



Home Office

# Leave extended by section 3C (and leave extended by section 3D in transitional cases)

**Version 11.0**

This guidance explains when section 3C of the Immigration Act 1971 operates to extend leave.

It also explains when section 3D of the Immigration Act 1971 operates to extend leave in transitional cases.

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# About this guidance

## Section 3C leave

This guidance explains when leave is extended by section 3C of the Immigration Act 1971 (section 3C leave) and how section 3C leave comes to an end.

It is based upon the following legislation:

- [The Immigration Act 1971](#)
- [The Immigration Rules](#)
- [The First-tier Tribunal Procedure Rules 2014](#)
- [Tribunal Procedure \(Upper Tribunal\) Rules 2008](#)

## Section 3D leave: transitional cases

At the end of this guidance there is a section on transitional cases where section 3D of the Immigration Act 1971 continues to apply pending an appeal against a decision to revoke or curtail leave made before 6 April 2015 (where the decision gave rise to a right of appeal). That right of appeal was abolished by the changes to section 82 of the Nationality, Immigration and Asylum Act 2002 fully implemented on 6 April 2015.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then you can email the Appeals policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was cleared:

- version **11.0**
- published for Home Office staff on **15 October 2021**

## Changes from last version of this guidance

The guidance has been amended to reflect caselaw in [Akinola \(2021\) EWCA Civ 1308](#).

### Related content

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# Purpose of leave extended by section 3C Immigration Act 1971

The purpose of section 3C leave is to prevent a person who makes an in-time application to extend their leave from becoming an overstayer while they are awaiting a decision on that application and while any appeal or administrative review they are entitled to is pending.

## When section 3C applies

This section explains when a person's leave is extended by section 3C of the Immigration Act 1971.

## Pending decision on application

A person will have section 3C leave if:

- they have limited leave to enter or remain in the UK
- they apply to the Secretary of State for variation of that leave
- the application for variation is made before the leave expires
- the leave expires without the application for variation having been decided
- the application for variation is neither decided nor withdrawn

## Pending appeal

Section 3C leave continues during any period when:

- an in-country appeal could be brought (ignoring any possibility of appeal out of time with permission)
- the appeal is pending (within the meaning of section 104 of the Nationality, Asylum and Immigration Act 2002), meaning it has been lodged and has not been finally determined

## Pending Administrative Review

Section 3C leave continues during any period when:

- an administrative review could be sought
- the administrative review is pending, in that it has not been determined
- no new application for leave to remain has been made

Section 3C leave will end if the person leaves the UK.

## Related content

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# Section 3C leave extended when an in-time application is made

An in-time application is an application made by a person in the UK who at the time of application has leave to enter or remain.

Where an in-time application to extend or vary leave is made and the application is not decided before the person's existing leave expires, section 3C extends the person's existing leave until the application is decided (or withdrawn).

Section 3C does not extend leave where the application is made after the applicant's current leave has expired.

## EEA applications

Section 3C does not extend leave where an application is made for a residence card under the EEA Regulations [Immigration \(European Economic Area\) Regulations 2006](#). An application for a residence card is not an application to extend or vary leave, it seeks confirmation that rights under the EEA Regulations are being exercised therefore the applicant does not require leave to enter or remain.

## Invalid applications

An invalid application does not extend leave under section 3C.

The Supreme Court in the case of [Mirza & Or 2016 UKSC 63](#) upheld the decision of the Court of Appeal in the case of [Iqbal & Others \[2015\] EWCA Civ 838](#) that section 3C leave does not apply where the application to extend or vary leave is rejected as invalid.

Information on the validity of applications can be found at [Validation, variation and withdrawal of applications](#)

## 'Validated applications'

Where an application is received that is invalid and a fee has been paid, even if it is the wrong fee, the [Validation, variation and withdrawal of applications](#) guidance provides that the Home Office will write out and provide a single opportunity to correct any omission or error. The person is given 10 working days to respond to the request.

Where the requested information is received, and the application is accepted as valid then the application should be treated as valid from the date it was first made, not the date the further information was received. The effect of this is that where the original application was made in time and the application was 'validated' at a later date, the person's section 3C leave will start from the date when their extant leave expires, even if the correct fee was not received until after that date.

Where the requested fee or further information is not received, or it is received but there is still no valid application then leave will not have been extended by section 3C because the application was invalid from the date it was made and was not validated therefore it did not give rise to section 3C leave.

Where the application becomes invalid because of a failure to provide biometrics the Supreme Court clarified that section 3C leave came to an end at the point the Home Office serves a notice of invalidity.

## Withdrawn applications

The Validation, variation and withdrawal of applications guidance sets out how to treat requests to withdraw applications and when withdrawal takes effect. Where an application is withdrawn section 3C leave will come to an end.

## Withdrawn decisions

Where a decision is withdrawn by the Secretary of State and the person has section 3C leave because of a pending appeal or administrative review, their section 3C leave will continue but will revert to leave under section 3C (2)(a) instead of section 3C(2)(b) as a decision on the original application will be outstanding.

Where a decision has been taken which has brought 3C leave to an end, and that decision is subsequently withdrawn the 3C leave will resurrect from the point the decision is withdrawn.

Withdrawing a decision has no effect on section 3C leave if the person did not have 3C leave at the time the decision was withdrawn.

This is a change from the previous policy position and reflects a change in caselaw. There will still have been a break in 3C leave from the point the decision bringing 3C leave to an end was served until it was withdrawn. For example, if the decision that brought 3C leave to an end was served on the 10 August and was not withdrawn until the 25 August from the 10 August to the 24 August the person will have been without 3C leave. However, where a decision is withdrawn and there is an application for leave outstanding, or a new application is made after a decision has been withdrawn, the person should not be disadvantaged by the break in their leave in having that application considered. This means you should treat the person as having been lawfully in the UK for the purposes of deciding the immigration application.

Where there has been a break in section 3C leave and you are granting leave on reconsideration of a withdrawn decision you should insert the following line in the grant letter:

'The break in your leave from (insert date section 3C leave came to an end) and the resurrection of section 3C leave (insert date of the decision being withdrawn )

will be treated as if you were lawfully present in the UK in any subsequent application that you make.'

Where you are considering an application where there has been a break in section 3C leave you should check the decision letter which first granted leave (which will be on CID or Atlas) to see if the wording has been inserted in the letter.

## Examples

The following examples set out the circumstances where a person has section 3C leave following an in-time application.

### Example 1

Leave expires on 11 April. A valid application is made on 10 April to extend leave. In this example leave is extended by section 3C because a valid application has been made while the person has leave.

### Example 2

Leave expires on 21 March. An application is made on 21 March to extend leave. The application is invalid as mandatory documents are missing. The applicant is given an opportunity to provide the missing documents. The missing documents are provided on 28 March and the application is 'validated'. The person's leave will have been extended by section 3C from the 22 March.

### Example 3

Leave expires on 21 March. An application is made on 21 March to extend leave. The application is invalid as mandatory documents are missing. The applicant is given an opportunity to provide the missing documents. The missing documents are not provided and the application is rejected as invalid on 30 March. The person will have been without leave from 22 March, their leave having expired on 21 March.

### Example 4

3C leave is brought to an end by a decision received on 10 August the decision is withdrawn on 10 September. The person's 3C leave starts to run again from 10 September. Between the 10 August to the 9 September the person was without 3C leave.

### Example 5

The person has no leave but makes an application which is refused on 10 August. The decision is withdrawn on the 10 September. The person has no 3C leave as a result of the decision being withdrawn, as they did not have 3C leave in the first place.



## Example 6

Leave expires on 21 September and an application for a residence card is made under the EEA Regulations on 20 September. An application is then made under the points-based system (PBS) rules on 2 November. A decision to refuse to issue the EEA residence card is made on 14 November and a decision to refuse the PBS application is made on 17 December. Leave expired on 21 September. The application for an EEA residence card did not lead to the applicant having section 3C leave and the application under the PBS rules was made when the applicant had no leave.

## Quashing a decision

Where a decision is quashed by the Courts then it is as if the decision had never been made. This means that where a decision that brought section 3C to an end is quashed by the Courts, section 3C leave will not have been brought to an end.

## Example

A decision bringing 3C leave to end is made on 1 March. The decision is quashed on the 1 October. The effect of quashing the decision is that the decision was never made. The person had 3C leave from the 1 March.

### **Related content**

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# Variation applications during section 3C leave

This section explains how a variation application is to be treated while leave is extended by section 3C of the Immigration Act 1971 (section 3C leave).

A variation application can seek to vary the:

- length of time for which the person is permitted to remain in the UK
- the condition attached to the leave
- the purpose for which the person is permitted to remain in the UK

While the person's leave is extended by section 3C they cannot make a new application for variation of leave. This is because Section 3C (4) states:

'A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by this section.'

However, section 3C (5) does allow the person to amend their existing application at any time before it is decided by the Secretary of State. The application to amend the existing application has to be a valid application. Where there is a difference in the fee between the initial variation application and the amended application any additional fee must be paid.

## Example

The initial variation application is for an extension of PBS leave. Before that application is decided, the applicant makes an application for leave under the family route. The family route application will amend the initial application. The higher family route fee must be paid before the application is valid. The application for an extension of PBS leave will no longer be considered.

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# Section 3C leave extended while an appeal is pending

This section tells you about leave that is extended by section 3C of the Immigration Act 1971 (section 3C leave) during the period when an applicant can appeal, or an appeal is pending.

If a person does not already have section 3C leave the fact that they are entitled to an in-country right of appeal against a decision does not give them section 3C leave.

A person does not have section 3C leave during an appeal where the appeal can only be brought after the person has left the UK. In these cases, section 3C leave will come to an end when their application is decided and certified. If the certificate is withdrawn the underlying decision should also be withdrawn. A new decision should be made which will generate a new right of appeal, which may be subject to recertification. Withdrawal of the decision means that section 3C leave will resurrect from the point the decision is withdrawn.

For information on appeal rights see Rights of Appeal.

## When is an appeal pending?

Section 104 of the Nationality, Immigration and Asylum Act 2002 sets out when an appeal is pending.

Where there is an in- country right of appeal under section 82 (1) of the Nationality, Asylum Immigration Act 2002 an appeal is pending during the period it could be brought. See the [Tribunal Procedure Rules 2014](#). Rule 19 sets out the time limit for appealing to the First-tier Tribunal and Rule 33 sets out the time limit for seeking permission from the First-tier Tribunal to appeal to the Upper Tribunal.

For further information, see the [Upper Tribunal Procedure Rules](#). The time limit for appealing to the Upper Tribunal is set out at Rule 21. The time limit for seeking permission to appeal to the Court of Appeal from the Upper Tribunal is set out Rule 44.

The [Civil Procedure Rules](#) set out the time limit to appeal to the Court of Appeal, Rule 52.4.

Section 3C leave will be extended until the appeal is no longer pending.

An appeal is pending until either:

- it is finally determined
- it is withdrawn
- it is abandoned

## Out of time appeals

Section 3C leave ends when the person does not appeal or seek permission to appeal within the relevant time limit. Where an appeal is made out of time it does not extend section 3C leave. However, if the Tribunal grants permission for an appeal made out of time to proceed, the case of [Akinola \(2021\) EWCA Civ 1308](#) confirms that section 3C leave will resurrect from the date that the appeal was instituted. This means that section 3C leave resurrects when the notice of appeal was lodged, not the date when the extension of time was granted. Where an extension of time is not granted by the Tribunal section 3C leave will not be resurrected.

Where the Tribunal has extended time to appeal and the appeal is ultimately successful the person should not be disadvantaged by the break in their leave in any future application for immigration leave. For the purposes of deciding the application you should treat any gap in leave as if the person was lawfully in the UK where the appeal is allowed.

### Example 1

A person with section 3C leave is sent a refusal decision on 1 October and has 14 days to appeal. An appeal is lodged out of time on 1 November. The person remains in the UK. On 21 November the Tribunal extends time to appeal.

The person had section 3C leave until 15 October when the time limit for appealing passed and then their section 3C leave ended. Section 3C leave is resurrected on 1 November when the notice of appeal was lodged.

### Example 2

A person with section 3C leave is sent a refusal decision on 1 October and has 14 days to appeal. An appeal is lodged out of time on 1 November. The person remains in the UK. On 21 November the Tribunal refuses to extend time.

The person had section 3C leave until 15 October when the time limit for appealing passed, and then their section 3C leave ended. As permission to extend time has not been granted section 3C leave does not resurrect.

### Example 3

A person who is in the UK but does not have section 3C leave is sent a refusal decision on 1 October and has 14 days to appeal. An appeal is lodged out of time on 1 November. The person remains in the UK. On the 21 November the Tribunal gives permission for the appeal to proceed out of time.

As the person did not have section 3C leave the fact that the Tribunal has accepted the out of time appeal does not change the fact that the person never had section 3C leave.

## Appeal finally determined

An appeal is finally determined when the appeal has been heard and decided and permission to onward appeal has not been sought within the prescribed time limits (although see section above on [out of time appeals](#)) or permission to appeal has been finally refused (namely there is no possibility of renewing the application for permission to appeal to a different court or tribunal).

Where there is an onward right of appeal to the Upper Tribunal or Court of Appeal section 3C leave will automatically run until the time limits for onward appeal have expired. For example, a decision of the First-tier Tribunal can be appealed to the Upper Tribunal. Permission to appeal to the Upper Tribunal must be sought from the First-tier Tribunal within 14 days from when the written reasons for the decision were provided. This means that unless the time limit to appeal is changed by the Tribunal under the case management powers set out in Rule 4 of the Tribunal Procedure Rules 2014 an appellant will always have a further 14 days of section 3C leave after they receive a decision from the First-tier Tribunal.

An appeal to the Court of Appeal is finally determined where judgement has been given by the Court of Appeal. An appeal to the Supreme Court does not extend section 3C leave.

The effective date on which a decision on appeal or permission to appeal is finally determined is the date on which the appellant receives notice of the determination from the Tribunal. This is deemed to be received 2 working days after postage unless the appellant can prove otherwise.

## Withdrawal of appeals in the First-tier Tribunal

As set out in variation applications during section 3C leave an application cannot be varied after a decision has been made on it. That means while the appeal is pending the only way a person can change their application is to withdraw their appeal, bringing their section 3C leave to an end.

An appellant may withdraw an appeal:

- orally, at a hearing
- at any time, by filing written notice with the Tribunal

An appeal is treated as withdrawn on the day that the appellant requests that the appeal be withdrawn. If a person makes a new application to the Secretary of State on the same day that they have withdrawn their appeal, then the new application should be accepted as the person has no section 3C leave.

For these purposes, the person's section 3C leave ends at the beginning of the day that they withdrew their appeal. This means that the new application, even if made on the same day, will not extend section 3C leave. The new application should be treated in accordance with the guidance in [Applications from overstayers \(non family route\)](#). Applications under the family rules should follow the guidance on overstaying

in Family Migration Appendix FM Section (1.0a) Family life as a (Partner or Parent) : 5- year Routes and exceptional circumstances for 10-year routes.

Rule 17 of the [First Tier Tribunal Procedure Rules 2014](#) governs the withdrawal of appeals.

## Withdrawal of appeals in the Upper Tribunal

A party to an appeal at the Upper Tribunal may withdraw their appeal:

- at any time before a hearing
- orally at hearing

Where a party withdraws their application for permission to appeal then the effective withdrawal date is the date the application for permission is withdrawn. If a person makes a variation of their initial application for leave on the same day they have withdrawn the appeal, then the varied application should be accepted as the person is to be treated as if they did not have section 3C leave on that day.

Where permission to appeal to the Upper Tribunal has been granted a party cannot withdraw their appeal until the Upper Tribunal agrees to the withdrawal. Where the Upper Tribunal agrees to the withdrawal it must notify the parties. The appeal and any section 3C leave will continue until the Upper Tribunal notifies the parties that the appeal is withdrawn. The effective date of the withdrawal of the appeal is contained in the notice issued by the Tribunal.

Rule 17 of the [Tribunal Procedure \(Upper Tribunal\) Procedure Rules 2008](#) governs the withdrawal of appeals in the Upper Tribunal.

## Withdrawal of decision during the appeals process

Where the Home Office withdraws a decision while the appeal is pending, section 3C leave reverts to leave under section 3C (5). This is because section 3C leave is no longer being extended as a consequence of an appeal being pending and reverts to leave which is being extended whilst a decision is awaited. As the decision has been withdrawn it is possible for the outstanding application to be varied during the period before it is decided.

For information on withdrawing decisions see withdrawing decisions and conceding appeals.

## Abandoned appeals

An appeal is treated as abandoned if the appellant is granted leave to enter or remain in the UK (section 104(4A) of the 2002 Act) unless the appellant indicates that they want the appeal to continue on asylum or humanitarian protection grounds. However, section 3C leave will end when leave is granted even if the appeal continues.

Section 92(8) of the 2002 Act states that an appeal is abandoned if a person leaves the UK before the appeal is finally determined, unless the claim to which the appeal relates has been certified under section 94(1), 94(7) or 94B of the 2002 Act. However, section 3C leave will end when a person leaves the UK in any event.

## Judicial review of the Upper Tribunal – ‘Cart’ JRs

Where there is a JR against the Upper Tribunal’s refusal to grant permission to appeal (PTA) from the First-tier Tribunal to the Upper Tribunal, the person will not have section 3C leave while the JR is pending, however if the JR results in remittal of PTA decision to the Upper Tribunal then, under [Civil Procedure Rule 54.7A](#) the refusal of permission by the Upper Tribunal is quashed, which mean section 3C leave will never have been brought to an end, for further information see [Quashing a decision](#).

## Position following an allowed appeal

Where an appeal has been allowed the Tribunal in allowing the appeal may have found that the Secretary of State’s original decision was unlawful such that the refusal decision is set aside. This means that the Secretary of State has to remake the decision. The effect on section 3C leave is that it reverts to leave under section 3C (5) during the period between the appeal being allowed and a new decision being made. As the decision has been set aside it is possible for the outstanding application to be varied during the period before it is decided.

## Examples

The following examples set out how section 3C extends leave when an appeal is pending.

### Example 1

An applicant makes an in- time application which is refused on 20 April and can be appealed in country within 14 days. The applicant does not appeal. Section 3C leave ends 14 days after the appealable decision is sent as an in- time appeal has not been lodged.

### Example 2

An applicant makes an out of time application to extend leave which is refused and there is a right of appeal. The person makes an in-time appeal and subsequently wins their appeal following which a grant of leave is made. The person did not have leave while the appeal was pending because section 3C only extends leave where there was an in-time application and in this example the application to extend leave was out of time.

## Making a protection or human rights claim while an appeal is pending

A person who is on section 3C leave cannot amend their application after it has been decided, pending any appeal or administrative Review. A protection or human rights claim can however be made when an appeal is pending. Guidance on identifying protection and human rights claims can be found in Rights of appeal. The protection or human rights claim should where possible be decided before the pending appeal is determined. The decision should be sent to the claimant and the Immigration Asylum Chamber should be notified (and the Presenting Offices Unit dealing with the pending appeal).

Where the claim is granted that may affect the pending appeal. Where the claim is refused and there is an in country right of appeal the Immigration Asylum Chamber should be requested to link the appeals. The request to link the appeals should be made by the decision maker who has decided the claim. The request to link the appeals should go to the hearing centre dealing with the appeal, the address for which should be on the Home Office file.

Where a decision cannot be taken on the claim before the pending appeal is determined the outstanding claim should be sent to the Presenting Officers Unit dealing with the pending appeal. The presenting officer will decide whether to consent to the outstanding claim being considered at the pending appeal in accordance with the guidance on consent in Rights of appeal.

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# Section 3C leave while an administrative review is pending

This section tells you about leave that is extended by section 3C of the Immigration Act 1971 (section 3C leave) during the period when an administrative review is pending.

Where a person has section 3C leave following an in-time application to vary leave and there is a right to administrative review of the refusal of that application, section 3C leave continues for the period during which an administrative review is pending.

An administrative review is pending until either:

- it is withdrawn
- it is determined
- a fresh application is made which brings the section 3C leave to an end

The detailed provisions as to when an administrative review is pending are set out in [Appendix AR](#) to the Immigration Rules. The guidance on [administrative review](#) contains more details on when an administrative review is pending.

If a person entitled to seek administrative review of a decision does not request administrative review within the relevant time limit, section 3C leave ends at the end of the last day on which they could have made an in-time application for administrative review.

The time limits for seeking administrative review are 14 days for persons not in detention and 7 days for persons in detention.

If a person does not already have section 3C leave, the fact that they are entitled to seek administrative review of a refusal decision does not give them section 3C leave, even if that administrative review is sought in-time.

## Out of time application for administrative review

Where an administrative review is made out of time it does not extend 3C leave. However, if the administrative review is accepted 3C leave will run from the decision to accept it.

### Example

An administrative review is lodged on the 1 August 17 days out of time. The person remains without 3C leave. On the 21 September the decision is taken to accept the administrative review out of time. The person has 3C leave from the 21 September.

## Decision withdrawn during administrative review

Where the Home Office withdraws a decision as a result of the administrative review section 3C leave reverts to leave under section 3C(5). This is because section 3C leave is no longer being extended as a consequence of the administrative review being pending and reverts to leave which is being extended whilst a decision is awaited. As the decision has been withdrawn it is possible for the outstanding application to be varied during the period before it is decided.

## Fresh application while an Administrative Review is pending

When an administrative review is pending against refusal of an application, if a person submits a fresh application the administrative review will no longer be pending. This is because the [Immigration Rules \(Appendix AR 2.10\)](#) states that the administrative review will cease to be pending the day prior to the day on which the fresh valid application is submitted.

If a protection or human rights claim is made while an Administrative Review is pending, the claim will have the effect of bringing the Administrative Review to an end.

Where an administrative review is no longer pending, section 3C leave comes to an end. Accordingly, where a fresh application is made after an administrative review has been refused it can be accepted because section 3C leave will have come to an end. Where the application is invalid the administrative review and the section 3C leave will not come to an end until such time as the application is accepted as being valid: see the [invalid applications](#) section for more information.

## Examples

The following examples set out how section 3C extends leave while an administrative review is pending.

### Example 1

The person makes an in-time application for leave which is refused on 20 April and gives rise to a right to administrative review. A variation of the initial application (a fresh application) is submitted on 30 April. Section 3C leave comes to an end on 29 April, the day before the fresh application is made. The person does not have section 3C leave while the fresh application is being decided.

### Example 2

An out of time application for leave is made and an administrative review is brought on the grounds that the overstayer rule was not properly considered. The administrative review succeeds, and leave is granted. In this example the person

never had section 3C leave because the person did not have extant leave at the time the application for leave was made.

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# Conditions of immigration leave where 3C applies

This section tells you about the conditions that apply to section 3C leave.

A person who has section 3C leave remains subject to the conditions attached to their extant leave unless the conditions of their leave are varied by the Secretary of State. For example, a person subject to a condition allowing employment may continue to work as before. Any restrictions on the type of employment allowed or the number of hours they can work will still apply.

The conditions attached to a person's leave can be varied while they are on section 3C leave, in the same way that someone who has been granted leave can have their conditions varied. So for example the conditions of a person's leave may be varied to impose a residence requirement or to put them on to reporting conditions.

## **Related content**

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# Cancelling section 3C leave

This section tells you about the power to cancel leave that is extended by section 3C of the Immigration Act 1971 ('section 3C leave').

Section 62 of the Immigration Act 2016 (the 2016 Act) amends section 3C of the Immigration Act 1971 (the 1971 Act) to provide for a power to cancel section 3C leave. This power was commenced on 1 December 2016.

Section 3C leave may be cancelled where a person has either:

- failed to comply with a condition attached to their leave
- used or uses deception in seeking leave to remain (whether successfully or not)

Section 3C leave cannot be cancelled for any other reason. The other general powers to curtail leave set out in the Cancellation of entry clearance and permission do not apply to section 3C leave.

The power to cancel section 3C leave is discretionary, see section on [discretion to cancel section 3C leave](#).

Cancellation of section 3C leave under this provision operates to bring the period of leave to an end with immediate effect. It cannot therefore be used to vary leave to, for example, 60 days.

## Grounds for cancelling section 3C leave

### Failing to comply with conditions of leave

Section 3C extends leave on the same conditions as applied to the leave that was extant when an in-time application for further leave was made. Those conditions therefore continue to apply during section 3C leave, unless they are varied. Section 3C leave may be cancelled where a person has failed to comply with any conditions attached to their leave. The failure to comply can be during the previous period of leave or during the leave as extended under section 3C. For example:

- a person was granted leave under Tier 4 with a condition permitting them to work for 20 hours per week during term time - they apply in-time to extend their leave and the condition continues to apply while they have leave under section 3C - if that person works in excess of 20 hours per week during term time, they will be in breach of the conditions of their leave
- a person was granted leave under Tier 2 with a condition prohibiting access to public funds - they apply in-time to extend their leave and the condition continues to apply while they have leave under section 3C - if that person obtained public funds during their Tier 2 leave they will have breached the conditions of their leave

Where the Home Office alleges that there has been a failure to comply with a condition of leave, the burden of proof is on the Home Office to demonstrate that failure and the standard of proof is on the balance of probabilities.

## Deception

The power to cancel section 3C leave on grounds of use of deception in an application for leave to remain does not depend on the deception having been successful. It is sufficient that there has been deception. It is also not necessary for the deception to have been used in the most recent application for leave to remain. Section 3C leave can be cancelled when deception has been used in any application for leave to remain, whether that is the current application or any previous application. However, where it was known deception had been used in a previous application and still granted leave, it will not be appropriate to rely on that previous use of deception to cancel section 3C leave.

Deception requires a person to act knowing that the information was false. Relevant questions for caseworkers to consider are:

- was any false document submitted in good faith or in the knowledge that it was false
- was incorrect information in an application an error or deliberate

Where the Home Office alleges that deception has been used, the burden of proof is on the Home Office to demonstrate that deception has been used and the standard of proof is on the balance of probabilities.

Examples of evidence that may support the finding that deception was used include:

- evidence that the person paid someone to provide the document and that person was not authorised to accept such payments or produce documents of that type
- evidence that relates directly to the person's circumstances and they would therefore clearly know that it was false, for example wrongly stating that they do not have a criminal conviction or providing passport details, personal bank statements, a degree certificate or a wage slip which are false
- evidence that contradicts information that the applicant has previously submitted (you do not need to prove which information is false if both applications were for leave to remain and one of the pieces of information is clearly false)

The above is not an exhaustive list and you must consider all relevant evidence when deciding whether an applicant used deception.

## Cancelling 3C leave where there is an outstanding application

Where a person has an outstanding application, you must first consider the application and then decide whether to cancel section 3C leave. For guidance on

considering applications where there is a breach of conditions or deception has been used you should refer to the grounds for refusal and the false representations guidance.

Where you are going to grant leave to remain despite the breach of conditions or deception you should not cancel section 3C leave.

When you are going to refuse an application, and the grounds for refusal include a breach of conditions or deception, you must decide whether to also cancel section 3C leave. The consequences of cancelling section 3C leave is that the person will not have section 3C leave while any appeal or administrative review against the refusal of the application is pending. This also means that any conditions associated with the previous immigration leave would no longer apply, for example a right to work or access public funds.

You should not cancel section 3C leave solely because you are refusing an application. On the exercise of discretion to cancel section 3C leave see [discretion to cancel 3C leave](#).

## **Cancelling 3C leave where there is an outstanding administrative review**

Where a person has an outstanding administrative review you should decide the administrative review. A decision on the administrative review will bring section 3C leave to an end unless new reasons are added to the refusal.

## **Cancelling 3C leave where there is an outstanding appeal**

Where section 3C leave is extended because the person has an outstanding appeal, cancellation of section 3C leave will not bring the appeal to an end. The consequences of cancelling section 3C leave is that the person will not have section 3C leave while the appeal is pending. This also means that any conditions associated with the previous immigration leave would no longer apply, for example a right to work or access public funds.

## **Discretion to cancel section 3C leave**

The power to cancel section 3C leave is intended to ensure that, where a person has practiced deception or failed to comply with the conditions of their leave, they are treated in the same way as people who have other types of leave and have that leave curtailed.

As cancellation of section 3C leave is discretionary, you must not automatically cancel a person's leave. You must establish the relevant facts and then carefully consider all the person's relevant circumstances before you make a decision on cancelling section 3C leave. This is consistent with the approach taken where consideration is being given to curtailing a person's immigration leave and the principles in the curtailment guidance should be followed. For the avoidance of

doubt, it will not be appropriate to cancel section 3C leave if you would not have curtailed immigration leave under the same circumstances.

You must not cancel section 3C leave simply because you have refused the application for further leave even where there has been a breach of conditions or deception has been used. A key consideration in deciding whether to cancel section 3C leave is the extent to which the deception used or breach of conditions was material to the decision to refuse the application, in that if you would not have refused the application solely because of the breach of conditions or use of deception then it will not normally be appropriate to cancel section 3C leave. For example, where the person has applied for indefinite leave to remain as a spouse and the casework checks show that the applicant receives tax credits but they have not declared this on their application form.

If the person is claiming tax credits legally, even though their conditions of leave state 'no recourse to public funds', then the application will not be refused under paragraph 322 (1A) even if they had disclosed the information. In these circumstances even if you refuse the application for another reason the use of deception and/or breach of conditions would not be a reason for the refusal. It would be inappropriate to cancel their section 3C leave.

Another example of where it would not be appropriate to cancel section 3C leave is where there is an application on the family route and there was a temporary breach of conditions by accessing public funds because the marriage has broken down, but the couple have since reconciled, and the access was limited and did not itself involve deception.

Where children in the UK are affected by the decision you must consider the effect of cancellation of section 3C leave on the welfare of the affected child. For example, where the child's parent has section 3C leave which allows them to work you should consider what the consequences would be on the child if that section 3C leave is cancelled and whether that is proportionate. You should approach the exercise of discretion and proportionality on the basis that any appeal or administrative review may be allowed. Further guidance on considering the rights of children can be found in the every [child matters guidance](#).

Examples of where it might be appropriate to cancel section 3C leave are where the person:

- is a points-based system (PBS) migrant who has breached their conditions of leave and there is no benefit in allowing them to continue to work or study with their original sponsor as that relationship has come to an end
- poses a significant risk to members of the public

Where section 3C leave is being extended by an appeal and it comes to light that a person has used deception or breached their conditions of leave you should consider whether it is appropriate to cancel the section 3C leave. As appeals can take some time to determine it may be appropriate to cancel section 3C leave. In considering whether to cancel section 3C leave you should consider how material the use of deception or breach of conditions has been and whether it led to the



application being refused initially. Where the use of deception or breach of conditions comes to light only after the application has been refused you will need to consider whether it is sufficiently serious that it would have been a material consideration in the application being refused. Where this is not the case section 3C leave should not normally be cancelled.

## Dependants

Where you cancel a main applicant's section 3C leave you can make a removal decision in respect of their dependants upon section 10 (2) of the Immigration and Asylum Act 1999. The removal decision will invalidate any extant leave (see section 10 (6)). For further guidance on making a decision in relation to a dependant see section 4 of liability to administrative removal under section 19 (non EEA National).

## Process for cancelling section 3C leave

You should update the admin events screen in CID where you are cancelling section 3C leave. Presenting officers should check the admin events screen to see if section 3C leave has been cancelled as the fact that the person has used deception or not complied with the conditions of their leave may be relevant to the outcome of the appeal. A copy of the letter cancelling section 3C leave should also be sent to file.

You should use the ICD.5009 template to cancel section 3C leave at the same time as deciding an outstanding application. You should use the ICD.5100 template when you are cancelling section 3C leave where an appeal is pending.

The power to serve the decision to cancel section 3C leave comes from the [Immigration \(Leave to Enter and Remain\) Order 2000](#).

When serving the ICD.5009 or ICD.5100 template you should follow the same procedure for serving a curtailment notice as set out in the Cancellation of entry clearance and permission.

### Related content

[Contents](#)

# Section 3D leave: transitional cases

This section tells you about transitional arrangements for people whose leave has been extended by section 3D of the Immigration Act 1971 (Section 3D leave)

## Section 3D leave

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 that leave while an appeal against that decision can be brought or is pending. Following the changes in appeal rights by the Immigration Act 2014, decisions to curtail or revoke leave no longer give rise to a right of appeal. Section 3D therefore continues to apply only to people whose leave was revoked or curtailed before 6 April 2015 and who have appeals pending against the decision to revoke or curtail their leave (under the pre 6 April 2015 appeals system).

People on section 3D leave cannot make an application for extension or variation of their leave. This means that anyone on section 3D leave who wants to make such an application will have to withdraw their appeal.

## Conditions that apply to section 3D leave

Persons who have their leave extended by section 3D remain on the conditions attached to the leave that has been revoked or curtailed. As with section 3C leave, the conditions attached to leave extended by section 3D may be varied by the Secretary of State.

### Related content

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