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## Immigration Bill 2015: '3C' and '3D' Leave

This information sheet provides further information about the changes to '3C' and '3D' leave proposed in the recent Immigration Bill published on 17 September 2015.

### What is '3C' leave?

When a person has leave to enter or remain (permission to stay) for a limited period and applies to extend or vary that leave before it expires, their leave is automatically extended with the same terms and conditions under section 3C of the Immigration Act 1971 to cover the period in which their application is being considered and any administrative review or appeal against a negative decision on their application is completed. This is often called '3C leave' and allows a person to do all the things they could under their original leave, such as work or study etc, with the same entitlements they held previously.

### What is '3D' leave?

Section 3D of the Immigration Act 1971 allows a person's leave to be extended automatically where the Home Office brings their leave to an end, to enable the applicant to bring an appeal or seek an administrative review of that decision. The Home Office may bring limited leave to an end ('curtail' it) where it considers the applicant has made false statements in their application for leave, breached a condition of their stay or no longer meets the requirements for leave to enter or remain under the immigration rules. There are also circumstances in which the Home Office may bring a person's indefinite leave to remain or permanent stay to an end ('revocation') and section 3D would also apply.

### What is Administrative Review?

Administrative Review is a procedure under which decisions may be reviewed internally by the Home Office to correct Home Office errors. It was introduced when the Immigration Act 2014 removed the right to appeal against certain immigration decisions. See ILPA's information sheet on Administrative Review for more information:

[http://www.ilpa.org.uk/resources.php/30884/information-sheet\\_-\\_immigration-act-2014-administrative-review](http://www.ilpa.org.uk/resources.php/30884/information-sheet_-_immigration-act-2014-administrative-review)

### What is proposed in the Immigration Bill?

Under the Bill, the Home Office would be give a new power to bring '3C leave' to an end where it considers that a person has either used deception or has breached a condition of their leave. The Government states that this would enable the Home Office to bring '3C leave' to an end in the same way that it can end (or 'curtail') ordinary leave to enter or remain.

The Bill would also remove '3D leave' provisions from the Bill. The Government states that there is no need for '3D leave' any more as the right to appeal against a decision to end (or 'curtail') leave was removed by the Immigration Act 2014 and there is no right of administrative review in these cases so there is no longer a need to extend leave for these purposes.

### **What is the problem with the proposals?**

During the passage of the Immigration Act 2014, the Government stated that an administrative review process would provide a remedy in those cases where a right of appeal had been removed. The right to appeal against a decision to curtail leave to enter or remain was removed by the Immigration Act 2014, however when the Home Office subsequently established administrative review, it did not permit administrative review of these decisions. So whilst it is correct that leave under section 3D of the Immigration Act 1971 cannot be extended because there is no longer a right of appeal or administrative review in these cases, the loss of these rights means that where the Home Office has made a mistake in its decision, the individual affected has no leave while they seek to correct that mistake. They cannot work or study. They become an overstayer and can be detained and removed.

Under the proposals of the Bill, the Home Office would be given the power to bring '3C leave' to an end in the same way that it can curtail leave to enter or remain generally. This would leave those whose '3C leave' was curtailed would be left without being able to remedy Home Office mistakes and wrong decisions.

The Home Office does not need a power to curtail '3C leave'. It can end '3C leave' simply by making a decision on the outstanding application and dealing with any appeal or administrative review. However, if the Home Office chose to end '3C leave' without making a decision on the original application, the individual would be left with no ability to challenge the decision through an appeal or administrative review because there is no right to bring such challenges to curtailment decisions.

If the Home Office made a decision on the original application at the same time as ending '3C leave', the applicant would have no lawful status during the period in which they were able to bring an administrative review of the decision, even though they would have no control over how long it took to decide their case. They would be subject to all the measures in the Bill aimed at creating a hostile environment for people without legal status, so could lose their job, their home and access to their bank account whilst the mistakes made by the Home Office were corrected.

### **What can go wrong with Home Office decision-making in these cases?**

The quality of Home Office decision-making was highlighted as a concern in 2014 when appeal rights were removed. Whilst the use of deception or breach of a condition would be a reason to refuse an immigration application, mistakes can be made. Mistakes that might be identified through administrative review include where the Home Office did not have sufficient evidence to support an assertion of deception or breach of conditions, or where a decision that a condition has been breached has been made under the wrong rules and policy. A notification by an employer that an individual no longer works for them may also be linked to the wrong employee and applicant.