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### ***Illegal Migration Act 2023***

A new law called *The Illegal Migration Act 2023* has recently come into force. The Act has brought about significant changes to the UK asylum and immigration system for people who arrive in the UK on or after 20 July 2023. We are in the process of updating the Toolkit to reflect these developments. For now, please be aware that some of the information in the Toolkit may be out-of-date for people who arrived in the UK after that date. To stay up to date with any changes to the Toolkit, please sign up to our newsletter.

## **10 year route to indefinite leave to remain**

This page explains the 10 year route to indefinite leave to remain, and the key steps of the process. It also explains how to apply for a fee waiver.

On this page, you will find the following information about the 10 year route:

- What is the 10 year route to indefinite leave to remain?
- Fees for a leave to remain application
- Fee waiver applications
- How to apply for a fee waiver
- Financial evidence required for a fee waiver
- What happens after you have submitted your application for a fee waiver?
- Actions you can take if your fee waiver is refused
- Limited leave to remain: visa renewal applications
- Outcomes
- Section 3c leave
- No Recourse to Public Funds
- Indefinite leave applications
- Continuous lawful residence
- How to apply for indefinite leave to remain
- What happens after you have made an application for indefinite leave to remain?
- Exceptional circumstances which can shorten the route

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## What is the 10 year route to indefinite leave to remain?

If you do not meet the full requirements of permission to remain as set out in the [Immigration Rules](#), but you have immediate family in, or long-term ties to the UK (which mean that you or family members human rights might be violated) you might be able to apply for indefinite leave to remain under the 10 year route.

The 10 year route came into effect in 2012. This means that if you started the 10 year route in 2012, you will be eligible to apply for indefinite leave to remain from 2022.

There are generally two types of people who qualify for the 10 year route:

1. People who have **partners** who are British Citizens or those who have **children** who are British who have lived in the UK for 7 years
2. People who have lived in the UK for a substantial period of time already (private life)

If you are on the 10 year route, you must apply for limited leave to remain every 2.5 years (30 months) until you complete 10 years of leave. At this point you are eligible for indefinite leave to remain.

This means that on the 10 year route you will have to make regular and repeat applications (four in total) to the Home Office before you can apply for settlement.

## Fees for an application for leave to remain

See the most up-to-date fees for applications for leave to remain on the 10 year route [here](#). You must also pay the [immigration health surcharge](#) (IHS).

You have to pay the immigration health surcharge online. You will have to register to use the IHS service and answer questions relating to your application. After paying, you will be sent an email with your IHS reference number. Keep this number safe.

Because the application for leave to remain is expensive, some people

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may choose to seek legal immigration advice to help them make the application. However, it is difficult to get legal aid for these applications. Your lawyer will need to apply for **exceptional case funding** before they can represent you free of charge. To qualify for exceptional case funding, you need to be able to show that your human rights would be breached if you did not have access to legal aid to help you with your application. See these [resources](#) from the Public Law Project for more information on exceptional case funding.

## Fee waivers

You can apply to have the application fee and the immigration health surcharge fee waived. This means that if your application is successful, you won't have to pay the fee.

You are eligible for a fee waiver if:

- You cannot afford the fee
- You are [destitute](#)
- You are at risk of being destitute
- Your income is not enough to meet a child's additional needs

It is also possible to ask for a waiver of the immigration health surcharge only, not the main application fee, if you have afford some of the costs but not all of them.

If you are applying for renewal of your and your family member's leave to remain, you can apply for a fee waiver for **all or some** of the applications.

## Applying for a fee waiver

**If you do not have leave to remain:** You must apply for a fee waiver before you apply for leave to remain. Once you have received a decision on your application for a fee waiver (if it is granted or refused) you **must** then apply for leave to remain within 10 working days. If you do not do this, any existing leave you have will come to an end.

**If you already have leave to remain:** You must apply for a fee waiver no more than 28 days before your current leave to remain expires. Once you have made an application for a fee waiver, your rights will continue as if you made an application for leave to remain. This is sometimes referred to

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as '[section 3c leave](#)'.

You need to apply for a fee waiver **before** you make your application to extend your permission to stay.

The fee waiver form is an online form. You can find it [here](#). You will need an email account to save your answers. Follow the link in your email and create a password which you can remember easily. This means you can return to your application at a later date.

The online form will ask you to choose the route you are applying under – for example as the parent of a child who has lived in the UK for 7 years. You must explain how you cannot afford the fees, explaining any impact on your children. Make sure to spell your name exactly the same on your fee waiver application and the leave to remain application you will make later.

Have a look at this [sample application form](#) from JWCI to see the questions the fee waiver application form asks.

## **Financial evidence**

To apply for a fee waiver, you need to provide evidence of your financial circumstances and the financial circumstances of your household. This means you may have to provide financial evidence about any other adults who you live with, and who you receive financial support from.

The responsibility is on you to provide this information. Fee waiver applications can be quite complicated because of the amount of evidence you have to provide. It is a good idea to get someone to look over your application to point out any evidence which is missing. There is **no right of appeal** against a negative fee waiver decision, so it is a good idea to make a strong application in the first place.

Once you have submitted the fee waiver form online, you will then have to upload supporting evidence to an online portal using your '1212 number' which you are given. You can send PDFs or photos of documents.

Which documents you will need to provide for a fee waiver application depends on your circumstances. General documents you should provide include:

- Copy of your passport
- Copy of your BRP

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- Medical records
- Birth certificates of children
- Evidence of childcare responsibilities

The type of documents you might need to provide include:

- Pay slips (such as P45 or P60) which show your income
- Bank statements
- Tenancy agreements or other documents who pays for your accommodation
- Utility bills
- Letter from employer confirming your employment or that of your family members
- Letter from Universal Credit if you or your family members are receiving benefits

All these documents should cover the most recent **6 months**.

If you have been supported by a church, charity or a local authority, it is a good idea to provide a **letter** from the organisation confirming the amount and kind of support they have given you. You can also provide letters from friends and family who have supported you, explaining the type of support they have given you.

You might not be able to provide letters of support, for example if you have visited food banks but do not have a record. However, you can provide a **statement** which outlines how you have supported yourself. This should say how you meet your essential living needs. Essential living needs are defined by the Home Office as utilities (household bills), food, essential clothing, toiletries, non-prescription medication, household cleaning items, and essential travel to places of education or worship.

You can also explain any 'unusual' expenses, which fall outside of the Home Office's definition of essential living needs in this statement. This can be a difficult process as the definition of 'unusual' is different for different people. It is a good idea to put as much information as possible into explaining purchases which fall outside of the list above. Try and write out an explanation for all the transactions or purchases over £20 on your bank statements.

You also need to provide information about any '**surplus income**' you might have. This means any money you might have left over after meeting your accommodation costs and essential living needs. This

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includes any money you might receive from family and friends. It also might include money you have in the form of assets – such as a car or a computer. It is helpful to highlight how any surplus (left over) income you might have is **less** than the cost of the application fees.

Finally, you will need to provide information about any **savings** you might have. Having savings does not necessarily mean that you will not be granted a fee waiver. It means you have to explain what these savings are for – such as for an emergency, or in case you lose your job.

The Home Office may also refuse your application for a fee waiver if it thinks you have **'intentionally disposed of funds'**, for instance by giving money away, or buying a possession that isn't essential to your essential living needs.

If you do not have official evidence such as bank statements, explain why in your personal statement. Remember to include bank statements for **all** the debit and credit cards in your name – even if you do not use them. If you have transactions in your bank statements which need explanation, you can write explanations on the document before you scan or photograph it.

Be careful about submitting false information for your fee waiver application. This will not just affect your application for a fee waiver, but also your application for permission to stay on the 10 year route. The Home Office can do checks about your finances to verify the information you have given them. They may also carry out interviews and home visits if they have a reason to believe you might not be telling the truth.

The Home Office will take into account any money you have earned from work you have done without permission. It is better to tell the Home Office about having worked illegally here than to have it resurface at a later date.

You do **not** need to show that you can't borrow money from other people to fund your application. This has been found to be unlawful. However, you might need to show information about the financial circumstances of everyone in your household. If you live with an adult who doesn't provide you with any financial support, make sure you say so in your application. If you often receive money from someone, and this is visible on your bank statements, explain why they cannot help you with the fees.

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If you have a disability, a family member who is disabled, or you have caring responsibilities, it is likely your household costs will be higher. You may also need to save money for healthcare or specific care. Explain in detail how your additional needs affect you and your family in your statement.

For more information from JWCI on the process of applying for a fee waiver, see [here](#).

## **What happens after you have submitted your application for a fee waiver?**

It is likely that you will have to wait for a response from the Home Office to your application for a fee waiver for **over 4 weeks**.

You will receive an email or letter to tell you the outcome of your fee waiver request.

If your fee waiver is granted, you will be sent a '**Unique Reference Number**'. Keep this number safe as you will need it when applying for permission to extend your leave online.

You will have **10 working days** (this means excluding weekends and public holidays) from the date you were sent the email or letter granting your fee waiver to submit your application for permission to extend your leave. It is a good idea to start your application for leave to remain **as soon as you have submitted your fee waiver**.

If you do not submit your application within 10 days, your fee waiver will have expired, and you will have to make a new application for a fee waiver.

If your fee waiver is granted, you will be allowed to make your renewal application for free or at a reduced cost. If your fee waiver is granted, your next period of leave will also come with the right to access public funds. Read more about what this means in the section about [No Recourse to Public Funds](#).

**What to do if your fee waiver application is refused**

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If your fee waiver application is refused, you can:

- Respond to a Home Office request for more evidence or information
- Apply again with better evidence (this might not be possible if you are renewing your leave to remain as your leave will expire if you don't apply within 10 days of fee waiver decision)
- Challenge the decision through judicial review (you will need legal advice for this, and this is not practical if you are renewing your leave to remain because your leave will expire if you don't apply for further leave within 10 days of the fee waiver decision).
- You may also want to think about if you could start an online fundraiser to raise the money for your application fee/health surcharge. This way, your friends and the people in the community could help you cover the costs of the fees.

## Limited leave to remain: visa renewal applications

The application to extend leave to remain (permission to be in the UK) on the 10 year route must be repeated by the applicant every 2.5 years.

Each application costs £1,033 for both adults and children. You must also pay the immigration health surcharge, at £624 a year for adults and £470 a year for children. In total this is £1,560 (2.5 times £624) for an adult, and £1175 for a child (2.5 times £470) per application.

To apply to extend your permission to stay in the UK, you can use [this form](#).

As part of the application, you may be required to enrol your biometrics. After you have completed the application form, you will receive a letter from the Home Office, asking you to visit an immigration centre to have your photograph and fingerprints taken.

For this application, you will need to provide the following documents:

- Your passport



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●Evidence of relationships, birth certificates, marriage certificates, evidence of other relationships

Once you have made an in-time application for limited leave to remain, all your rights and entitlements will continue to apply as if you had made a new leave to remain application. This is because of something called 'section 3c leave' (Immigration Act 1971). See [below](#) for more information about section 3c leave.

It is important to make your application in time, otherwise you are at risk of being an overstayer and losing your legal residence status and the rights and entitlements that accompanied your leave to remain. You will also risk losing your place on the 10 year route. If you 'fall off' the route in this way, you will have to start from the start, and your 10 year clock will start again.

## **Outcomes**

If the application is successful, you will be granted 2.5 years leave to remain. This means that you will have to reapply before this period of leave expires.

You can work or be self-employed.

If you were not granted a fee waiver, the Home Office will automatically apply a 'No Recourse to Public Funds' condition on your visa. You can apply to have this condition lifted. See the section [below](#) on No Recourse to Public Funds for more information on what this means.

Any decision to refuse your application for leave to remain will come with a right of appeal to the First-tier Tribunal. There is a 14 day time limit for lodging an appeal.

## **Section 3c Leave**

If you already have leave to remain and have submitted a fee waiver application, or if you have submitted an application for renewal of your leave to remain, your rights and entitlements from your previous grant of leave will continue. This is because of section 3c of the Immigration Act 1971.

You will not become an overstayer. You are still able to work in line with your previous entitlement.

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In theory, being on section 3c leave should not affect your ability to continue working, or apply for a job. But, in practice many people are denied access to work when they are on section 3c leave. There is no physical or digital proof of section 3c leave, and some employers or landlords use this as a reason not to give people jobs or to rent a property.

If an employer **wrongly** tells you that you cannot work while you are on section 3c leave, tell them that they can use the Home Office's Employer Checking Service (ECS). This is a system to check a person's immigration status and right to work. Some employers will not know about it, or will refuse to use it. You can also write a letter to your employer explaining your Section 3c Leave. You can use this letter template here: <https://www.childrenslegalcentre.com/resources/3c-leave-template-letter/>

## **No Recourse to Public Funds (NRPF)**

If you are granted limited leave to remain on the 10 year route, you will usually have a 'No Recourse to Public Funds' condition on your visa. No Recourse to Public Funds (often shortened to NRPF) is an immigration condition which stops people from accessing benefits (also called 'public funds'), such as homelessness assistance, and universal credit. The NRPF condition causes hardship to the people it affects. If you have children and are struggling with not being able to support your family because of an NRPF condition, have a look at Project 17's resources, [here](#).

If you are on the 10 year route and you are struggling with an NRPF condition, you may **be eligible to have your NRPF condition lifted**. You can do this via the 'Change of Conditions' [process](#). You must pass the 'Destitution Test'. This process requires 6 months of detailed financial and other evidence of how you have been living. You can learn more about how to do this [here](#).

For information about how to apply to do this, see information from the Unity Project [here](#).

## **Indefinite leave to remain applications**

After you have been in the UK legally for ten continuous years, you will be able to apply for indefinite leave to remain, which is sometimes called settlement.

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Indefinite leave to remain means that you will be legally resident in the UK without any immigration restrictions. If you are granted indefinite leave to remain, you do not need to apply to extend your leave in the UK again to stay here. If you meet additional criteria, and you can pay the fee, you can eventually also apply for British citizenship.

Indefinite leave to remain does not expire but can be revoked (taken away) if you live outside of the UK for more than 2 years after you have been granted indefinite leave to remain.

## **Continuous lawful residence**

To qualify for indefinite leave to remain on the 10 year route, you must meet the requirements of continuous (no gaps or breaks in between) residence in the UK. The 10 year period starts from the day you first entered the UK. You must not have been outside the UK for more than 18 months (540 days) in total in the 10 year period. It cannot include time spent as a visitor, short-term student or on a season worker visa. Also you must not have been outside the UK for more than 6 months at a time. Time spent in prison also counts as a break in continuous residence. There are some possible exceptions to these rules. For example, if the absences were for particularly important reasons, such as being unable to travel back to the UK, or for other compelling and compassionate reasons.

You must have maintained valid leave to remain status for the entire 10 year period. Being in the UK 'legally' means not breaching any immigration laws. Breaching an immigration law includes entering the UK illegally, overstaying, or breaching a condition of your leave to remain.

The Home Office will also consider whether there are any reasons not to grant you indefinite leave to remain. They may look at several factors, including your age, your personal history, any criminal convictions, and the strength of your connections to the UK.

## **How to apply for indefinite leave to remain**

An application for indefinite leave to remain can be complicated. Because of the high cost of the application, it is important to ensure you understand the requirements of the process so that you get it right the first time. The current fee for an application for indefinite leave to remain

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based on 10 year residence is £2,608 per adult and £2,223 per child. You can use the priority service for a higher fee (an extra £800) and you should get a decision within a day.

There is no fee waiver available for the application. If your application is refused, you will not be refunded the fee.

For this reason, some people may choose to seek legal immigration advice to help them make the application. However, it is difficult to get legal aid for these applications. Your lawyer will need to apply for exceptional case funding before they can represent you free of charge. To qualify for exceptional case funding, you need to be able to show that your human rights would be breached if you did not have access to legal aid to help you with your application.

Read more about exceptional case funding here:

<https://publiclawproject.org.uk/exceptional-case-funding/>

If you cannot receive legal advice to help you with an application for indefinite leave to remain, you can also use Right to Remain's resources as a guide to help you.

You can apply up to 28 days before completing the 10 year qualifying period, but not before. The application should be made before the expiry of your current leave to remain. For example, if you arrived in the UK on a visa on the 28th January 2013, your 10 year qualifying period would finish on the 28th January 2023. This means that you could apply on the 1st January 2023 but not before.

You can apply online, using an immigration form called the SET(LR). This form will ask you to provide your personal details, immigration history, any criminal convictions, information about your knowledge of language and life in the UK.

You will need to provide supporting documents. The documents you will need for your application depend on your specific circumstances.

Generally, you will need to provide your current passport, any previous passports, and 2 recent identical passport photos. Your application could be rejected if you do not provide any form of ID. You will need to provide your Biometric Residence Permit (if you have one). If you don't have a Biometric Residence Permit (BRP), you are required to apply for one as

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part of the application. You can make an account to book an appointment for a BRP here. You can either upload your documents directly, or pay extra for them to upload them at the appointment. Do not forget your appointment bar code, consent forms and your ID.

You might also have to provide documents which prove that you have been living in the UK for ten years. This could include:

- Bank statements
- Tenancy agreements
- Proof of employment
- Doctor's letters
- Gas, electricity and water bills
- National Insurance contributions, or P60 forms
- Evidence of private and family life in the UK: birth certificates of children

For more information on what evidence to use to prove time spent living in the UK, see our toolkit page on evidence. Remember you are being asked to show that you have lived in the UK for 10 years. Try and create a timeline of your life in the UK. Use pictures to jog your memory or what happened when, and speak to your friends and family. Find news headlines that you remember to see if they help trigger your memory.

If you are aged between 18 and 64, you will need to show sufficient knowledge of English. This can be proved through either: your nationality; completion of an English language degree; or passing an English test at level B1.

You will also have to pass the 'Life in the UK' test. This is a test on customs, traditions, laws, and politics in the UK. The test costs £50 and takes place in a test centre. It is important to prepare for the test as some questions are very difficult. There are free resources online where you can study for the Life in the UK test.

If you make a mistake in your application for indefinite leave to remain, the Home Office will not contact you to correct it. This is why it is a good idea to take as much time as possible to look over your application carefully before you submit. Ask someone you trust to help you.

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## **What happens after you have made an application for indefinite leave to remain?**

It can take over 6 months before the Home Office makes a decision on your application for indefinite leave to remain under the 10 year route. During this time, you cannot leave the UK to travel overseas. Home Office guidance last updated in November 2022 shows that the average time people wait for a decision is currently 10 months.

If you need to travel overseas while your application is being considered by the Home Office and it is an emergency (for example if a family member has died) you can ask the Home Office to make a decision quicker. To do this, you can contact UKVI.

It can be very frustrating waiting for the Home Office to make a decision on an application for leave to remain. You are not alone, and there are likely to be many people in your position.

For more information on what to do if you need to change an application to get a decision quicker, for instance if you need to travel abroad, see this blog by Free Movement: [https://freemovement.org.uk/upgrading-and-varying-applications-where-decisions-are-delayed/?mc\\_cid=c95129661b&mc\\_eid=2b889546c5](https://freemovement.org.uk/upgrading-and-varying-applications-where-decisions-are-delayed/?mc_cid=c95129661b&mc_eid=2b889546c5)

Receiving indefinite leave to remain through the 10 year route means you will be allowed to stay permanently, and you will be 'settled' in the UK. You will be able to live, work and study in the UK, and apply for benefits. You can also use indefinite leave to remain to apply for British Citizenship.

Indefinite leave to remain does not expire but can be revoked if you live outside of the UK for more than 2 years after you have been granted indefinite leave to remain.

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## **Exceptional circumstances which can shorten the route**

The usual Home Office position is that applicants must have a period of 'probationary' (this means under review) limited leave before being eligible to apply for indefinite leave to remain.

However, in some circumstances, you might be able to skip the 10 year route and make an application for indefinite leave to remain.

This is only possible in cases where there are 'exceptional' or 'compelling' reasons. The Home Office has discretion (this means the power) to grant leave for longer than 30 months. This is called being granted leave 'outside of the Immigration Rules'.

There must be evidence to show that your circumstances require you to be granted a longer period of leave. You must show that being granted limited leave would cause serious distress and have a disproportionate negative impact on your health or welfare. This means the evidence you provide has to be enough to show that the negative effects you would experience go above and beyond the effects experienced by other people on the 10 year route to settlement.