continuous period in the UK see link on left: Exceptional cases.

Definition of the UK

For immigration purposes 'UK' means Great Britain and Northern Ireland only.

It does not include the Crown dependencies:

- the Channel Islands, and
- the Isle of Man.

However, paragraph 1(1) of schedule 4 to the Immigration Act 1971 (see related link) 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.

For more information on the categories covered and the Immigration Rules, see link on left: About this guidance, and related links:

- Paragraph 128-199c of the Immigration Rules
- Paragraph 200-239 of the Immigration Rules, and
- Part 6A of the Immigration Rules.

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.

For more information about the Crown dependencies and time spent there counting towards continuous residence, see link on left.

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

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	ILR, for example on ships or oil rigs. You must count this as an absence from the UK.	
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The Crown dependencies - Bailiwicks of Jersey and Guernsey, and the Isle of Man

<p>About this guidance</p> <p>Categories where the continuous period is not five years</p> <p>How to determine if the continuous period is spent lawfully in the UK</p> <p>Absences which may be disregarded</p> <p>Breaks in the continuous lawful period</p> <p>Continuation of lawful leave during absences from the UK</p> <p>Exceptional cases</p>	<p>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.</p> <p>The Bailiwick (jurisdiction) of Guernsey covers other Channel Islands including Sark and Alderney.</p> <p>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.</p> <p>They must also have complied with the terms of their leave. This means, they must:</p> <ul style="list-style-type: none">• not have breached the conditions of their stay, and• be free from convictions in the Crown dependencies. <p>For more information on considering whether time spent in a Crown dependency counts towards the continuous residence period, see related link.</p>	<p>In this section</p> <p>Routes of entry to the Crown dependencies</p> <p>Continuous residence - does time spent in the Crown dependencies count?</p> <p>Links to staff intranet removed</p>
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Routes of entry to the Crown dependencies

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

You must be aware 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 differences are as follows:

- The Isle of Man operates the same points-based system (PBS) as the UK. The only exception is there is no Tier 1 (Exceptional talent) category.
- Guernsey and Jersey continue to operate the work permit system and pre-PBS routes for:
 - business persons
 - investors and writers, and
 - artists categories.
- All three islands have the UK ancestry category.
- Jersey and the Isle of Man have the category of overseas domestic workers in private households.
- The rules are the same as the UK Immigration Rules for the overseas domestic workers in private households and the UK ancestry categories.

The table below shows:

- which leave categories each of the islands has or has had, and
- 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)

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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 (open)
Tier 1 (Investor)	No	No	Yes (open)
Tier 1 (Entrepreneur)	No	No	Yes (open)
Tier 1 (Exceptional talent)	No	No	No
Tier 2 (Intra-company transfer)	No	No	Yes (open)
Tier 2: <ul style="list-style-type: none"> • (General) • (Sportsperson), and • (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.

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Below are some differences and similarities 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, and
 - 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, and
- have an English language and Knowledge of Life test at the ILR stage.

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

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This page 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. For more information on the categories this guidance covers, see link on left: About this guidance.

Relevant parts of the Immigration Rules

Section of the rules	What it applies to
Part 5 – paragraph 128A is relevant to:	<ul style="list-style-type: none"> • work permit holders • pre-points-based system (PBS) employment • UK ancestry, and • overseas domestic workers.
Part 6 – paragraph 200A is relevant to:	<ul style="list-style-type: none"> • pre-PBS businesspersons • investors • innovators, and • writers, composers and artists.
Part 6A (PBS) the relevant rules are:	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ (General) ○ (Sportsperson), and ○ (Minister of religion).

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[Routes of entry to the Crown dependencies](#)

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You may count time spent in the Crown dependencies towards the three, four or five 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, and
 - apply for ILR in the UK.
- The applicant's most recent period of leave must:
 - have been granted in the UK, and
 - 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 equivalent, as 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, for more information, see link on left: [Exceptional cases](#), and
 - not have outstanding convictions in the Crown dependency.

Restricted information – do not disclose – start of section

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

Restricted information – do not disclose – end of section

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Category applying for ILR in UK	Any Crown dependency leave
A work permit holder	<p>Must be as a:</p> <ul style="list-style-type: none"> • work permit holder • highly skilled migrant, or • self employed lawyer.
Tier 1 (Entrepreneur)	<p>Must be as:</p> <ul style="list-style-type: none"> • an entrepreneur • a business person (in Guernsey or Jersey since 30 June 2008), or • an innovator.
Tier 2 (General)	<p>Must be as a:</p> <ul style="list-style-type: none"> • qualifying work permit holder since 27 November 2008 • 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) • Tier 2 (Intra-company transfer), or • businessperson in Guernsey or Jersey since 30 June 2008 or as a work permit holder.

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		<p>You must refer to the codes of practice in appendix J of the Immigration Rules. For sportspersons, including coaches, they must have been:</p> <ul style="list-style-type: none">• internationally established at the highest level, and• employed because they have made a significant contribution to the development of their sport at the highest level. <p>For more information on appendix J of the Immigration Rules: see related link.</p>	
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Absences which will not break continuity in the continuous period

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

No more than 180 whole days absence are allowed in any of the five, two, three or four consecutive 12 month periods, depending on the category, preceding the date of the application for indefinite leave to remain (ILR).

The specified continuous period is counted backwards from the date of the ILR application. For example, if the date of application is 11 November 2012, the consecutive periods would be as follows:

Year 1	11 November 2012	to 12 November 2011
Year 2	11 November 2011	to 12 November 2010
Year 3	11 November 2010	to 12 November 2009
Year 4	11 November 2009	to 12 November 2008
Year 5	11 November 2008	to 12 November 2007

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

- work permit holder
- representative of an overseas newspaper, news agency or broadcasting organisation
- 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
- minister of religion, missionary or member of a religious order
- airport-based operational staff of overseas-owned airlines
- private servants in diplomatic households
- domestic workers in private households
- person established in business under a European Community (EC) Association

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Agreement

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 International Agreement (private servants in diplomatic households granted under rules in place before 6 April 2012 only).

Absences must be 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 must be in line with the UK statutory annual leave entitlement.

Evidence in the form of a letter from the employer setting out the reasons for the absences, including annual leave, must be provided. Tier 1 (General) applicants who are self-employed or in business must provide a letter of explanation of their business-related absences, including any time spent on holiday outside the UK.

However, time spent absent from the UK for extended periods, particularly if the business is not continuing, would not be allowed..

Compassionate reasons will vary but can include:

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

Evidence in the form of a letter from the applicant setting out the reason for the absence and documents of support must be provided. For example:

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

In the following categories, absences must be for reasons connected with the applicant's purpose for being in the UK or for serious or compelling compassionate reasons. Evidence, as specified above, must be provided for compelling or compassionate reasons only:

- UK ancestry
- business person
- investor
- innovator
- writer, composer, or artist
- retired person of independent means
- highly skilled migrant programme (not applying under Appendix S of the rules)

For the Tier 1 (Investor), Tier 1 (Entrepreneur), Tier 1 (Exceptional talent) and highly skilled migrant (applying under Appendix S of the rules) categories there is no requirement to give a reason for absences if they do not exceed 180 days in any of the five, four, three or two consecutive 12 month periods of the continuous period, depending on the category, counted backwards from the date of application for indefinite leave to remain (ILR).

Only whole days absences are counted. Part day absences, for example, less than 24 hours duration are not counted.

The period between entry clearance being issued and the applicant entering the UK may be counted toward the qualifying period, as long as it does not exceed 90 days. This can occur if the applicant is delayed travelling to the UK. Provided the period of delay does not exceed 90 days, it will not be counted as an absence.

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 considered broken.

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	<p>Where an applicant's continuous residence period includes time spent as a Tier 2 migrant or a work permit holder, annual leave includes a short holiday taken on conclusion of employment, where the applicant applied to work for a new employer within 60 days of the conclusion of the previous employment. See link on left: Breaks in the continuous lawful period.</p>	
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Indefinite leave to remain – calculating continuous period in UK

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

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| | <ul style="list-style-type: none">• armed force concerned, confirming the deployment and the dates, and• employer confirming the applicant's release for reserve service and their date of re-employment. | |
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Breaks in the continuous lawful period

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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, or
 - 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.

If the continuous residence period includes periods of overstaying before further leave being granted before 1 October 2012, these periods may be disregarded for ILR provided the period does not exceed 28 days. Any period spent in the consideration of applications for leave to remain where the application was made no more than 28 days after the expiry of leave may be disregarded for ILR.

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, such a period may be disregarded 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. So for the purpose of paragraph 245AAA (b) the applicant will have had Tier 1 leave from that date.

This guidance is based on the Immigration Rules

Indefinite leave to remain – calculating continuous period in UK

Continuation of lawful leave during absences from the UK

<p>About this guidance</p> <p>Categories where the continuous period is not five years</p> <p>How to determine if the continuous period is spent lawfully in the UK</p> <p>The Crown dependencies - Bailiwicks of Jersey and Guernsey, and the Isle of Man</p> <p>Absences which may be disregarded</p> <p>Breaks in the continuous lawful period</p> <p>Continuation of lawful leave during absences from the UK</p> <p>Exceptional cases</p>	<p>This page tells you about lawful leave continuing during absences from the UK.</p> <p>The continuous period is maintained if the:</p> <ul style="list-style-type: none">• applicant leaves the UK without valid leave, but re-enters with new entry clearance within 28 days of their leave expiry date, or• applicant leaves the UK with valid leave and re-enters the UK whilst that leave remains valid, provided the absence(s) do not exceed 180 days in a relevant 12 month period. <p>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, then the continuous period is broken and leave is not aggregated.</p>	<p>Links to staff intranet removed</p>
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This guidance is based on the Immigration Rules

Indefinite leave to remain – calculating continuous period in UK

Exceptional cases

<p>About this guidance</p> <p>Categories where the continuous period is not five years</p> <p>How to determine if the continuous period is spent lawfully in the UK</p> <p>The Crown dependencies - Bailiwicks of Jersey and Guernsey, and the Isle of Man</p> <p>Absences which may be disregarded</p> <p>Breaks in the continuous lawful period</p> <p>Continuation of lawful leave during absences from the UK</p> <p>Exceptional cases</p>	<p>This page tells you about the exceptional circumstances when you can grant indefinite leave to remain (ILR) outside the rules when their continuous leave is broken.</p> <p>Absences of more than 180 days in each consecutive 12 month period preceding the date of application (in all categories) will mean the continuous period has been broken. However, consideration may still be given to granting indefinite leave to remain (ILR) outside the rules if evidence is provided to show the excessive absence was due to serious or compelling compassionate reasons.</p> <p>Evidence in the form of a letter from the applicant setting out full details of the compelling reason for the absence and supporting documents must be provided.</p> <p>Absences of more than 180 days in any 12 month period for employment or economic activity reasons are not considered exceptional.</p> <p>Discretion will only be applied when authorised at senior executive officer (SEO) level.</p> <p>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.</p> <p>Discretion may be applied to the requirements for an application for ILR in the UK from senior care workers who have been working in the UK without leave between the period 13 August 2007 and 27 November 2008, For more information see related link: Requirements for work permit holders – settlement applications for senior care workers.</p> <p>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.</p> <p>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</p>	<p>Links to staff intranet removed</p>
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This guidance is based on the Immigration Rules

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. For more information on this see related link: 1.2 Persons who Cease to be Exempt from Control on or after 1 March 2000 (Section 8(2) and 8(3) of the 1971 Act)

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 five 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, or
- leave as an employee under any provisions of part 5 of the Immigration Rules.

This guidance is based on the Immigration Rules

Indefinite leave to remain - calculating continuous period in UK

Contact

<p>About this guidance</p> <p>Categories where the continuous period is not five years</p> <p>How to determine if the continuous period is spent lawfully in the UK</p> <p>The Crown dependencies - Bailiwicks of Jersey and Guernsey, and the Isle of Man</p> <p>Absences which may be disregarded</p> <p>Breaks in the continuous lawful period</p> <p>Continuation of lawful leave during absences from the UK</p> <p>Exceptional cases</p>	<p>This page explains who to contact for more help when you are calculating the continuous period in the UK for indefinite leave to remain applications.</p> <p>If you have read the relevant Immigration Rules and this guidance and still need more help, you must first ask your entry clearance manager, chief border force officer, senior caseworker or line manager.</p> <p>If the question cannot be answered at that level, you may email settlement operational policy (see related link) for guidance on this policy.</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the settlement operational policy team, who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	<p>Related links</p> <p>Changes to this guidance</p> <p>Information owner</p> <p>Links to staff intranet removed</p>
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Indefinite leave to remain - calculating continuous period in UK

Information owner

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[Categories where the continuous period is not five years](#)

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This page details the information owners for indefinite leave to remain – calculating the continuous period in the UK.

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Related links

[Changes to this guidance](#)

[Contact](#)

Links to staff intranet removed