

CHAPTER 5: SECTION 1 - WORK PERMIT EMPLOYMENT

Please note that this IDI does not contain up-to-date information and will be updated shortly. Details of the rules relating to work permit employment can be found in the [Immigration Rules](#).

ANNEX F - SETTLEMENT - GUIDANCE - GENERAL

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1. INTRODUCTION

Under various paragraphs of HC 395 settlement may be granted to those who have spent 5 years here in certain categories, but only if it has been specifically applied for. This arrangement is also extended to those who have remained here exceptionally outside the rules in permit-free employment for 5 years.

The advice in this annex should be read in conjunction with the section of these instructions relevant to the category in which indefinite leave is being sought.

2. CATEGORIES TO WHICH THIS GUIDANCE APPLIES

2.1. Under part 5 of the rules

- Work permit holders (Paragraph 134)
- Representatives of overseas newspapers etc. (Paragraph 142)
- Sole Representatives (Paragraph 150)
- Private Servants in diplomatic households (Paragraph 158)
- Employees of overseas governments (except those exempt from control) or the United Nations or other international organisation of which the United Kingdom is a member (Paragraph 167)
- Ministers of religion, missionaries or member of religious orders (Paragraph 176)
- Airport based operational staff of overseas owned airlines (Paragraph 184)
- Commonwealth citizens with United Kingdom ancestry (Paragraph 192)

2.2. Under part 6 of the rules

- Businessmen (Paragraph 209)
- Businessmen under provision of EC Association Agreements (Paragraph 222)
- Investors (Paragraph 230)
- Writers, composers and artists (Paragraph 238)

2.3. Under part 7 of the rules

- Retired persons of independent means (Paragraph 269)

2.4. Exceptionally outside the rules

- Domestic servants accompanying employer
- Employees of a government sponsored press, trade, tourist or cultural organisation
- Civilian employees of and employees of firms under contract to NATO forces
- Other, smaller-scale concessionary arrangements permitting full time employment for four years.

3. CALCULATION OF THE FIVE YEAR PERIOD FOR SETTLEMENT

In assessing whether or not an applicant has fulfilled the requirement to have spent 5 years in continuous residence in the same capacity, short absences abroad, for example for holidays (consistent with annual paid leave) or business trips (consistent with maintaining employment or self-employment in the United Kingdom), may be disregarded, provided he has clearly continued to be based here.

3.1. Discretion in cases where continuous residence has been broken

In addition, time spent here in this capacity may **exceptionally** be aggregated, and continuity not insisted upon, in cases where:

- there have been no absences abroad (apart from those described in paragraph 3 above) and **authorised employment or business here has not been broken** by any interruptions of more than 3 months or amounting to more than 6 months in all; or
- there have been **longer absences abroad**, provided the absences were for compelling grounds either of a compassionate nature or for reasons related to the applicant's employment or business in the United Kingdom. None of the absences abroad should be of more than 3 months, and they must not amount to more than 6 months in all.

NB: Decisions in such cases must be taken at HEO level or above.

In cases involving breaks in residence and/or employment or self-employment other than or in excess of those detailed above, periods may be aggregated or shortfalls disregarded **only with the approval of an SEO or Grade 7.**

3.2. Retired persons of independent means

Cases involving retired persons of independent means are less straightforward since they have no business or employment to tie them to the United Kingdom. Absences abroad consistent with holidays retired or wealthy people may take are acceptable provided it is clear that the applicant is not maintaining a business or a main base in another country. In such cases settlement can be granted in the normal way after a period of 5 years.

4. ACTION WHEN ALL REQUIREMENTS EXCEPT CONTINUITY OF RESIDENCE HAVE BEEN MET

Where a person has spent less than half his time in the United Kingdom he should be refused indefinite leave to remain and not granted a further extension of stay.

Where an application for settlement is to be refused **only** because of lack of continuity of residence but is likely to succeed if re-submitted within a year a suitable extension should be granted on the same conditions as before with a letter indicating that the case for settlement will be reviewed upon application at the end of the further period.

5. REFUSAL ON OTHER GROUNDS

In other cases where an application for settlement is to be refused, the settlement group should refer the case back to the caseworking group, who should consider whether an application for further limited leave to remain

would succeed under the relevant paragraph of the Rules. If so the applicant should be granted an extension for the period of approved employment, not exceeding 3 years, on the same Code as before. Where the relevant requirements of the Rules are not met, the application should be refused.

6. APPLICANTS WHO QUALIFY BUT DO NOT REQUEST SETTLEMENT

In cases where settlement is not requested, further leave to remain should be granted up to a maximum of 3 years on **Code 1** provided the relevant requirements of the Rules for the *immediate* grant of settlement are met. Where the requirements for settlement are not met the application must be considered against the requirements of the Rules for further limited leave to remain.

6.1. Further applications after 3 years

A person who has qualified and continues to qualify under the Rules for settlement but has not previously applied for it may be granted settlement, on application, or up to 5 years' further leave to remain **on Code 1** provided there has been no single break in residence of more than 6 months. In the case of an absence from the United Kingdom of over 6 months but under 2 years the application should not be refused but referred to an SEO or Grade 7.