LONG RESIDENCE

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1 INTRODUCTION

The rules on long residence recognise the ties a person may form with the UK over a lengthy period of residence here. Paragraphs 276A-D of HC 395 as amended by HC 538 allow settlement to be granted after a period of:

- 10 years continuous lawful residence or
- 14 years continuous residence of any legality

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1.1 **Background**

Until April 2003 there was no provision in the immigration rules for a person to be granted indefinite leave to remain on the grounds of long residence. The Long Residence Concession allowed for a discretionary grant of settlement after 10 years continuous lawful residence or 14 years continuous residence of any legality, provided there were no serious countervailing factors.

Under the provisions of the Nationality, Immigration and Asylum Act (NIA) 2002, which came into effect in April 2003, there is no right of appeal against refusal for those seeking leave to enter or remain under concessionary arrangements. As a consequence the Long Residence Concession was brought within the scope of the immigration rules from 1 April 2003.

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2 CRITERIA FOR RESIDENCE

2.1 Criteria for residence for 10 years long residence cases and 14 years long residence cases

Paragraph 276A of the immigration rules defines continuous residence and lawful residence.

- To be granted ILR following **14 years long residence**, the applicant must meet the criteria for continuous residence for the whole period.
- In order to be granted ILR following **10 years long residence**, the applicant must satisfy the criteria for continuous lawful residence. This means that they would have to meet the criteria for continuous residence as well as having been lawfully resident in the UK for at least 10 years.

The tables below give details of the criteria for both 10 years and 14 years cases:

<u>14 Years Long Residence</u>

<table>
<tr><td colspan="2">Does the applicant have at least 14 years continuous residence?</td></tr>
<tr><td>Yes</td><td>No</td></tr>
<tr><td>▼</td><td>Refuse on paragraph 276D with reference to paragraph 276B(i)(b) and [276A…]*
▼</td></tr>
<tr><td colspan="2">Are there any reasons why the granting of leave would be against the public good?</td></tr>
<tr><td>No</td><td>Yes</td></tr>
<tr><td>▼</td><td>Refuse on paragraph 276D with reference to paragraph 276B(ii)*
▼</td></tr>
<tr><td colspan="2">Does the applicant meet the Knowledge of Language and Life criteria? (this is necessary for ILR applications <u>not</u> LTR applications)</td></tr>
<tr><td>Yes
▼
Grant ILR</td><td>No
▼
ILR applications submitted between 2 April 2007 and 30 March 2009 can be Considered for a grant of further leave to remain if they meet all the ILR criteria <u>except</u> KOL.

ILR applications submitted on or after 31 March 2009 without KOL should be refused on paragraph 276D with reference to paragraph 276B(iii)*</td></tr>
</table>

* An applicant should be refused on **<u>all</u>** relevant grounds (i.e. consideration must be made under paragraph 276B(i) for the relevant qualifying period and also under paragraph 276B(ii) for any reasons against public interest and paragraph 276B(iii) - KOL).

10 Years Long Residence

Does the applicant have at least 10 years continuous lawful residence?	
Yes	**No**
▼	*Refuse on paragraph 276D with reference to paragraph 276B(i)(a) and [276A…]** ▼
Are there any reasons why the granting of leave would be against the public good?	
No	**Yes**
▼	*Refuse on paragraph 276D with reference to paragraph 276B(ii) ** ▼
Does the applicant meet the Knowledge of Language and Life criteria? (this is necessary for ILR applications not LTR applications)	
Yes ▼ **Grant ILR**	**No** ▼ *ILR applications submitted between 2 April 2007 and 30 March 2009 can be Considered for a grant of further leave to remain if they meet all the ILR criteria except KOL.* *ILR applications submitted on or after 31 March 2009 without KOL should be refused on paragraph 276D with reference to paragraph 276B(iii)**

* An applicant should be refused on **all** relevant grounds (i.e. consideration must be made under paragraph 276B(i) for the relevant qualifying period and also under paragraph 276B(ii) for any reasons against public interest and paragraph 276B(iii) - KOL).

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2.2 Continuous residence

2.2.1 Definition of continuous residence

Continuous residence is defined in Paragraph 276A(a) of the immigration rules:

> Continuous residence means residence in the United Kingdom for an unbroken period, and for these purposes a period shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, provided that the applicant in question has existing limited leave to enter or remain upon their departure and return.

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2.2.2 Residence in the United Kingdom

The United Kingdom consists of Great Britain and Northern Ireland (Interpretation Act 1978). Therefore, time spent in the Republic of Ireland, Channel Islands or the Isle of Man does not count as residence in the UK for the purpose of the long residence rules. This is the case even though those three entities form part of the Common Travel Area.

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2.2.3 Events that break continuous residence

Paragraph 276A(a)(i) to (v) lists all circumstances in which continuous residence would be deemed to be broken. This would be instances where:

- the applicant is absent from the UK for a period of more than 6 months at any one time or is absent for a shorter period but does not have valid leave to enter or remain on their departure from and return to the UK;
- the applicant has been removed or deported from the UK or has left the UK following the refusal of leave to enter or remain;
- the applicant left the UK and by doing so, showed clear intention not to return;
- the applicant left the UK under circumstances in which they could have no reasonable expectation at the time of leaving, to be able to return lawfully;
- the applicant has been convicted of an offence and sentenced to a period of imprisonment, or, was directed to be detained in an institution other than a prison (e.g. hospital, young offenders), provided that this was not a suspended sentence (see further guidance below);
- the applicant has spent a total of 18 months outside of the UK throughout the entire 10/14 years period.

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2.2.4 Time spent outside the United Kingdom

Continuous residence should be considered to have been broken if the applicant has spent a total of more than 18 months absent from the United Kingdom during the period in question.

Subject to that, continuous residence shall not be considered to have been broken where an applicant is absent from the United Kingdom for a period of 6 months or less at any one time, *provided that the applicant has existing limited leave to enter or remain upon his departure and return* (see Example 1).

To benefit from this, an applicant must have valid leave on the date that they departed the UK and valid leave on the date that they returned. Please note that this does not have to be the same grant of leave on departure and return (see Example 2). Nor is it necessary for the leave to be in the same category (i.e. an applicant can depart the UK with leave as a student and return with leave as a work permit holder). As long as the applicant has valid leave on both the date of departure and the date they return, they will not have broken continuous residence.

If the applicant was here with a right to reside under the EEA Regulations when they left the UK, and was readmitted under the EEA Regulations, then the applicant's residence may be treated as continuous (provided that their total absences do not exceed eighteen months and no individual absence exceeds six months).

Sources from which evidence of the applicant's absences may be obtained include the application form and any stamps in the applicant's passport that indicate that they have spent time outside the UK. Caseworkers should also check the 'landing cards' section of Warehouse to verify when an applicant has entered the UK.

For the purpose of calculating time spent outside the UK for the long residence rules, a month constitutes 30 calendar days.

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2.2.5 Time spent in prison

A sentence of imprisonment breaks any period of continuous residence the individual may have had before the date on which the sentence was passed. The same applies to any other custodial sentence imposed by a court, such as detention in a Young Offender's institution or detention in hospital. The effect of continuous residence being broken in this way is that none of the time spent in the UK before the individual was sentenced will count as continuous residence.

However a **suspended** sentence does not break continuous residence. Furthermore, detention in hospital only breaks continuous residence if it was imposed as a sentence for an offence.

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2.2.6 Events that "stop the clock" for the purposes of the continuous residence

Paragraph 276B(i)(b) allows settlement to be granted where the applicant has had 14 years continuous residence here (whether or not the residence was lawful), excluding any period following the service of:

a. a notice of liability to removal; or

b. a decision to remove by way of Directions under paragraphs 8 to 10A, or 12 to 14, of Schedule 2 to the Immigration Act 1971, or section 10 of the Immigration and Asylum Act 1999; or

c. a notice of intention to deport (also known as a Notice of a decision to make a deportation order).

Service of any of the above notices "stops the clock" for the purposes of paragraph 276B(i)(b). This means that, if the applicant had not accumulated 14 years continuous residence on the date the "clock stopping" notice was served, they will never be able to qualify under paragraph 276B(i)(b).

Notices which stop the clock include:

- IS151A
- IS151A Part 2
- IS151B
- IS151B (NSA) (used in NSA cases)
- IS151B (CERT) (used where an asylum or Human Rights claim has been refused and certified under section 96 of the Nationality, Immigration and Asylum Act 2002).
- Notice of intention to deport ICD.1070
- Prior to the introduction of the ICD.1070 (on 2 October 2000), the notice of intention to deport was the APP 104.
- ICD.1071
- ICD.1072
- ICD.1075
- ICD.1076

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2.2.7 Early applications

All valid applications for further leave to remain must be considered, even if the applicant has not yet completed the necessary qualifying period for settlement.

The long residence rules require an applicant to have had continuous residence in the UK for either 10 or 14 years before they qualify for settlement. If an applicant applies for settlement before they have completed this period of leave, they will not meet the requirements of long residence.

An application for settlement which is considered by caseworkers more than 28 days before the applicant completes the required qualifying period for long residence should be refused on the basis that they have not completed the required period of leave in the UK. If the application is considered 28 days or less before the 10/14 years is completed and the applicant meets all the other criteria, ILR may be granted.

The caseworker should fully consider the case and cite any other reasons for refusal in addition to the applicant not having spent enough time in the UK to have completed the qualifying period (i.e. all breaks in continuous residence for 14 years cases and continuous lawful residence for 10 years cases).

An applicant refused under the long residence rules due to submitting their application too early can be considered for a grant of ILR if they re-apply once they have completed their qualifying period or up to 28 days prior to this.

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2.2.8 Examples of continuous residence

Example 1

A person enters the UK on 1 September 2004 with entry clearance as a student which is valid until 31 October 2005. On 5 November 2005 (after their previous leave expired) the person leaves the UK. On 5 January 2006 the person re-enters the UK with valid entry clearance as a student. Will the person's continuous residence be deemed to be broken?

Yes. The person did not have valid leave on the date of their departure so continuous residence has been broken.

Example 2

A person enters the UK on 1 September 2004 with entry clearance as a student which is valid until 31 October 2005. On 25 October 2005 (before the previous leave expired) the person departs the UK. On 5 January 2006 the person re-enters the UK with valid entry clearance as a student. Will the person's continuous residence be deemed to be broken?

No. Because the person had valid leave on the date of their departure and the date of their return and the time spent outside the UK was less than 6 months, continuous residence has been maintained, even though they re-entered with a fresh grant of leave.

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2.3 Continuous lawful residence

2.3.1 Background

In order to satisfy continuous lawful residence an applicant must first meet the criteria for continuous residence. In addition, they must also have been lawfully resident during the time spent in the UK. This section explains how to determine whether an applicant has been continually lawfully resident in the UK.

2.3.2 Definition of lawful residence

Lawful residence is defined in Paragraph 276A of the immigration rules as a period of continuous residence in which the applicant has had:

- existing leave to enter or remain; or
- temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or
- an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.

2.3.3 Breaks in lawful residence and the use of discretion

Caseworkers should be satisfied that the applicant has acted lawfully throughout the entire period and has made every attempt to comply with the immigration rules.

If an applicant has a **single** short gap in lawful residence through making one **single** previous application out of time by a few days (not usually more than 10 calendar days out of time), caseworkers should use discretion granting ILR, **so long as the application meets all the other requirements.**

It would **not usually** be appropriate to exercise discretion when an applicant has **more than one** gap in their lawful residence due to submitting more than one of their previous applications out of time, as they would not have shown the necessary commitment to ensuring they have maintained lawful leave throughout their time in the UK.

It may be appropriate to use your judgement in cases where an applicant has submitted a single application more than 10 days out of time if there are extenuating reasons for this (e.g. postal strike, hospitalisation, administrative error on our part etc). This must be discussed with a Senior Caseworker.

Examples of use of discretion:

The following examples illustrate some instances in which it may/may not be appropriate to exercise discretion. Please note, this is not an exhaustive list of scenarios and each application should be judged on it's own merits and discussed with a Senior Caseworker.

1. An applicant has a single gap in their lawful residence due to submitting an application 7 days out of time. All other applications have been submitted in time throughout the 10 years period. Because the applicant has a single gap and submitted their application less than 10 days out of time, **discretion would normally be appropriate.**

2. An applicant has 3 gaps in their lawful residence due to submitting 3 separate applications out of time. These were 12, 4 and 8 days out of time respectively. Because the applicant has more than one gap in lawful residence due to submitting more than one application out of time, **discretion would not normally be appropriate.**

3. An applicant has a single gap in their lawful residence due to submitting an application 24 days out of time. The applicant has however produced a letter from their consultant stating that they were hospitalised during this period. Even though the applicant submitted their application more than 10 days out of time, they have proved that there were extenuating circumstances and have endeavoured to maintain lawful residence throughout the rest of the 10 years period, **discretion would normally be appropriate.**

The decision to exercise discretion should not be taken without consent from an SEO or equivalent.

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2.3.4 Time spent outside the UK

To qualify for ILR following 10 years long residence, the applicant must have had 10 years continuous lawful residence while they were in the UK. This means that continuous lawful residence should not be considered to have been broken if an applicant has a gap of leave while they were outside the UK (see Example 3). The applicant would have to have been outside the UK for the entire duration of the gap in leave in order to avoid breaking continuous lawful residence. The period outside the UK must however be less than 6 months in duration.

2.3.5 Out of time applications

Please note that there is no requirement for applications to be made in time under the 10 years rule. Out of time applications *may* qualify for a grant of ILR, providing that the applicant has previously built up an unbroken 10 year period of continuous lawful residence in the UK. See Example 4.

Any applications submitted more than six months out of time may need specific handling – please consult current guidance on handling for applications over six months out of time.

2.3.6 Cases where an applicant completes 10 years continuous lawful residence or 14 years continuous residence while awaiting a decision on an application or appeal

Sections 3C and 3D of the Immigration Act 1971 both extend individuals' leave in certain circumstances.

To prevent applicants from becoming overstayers through no fault of their own, section 118 of the Nationality, Immigration and Asylum Act 2002 introduced an amended Section 3C into the Immigration Act 1971.

Section 3C extends leave where a person with leave to enter or remain makes an in-time application (i.e. an application made before their leave expires), but where leave expires before a decision on that application is reached. Where a person has 3C leave, and his/her application is refused, 3C leave continues until appeal rights are exhausted. Section 3C only applies to in time applications. If a person submits an out of time application, they will have a gap in continuous lawful residence from the date their leave expired until the date that they are next granted leave, regardless of how long it takes for the decision to be made (see Example 5).

To prevent people becoming overstayers while exercising a right of appeal against a decision to curtail or revoke leave to enter or remain, section 11 of the Immigration, Asylum and Nationality Act 2006 added section 3D to the Immigration Act 1971. When leave to enter or remain is curtailed or revoked, Section 3D extends it while an appeal is brought and while it is pending and continues until appeal rights are exhausted.

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 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 ten-year threshold while they have such leave will not simply be able to apply for ILR. This could occur in the following two situations:

The applicant completes 10 years continuous lawful residence or 14 years continuous residence while awaiting a decision on an application for further leave

If the application that gave rise to the 3C leave has not yet been decided, then the applicant may **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 will need to pay the balance before the varied application can be considered. For further information, please see Chapter 1, Section 5 on 3C leave and also Chapter 1, Part A of the IDIs for information on variation of applications.

The applicant completes 10 years continuous lawful residence or 14 years continuous residence while awaiting a decision of an appeal

A person may complete 10 years continuous lawful residence or 14 years continuous 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 it is open to the applicant to submit further grounds to be considered at appeal.

If the applicant has an outstanding appeal against a decision made to refuse LTR or ILR and submits an application for long residence, the case should be voided and the fee refunded. A file or sub file should be created and this should be sent, marked PRIORITY, to the Presenting Officers Unit dealing with the appeal. A letter should be sent to the applicant or their representative informing them that their application has been linked with their outstanding appeal. Caseworkers should use Doc Gen letter ICD.3207 for this purpose.

Where the appeal is against a decision to curtail or revoke and the immigration decision was made on or after 31 August 2006 the same process should be followed but Doc Gen letter ICD.3258 should be used.

Extended leave under previous legislation

Caseworkers should be aware of legislation that was in force for extending leave before the Sections 3C and 3D were amended. If 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 that applicants who had appeals allowed before Sections 3C and 3D were amended could have breaks in their continuous lawful residence while their appeals were pending.

Prior to 2 October 2000, persons 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 further extended 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/revocation of leave was pending. Before 31 August 2006, an applicant’s leave was not extended whilst their appeal against curtailment/revocation was outstanding but existing leave would not be considered to have been cancelled until the date that appeal rights had been exhausted.

Please see Chapter 1 Section 5 of the IDIs for further information about 3C and 3D leave.

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2.3.7 Treatment of Temporary Admission

Temporary Admission (TA) only qualifies as lawful residence if leave to enter or remain is subsequently granted. See Example 6. More information on TA can be found in Chapter 31, Section 1 and 2 of the IDIs.

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

Applications may be received from third country nationals who have spent part of their time in the United Kingdom as the spouse, civil partner or other family member of an EU/EEA national exercising their treaty rights to reside here, but who have not been able to qualify for permanent residence. Alternatively, we may receive applications from former family members who have had a retained right of residence (see Chapter 5 of the European Casework Instructions for more details).

During their time here under the provisions of the EEA Regulations, the individuals would not have been subject to immigration control and would not have required leave to enter or remain. Therefore, they would not fall within the definition of lawful residence given at paragraph 276A.

However, the family members of EU/EEA nationals exercising their treaty rights to reside in the UK are here in a lawful capacity. Provided they meet all of the other requirements, discretion may be exercised to count this time as if it were lawful residence.

This does not affect the rights of family members of EEA nationals to permanent residence in the UK where they qualify for it under Regulation 15 of the Immigration (European Economic Area) Regulations 2006.

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2.3.9 Time spent here while exempt from Immigration Control

Effect on Continuous lawful residence

If a person has spent time in the UK exempt from immigration control (e.g. as a diplomat or member of the Armed Forces), that time should be counted as continuous lawful residence.

When a period of exemption ends, a person is given 90 days in which to submit an application for leave or depart the UK. This is known as ‘deemed leave’ (the person does not receive an endorsement in their passport). If a person submits an in-country application within 90 days of their exemption ending and is subsequently granted a period of leave, they will not have broken their continuous lawful residence. Those remaining beyond the 90 days deemed leave who do not submit an application for further leave will break their continuous lawful residence. See Example 7.

Effect on Continuous Residence

If a person departs the UK during a period of exemption, provided that all other requirements of paragraph 276A(a) are met, the person will be deemed to have continuous residence.

If a person leaves the UK following the end of their exemption, during their period of deemed leave, they will not be considered to have broken their continuous residence even if they return to the UK after their 90 days deemed leave has expired so long as they meet the criteria of paragraph 276A(a).

In addition, continuous residence will not be considered to have been broken where a person is granted a short period of leave following the end of a period of exemption, then departs from the UK and subsequently returns with a fresh grant of leave, so long as all the other criteria of paragraph 276A(a) are met.

This approach is to ensure that those whose period of exemption has ended are not disadvantaged due to having received deemed leave.

Please also note that a person who applies for leave while still exempt should be told that there is no power to grant them leave but that if they apply when they cease to be exempt, their application will be considered.

For further guidance, see Chapter 14 section 1 of the IDIs - Persons Exempt From Control.

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2.3.10 Examples of continuous lawful residence

Example 3

A person has leave in the UK that expires on 15 September 2008. The person departs the UK on 10 September 2008 (before their leave expired). Whilst the person is abroad they obtain fresh entry clearance and re-enter on 30 October 2008. Has continuous lawful residence been broken?

No. As the person was abroad while they had a gap in leave they have not broken their continuous lawful residence. However, had the person departed the UK after the 15 September 2008, (after their leave had expired), they would have spent time in the UK without lawful leave and therefore broken their continuous lawful residence.

Example 4

A person enters the UK on 31 March 1997 and is granted leave to enter. The person is subsequently granted a series of extensions, all of which are 'in time' applications. The last period of leave the person is granted expires on 31 March 2007. The person applies for ILR following 10 years continuous lawful residence in the UK on 30 April 2007 (out of time). Does the person meet the criteria for lawful residence?

Yes. Although the person has applied out of time, they built up 10 years continuous lawful residence prior to their leave expiring. Provided the person meets all the other criteria outlined in the rules, ILR can be granted.

Example 5

A person has leave to enter as a student, which is valid until 31 July 2007. The person submits an out of time application for further leave to remain on 15 September 2007. The person is subsequently granted further leave to remain as a student on 15 October 2007. Is there a break in his lawful residence for the purposes of 10 years long residence?

Yes. Because the person submitted an out of time application, Section 3C does not extend their leave from when the application was submitted. The person has a break in continuous lawful residence from when their leave to enter expired on 31 July 2007, until the date that they were granted further leave to remain as a student on 15 October 2007.

Example 6

A person applies for leave to enter at Port on 31 January 1995 and is granted TA. The person remains on TA until 27 June 2003, when they are granted four years' leave to enter until 27 June 2007. On 1 February 2005, the person applies for ILR under the 10 years rule. Has the person completed 10 years continuous lawful residence in the UK?

Yes. As the person was granted leave in 2003 following a period of TA, this means that their time on TA between 1995 and 2003 counts as lawful residence. Therefore the person has been here lawfully for ten years.

Example 7

A person working as a diplomat who was exempt from control, ends their employment and ceases to be exempt on 31 December 2006. The person submits an in-country application for leave to remain on 1 February 2007 and is granted further leave until 30 May 2009. Has the person broken their continuous lawful residence?

No. The person has deemed leave until 31 March 2007 and submitted their application before the deemed leave expired and have therefore had continuous lawful residence throughout this period.

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3. FACTORS TO BE CONSIDERED BEFORE LEAVE IS GRANTED

3.1 Background

Possession of the required period of residence in the UK does not automatically entitle the applicant to a grant of leave, but only to be **considered** for a grant. The factors highlighted below should always be taken into consideration when making a decision on a case. However, the general rule is that a person who satisfies the appropriate continuous residence or continuous lawful residence requirement should normally be granted ILR, unless a grant would, in all the circumstances of the case, be **against the public interest**.

Paragraph 276B(ii) sets out a number of points which should be considered in all cases. These are:

- age

- strength of connections in the United Kingdom
- personal history, including character, conduct, associations and employment record
- domestic circumstances
- previous criminal record and the nature of any offence of which the person has been convicted
- compassionate circumstances
- any representations received on the person's behalf

This guidance provides further advice on those points.

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3.2 Consideration of relevant points

The factors listed at (a) to (g) of paragraph 276B(ii) should be assessed to determine whether or not a grant of ILR would be against the public interest. Caseworkers should look at reasons for and against granting ILR using the factors listed (further guidance is given below) and, where necessary, undertake a 'balancing exercise' in order to weigh up whether or not a grant of ILR 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 in paragraph 276B(ii). However, even if an applicant has not completed the required period of residence and therefore falls for refusal, caseworkers should also consider any reasons why the applicant may fall for refusal under paragraph 276B(ii).

Some factors (convictions for minor criminal offences, etc) would suggest that it would be appropriate to refuse leave. Caseworkers will need to weigh those factors against the compassionate circumstances (if any) and all the other circumstances (strength of connections to the UK, domestic circumstances, etc) of the case and then decide whether a grant of ILR would be against the public interest.

It is important that all the circumstances of the case are taken into account before a final decision on whether a grant of ILR would be in the public interest is made.

General guidance is given below. The scenarios outlined are not exhaustive and caseworkers should take into consideration all the relevant factors in each case and discuss any issues with their Senior Caseworker.

Age

Caseworkers should take an applicant's age into consideration in cases where they are minded to refuse on other grounds under paragraph 276B(ii). Caseworkers should take into account whether an applicant's age would mitigate 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) has spent their formative years in the UK and adapted to life here.

Strength of connections in the UK

The family life a person has in the UK should be taken into account in assessing the strength of their connections to the UK. This would 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, where 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 tern commitment and a connection to the UK. However, on it's 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 should be considered. If someone is citing their business interests as proof of commitment to the UK, it is appropriate to expect supporting documentary evidence to be provided. The applicant would however be required to show further proof of strong connections to the UK.

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

Personal history, including character, conduct, associations and employment record

Character, conduct and associations goes beyond criminal convictions and enables the caseworker to consider whether the applicant's activities in the UK or abroad makes it undesirable for us to grant ILR.

This could include concern about the applicant on the basis of national security, war crimes, crimes against humanity, serious criminality (whether convicted or not) or other activities that make the applicants presence in the UK not conducive to the public good.

A history of anti-social behaviour or low level criminality, especially if it has led to the issue of an ASBO, or the applicant's having signed the sex offenders register might be grounds to refuse ILR.

The applicant's **employment record** will often be a significant consideration. Caseworkers need to 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 'sound' employment record is not in itself a reason to refuse leave, when coupled with long residence or other strong ties with the UK, having a 'sound' employment record 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.

An applicant's conduct includes his or her **immigration history**. This will not be relevant in most cases brought under the ten-year rule, because the requirement that residence be lawful implies that the applicant is not an immigration offender.

However, immigration history is relevant to the 14 year rule. Clearly, it would not be appropriate to refuse leave on the grounds of conduct simply because the applicant is an overstayer or illegal entrant, as that would defeat the purpose of the rule. However, the rule is not intended to reward people for their success in evading, or failing to co-operate with immigration control. Therefore, any deliberate or blatant

attempts to circumvent immigration control, e.g. by absconding, contracting a marriage of convenience or using false documents (this is not an exhaustive list), may well mean that it is not in the public interest to grant leave.

Domestic circumstances

If the applicant has dependant children who have adapted to life in the UK this could be a factor against refusal on paragraph 276B(ii), as could the presence of another settled person who is routinely dependent on the applicant (e.g. a disabled relative).

Previous criminal record and the nature of any offence of which the person has been convicted

Where the applicant has a history of criminal activity, caseworkers should always consult a Senior Caseworker.

If information comes to light indicating that an individual has been convicted of a criminal offence, the case may be of interest to the Criminal Casework Directorate (CCD). Caseworkers should refer to Chapter 9, Section 4A for further information.

Convictions that are "spent" under the Rehabilitation of Offenders Act 1974 should not be taken into account. For further information see Chapter 32, Section 2 of the IDIs.

A sentence of imprisonment or detention breaks the applicant's continuous residence in the UK (see paragraph 2.2.5 of this guidance). Therefore, anyone who has been imprisoned is likely to find it difficult to meet the requirement of having 10 or 14 years continuous residence in the first place.

Compassionate circumstances

It is not possible to define all potential "compassionate" circumstances, but it might, depending on the circumstances, include such things as significant or serious illness, frailty or particularly difficult family circumstances.

Compassionate circumstances are most likely to be relevant if:

- the applicant has been here for long enough to qualify for ILR (i.e. for 10 or 14 years); but
- there are other factors (e.g. criminal convictions, or a bad immigration history) that suggest that a grant of ILR might not be appropriate.

Any representations received on the person's behalf

All representations raised on behalf of the applicant should be carefully assessed, even if these have been dismissed in previous applications.

Caseworkers will need to weigh those factors against the compassionate circumstances (if any) and all the other circumstances of the case, and then decide whether a grant of ILR would be against the public interest.

Caseworkers should not refuse leave to someone who has been in the UK for the required period without consulting a Senior Caseworker.

Caseworkers should also consult guidance on refusing an application on general grounds if refusing under paragraph 276B(ii). Further information can be found in Chapter 9, Section 4 of the IDIs.

Refusal formulae can be found in Annex A.

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4 KNOWLEDGE OF LIFE IN THE UK

Applications under the long residence rules submitted on or after 2 April 2007 will have to meet the **knowledge of the English language, and life in the UK** requirement before qualifying for ILR.

The IDI on **knowledge of life in the UK** (Chapter 1, Section 18) provides further important information about this requirement. This includes advice on how an applicant can satisfy this criteria and what evidence is required by caseworkers.

If the applicant has submitted an ILR application on or before 30 March 2009 and meets all the criteria of long residence except knowledge of life, they should be considered for a grant of further leave to remain (LTR), as described in Section 6 below. ILR applications made on or after 31 March 2009 without knowledge of life should be refused on this basis. Applicants who meet all the long residence criteria other than KOL can still be granted LTR after the 31 March 2009 but will need to ensure that they apply specifically for LTR rather than ILR.

Stock wording for refusing an applicant on the basis of not meeting the knowledge of life criteria can be found in Annex A. Please note that pre 31 March 2009 ILR applicants should only be refused on this basis if they have made false representations, or failed to disclose a material fact, in making the application (e.g. presented a false certificate purporting to prove knowledge of life) or in conjunction with other grounds for refusal.

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5 PEOPLE SETTLED IN THE UK ON 1 JANUARY 1973

5.1 Background

The Immigration Act 1971 came into force on 1 January 1973. Under Section 1(2) of the Act, anyone settled in the UK on that date and not having the right of abode or being exempt under the Act from the provisions relating to leave to enter or remain is to be treated as having been given ILR when the Act came into force.

5.2 How can someone qualify?

Applicants who were resident in the UK on 1 January 1973 will not need to meet the long residence rules because they already have ILR.

Caseworkers should request evidence that the applicant has been in the UK since 1 January 1973. Evidence of this could be official correspondence. The burden of proof is on applicants to show that they were settled in the UK before the Act came into force on 1 January 1973. However, if there is no conclusive documentary evidence that the applicant has been in the UK since 1 January 1973, caseworkers should look at other circumstances that may indicate that they were settled here by this date e.g. if they have raised a family or married before that date. All evidence submitted should be carefully considered.

Whilst the onus is on the applicant to provide the necessary evidence to show they were settled in the UK before 1 January 1973, these cases involve people who have

been in the UK for many years. Often they will have been in the UK from an early age and will have established close ties. It is important that these cases are handled in a sensitive manner and applicants are given every opportunity to provide the necessary evidence.

If the applicant provides the necessary evidence of this they should be given an NTL endorsement and the difference between the fee for ILR and NTL should be refunded.

5.3 Factors that may prevent eligibility

Persons who were granted ILR due to having been in the UK on 1 January 1973 may have lost this status if they have spent a period of **two years or more outside the UK** (see Chapter 1, Section 3 of the IDIs on returning residents for more information).

Applicants who were exempt from control on 1 January 1973 are not considered to have ILR by virtue of the 1971 Immigration Act. These applicants would have to meet the long residence rules.

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6 GRANTING FURTHER LEAVE TO REMAIN

Prior to 2 April 2007 it was not possible to grant leave to remain on the basis of long residence. On 2 April 2007, paragraph 276A1 and paragraph 276A2 were added into immigration rules to allow long residence applicants to be granted an extension of leave to remain when all the requirements for ILR under long residence were met, except for the knowledge of life (KOL) requirement.

Applications for ILR submitted on or before 30 March 2009, that meet all the long residence rules except KOL should automatically be considered for an extension of stay in this category. However, from 31 March 2009 applicants without knowledge of life would have to apply specifically for LTR in order be granted an extension.

Where an applicant meets all the requirements of paragraph 276B, except the knowledge of life requirement, and has not made false representations, or failed to disclose any material fact when making their ILR application, then leave to remain should be granted as follows:

- **Where the applicant is applying under the 14 years rule:** 2 years' LTR with no restriction on employment should be granted. The applicant will be granted leave on code 1 conditions (no recourse to public funds). Applicants should be granted on code 1, even if they were previously granted leave on code 1A conditions.

- **Where the applicant is applying under the 10 years rule:** 2 years' LTR on the same condition code as attached to their previous grant of leave should be granted (even if the applicant would not qualify for further leave in that category, were they to apply separately for it or if that category no longer exists).

Caseworkers should note that the extension of leave to remain is granted under the 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 will therefore need to meet the LTR rules for Long Residence (paragraph 276A2), and not the LTR rules for their previous category.

Please note that caseworkers should only grant an extension of further leave on the basis of long residence if the applicant meets all the criteria for ILR, except for knowledge of life. Applicants should not be granted an extension in order to complete the qualifying period for long residence (10 or 14 years), if they have not spent enough time in the United Kingdom to be granted ILR. (see guidance on early applications).

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7 GRANTING INDEFINITE LEAVE TO REMAIN

Where all of the requirements of paragraph 276B are met, the applicant should be granted indefinite leave to remain. Please see the tables above for ease of reference.

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8 INDEFINITE LEAVE TO ENTER

It should be noted that there is no provision in the long residence rules to grant indefinite leave to enter. This means that a person who has not technically entered the UK (e.g. because they have been on Temporary Admission) cannot qualify under the Rules. However, where such a person meets all the other requirements of Rule 276B, discretion should normally be exercised to grant him or her indefinite leave to enter outside the immigration rules.

As such a grant will be made outside the immigration rules; it does not have to be made by an Immigration Officer, but can be made by someone acting on behalf of the Secretary of State.

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9 DEPENDANTS OF PERSONS APPLYING FOR SETTLEMENT ON THE BASIS OF LONG RESIDENCE

On 29 February 2008, immigration rules came into force specifying application forms and procedures for applications or claims in connection with immigration. The rules are in paragraphs 34A-34J of the immigration rules. The Immigration (Leave to Remain) (Prescribed Forms and Procedures) Regulations 2007, which previously specified application forms and related procedures for applications for leave to remain in the UK, ceased to have effect on 29 February 2008 (See IDI Chapter 1A, Section 1 of the IDIs)

Paragraph 34D of the immigration rules permits the inclusion of applications by dependants on a specified application form if they are the spouse, civil partner, unmarried or same-sex partner and/or children under the age of 18 of the main applicant, and provided that the form permits the inclusion of such applications.

As there is no provision for dependants in the long residence category, any dependants specified in paragraph 34D (spouse, civil partner, unmarried or same-sex partner and/or child under the age of 18) included on the application form should normally be refused on the basis that there is no provision in the immigration rules.

Refusals on this basis should be made under paragraph 322(1) of the immigration rules. See Annex A for stock wording.

Dependants who do not meet the criteria of Para 34D who are included on the main applicant's form (e.g. children aged 18 or over, brothers, sisters etc) should be rejected.

Should the main applicant be granted ILR, family members will need to apply under the relevant categories of the rules relating to spouses, civil partners and dependant children of persons present and settled in the UK.

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10 REFUSAL OF INDEFINITE LEAVE TO REMAIN

Where the requirements of paragraph 276B are not met and the decision has been made with reference to Annex A, the applicant should be refused indefinite leave to remain. Annex A provides examples of refusal formulae.

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10.1 Human Rights considerations

As applicants in this category will have spent a number of years in the UK, there may be Human Rights grounds that need consideration if the applicant does not satisfy the long residence criteria. These grounds could be raised specifically by the applicant or may be implicit (e.g. Article 8 consideration would be appropriate if it comes to light that the applicant is in a relationship with a settled person).

Further details on considering asylum and Human Rights grounds can be found in the IDIs (Chapter 1, Section 10) and also in the Asylum Policy Instructions (APIs).

If it is considered that Human Rights grounds do not merit a grant of leave, the reasons for this should be included in the refusal notice along with the reasons why the applicant does not meet the immigration rules for long residence.

Where a person is found to have a legitimate claim to remain in the UK under Article 8, the period of leave to be granted should be determined in accordance with the Asylum Policy Instruction on Discretionary Leave.

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11 STATISTICS

- *Granting indefinite leave to remain:*

  6AA Long residency - Sett 10/14 yrs LRC

- *Refusing indefinite leave to remain:*

  X7 Refusal - ILR premature or inappropriate application

  X8 Refusal - ILR other than husband and wife, no extension granted

- *Granting leave to remain:*

X3 Other – Extn other reasons

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ANNEX A - REFUSAL FORMULAE

You have applied for indefinite leave to remain on the basis of your long residence in the United Kingdom but your application has been refused.

- ***Applicant has not completed 10 years continuous lawful residence***

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.

Paragraph 276D with reference to paragraph 276B(i)(a) and [276A…]

- ***Applicant has not completed 14 years continuous residence***

In view of […], the Secretary of State is not satisfied that you have had at least 14 years continuous residence in the United Kingdom.

Paragraph 276D with reference to paragraph 276B(i)(b) and [276A…]

- ***It is against the public interest to grant the applicant ILR***

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.

Paragraph 276D with reference to paragraph 276B(ii)

- ***Applicant does not satisfy the Knowledge of Life requirement***

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.

Paragraph 276D with reference to paragraph 276B(iii)

- ***Dependants applying in line with the main applicant***

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 being sought for a purpose covered by the immigration rules.

Paragraph 322(1)