



Home Office

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

Version 6.0

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 email Appeals policy.

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.

Clearance

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

- version 6.0
- published for Home Office staff on **[add publication date]**

Official – sensitive: start of section

The information on this page has been removed as it is restricted for internal Home Office use only.

Official – sensitive: end of section

Changes from last version of this guidance

- the guidance clarifies that EEA applications do not qualify as applications that extend section 3C leave
- the guidance also clarifies that section 3C leave does not apply where the Tribunal allows an appeal out of time or the Home Office withdraws a decision where section 3C leave is not in operation at the time the decision is withdrawn

Related content

[Contents](#)

Related external links

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), ie 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 ie it has not be determined
- no new application for leave to remain has been made

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

For further information on when section 3C applies see related.

Related content

- [Section 3C leave extended when an in time application is made](#)
- [Section 3C leave extended while an appeal is pending](#)
- [Section 3C leave extended while an administrative review is pending](#)
- [Contents](#)

Related external links

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 Court of Appeal clarified 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 specified application forms and procedures.

'Validated applications'

Where an application is received that is invalid and a fee has been paid, even if it is the wrong fee, the specified application forms and procedures 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 business 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 starts from the date the application was first made.

Where the requested 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.

Withdrawn applications

The specified application forms and procedures 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 the decision is withdrawn after section 3C leave has come to an end withdrawal of the decision does not mean that the person once again has section 3C leave. This is because section 3C leave can arise and exist only where it is a seamless continuation of leave, either extant leave or section 3C leave. Where there is a break in that leave, such that section 3C leave has come to an end, section 3C leave cannot be resurrected.

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

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.

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.

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 does not mean that the person once again has section 3C leave. This is because section 3C leave can arise and exist only where it is a seamless continuation of leave, either extant leave or section 3C leave. Where there is a break in that leave, such that section 3C leave has come to an end, section 3C leave cannot be resurrected.

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, Immigration and Asylum 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 even if the relevant Tribunal accepts the appeal or the application for permission to appeal out of time.

Once section 3C leave has come to an end it cannot be resurrected. This is because section 3C leave exists only where it is a seamless continuation of leave, either extant leave or section 3C leave. Where there is a break in that leave, for example because section 3C leave has come to an end, section 3C leave cannot be resurrected.

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, 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

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. For these purposes, the person is to be treated as if they did not have section 3C leave on the day that they withdrew their appeal.

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 still pending the only way a person can amend their application is to withdraw their appeal, bringing their section 3C leave to an end.

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, the person will not have section 3C leave while the JR is brought, or if it is successful, even if the outcome means that an appeal to the Upper Tribunal proceeds.

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.

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 the person makes an out-of time application for administrative review and the Home Office accepts the administrative review out of time the person will not have section 3C leave during the administrative review. This is because section 3C leave exists only where it is a seamless continuation of leave, either extant leave or section 3C leave. Where there is a break in that leave, for example because section 3C leave has come to an end, section 3C leave cannot be resurrected.

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 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.

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 28 day 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.

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.

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.