



Long Residence Rules

22nd July 2008

Some people may qualify for settlement (indefinite leave to remain) in the UK because of the length of time they have been living here. The Immigration Rules explain the circumstances in which someone may qualify for settlement because of what is referred to as long residence. This information sheet provides information about the long residence rules.

General information

The long residence rules are set out in paragraphs 276A-276D of the Immigration Rules. They were introduced into the Immigration Rules in April 2003. Before this date, the Home Office operated a policy outside of the rules (a concession). However, since the withdrawal of that concession (which was not withdrawn until several months after the rules were introduced), the Home Office has begun to apply the long residence rules restrictively – particularly in relation to breaks in the period of someone's residence in the UK – see below.

The long residence rules apply in two circumstances. These are explained more fully under separate headings below. In brief, the circumstances in which the long residence rules apply are:

- where someone has been in the UK lawfully for 10 years or more
- where someone has been in the UK unlawfully for 14 years or more

In July 2008, the UK Border Agency informed ILPA that the future of the long residence rules is under review as part of the changes intended to be introduced to the way migrants may become British citizens (naturalisation) – see the March 2008 “Path to Citizenship” information sheet.

10 years lawful residence

Someone who has lived in the UK for a period of 10 years may apply for indefinite leave to remain if his or her presence in the UK over this time has been lawful. Unless one of the following applies, indefinite leave to remain will normally be granted:

- the 10 years period has been broken (see below)
- there are public interest reasons to refuse the application (see below)
- the individual fails to demonstrate sufficient knowledge of the English language and of life in the UK (see April 2007 information sheet “Applying for Settlement”)

Lawful residence means that the person must either have had leave to enter or remain in the UK over the course of this 10 years period. 10 years on temporary admission is not 10 years lawful residence. However, time spent on temporary admission can count towards 10 years lawful residence if the period of time on temporary admission is immediately followed by a grant of leave to enter or remain. By way of example, a person on temporary admission for 6 years, who is immediately then given any form of leave to enter or remain for 4 years, will by the end of this 10 years period be able to apply for indefinite leave to remain under the long residence rules.

14 years unlawful residence

Someone who has lived in the UK for a period of 14 years may apply for indefinite leave to remain even though his or her presence in the UK during this time has been unlawful. Unless one of the following applies, indefinite leave to remain will normally be granted:

- the 14 years period has been broken (see below)
- there are public interest reasons to refuse the application (see below)
- the individual fails to demonstrate sufficient knowledge of the English language and of life in the UK (see April 2007 information sheet “Applying for Settlement”)

ILPA information service

funded by JRCT

www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.



information sheet

Breaks in the 10 or 14 years periods

If either of these periods is broken, the individual may be refused indefinite leave to remain under the long residence rules. These periods will be broken if any of the following apply:

- the individual was outside of the UK (England, Northern Ireland, Scotland and Wales) for any length of time during the period unless he or she had leave to enter or remain at the point of departure and return
- the individual was outside of the UK for any length of time during the period and when departing he or she then demonstrated a clear intention not to return or could have had no reasonable expectation of being able to return lawfully
- the individual was outside of the UK for a total of 18 months or more during the period
- the individual spent anytime in prison or other institution (e.g. a Young Offenders' institution) as a result of a custodial sentence imposed by a court during the period

In recent cases, the Home Office has applied an even stricter test when someone has spent time outside of the UK during the period. In these cases, the Home Office has required the individual to demonstrate that he or she had leave to enter or remain at the time of departing from, and returning to the UK, and throughout the intervening period. However, this is not the test in the Immigration Rules and a refusal on this basis may be unlawful.

The 14 years period will be broken if any of the following was served on the individual or his or her representative during that period:

- a notice that the individual is liable to be removed
- a decision that the individual should be removed
- a notice that it is intended to deport the individual

Public interest reasons not to grant indefinite leave to remain

Before it is decided whether to grant indefinite leave to remain, the factors set out in paragraph 395C of the Immigration Rules will be considered. These factors include:

- the individual's personal history, including character, conduct, associations and employment record

Factors that may lead to an application for indefinite leave to remain being refused include:

- where there is reason to think the individual's presence constitutes a threat to national security
- where there are other reasons (e.g. criminality) that might ordinarily lead to someone being deported
- where the individual has not been economically self-sufficient for a significant period of the time he or she has been in the UK

An individual's immigration history may also provide a reason to refuse indefinite leave to remain. However, illegal entry to the UK or overstaying would not of itself ordinarily lead to a refusal where someone is applying on the basis of 14 years unlawful residence in the UK. The Home Office guidance states that an individual's immigration history "will not be relevant in most cases" where someone is applying on the basis of 10 years lawful residence.

Home Office guidance

Chapter 18 of the Immigration Directorate Instructions provides guidance on how the UK Border Agency will apply the long residence rules. This guidance is available at: http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter18/Long_Residence_IDI-_final_d1.pdf?view=Binary

ILPA information service

funded by JRCT

www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

[steve.symonds](mailto:steve.symonds@ilpa.org.uk)

[@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.
