

Chapter 6 Settlement

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1. Introduction

On 30 June 2008 provisions for leave to enter and leave to remain were deleted for five categories previously included in Chapter 6 of the Immigration Directorate Instructions (IDIs).

The affected categories are;

Business Persons;
Innovators;
Investors;
Writers, composers and Artists;
Self Employed Lawyers.

Whilst it is no longer possible for individuals to apply for leave to enter or remain in any of these categories, it is still possible for those who have sufficient leave in these categories to apply for indefinite leave to remain. This IDI provides guidance on the settlement criteria for the above categories.

1.1 Forms

A person applying for indefinite leave to remain in any of the categories above should use the specified application form – SET(O). However, under the specification Rules applications submitted on the form previously specified for that purpose will continue to be valid for a period of 21 days after the date on which a new form is specified. As such any application for ILR as a Business Person, Innovator or Investor submitted between 30 June 2008 and 21 July 2008 on a BUS form should continue to be treated as valid.

Any application submitted after 21 July 2008 on a form other than a SET(O) will fall to be **rejected**.

2. Knowledge of Language and Life in the UK

In addition to the individual requirements for each of these categories applicants over the age of 18 and under the age of 65 are required to meet a knowledge of life in the United Kingdom test.

Full guidance on this requirement can be found in [Chapter 1 Section 18](#) of the IDIs.

Any application which falls for refusal solely on the grounds that the knowledge of life requirement has not been met should not be refused without referral to a SCW/CCW in the first instance.

3. Persons intending to establish themselves in business (Business Persons)

The requirements for someone applying for indefinite leave to remain under this category are detailed in Paragraph 209 of the immigration rules.

To qualify for indefinite leave in this capacity there are four requirements that the applicant must meet.

The applicant must:

i) have spent a continuous period of five years in the United Kingdom in this capacity and still be engaged in the business in question; and

(ii) have met the requirements of paragraph 206 throughout the five year period; and

(iii) have submitted audited accounts for the first four years of trading and management accounts for the 5th year; and

(iv) have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless they are under the age of 18 or aged 65 or over at the time they make their application.

3.1 Continuous Period of Five Years

Further information on how to calculate whether an applicant meets these criteria can be found at [Annex A](#).

In addition to this requirement the applicant must also be able to show that they are still engaged in the same business for which leave was granted.

3.2 Met the requirements of Paragraph 206 throughout the five year period

An applicant must provide evidence to show that they have continued to meet the requirements of the Business Person category throughout the whole of the five years.

In order to do this they must provide evidence that;

- a) they have maintained an investment of at least £200,000 throughout the whole of the five year period; and
- b) that they are actively involved on a full time basis in trading or providing services on their own account or in partnership or in the promotion and management of the company as a director; and
- c) created and maintained new paid full time employment for at least two members of staff, present and settled in the United Kingdom.

To satisfy requirements **a and b** they should provide audited accounts for the first four years of trading and management accounts for the fifth year. If they are unable to provide management accounts for the fifth year as required by the immigration rules, draft accounts should be provided along with an explanation as to why management accounts are not available.

In order to satisfy requirements **c** the applicant should provide the following information regarding the two employees: name, position, salary, hours of work, date they started/ended (where applicable) and evidence of their immigration status, i.e. a copy of their birth certificate or passport (uncertified copies are acceptable in this instance).

3.4. Granting settlement

If all the above requirements have been met, settlement may be granted.

3.5 CID DATA

1EA Settlement granted (to applicant)

Refusal of settlement

[Chapter 9, Section 1 "Adverse decisions - General Guidance"](#) provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Where each of the requirements of Paragraph 209 of the immigration rules is not met, the application for settlement should be refused.

ANNEX B (below) provides examples of refusal formulae.

X7 Settlement refusal - premature or inappropriate application (applicant still has concurrent leave)

X8 Settlement refusal - no extension of leave granted

4. Innovators

The requirements for someone applying for indefinite leave to remain under this category are detailed in Paragraph 210G of the immigration rules.

To qualify for indefinite leave in this capacity there are three requirements that the applicant must meet.

The applicant must:

(i) have spent a continuous period of at least five years leave in the United Kingdom in this capacity; and

(ii) have met the requirements of paragraph 210D throughout the five year period; and

(iii) have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless they are under the age of 18 or aged 65 or over at the time they make their application.

4.1 Continuous Period of five years

Further information on how to calculate whether an applicant meets this criteria can be found at [Annex A](#).

4.2 Met the requirements of Paragraph 210D throughout the five year period

An applicant must provide evidence to show that they have continued to meet the requirements of the Innovator category throughout the whole of the five years. In order to do this they must provide evidence that;

a) they have established a viable trading business, by reference to the audited accounts and trading records of that business; and

b) continue to meet the requirements of paragraph 210A (i) and (iv); and has set up a business that will create full-time paid employment for at least two persons already settled in the UK; and

c) has maintained a minimum five per cent shareholding of the equity capital in that business, once it has been set up, throughout the period of their stay.

In order to satisfy requirement a) the applicant needs to submit statutory accounts for the last four years and management accounts for the final year.

In order to satisfy requirement b) the applicant should submit details of the employees name, position, salary, hours of work, date they started/ended (where applicable) and evidence of their immigration status, i.e. a copy of their birth certificate or passport(uncertified copies are acceptable in this instance).

In order to satisfy requirement c) the applicant should submit evidence that they have maintained a minimum five percent shareholding of the equity capital for a continuous period of five years.

4.3 Granting settlement

If all the above requirements have been met, settlement may be granted.

4.4 CID DATA

1PA Settlement granted (to applicant)

Refusal of settlement

[Chapter 9, Section 1 "Adverse decisions - General Guidance"](#) provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Where each of the requirements of Paragraph 210G of the immigration rules are not met, the application for settlement should be refused.

[ANNEX B](#) (below) provides examples of refusal formulae.

X7 Settlement refusal - premature or inappropriate application (applicant still has concurrent leave)

X8 Settlement refusal - no extension of leave granted.

5. Investors

The requirements for someone applying for indefinite leave to remain under this category are detailed in Paragraph 230 of the Immigration Rules.

To qualify for indefinite leave in this capacity there are three requirements that the applicant must meet.

The applicant must:

a) have spent a continuous period of five years in the United Kingdom in this capacity; and

b) have met the requirements of paragraph 227 throughout the five year period including the requirement as to the investment of £750,000 and continues to do so; and

c) have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless they are under the age of 18 or aged 65 or over at the time they make their application.

5.1 Continuous Period of five Years

Further information on how to calculate whether an applicant meets this criteria can be found at [Annex A](#).

5.2 Met the requirements of Paragraph 227 throughout the five year period.

When considering if this requirement has been met, caseworkers must be satisfied that the applicant has:

- made the United Kingdom their main home throughout the five years; and has, either:
 - money of their own under their control in the United Kingdom of not less than £1 million; or
 - a personal net worth of more than £2 million and has £1 million under their control in the United Kingdom, which may include money loaned by a financial institution regulated by the Financial Services Authority;
- and kept a capital sum of £1 million in the United Kingdom throughout that period and maintained his £750,000 investment of that capital in accordance with the immigration rules; and
- maintained and accommodated themselves and any dependants without recourse to public funds or working as an employee.

5.3. Granting settlement

If all the requirements of the Rules for settlement have been met, indefinite leave may be granted.

5.4. CID DATA

1EA Settlement granted (to applicant)

Refusal of settlement

[Chapter 9, Section 1 "Adverse decisions – General Guidance"](#) provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

[ANNEX B](#) (below) provides examples of refusal formulae.

X7 Settlement refusal – premature or inappropriate application

X8 Settlement refusal – no extension of leave granted

6. Writers, Composers and Artists

The requirements for someone applying for indefinite leave to remain under this category are detailed in Paragraph 238 of the Immigration Rules.

To qualify for indefinite leave in this capacity there are three requirements that the applicant must meet.

The applicant must:

- a) have spent a continuous period of five years in the United Kingdom in this capacity; and
- b) have met the requirement of paragraph 235 throughout the five year period; and
- c) have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless they are under the age of 18 or aged 65 or over at the time they make their application.

6.1 Continuous Period of five Years

Further information on how to calculate whether an applicant meets these criteria can be found at [Annex A](#).

6.2 Met the requirements of the Paragraph 235 throughout the five year period.

To demonstrate they have met the requirements of the Writers, Composers and Artists category throughout the five year period applicants should provide evidence to show that they have supported themselves and any dependants without either recourse to public funds or employment other than as a Writers, Composers and Artists.

6.2.1 ACTIVITIES PERMITTED TO WRITERS, COMPOSERS AND ARTISTS

Persons admitted as writers, composers or artists may only do work related to their self-employment. Their work may be commissioned or they may seek to sell their finished products. They may also work under contract provided they receive only a

fee. It is permissible for a poet to be involved in reading or reciting his poems or for a composer to conduct his work but performance should not be their primary source of income.

An artist who wishes to come here to exhibit and sell their work may do so if they qualify under paragraph 232 even if they have no wish to establish themselves here permanently as an artist.

6.2.2 Source of income

Writers, composers and artists must support themselves mainly from the proceeds of their work. They may supplement this with income from their own investments but they are not permitted to take employment for which a work permit would be required unless this is related to their self-employment - see above.

Money/funds provided by relatives to financially support the applicant are not to be taken into account.

6.3. Granting settlement

If all the above requirements have been met, settlement may be granted.

6.4 CID Codes

1J Settlement after five continuous years here in the category.

[Chapter 9, Section 1 "Adverse decisions - General Guidance"](#) provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

[ANNEX B](#) (below) provides examples of refusal formulae.

X7 Settlement refusal - premature or inappropriate application (applicant still has concurrent leave)

X8 Settlement refusal - no extension of leave granted

7. Self Employed Lawyers

Before 30 June 2008 applications from solicitors, barristers and law consultants seeking to set up in practice here were considered under a concession, outside the Rules. This concession sat under the provisions for 'persons intending to establish themselves in business', effectively removing the requirements to invest £200,000 in the business or to create two new jobs for persons settled in the United Kingdom from these individuals.

This concession did not cover those coming as **employees** of law firms. These individuals were required to obtain work permits in the normal way.

7.1 Requirements of the concession

To qualify for ILR under the concession an individual must meet all of the following criteria;

- a) they have spent a continuous period of five years in the United Kingdom in this capacity; and
- b) throughout the five years in the United Kingdom they have been able to maintain and accommodate themselves and any dependants adequately without recourse to public funds.
- c) for Solicitors:

evidence from the Law Society for England and Wales, the Law Society of Scotland or the Incorporated Law Society of Northern Ireland (as appropriate) of his admission to the Roll of Solicitors.

for Barristers:

evidence of their admission to the Bar; of England and Wales; of Northern Ireland; of Scotland; or, alternatively, evidence of a place in Chambers;

for Consultants in Overseas Law

letter from the appropriate Law Society saying whether or not there is any objection to the application being granted. If a Law Society objects to the granting of an application, refer to the Employment Operational Policy Team.

- d) they have sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, unless they are under the age of 18 or aged 65 or over at the time they make their application.

Where an applicant fails any part of these requirements the application will fall to be refused under Paragraph 322(1) of HC 395 (as amended)

7.2. Granting settlement

If all the above requirements have been met, settlement may be granted.

7.3 CID DATA

1EA Settlement granted (to applicant)

Refusal of settlement

[Chapter 9, Section 1 "Adverse decisions - General Guidance"](#) provides important advice about the decision making process and should be consulted whenever an application falls to be refused.

Where each of the requirements of the concession is not met, the application for settlement should be refused.

X7 Settlement refusal - premature or inappropriate application (applicant still has concurrent leave)

X8 Settlement refusal - no extension of leave granted

Annex A- CALCULATION OF THE FIVE YEAR PERIOD FOR SETTLEMENT

In assessing whether or not an applicant has fulfilled the requirement to have spent five 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.

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 the paragraph 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 total for the whole five year period..

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.*

ANNEX B REFUSAL FORMULAE

PLEASE NOTE: The following wordings are examples - they do not constitute an exhaustive list of all possible formulae.

REFUSAL OF INDEFINITE LEAVE TO REMAIN as a person intending to establish themselves in Business.

"You have applied for indefinite leave to remain in the United Kingdom [as a businessman/for business] ..."

Not 5 years in category

"... but [? in view of ...] the Secretary of State is not satisfied that you have spent a continuous period of 5 years in the United Kingdom in this capacity."

Paragraph 210 with reference to 209(i)

Still engaged in employment

"... but [although you spent a continuous period of 5 years in business in the United Kingdom] [? in view of ...] the Secretary of State is not satisfied that you are still so engaged."

Paragraph 210 with reference to 209(i)

Failure to produce audited accounts

"... but [? in view of ...] the Secretary of State is not satisfied that you can show audited accounts which show the precise financial position of the business 200,000 of your own, and which confirm that you have invested not less than money directly into the business in the United Kingdom throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(ii)

Insufficient money/not own money

"... but [? in view of ...] the Secretary of State is not satisfied that you can show 200,000 of your own money directly into the business, you invested not less than in the United Kingdom throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(ii)

Full-time involvement

"... but [? in view of ...] the Secretary of State is not satisfied that you can show you were actively involved on a full-time basis in trading or providing services on your own account or in partnership or in the promotion and management of the company as a director throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(iii)

Proportional investment/interest

"... but [? in view of ...] the Secretary of State is not satisfied that you can show your level of financial investment has been proportional to your interest in the business throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(iv)

Disguised employment

"... but [? in view of ...] the Secretary of State is not satisfied that you can show you have either had a controlling or equal interest in the business or that the [partnership/directorship] did not amount to disguised employment throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(v)

Liabilities

"... but [? in view of ...] the Secretary of State is not satisfied that you can show you were able to bear your share of any liability the business may have incurred throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(vi)

Genuine need for investment/services

"... but [? in view of ...] the Secretary of State is not satisfied that you can show there was a genuine need for your investment and services in the United Kingdom throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(vii)

New business - failure to produce evidence of new employment

"... but you were admitted to establish a new business and [? in view of ...] the Secretary of State is not satisfied that you can show that new full-time paid employment was created in the business for at least 2 persons settled in the United Kingdom throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(viii)(a)

Existing business - failure to produce evidence of new employment

"... but you have [taken over/joined] an existing business and [? in view of ...] the Secretary of State is not satisfied that you can show that your services and investment resulted in a net increase in the employment provided by the business to persons settled in the United Kingdom to the extent of creating at least 2 new full-time jobs throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(viii)(b)

Maintenance and accommodation

"... but [? in view of ...] the Secretary of State is not satisfied that your share of the profits of the business was sufficient to maintain and accommodate yourself [and your dependants] without recourse to employment (other than your work for the business) or to public funds throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(ix)

Other employment

"... but [? in view of ...] the Secretary of State is not satisfied that you did not have to supplement your business activities by taking or seeking employment in the United Kingdom other than your work for the business throughout the 5 year period you have spent in this capacity."

Paragraph 210 with reference to 209(ii) and 206(x)

Failure to submit accounts

"... but [? in view of ...] the Secretary of State is not satisfied that you have submitted audited accounts for the first 4 years of trading and management accounts for the 5th year."

Paragraph 210 with reference to 209(iii)

Innovators

You have applied for indefinite leave to remain in the United Kingdom as an Innovator.....

Not 5 Years in category

"...but [?in view of...] the Secretary of State is not satisfied that you have spent a continuous period of 5 years in this capacity."

Paragraph 210H with reference to 210G(i)

Failure to produce audited accounts

"...but [? In view of...] the Secretary of State is not satisfied that you can show audited accounts which show the business you established to have a viable trading presence."

Paragraph 210H with reference to 210G(i.) and 210D(i)

Not maintained a sufficient level of investment

"...but [?in view of...] the Secretary of State is not satisfied that you have maintained a minimum five per cent shareholding of the equity capital in the business throughout this period.

Paragraph 210H with reference to 210G(i) and 210D(iii)

Investors

You have applied for indefinite leave to remain in the United Kingdom as an investor..."

Not 5 years in category

"...but [? in view of ...] the Secretary of State is not satisfied that you have spent a continuous period of 5 years in the United Kingdom in this capacity."

Paragraph 231 with reference to 230(i)

No switching

"...but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as an investor."

Paragraph 231 with reference to 230(ii) and 227(i)

Insufficient money/not own money

"...but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you have had at least £1,000,000 of your own money under your control and disposable in the United Kingdom throughout this period, or have had a personal net worth of at least £2million and have money loaned to you by a financial institution regulated by the Financial Services Authority ."

Paragraph 231 with reference to 230(ii) and 227(ii)(a) or 227(ii)(b)

Insufficient investment throughout 5 years

"...but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you have throughout this period had not less that £750,000 of your own capital invested in the United Kingdom by way of United Kingdom Government bonds or share capital or loan capital in active and trading United Kingdom registered companies, other than those principally engaged in property investment and excluding deposits with a bank, building society or other enterprise whose normal course of business includes the acceptance of deposits,."

Paragraph 231 with reference to 230(ii), 227(iii) and 224(ii)

Insufficient investment in the future

"... but although you have spent a continued period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you will continue to have not less than £750,000 of your own capital invested in the United Kingdom by way of United Kingdom Government bonds or share capital or loan capital in active and trading United Kingdom registered companies, other than those principally engaged in property investment and excluding deposits with a bank,

building society or other enterprise whose normal course of business includes the acceptance of deposits."

Paragraph 231 with reference to 230(ii), 227(iii) and 224(ii)

Intention to live elsewhere

"... but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you have made the United Kingdom your main home."

Paragraph 231 with reference to 230(ii) and 227(iv)

Maintenance and accommodation

"... but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you were able to maintain and accommodate yourself [and your dependants] throughout this period without taking employment (other than your self-employment or business) or having recourse to public funds."

Paragraph 231 with reference to 230(ii) and 227(v)

Writers, artists & composers

"You have applied for indefinite leave to remain in the United Kingdom as [a/an] [writer/composer/artist] ..."

Not 5 years in category

"... but [? in view of ...] the Secretary of State is not satisfied that you have spent a continuous period of 5 years in the United Kingdom in this capacity."

Paragraph 239 with reference to 238(i)

{INDECS Code: X7}

No switching

"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as [a/an] [writer/composer/artist]."

Paragraph 239 with reference to 238(ii) and 235(i)

{INDECS Code: X8}

Other work

"... but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you have not worked except as related to your self-employment as [a/an] [writer/composer/artist] throughout this period."

Paragraph 239 with reference to 238(ii), 235(ii) and 232(ii)

{INDECS Code: X8}

Has had adequate own resources during preceding year

"... but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you have been able to maintain and accommodate yourself [and your dependants] from your own resources without working, except as [a/an] [writer/composer/ artist], for the preceding year throughout the 5 year period."

Paragraph 239 with reference to 238(ii), 235(ii) and 232(iii)

{INDECS Code: X8}

Maintenance and accommodation

"... but although you have spent a continuous period of 5 years in the United Kingdom in this capacity [? in view of ...] the Secretary of State is not satisfied that you have been able to maintain and accommodate yourself [and your dependants] from your own resources without working, except as [a/an] [writer/composer/ artist], and without recourse to public funds throughout this period."

Paragraph 239 with reference to 238(ii), 235(ii) and 232(iv)

{INDECS Code: X8}