
Leave to Remain

A person who has permission to be in the UK is said to have 'leave to remain'. There are different types of leave to remain and a person's rights and entitlements is dependent on what kind of leave they have and any conditions attached to that leave.

If a person has leave to remain in the UK because they have a visa (e.g. spouse visa, employment visa, student visa) then the terms and conditions of their leave will usually be specified within the visa, for example, it may state 'Employment prohibited' which would mean that the visa holder could not work in the UK.

There are other kinds of Leave to Remain such as Indefinite Leave to Remain, Refugee Status, or Discretionary Leave (previously Exceptional Leave to Remain or Humanitarian Protection status). In most cases, a person with one of these kinds of Leave to Remain in the UK has the same access to benefits, housing, health care etc. as an equivalent British citizen unless they are subject to a 'No Recourse to Public Funds' condition.

Indefinite Leave to Remain

Indefinite Leave to Remain is sometimes known as 'settled status'. It means that there is no time limit on a person's stay in the UK and no conditions as to recourse to public funds. This may be stamped in their passport or travel document, or on a Biometric Residence Permit (BRP), and HO Immigration also issue a letter when it is granted. Settled status removes all leave conditions, so the holders are not subject to any bar on recourse to public funds.

Losing indefinite leave to remain

A settled person loses their indefinite leave to remain automatically if s/he leaves the UK and does not return within two years.

Since 1st August 2008, removal of indefinite leave (and subsequent deportation) is also automatic for any non British or EEA citizen who is convicted of a criminal offence and sentenced to 12 months imprisonment or more. Only those who committed the relevant offence before the age of 18 can appeal against this penalty.

Others can go to the courts to argue that the deportation breaches their human rights, but there is a high bar to meet for this (see Deportation and the Law)

Even if an FNO is able to show that deportation would breach human rights, those who have had a sentence of two years or more for a “particularly serious” offence (which can include criminal damage or theft) can be “designated” by the Home Secretary. This removes their immigration status and all rights to work, benefits, housing etc. Designation may also apply to members of the family. Various restrictions are applied, and support is provided, with no cash, by the Home Office. When settled status is lost, in most cases the person loses their rights to benefits and housing.

Limited Leave to Remain

As is the case for a person with Indefinite Leave to Remain, a person with Limited Leave to Remain will generally have the same access to services as an equivalent UK citizen unless the leave is granted subject to a ‘No Recourse to Public Funds’ (NRPF) condition. Limited leave may be given for a range of reasons. Refugee status, humanitarian protection status, discretionary leave are all types of limited leave.

Refugee

A refugee is defined as a person who has a well founded fear of persecution on specific grounds, and so cannot live in his/her own country or any other country where s/he has a right to live. Refugees arrive in the UK either on defined “programmes” to allow flight from specific places (Latin America in the 70s and Vietnam in the late 70s and 80s for example, and the current Gateway resettlement programmes for those from west Africa and south east Asia), or they ask the British government to recognise them as refugees once they get here. The latter are “asylum seekers” until a decision is made about granting them “refugee status”. From 1999, refugees were also granted Indefinite Leave to Remain along with refugee status. They were issued with a GEN 22 or GEN 33 letter confirming the grant of status and ILR. From 30th August 2005, most refugees granted refugee status get five years limited leave and their status is then reviewed.

In addition to having the same rights to services as other people with leave to remain, all refugees have the right to “family reunion”: their family members can come to live with them in the UK, and have the same status and eligibility for benefits and housing as the refugee as soon as they arrive, whether they arrive via a formal application for such a family reunion or simply turn up. These provisions apply only to husbands/wives/children under 18 where they constitute a “pre-flight” family: i.e. one established before the refugee sought protection. Family members are given leave in line with the refugee concerned.

Supporting a person with leave to remain

Anyone who has leave to remain and recourse to public funds should be able to access mainstream services and should be helped in the same way as an equivalent British prisoner by any partner agencies, statutory partners, etc. Some thought however may need to be given to whether they have cultural or language needs which would not be met through mainstream services and if so, alternative services may be sought. Specialist community organisations local to the area where the person is to be released may be able to advise on this.

Applications for citizenship or further leave to remain

A person with Indefinite Leave to Remain who has a criminal conviction should seek legal advice before applying for citizenship.

A person with limited Leave to Remain who has a criminal conviction should also seek legal advice when their leave is close to expiry before making an application for further leave.