Home Office

Long residence

Version 19.0

Contents

About this guidance

This guidance tells you how to consider indefinite leave to remain (ILR) and leave to remain (LTR) applications from people applying on the basis of long residence in the UK.

This guidance is based on the Immigration Rules.

The rules on long residence recognise the ties a person may form with the UK over a lengthy period of residence here.

ILR can be granted under paragraphs 276A-276D of the Immigration Rules after a period of 10 years continuous lawful residence.

Before 9 July 2012 it was possible to grant ILR under the long residence provisions after a period of 14 years continuous residence, but that provision was removed by changes to the Immigration Rules on that date.

However, a person granted an extension of stay following an application made before 9 July 2012 can still be considered under the rules in force before that date. This means a person granted leave to remain on the basis of 14 years residence in the UK can still be granted ILR once the requirements are met.

If a person was continuously resident in the UK on or before 1 January 1973, they should not apply for long residence. For guidance, see: Windrush scheme casework guidance.

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 Settlement Policy team.

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 **19.0**
- published for Home Office staff on **5 October 2023**

Changes from last version of this guidance

Updated to reflect changes to the Immigration Rules where time spent in the UK with leave as a visitor, short-term student, and seasonal worker (under current or predecessor routes) does not count as lawful residence.

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Requirements

This page tells you about the requirements for the leave under the long residence rules.

Before considering an application you must check the application is valid.

For more information, see validation, variation and withdrawal.

Long residence is a provision only available to those who are in the UK. There is no provision in the long residence rules to grant entry clearance for settlement from outside the UK (also known as indefinite leave to enter).

Limited leave

Since 2 April 2007 it is possible to grant permission to stay (leave to remain) on the basis of long residence, under paragraph 276A2 of the Immigration Rules.

This allows long residence applicants to be granted limited leave to remain, if the requirements of 276B are met, except under 276B (iii) and (iv).

Limited leave to remain is granted under paragraph 276A2 of the long residence category of the Immigration Rules, and not as an extension of their previous category of limited leave to remain. This means an applicant must meet the rules for long residence, and not the rules for their previous category.

You must only grant an extension of further leave on the basis of long residence if the applicant meets all the criteria in paragraph 276B (i), (ii) and (v). You must not grant an applicant an extension in order to complete the qualifying period of 10 years for long residence, if they have not spent enough time in the UK to be granted indefinite leave. For more information, see early applications.

For more information see knowledge of language and life in the UK requirement.

Related content
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Indefinite leave to remain

This page tells you about the requirements applicants must meet to qualify for indefinite leave to remain on the basis of long residence after 10 years continuous lawful residence in the UK.

Before considering an application you must check the application is valid.

For more information, see validation, variation and withdrawal.

Requirements

The applicant must meet all the requirements of Part 7, paragraph 276B to be granted indefinite leave, including that they have completed at least 10 years continuous lawful residence in the UK.

For more information on these requirements, see 10 years continuous lawful residence.

For more information on the knowledge of language and life requirement, see knowledge of language and life in the UK.

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10 years' continuous lawful residence

This page tells you how to decide whether an applicant has been continually lawfully resident in the UK when considering long residence applications.

Once an applicant has built up a period of 10 years' continuous lawful residence, there is no limit on the length of time afterwards when they can apply. This means they could leave the UK, re-enter on any lawful basis, and apply for indefinite leave to remain from within the UK based on a 10 year period of continuous lawful residence they built up in the past. There is also nothing to prevent a person relying on a 10 year period that they may have relied on in a previous application or grant.

Time the applicant has spent in the UK with 3C leave also counts towards lawful residence. You can find more information on time awaiting a decision on an application or an appeal.

Definition of continuous lawful residence

Continuous and lawful residence are defined in paragraph 276A of the Immigration Rules. To count towards long residence, residence must be continuous and lawful.

This includes any time spent in the UK with permission under any other student route (such as Appendix Student or Tier 4) does count as lawful residence, even if the permission is granted for a short period. You must carefully check casework systems to make sure that periods marked as a 'short-term student' were actually on the short-term student route before discounting them.

To clarify, time spent with entry clearance or permission as a visitor does not count as continuous lawful residence. This includes time granted under Appendix V: Visitor (the current visitor rules) and any previous visitor rules (such as paragraph 40 of Part 2 of the Immigration Rules).

Similarly, time spent with entry clearance or permission as a short-term student does not count as lawful residence. This includes time granted under Appendix Short-term Student (English language), the current short-term student rules, and any previous short-term student rules (such as paragraphs A57A to A57H of the Immigration Rules).

Also, time spent with entry clearance or permission as a seasonal worker does not count as lawful residence. This includes time granted under Appendix Temporary work – Seasonal Worker (the current seasonal worker rules) and any previous seasonal worker rules (such as paragraphs 104-109 of Part 4 of the Immigration Rules, and paragraphs 245ZM to 245ZP of the Tier 5 (Temporary Worker) rule.

Residence in the UK

The UK consists of Great Britain and Northern Ireland. Time spent in the Republic of Ireland, Channel Islands or the Isle of Man does not count as residence in the UK for

the purposes of long residence even though they form part of the common travel area.

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Breaks in continuous residence

This page tells you when continuous residence is considered to have been broken for the purpose of long residence applications.

Events that break continuous residence

Continuous residence is considered to be broken if the applicant has:

- been absent from the UK for a period of more than 6 months (184 days) at any one time
- spent a total of 18 months (548 days) outside the UK throughout the whole 10 year period
- left the UK before 24 November 2016 with no valid leave to remain on their departure from the UK, and failed to apply for entry clearance within 28 days of their previous leave expiring (even if they returned to the UK within 6 months (184 days))

Time spent outside the UK

Continuous residence is not considered broken if the applicant:

- is absent from the UK for 6 months (184 days) or less at any one time
- had existing leave to enter or remain when they left and when they returned - this can include leave gained at port when returning to the UK as a non-visa national
- departed the UK before 24 November 2016, but after the expiry of their leave to remain, and applied for fresh entry clearance within 28 days of that previous leave expiring, and returned to the UK within 6 months (184 days)

If the applicant had existing leave to enter or remain when they left and returned to the UK, the existing leave does not have to be in the same category on departure and return. For example, an applicant can leave the UK as a Tier 4 (General) student and return with leave as a spouse of a settled person. Continuous residence is not broken as the applicant had valid leave both when they left and returned to the UK.

If an applicant was in the UK with a right to reside under European Economic Area (EEA) regulations, continuous residence is not broken if they leave the UK and are then re-admitted under the EEA regulations.

If the applicant has been absent from the UK for more than 6 months (184 days) in one period or more than 18 months (548 days) in total, the application should normally be refused. However, it may be appropriate to exercise discretion over excess absences in compelling or compassionate circumstances, for example where the applicant was prevented from returning to the UK through unavoidable circumstances.

This must be decided at senior executive officer (SEO) level with a grant of leave outside the Immigration Rules being the appropriate outcome.

Things to consider when assessing if the absence was compelling or compassionate are:

- for all cases – you must consider whether the individual returned to the UK within a reasonable time once they were able to do so
- for the single absence of over 184 days:
  - you must consider how much of the absence was due to compelling circumstances and whether the applicant returned to the UK as soon as they were able to do so
  - you must also consider the reasons for the absence
- for overall absences of 548 days in the 10 year period:
  - you must consider whether the long absence (or absences) that pushed the applicant over the limit happened towards the start or end of the 10 year residence period, and how soon they will be able to meet that requirement
  - if the absences were towards the start of that period, the person may be able to meet the requirements in the near future, and so could be expected to apply when they meet the requirements
  - however, if the absences were recent, the person will not qualify for a long time, and so you must consider whether there are particularly compelling circumstances

All of these factors must be considered together when determining whether it is reasonable to exercise discretion.

Time spent in prison

Continuous residence is broken if an applicant receives a custodial sentence by a court of law and is sent to:

- prison
- a young offender institution
- a secure hospital

Any time the applicant spends in one of the above establishments does not count as continuous leave for the purposes of meeting 276A and 276D of the Immigration Rules. Any leave accumulated before sentencing will be disregarded and only residence after release from custody will be counted as continuous residence.

Continuous residence is not broken if an applicant receives a suspended sentence from a court of law. It is also important to note that time spent on remand awaiting trial does not break continuous residence.

Calculating absence from the UK

You must check carefully:

- information on the application form
- any UK exit and entry stamps in the passports
- the landing cards section on warehouse to confirm when the applicant entered the UK

You must be satisfied there is enough evidence to show the applicant has been in the UK continuously for 10 years required under the rules.

You must only include whole days in this calculation. Part day absences (periods of less than 24 hours) are not counted. Therefore, dates of departure from and arrival into the UK will not be included in the overall absence period, as the applicant will not have been outside the UK for the whole day on those dates.

Withdrawn decisions

Where a decision has been taken which has brought 3C leave to an end, and that decision is subsequently withdrawn, the 3C leave will resurrect from the point the decision is withdrawn

Where a decision is withdrawn and there is an application for leave outstanding, or a new application is made after a decision has been withdrawn, the person should not be disadvantaged by the break in their leave in having that application considered. This means you should treat the person as having been lawfully in the UK for the purposes of deciding the immigration application including an application under the long residence rules.

Where a decision which brought section 3C leave to an end has been withdrawn, and section 3C leave has been resurrected, and there is an application outstanding which is granted the person should be treated as if they were lawfully present in the UK in any subsequent long residence application that they make. In these cases leave will need to be granted using discretion outside the Immigration Rules.

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Early applications

This page tells you what you must do if you receive an application for indefinite leave on the basis of long residence before an applicant has completed their period of 10 years qualifying leave.

You must consider all valid applications, even if the applicant has not yet completed the necessary qualifying period for indefinite leave. The long residence rule requires applicants to have at least 10 years continuous residence in the UK before they can qualify for indefinite leave.

Applications being considered more than 28 days before the required qualifying period is completed

If you are considering an application more than 28 days before the applicant completes the required qualifying period for long residence you must refuse. This is because the applicant has not completed the required period of leave in the UK.

You must fully consider the case and mention any other reasons for refusal in addition to the applicant not spending enough time in the UK to complete the qualifying period. For example, all breaks in continuous residence.

Applicants who are refused under the long residence rules due to them submitting their application too early can re-apply once they have completed their qualifying leave or up to 28 days before this.

Applications being considered 28 days or less before the required qualifying period is completed

You can grant an application if it is considered 28 days or less before the applicant completes the required qualifying period, provided they meet all the other rules for long residence.

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Examples of continuous residence

This page gives you examples of when you must grant or refuse a long residence application when considering the continuous residence requirement.

Example 1

An applicant:

- enters the UK on 1 September 2004 with entry clearance as a student which is valid until 31 October 2005
- leaves the UK on 5 November 2005, after their previous leave expired
- applies for entry clearance on 22 December 2005
- re-enters the UK with valid entry clearance as a student on 5 January 2006

The applicant did not have valid leave on the date of their departure, and failed to apply for fresh entry clearance within 28 days of the original leave expiring. Therefore continuous residence has been broken.

Example 2

An applicant:

- enters the UK on 1 September 2004 with entry clearance as a student which is valid until 31 October 2005
- leaves the UK on 25 October 2005, before their previous leave expired
- re-enters the UK with valid entry clearance as a student on 5 January 2006

The person had valid leave on the date of their departure and on the date of their return to the UK, and the time spent outside the UK was less than 6 months (184 days). Continuous residence has been maintained, even though the person entered the UK with a fresh grant of leave.

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Breaks in lawful residence

This page tells you about circumstances that break lawful residence for long residence applications and when you can use discretion for short breaks in lawful residence.

Time spent outside the UK

Gaps in lawful residence

You may grant the application if an applicant:

- has short gaps in lawful residence through making previous applications out of time by no more than 28 calendar days where those gaps end before 24 November 2016
- has short gaps in lawful residence on or after 24 November 2016 but leave was granted in accordance with paragraph 39E of the Immigration Rules
- meets all the other requirements for lawful residence

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

- end of the last period of leave to enter or remain granted (including where an in-time application was submitted but the application was considered invalid)
- end of any extension of leave under sections 3C or 3D of the Immigration Act 1971
- the point that a migrant is deemed to have received a written notice of invalidity, in relation to an in-time application for further leave to remain where that application was deemed invalid due to the failure by the applicant to provide biometrics

Periods of overstaying

When refusing an application on the grounds it was made by an applicant who had overstayed by more than 28 days before 24 November 2016, you must consider any evidence of exceptional circumstances which prevented the applicant from applying within the first 28 days of overstaying.

The threshold for what constitutes ‘exceptional circumstances’ is high, but could include delays resulting from unexpected or unforeseeable causes. For example:

- serious illness which meant the applicant or their representative was not able to submit the application in time – this must be supported by appropriate medical documentation
- travel or postal delays which meant the applicant or their representative was not able to submit the application in time
- inability to provide necessary documents – this would only apply in exceptional or unavoidable circumstances beyond the applicant’s control, for example:

- it is the fault of the Home Office because it lost or delayed returning travel documents
- there is a delay because the applicant cannot replace their documents quickly because of theft, fire or flood – the applicant must send evidence of the date of loss and the date replacement documents were sought

Any decision to exercise discretion and not refuse the application on these grounds must be authorised by a senior caseworker at senior executive officer (SEO) grade or above.

When granting leave in these circumstances, the applicant must be granted leave outside the rules for the same duration and conditions that would have applied had they been granted leave under the rules.

Time spent outside the UK

A person who is outside the UK will not be in breach of the Immigration Rules.

You can overlook a period of unlawful residence if the applicant leaves the UK after their valid leave has expired but before 24 November 2016, and:

- applies for entry clearance within 28 days of their original leave expiring
- returns to the UK with valid leave within 6 months (184 days) of their original departure

Examples of gaps in lawful residence

The examples below show some instances when it may or may not be appropriate to grant the application. This is not a complete list and you must judge each application on the information it contains and discuss this with a senior caseworker.

Example 1

An applicant has a single gap in their lawful residence due to submitting an application 17 days out of time. All other applications have been submitted in time, throughout the 10 years period.

Question	Answer
Would you grant the application in this case?	Grant the application as the rules allow for a period of overstaying of 28 days or less when that period ends before 24 November 2016.

Example 2

An applicant has 3 gaps in their lawful residence due to submitting 3 separate applications out of time. These were 9, 17 and 24 days out of time.

Question	Answer
Would you grant the application in this case?	Yes. Grant the application as the rules allow for periods of overstaying of 28 days or less when that period ends before 24 November 2016.

Example 3

An applicant has a single gap in their lawful residence due to submitting an application 34 days out of time. The applicant has provided a letter from their consultant stating they were hospitalised during this period.

Question	Answer
Would you be right to use discretion in this case?	Yes. Even though the application was more than 28 days out of time, the absence occurred before 24 November 2016 and the applicant has provided sufficient evidence to demonstrate that there were exceptional reasons for the late application and has tried to maintain lawful residence throughout the rest of the 10 year period. You must confirm this with your senior executive office (SEO) senior caseworker.

Example 4

An applicant's leave expired on 10 July 2012 but they only departed the UK on the 1 August 2012. They submitted an application for entry clearance on the 5 August 2012. When returning to the UK on the 27 October 2012 they submitted a long residence application.

Question	Answer
Would you grant the application in this case?	Yes. Grant the application as the rules allow for periods of overstaying of 28 days or less when that period ends before 24 November 2016. This applicant submitted their application for entry clearance less than 28 days after their original grant of leave had expired and returned to the UK within 6 months (184 days) of last leaving.

Example 5

An applicant's leave expired on 1 September 2013 and they departed the UK on 1 October 2013. They submitted an application for entry clearance within 11 days of departing and re-entered on 2 December 2013.

Question	Answer
Would you grant the application in this case?	No. They failed to depart the UK within 28 days of their original grant of leave expiring and so had a period of more than 28 days overstaying.

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Out of time applications

This page tells you about ‘out-of-time’ applications submitted for 10 years long residence applications.

An applicant applying for an extension of stay or indefinite leave to remain (ILR) on the basis of long residence must not be in breach of the Immigration Rules.

Applications made before 24 November 2016

Where the application was made before 24 November 2016 a period of overstaying of 28 days or less on the date of application will be disregarded.

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

- end of the last period of leave to enter or remain granted(including where an in-time application was submitted but the application was considered invalid)
- end of any extension of leave under sections 3C or 3D of the Immigration Act 1971
- the point that a migrant is deemed to have received a written notice of invalidity, in relation to an in-time application for further leave to remain where that application was deemed invalid due to the failure by the applicant to provide biometrics

When refusing an application on the grounds it was made by an applicant who has overstayed by more than 28 days, you must consider any evidence of exceptional circumstances which prevented the applicant from applying within the first 28 days of overstaying.

The threshold for what constitutes ‘exceptional circumstances’ is high, but could include delays resulting from unexpected or unforeseeable causes. For example:

- serious illness which meant the applicant or their representative was not able to submit the application in time – this must be supported by appropriate medical documentation
- travel or postal delays which meant the applicant or their representative was not able to submit the application in time
- inability to provide necessary documents – this would only apply in exceptional or unavoidable circumstances beyond the applicant’s control, for example:
  - it is the fault of the Home Office because it lost or delayed returning travel documents
  - there is a delay because the applicant cannot replace their documents quickly because of theft, fire or flood – the applicant must send evidence of the date of loss and the date replacement documents were sought

Any decision to exercise discretion and not refuse the application on these grounds must be authorised by a senior caseworker at senior executive officer (SEO) grade or above. When granting leave in these circumstances, the applicant must be

granted leave outside the rules for the same duration and conditions that would have applied had they been granted leave under the rules.

Applications made on or after 24 November 2016

Where an out of time application is submitted on or after 24 November 2016, you must consider whether to exercise discretion in line with paragraph 39E of the immigration rules. This must be authorised by a senior caseworker at senior executive officer (SEO) grade.

Example of out of time applications

Example 1

A person has leave to enter as a student, valid until 31 July 2016. The person submits an out of time application for leave to remain on 15 September 2016. The person is granted leave as a student on 15 October 2016.

Question	Answer
Is there a break in their lawful residence under the 10 years long residence rules?	Yes, the person submitted an out of time application. The person has a break in their continuous lawful residence, from the date their leave expired on 31 July 2016, until the date they were granted leave as a student on 15 October 2016.

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Treatment of time spent in the UK as a visitor, short-term student, and seasonal worker

Any periods of time with leave in any of the following, are not ‘lawful residence’ for the purposes of long residence and will break continuous residence:

- any category of visitor granted under ‘Appendix V: Visitor’ of the Immigration Rules
- short-term student granted under ‘Appendix Short-term Student’ of the Immigration Rules
- seasonal worker granted under ‘Appendix Temporary work – Seasonal Worker’ of the Immigration Rules

Time spent with entry clearance or permission as a visitor does not count as lawful residence. This includes time granted under Appendix V: Visitor (the current visitor rules) and any previous visitor rules (such as paragraph 40 of Part 2 of the Immigration Rules).

Similarly, time spent with entry clearance or permission as a short-term student does not count as lawful residence. This includes time granted under Appendix Short-term Student (English language), the current short-term student rules, and any previous short-term student rules (such as paragraphs A57A to A57H of the Immigration Rules). Any time spent in the UK with permission under any other student route (such as Appendix Student or Tier 4) does count as lawful residence, even if the permission is granted for a short period. You must carefully check casework systems to make sure that periods marked as a ‘short-term student’ were actually on the short-term student route before discounting them.

Also, time spent with entry clearance or permission as a seasonal worker does not count as lawful residence. This includes time granted under Appendix Temporary work – Seasonal Worker (the current seasonal worker rules) and any previous seasonal worker rules (such as paragraphs 104-109 of Part 4 of the Immigration Rules, and paragraphs 245ZM to 245ZP of the Tier 5 (Temporary Worker) rules).

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Treatment of temporary admission, temporary release, and immigration bail

Any periods of time with temporary admission, temporary release or immigration bail are not ‘lawful residence’ for the purposes of long residence and will break continuous residence.

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Time awaiting a decision on an application or appeal

This page tells you when time spent in the UK awaiting a decision on an application or an appeal counts as lawful residence for long residence applications.

Sections 3C and 3D of the Immigration Act 1971 extend a person's leave in certain circumstances.

Section 3C and 3D leave prevents an individual becoming an overstayer while they are awaiting or appealing a decision.

An overstayer is a person who stays in the UK beyond the period of their leave. This is a criminal offence under section 24 of the Immigration Act 1971.

3C leave

Section 118 of the Nationality, Immigration and Asylum Act 2002 added section 3C to the Immigration Act 1971 to prevent an applicant from becoming an overstayer by extending their leave while they are:

- awaiting a decision on an in-time application
- exercising a right of appeal against the refusal of such an application

Information on the impact a withdrawn application has on 3C leave can be found in the 3C guidance.

3D leave

Section 11 of the Immigration, Asylum and Nationality Act 2006 added section 3D to the Immigration Act 1971 to prevent a migrant from becoming an overstayer while they are exercising a right of appeal against a decision to curtail or revoke leave to enter or remain in the UK (if that decision leaves them with no leave). Section 3D leave was repealed by the Immigration Act 2016 from 1 December 2016.

When leave to enter or remain is curtailed or revoked, section 3D extends it while an appeal against that decision is:

- brought
- pending

Both 3C and 3D leave count as existing leave to enter or remain in the UK, and therefore as lawful residence for the purpose of the 10 year long residence rule.

A person cannot make a fresh application for leave while they have 3C or 3D leave pending the outcome of a decision on their outstanding application. This means that

someone who reaches the 10 year threshold during this leave cannot apply for indefinite leave. This could occur in the following 2 situations:

The applicant completes 10 years continuous lawful residence while awaiting a decision on an application for further leave

If the application that has generated the 3C leave has not yet been decided, the applicant can vary the grounds of that application to include a request for leave on the basis of long residence. If a long residence application would attract a higher fee than the initial application, the applicant must pay the balance before the varied application can be considered. For more information, see:

- Immigration Act 1971
- validation, variation and withdrawal

The applicant completes 10 years continuous lawful residence while awaiting a decision of an appeal

A person may complete 10 years continuous lawful residence whilst they are awaiting the outcome of an appeal and submit an application on this basis. Under sections 3C and 3D, it is not possible to submit a new application while an appeal is outstanding. However, the applicant can submit further grounds to be considered at appeal.

If the applicant has an outstanding appeal against a decision to refuse leave to remain or indefinite leave to remain, and submits an application for long residence, you must void the long residence application and refund the fee. You must create a file or sub-file and mark it 'PRIORITY'. You must send the file or sub-file to the presenting officers unit (POU) dealing with the appeal. You must send a letter to the applicant or their representative informing them their application has been linked with their outstanding appeal. You must use Doc Gen letter ICD.3207 for this purpose.

If the appeal is against a decision to curtail or revoke, and the immigration decision was made on or after 31 August 2006, you must follow the same process but you must use Doc Gen letter ICD.3258.

Out of time appeals

Section 3C leave ends when the person does not appeal or seek permission to appeal within the relevant time limit. Where an appeal is made out of time it does not extend section 3C leave. However, if the Tribunal grants permission for the appeal to proceed, the case of Akinola (2021) EWCA Civ 1308 confirms that section 3C leave will resurrect from the date that the appeal was instituted. This means that section 3C leave is considered to have been resurrected from when the notice of appeal was filed, not the date when the extension of time was granted. Where an extension of time is not granted by the Tribunal, section 3C leave will not be resurrected.

For further detail and examples of the operation of 3C leave where an appeal is made out of time see 3C and 3D guidance.

This means that a person who was on 3C leave, but fails to appeal or seek permission to appeal within the relevant deadline, will become an overstayer once that deadline has expired. They will remain an overstayer until either the Tribunal grants permission to proceed with the appeal out of time or any subsequent grant of leave.

When considering a long residence application in which a previous out of time appeal had been submitted following:

- an in time application
- an application made no more than 28 days after the previous leave expired where the application was submitted before 24 November 2016 or in accordance with paragraph 39E where the application was made on or after 24 November 2016

you should normally use discretion to disregard the break in continuous lawful residence immediately prior to the notice of appeal being filed that resulted in the Tribunal granting permission to proceed where one of the following apply:

- the out of time appeal was subsequently allowed
- the out of time appeal was subsequently dismissed but further leave was granted following a further application made:
  - within 28 days of 3C leave expiring where the application was made before the 24 November 2016
  - after 24 November 2016 in accordance with paragraph 39E

Any discretion on this basis will result in a grant outside of the Immigration Rules.

Extended leave under previous legislation

You must be aware of legislation that was in force for extending leave before sections 3C and 3D were amended. If the applicant lodged an appeal against a decision to refuse or curtail leave prior to 3C and 3D being amended, their leave may have expired before their appeal was heard. This means applicants who had appeals allowed before Sections 3C and 3D were amended may have breaks in their continuous lawful residence while their appeals are pending.

Before 2 October 2000, people who made in time applications had their leave to remain extended by the Variation Of Leave Order (VOLO). VOLO extended existing leave until a decision was made on an application, and also extended leave by 28 days from the date the application was refused or withdrawn. Leave was not extended further while an appeal was pending.

Section 3D was introduced on 31 August 2006. Prior to this, it was possible for a person to submit a fresh application while an appeal against curtailment or revocation of leave was pending. Before 31 August 2006, an applicant's leave was not extended whilst their appeal against curtailment or revocation was outstanding,

but existing leave would not be considered to have been cancelled until the date that appeal rights had been exhausted.

For further information see 3C and 3D guidance.

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Time spent in the UK with a right to reside under EEA regulations

This page tells you how to consider a long residence application when a person has previously spent time in the UK with a right to reside under the Immigration (European Economic Areas Regulations 2006 (the EEA Regulations)), whilst the Regulations were still in force in the UK.

EEA nationals and their recognised family members who were resident in the UK before Free Movement ended at 11pm GMT on 31 December 2020, could still, under the Withdrawal Agreement, continue to exercise EEA residential rights in the UK until 30 June 2021. These individuals should have made an application to the EU Settlement Scheme by this date to regularise their leave under the Immigration Rules Appendix EU and avoid being in the UK unlawfully.

Under paragraph 276A of the Immigration Rules, time spent in the UK as one of the following, does not meet the definition of lawful residence set out in the Rules:

- the spouse, civil partner, or other family member of a European Union (EU) national
- an EEA national exercising their treaty rights to live in the UK but have not qualified for permanent residence
- former family members who have retained a right of residence

This is because these individuals were not subject to immigration control whilst residing in the UK under the provisions of the EEA regulations and were consequently not required to hold leave to enter or leave to remain. For further information see EEA Nationals guidance.

When considering a long residence application, however, you should apply discretion and count time spent in the UK as lawful residence for an EU or EEA national, or their family members exercising their treaty rights to reside in the UK.

Sufficient evidence must be provided to demonstrate that the applicant has been exercising treaty rights throughout any period that they are seeking to rely on for the purposes of meeting the long residence rules.

Whether a period of residence is counted, or not, for the purpose of long residence under paragraph 276A of the Immigration Rules, does not affect the rights of family members of EEA nationals to have previously acquired permanent residence in the UK, where they qualify for it after a period of 5 years residence in under Regulation 15 of the EEA Regulations. More information can be found on the GOV.UK website – apply for a UK residence card.

If an applicant was in the UK with a right to reside under European Economic Area (EEA) regulations, continuous residence is not broken if they leave the UK and are then re-admitted under the EEA regulations.

When granting a long residence application in which a person has relied on a period of leave in the UK exercising treaty rights as an EEA national or their family member, any grant of leave must be made outside the Immigration Rules.

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Time spent in the UK as a Turkish national whilst working under the ECAA worker provisions

A Turkish national may have spent time working in the UK under the ECAA provisions. Any time spent in the UK under this provision may be counted as legal continuous residence and count towards the 10 year qualifying period for leave under long residence.

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Time spent in the UK as a British citizen

Time spent in the UK as a British citizen must be counted as lawful residence. People may have spent time in the UK as a British citizen and since renounced their British citizenship. This time spent as a British citizen in the UK would still count as lawful residence for 10 year long residence applications.

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Time spent in the UK whilst exempt from immigration control

This page tells you when time spent in the UK counts as lawful residence for 10 year long residence applications for applicants who are exempt from immigration control.

Time spent in the UK exempt from immigration control must be counted as lawful residence. People exempt from immigration control include diplomats and members of the armed forces.

Deemed leave for diplomats and 28 days leave outside the rules for former members of armed forces

'Deemed leave' is the 90 days that diplomats are given once their period of exemption from immigration control period ends.

Former members of armed forces will normally be granted 28 days leave outside the Immigration Rules when they cease to be exempt on discharge.

By the end of the 28 or 90 days, the person must either:

- submit an application for leave
- depart the UK

A person on deemed leave does not receive an endorsement in their passport. However, a former member of the armed forces will have their passport endorsed.

If a person submits an application to extend their stay in the UK within 28 or 90 days of their exemption ending, and is granted a period of leave, their continuous lawful residence is not broken.

If a person remains in the UK, and does not submit an application for further leave after the 28 or 90 days described above, their continuous lawful residence is broken.

For an example of time spent in the UK while exempt from immigration control counting as lawful continuous residence, see the example of how to consider exempt leave.

Effect on continuous residence

Continuous residence is not broken if a person:

- leaves and then returns to the UK during a period of exemption
- continues to meet all other requirements of long residence, set out in paragraph 276A(a) of the Immigration Rules

If a person leaves the UK following the end of their exemption and during their period of deemed leave, continuous residence is not broken, even if they return to the UK after their 90 days deemed leaved has expired. This is providing they meet all the other long residence requirements in paragraph 276A(a) of the Immigration Rules.

Continuous residence is not broken if a person is granted a short period of leave at the end of their exemption and leaves the UK providing that they:

- return to the UK with a fresh grant of leave
- meet all the other requirements of long residence in paragraph 276A(a) of the Immigration Rules

For more information on the long residence requirements, see Immigration Rules 276A-276D.

If a person applies for leave while they are still exempt, you must inform them their application will be considered once their exemption ends.

For more information on exemptions, see persons exempt from control.

Example of how to consider exempt leave

Example 1

A person working as a diplomat who was exempt from control ends their employment and ceases to be exempt from immigration control on 31 December 2006. The person submits an application for leave to remain on 1 February 2007, and is granted leave until 30 May 2009.

As a diplomat, this person has deemed leave until 31 March 2007 and submitted their application before the deemed leave expired. This means that the person had continuous lawful residence during this period.

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Public interest

This page tells you factors you must consider before granting indefinite leave to remain for long residence applications.

On most occasions, a person who meets the requirements for continuous lawful residence should be granted indefinite leave to remain. This is unless a grant is against the public interest.

You must consider whether there are any reasons why it would be undesirable on public interest grounds to grant indefinite leave. In considering this you must take into account the person's:

- age
- strength of connections in the UK
- personal history, including character, conduct, associations and employment record
- domestic circumstances
- compassionate circumstances
- any representations on the person's behalf

The applicant must also not fall for refusal under the general grounds for refusal.

You must assess the factors in paragraph 276B (ii) to decide whether a grant of indefinite leave would be against the public interest. You must look at reasons for and against granting indefinite leave using the factors listed and, where necessary, weigh up whether a grant of indefinite leave would be in the public interest.

If the applicant has not completed the necessary period of residence, they will not be able to satisfy the rules for long residence, regardless of any of the factors listed above. However, even if an applicant has not completed the required period of residence and therefore falls for refusal, you must also consider any reasons why the applicant may fall for refusal under paragraph 276B(ii), and include these reasons in your refusal notice.

Some factors would suggest that it would be appropriate to refuse leave. You must weigh those factors against the compassionate circumstances, if any and all the other circumstances, such as strength of connections to the UK, domestic circumstances of the case, and then decide whether a grant of indefinite leave would be against the public interest. More detailed information on each of these factors is provided later in the following sections.

It is important that you take into account all of the circumstances of the case before you decide whether a grant of indefinite leave would be in the public interest.

You must not refuse leave to someone who has been in the UK for the required period without consulting a senior caseworker. You must also consult guidance on

refusing an application on general grounds for refusal if refusing under paragraph 276B(ii).

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

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Age

This page tells you when a person’s age may be a relevant factor when you are considering a long residence application.

You must take an applicant's age into consideration in cases when you are considering refusing on other relevant points under paragraph 276B(ii). You must consider whether an applicant's age would weigh against refusal.

Age may be a relevant factor if the applicant is an unaccompanied child under the age of 18, or if the applicant or their dependants have spent their formative years in the UK and adapted to life here.

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Strength of connections in the UK

This page tells you when a person’s connections to the UK may be a relevant factor when you are considering a long residence application.

You must take an applicant's strength of connections into consideration in cases when you are considering refusing on other relevant points under paragraph 276B(ii). You must consider whether an applicant's connections with the UK would weigh against refusal.

The family life a person has in the UK must be taken into account in assessing the strength of their connections to the UK. This may be particularly strong if they are married to or have established a similar relationship with a settled person. The person may have other close relatives settled in the UK. The strength and closeness of the relationship will determine how strong a factor this may be. Similarly, if a person's close relatives are not in the UK, this may call into question the strength of the person's connection to the UK.

Owning property or a business may support the view that an applicant has shown long term commitment and a connection to the UK. However, on its own, this would not be a significant factor. Factors such as the length of time the individual has owned the business or property, or whether the business is legally operating must be considered. If someone mentions their business interests as proof of commitment to the UK, they must provide supporting documentary evidence. The applicant will be required to show further proof of strong connections to the UK.

If the applicant has contributed positively to society, for example through significant investment or charitable work, this may be another factor in their favour, although this is unlikely to be decisive on its own.

Related content
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Personal history

This page tells you when a person's personal history may be a relevant factor when you are considering a long residence application.

You must take an applicant's personal history into consideration in cases when you are considering refusing on other relevant points under paragraph 276B(ii).

Character, conduct and associations go beyond criminal convictions and allow you to consider whether the applicant's activities in the UK, or abroad, makes it undesirable for you to grant indefinite leave.

This could include concerns about the applicant on the basis of:

- national security
- war crimes
- crimes against humanity
- serious criminality, whether convicted or not
- other activities that make the applicant's presence in the UK not conducive to the public good

Applicants who do not satisfy the general grounds within the Immigration Rules now face refusal under the rules for settlement. For more information see general grounds for refusal.

Applications for settlement on the basis of long residence must be refused if:

- the requirements set out in paragraph 276B are not met
- 276B (ii) includes non conducive to the public good
- 276B (iii) includes any reason within the general grounds for refusal

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

A history of anti-social behaviour or low level criminality might be grounds to refuse indefinite leave, especially if it has led to the issue of a Criminal Behaviour Order.

The applicant's employment record will often be a significant consideration. You must consider what the person has been doing while they have been in the UK, and

what economic contribution, if any, they have made. Whilst not having a record is not in itself a reason to refuse leave, having a good employment record along with strong ties with the UK would count in a person's favour, if they have not been a burden on public finances but have, in fact, contributed through income tax and national insurance contributions. Equally, the lack of such a record, and any charges they have made on public finances, would count against them.

An applicant's conduct includes their immigration history. This will not be relevant in most cases brought under the 10 year rule, because the requirement that residence must be continuously lawful implies that the applicant is not an immigration offender. However, previous immigration offences that occurred before their 10 years continuous lawful residence must be taken into account, and will count against them.

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Domestic circumstances

This page tells you about when a person's domestic circumstances may be a relevant factor when you are considering a long residence application.

If the applicant has dependent children living in the UK, this could be a factor against refusal on the basis of paragraph 276B(ii), if they have lived in the UK for a substantial period of time and are fully integrated here.

If there are dependent children, and you intend to refuse the case, you must consider the Home Office's duty to safeguard and promote child welfare.

The presence of another settled person who is routinely dependent on the applicant, for example a disabled relative, could also be a factor against refusal. For further guidance see the GOV.UK website – apply to remain in the UK with family.

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Compassionate circumstances

This page tells you when compassionate circumstances may be a relevant factor when you are considering refusing under paragraph 276B(ii). You must consider whether there are any compassionate circumstances that would weigh against refusal.

It is not possible to define all potential compassionate circumstances, but it might, depending on the circumstances, include:

- significant or serious illness
- frailty
- particularly difficult family circumstances

Compassionate circumstances are most likely to be relevant if the applicant has been here for long enough to qualify for indefinite leave, but there are other factors, such as criminal convictions or an adverse immigration history, that suggest a grant of indefinite leave might not be appropriate.

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Representations received on a person’s behalf

This page tells you when representations received on the person's behalf may be a relevant factor when you are considering refusing a long residence application under paragraph 276B(ii).

All representations raised on behalf of the applicant must be carefully assessed, even if these have been dismissed in previous applications. However, such representations are unlikely to be decisive, either in favour of or against an applicant.

You must weigh those factors against the compassionate circumstances, if any, and all the other circumstances of the case, and then decide whether a grant of indefinite leave would be against the public interest.

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Grant or refuse leave on the basis of long residence

This page tells you about how to grant or refuse a long residence application.

Granting leave to remain

You must grant leave to remain on the basis of long residence if the applicant meets all of the requirements of paragraph 276A2 and the requirements of paragraphs 276AO3 and 276AO4 of the Immigration Rules are met.

This includes applicants who have applied for indefinite leave to remain but they are unable to meet 276B (iii) and / or (iv) which say that the applicant:

- does not fall for refusal under the general grounds for refusal
- has sufficient knowledge of the English language, and about life in the UK, unless they are under the age of 18 or aged 65 or over at the time they make their application

For more information see:

- Extension requirements
- Immigration Rules 276A-276D
- General grounds for refusal

If the applicant has less than 20 years residence in the UK, you must grant 2 years leave to remain on the same condition code they had in their previous grant of leave. This applies even where the applicant would not qualify for further leave in that category if they were to apply separately for it, or if that category no longer exists. To ensure that the applicant is granted leave with the same conditions when using condition codes 2/4 or 4B, check the conditions code table.

If the applicant has more than 20 years residence in the UK the grant of leave must not contain any restriction on employment.

The extension of leave to remain is granted under paragraph 276A2 of the long residence category of the Immigration Rules, and not as an extension of their previous category of leave to remain. Applicants must therefore meet the leave to remain rules for long residence and not the leave to remain rules for their previous category.

If an applicant was granted an extension of stay on an application made before 9 July 2012 they will remain subject to the rules that were in force on 8 July 2012. This means an applicant granted leave following 14 years long residence can be granted further leave or indefinite leave to remain (ILR) on that basis, even though that provision no longer exists.

If you grant leave to remain in this category you must use the following statistical category:

- X3 Other – Extn other reasons

Refusing

Before you refuse an application, as applicants in this category will have spent a number of years in the UK, there may be human rights grounds to consider granting a period of leave even if the applicant does not satisfy the long residence requirements. Where applicable, you must consider the following provisions:

- Appendix FM, partner and parent 10-year routes for claims on the basis of family life (see Appendix FM of the Immigration Rules)

- Appendix Private Life for claims on the basis of private life, see considering an application in the private life route)

- Leave outside the Immigration Rules for claims on the basis of compelling compassionate grounds

You must refuse the application if the applicant does not meet the requirements of paragraph 276A1 of the Immigration Rules and there are no other grounds to grant (including under Appendix FM, or Appendix private life or outside the Immigration Rules on the basis of compelling compassionate grounds.

Related content
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Grant or refuse indefinite leave

This page tells you how to grant or refuse applications for indefinite leave on the basis of long residence.

Granting indefinite leave

You must grant the applicant indefinite leave on the basis of long residence if the applicant meets all of the requirements of paragraph 276B of the Immigration Rules.

For more information see:

- Indefinite leave requirements
- Immigration Rules 276A-276D
- General grounds for refusal

If you grant indefinite leave to remain in this category you must use the following statistical category:

- 6AA Long residency - Sett 10 LRC

Refusing indefinite leave

You should normally refuse indefinite leave if:

- the applicant does not meet the requirements of paragraph 276B
- any of the general grounds for refusal apply

For examples of refusal wording, see indefinite leave refusal wording.

If you refuse the application, you must use the appropriate statistical code from the following:

- Long Residence - Refused Sett - KOL / ESOL - XOTRSLA01
- Long Residence - Refused Sett - Criminality - XOTRSLA05
- Long Residence - Refused Sett - Continuous Residence - XOTRSLA02
- Long Residence - Refused Sett - Against public good - XOTRSLA03
- Long Residence - Refused Sett - Combination of reasons failed - XOTRSLA04
- Other - Refusal Settl. Premature Appl - X7

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Indefinite leave refusal wording

This page provides suggested refusal wording for applications for indefinite leave for long residence.

Reason for refusal and paragraph of the Immigration Rules	Wording
Applicant has not completed 10 years continuous lawful residence Paragraph 276D with reference to paragraph 276B(i)(a) and [276A...]	In view of [...] the Secretary of State is not satisfied that you have had at least 10 years continuous lawful residence in the United Kingdom.
There is reason why it would be undesirable to grant indefinite leave to remain because of public interest issues, taking into account the applicant's personal history, including: • character • conduct • associations and employment record Paragraph 276D with reference to paragraph 276B(ii)	You have applied for indefinite leave to remain on the basis of your long residence in the United Kingdom but, in the light of [...], the Secretary of State has concluded that it would not be in the public interest for you to be given indefinite leave to remain.
Applicant does not satisfy the knowledge of life requirement Paragraph 276D with reference to paragraph 276B(iv)	In view of [...], the Secretary of State is not satisfied that you have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom or that you are under the age of 18 or aged 65 or over at the time you made your application.
Applicant falls for refusal under general grounds Paragraph 276D with reference to paragraph 276B(iii)	In view of [...], your application falls for refusal under the general grounds for refusal.
Dependants applying in line with the main applicant Paragraph 322(1)	You have applied for indefinite leave to remain as the husband/wife/civil partner/unmarried partner/same sex partner/child of a person who has spent 10 years/14 years long residence in the United Kingdom but your application has been refused, as the Secretary of State is not satisfied that variation of leave to remain is

Reason for refusal and paragraph of the Immigration Rules	Wording
	being sought for a purpose covered by the Immigration Rules.

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Dependants in a long residence application

This page tells you about how to consider applications from dependants of people applying under the long residence rules.

Long residence dependants'

There is no provision within the Immigration Rules for an applicant to include dependants on a long residence application.

Dependants must make their own sole applications if they wish to rely on the 10 year long residence rule.

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