



Home Office

Applications from overstayers

Version 8.0

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About this guidance

This guidance is for caseworkers who consider applications for further leave to remain made on or after 9 July 2012 by an applicant without valid leave in certain routes.

The routes it covers are:

- all work and study, including the points-based system
- visitors
- long residency
- UK ancestry
- most discharged Her Majesty's (HM) forces
- family (except certain categories including bereaved partners, victims of domestic violence and children – if in doubt whether this applies, seek advice from senior caseworkers)

It does not apply to:

- the following armed forces routes:
 - dependants applying for leave to enter or remain as the family member of a serving HM forces member
 - those applying under an armed forces concession, for example, Gurkhas discharged before July 1997 applying under the special discretionary arrangements
- applications for administrative review under [Appendix AR of the Immigration Rules](#)

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 email Compliance and Enforcement Policy Unit.

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 published:

- version **8.0**
- published for Home Office staff on **05 August 2019**

Changes from last version of this guidance

References have been inserted to make it clear the guidance applies to family routes (except certain categories). Guidance title amended accordingly.

Guidance reformatted to latest template.

Related links

[Contents](#)

Refusal on grounds of overstaying

This section tells caseworkers about considering applications where the applicant has overstayed their original grant of leave.

Any applicant who is applying for leave to remain must not have remained in the UK after the expiry of their original grant of leave, on the date of their application. Remaining in the UK after leave has expired is commonly known as overstaying.

The Immigration Rules were amended with effect from 24 November 2016 to abolish the 28 day grace period, under which applications for leave to remain were not refused on the basis of overstaying if made within 28 days of the expiry of leave. The Immigration Rules now provide for current overstaying to be disregarded in a limited number of scenarios but otherwise it is now a ground for refusal.

First, overstaying will be disregarded if the Secretary of State considers that there was a good reason beyond the control of the applicant or their representative, provided in or with the application, why it could not be made in time, provided that the application is made within 14 days of the expiry of leave.

Second, overstaying will be disregarded where the applicant previously made an in-time application which was refused, and the current application was made within 14 days of:

- the refusal of the previous application for leave
- the expiry of any leave extended by [section 3C of the Immigration Act 1971](#)
- the expiry of the time-limit for making an in-time application for administrative review or appeal (where applicable)
- any administrative review or appeal being concluded, withdrawn or abandoned or lapsing

The provision to permit exceptions for overstayers is found in [paragraph 39E of the Immigration Rules](#). This states:

‘This paragraph applies where:

- (1) the application was made within 14 days of the applicant’s leave expiring and the Secretary of State considers that there was a good reason beyond the control of the applicant or their representative, provided in or with the application, why the application could not be made in time; or
- (2) the application was made:
 - (a) following the refusal of a previous application for leave which was made in-time; and
 - (b) within 14 days of:
 - (i) the refusal of the previous application for leave; or
 - (ii) the expiry of any leave extended by section 3C of the Immigration Act 1971; or

- (iii) the expiry of the time-limit for making an in-time application for administrative review or appeal (where applicable);
- (iv) any administrative review or appeal being concluded, withdrawn or abandoned or lapsing.'

The 14 day consideration period is calculated from the latest of either the:

- last day of their latest grant of leave to enter or remain
- end of any extension of their leave under [section 3C](#) or [section 3D](#) of the Immigration Act 1971

Calculating the date the period of overstaying begins

Caseworkers must calculate the date on which the period of overstaying begins based on the last day of the migrant's latest grant of leave to enter or remain, or when leave under section 3C or 3D ended. Caseworkers must take into account any variation on the duration of leave, such as a curtailment decision.

The first day of the 14 day consideration period begins on the first day after the day the migrant's leave has expired. This is unless the migrant has submitted an in-time application which has not been decided before their leave expires.

For further information on section 3C of the Immigration Act 1971, including how to calculate when that leave ends, see: 3C and 3D leave.

Examples of calculating when the period of overstaying begins

Case examples can be found in the [Applications from overstayers: case examples](#) section.

If a caseworker is refusing an application because of overstaying

If, within the 14 day consideration period, the applicant submitted details of circumstances beyond their control that prevented them from seeking leave, these should be considered.

Caseworkers must give thought to:

- the plausibility of the reasons
- whether the reason was genuinely outside the applicant's control or whether the applicant is describing difficulties that could realistically have been surmounted
- the credibility of evidence provided

Caseworkers must decide each case on its merits, but examples of reasons that might be considered beyond the control of applicants are:

- the applicant was admitted to hospital for emergency treatment (evidenced by an official letter verifying the dates of admission and discharge and the nature of the treatment)
- a close family bereavement
- an educational institution was not sufficiently prompt in issuing a Confirmation of Acceptance for Studies (CAS)

If a caseworker decides to use discretion it must be authorised by a senior caseworker, at Senior Executive Officer (SEO) grade or above. In these circumstances a caseworker must grant leave under the rules, with the same duration and conditions as a normal grant of leave under the rules attached to it. The decision letter must be clear that leave is being granted because the migrant met all other requirements of the route and the caseworker has accepted there were exceptional circumstances which prevented the applicant from making an in-time application.

Migrant's status following submission of an application within 14 days of overstaying

The submission of an application within the 14 day consideration period of overstaying does not mean the migrant's previous leave is either re-instated or extended. Therefore, an applicant without valid leave at the point they submit their application continues to be an overstayer from the point their leave expired and throughout the period their application is pending.

As the applicant has no leave during the period their application is pending they have no permission to work in the UK.

Any employer found employing a person who does not have permission to work in the UK may be liable to a civil penalty for employing an illegal worker under [section 15 of the Immigration, Asylum and Nationality Act 2006](#) (the 2006 Act). An employer also commits a criminal offence under [section 21 of the 2006 Act](#) if they knowingly employ an illegal worker and may face up to 2 years' imprisonment and/or an unlimited fine if the case is dealt with at Crown Court. For more information, see: [Check an employee's right to work documents](#).

Related links

3C and 3D leave

[Contents](#)

Related external links

[Check an employee's right to work documents](#)

Applications from overstayers: case examples

This section gives caseworkers some examples of how to calculate when the period of overstaying begins.

In-time application refused, appeal right not exercised

The migrant had leave until 1 March 2015 and submitted an application for further leave on 26 February 2015. A decision letter refusing the application was posted on 31 July 2015, but the migrant did not exercise their right of appeal.

In this case the migrant's leave was extended during the period:

- their application was awaiting determination
- they could have brought an appeal against the refusal decision

Therefore, the migrant began overstaying on 17 August 2015, based on:

- decision letter posted on 31 July 2015
- adding 2 days for deemed postal service gives refusal date of 2 August 2015
- adding 14 days while an in-time appeal could be brought gives 16 August 2015 (as a consequence of section 3C of the Immigration Act 1971 leave is extended during the period in which they can lodge an appeal and whilst the appeal is awaiting determination)
- first day of overstaying is 17 August 2015

In-time application refused, appeal right exercised, refusal decision upheld

The migrant had leave until 1 March 2015 and submitted an application for further leave on 26 February 2015. The application was refused on 31 July 2015. The migrant exercised their right of appeal and on 1 October 2015 the court upheld the refusal decision. No onward appeal was made.

In this case the migrant's leave was extended during the period:

- their application was awaiting determination
- they could have brought an appeal against the refusal decision
- their appeal is pending

Therefore, the migrant began overstaying on 16 October 2015, based on:

- appeal determined on 1 October 2015
- adding 14 days while an in-time onward appeal could be brought gives 15 October 2015

- first day of overstaying is 16 October 2015

In-time application, rejected after leave expired

The migrant had leave until 2 March 2015 and submitted an application for further leave on 26 February 2015. The application was rejected on 31 March 2015.

In this case the migrant began overstaying on 3 March 2015 as an application that is rejected does not extend 3C leave.

Related links

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Armed forces cases

This section tells caseworkers how to calculate the 14 day consideration period for armed forces cases and what caseworkers can consider as exceptional circumstances.

For armed forces cases the 14 day consideration period runs from the last date of leave after their discharge.

Foreign and Commonwealth cases (including Gurkhas) are normally granted 28 days' leave to remain (LTR) from the date of their discharge to regularise their status in the UK, but this does not always happen and LTR is not granted automatically. Caseworkers must not assume the last day of leave will be 28 days after discharge from Her Majesty's (HM) forces.

Where 28 days' leave is granted, the period of overstaying begins on the day after that leave expires. If no leave is granted, the 14 day consideration period for overstaying begins on the day after the date of discharge.

Exceptional circumstances

For armed forces cases, exceptional circumstances which may justify exercising discretion include reasons which directly relate to the individual's armed forces service. For example:

- deployment abroad at short notice
- the commanding unit have retained or lost their service personnel's documents

This also applies to dependants who cannot make an application under the armed forces rules because their military sponsor cannot submit documents due to service related reasons.

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