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OVERSTAYERS: NEW IMMIGRATION RULES

The [Statement of Changes in Immigration Rules HC 667](#), published on 03 November 2016, made changes to the circumstances in which a period of overstaying will be disregarded when a person makes a further application to remain in the UK. This information sheet explains what overstaying is and the changes that have been introduced.

What is overstaying?

A person becomes an overstayer if they have had leave to enter or remain in the UK and then stays in the UK after their leave has expired. Overstaying should always be avoided if possible.

How can overstaying be avoided?

A person with leave to enter or remain can avoid becoming an overstayer by making a valid application for further leave to remain before their current leave expires. Their leave will be extended automatically by operation of section 3C of the Immigration Act 1971 and will continue with the same rights and conditions with which the leave was originally granted. This is often called '3C leave' (after section 3C of the Immigration Act 1971 which makes provision for it) and will be extended until the application for further leave is decided and (normally) until any administrative review or appeal brought within the correct time limit is completed. See ILPA's information sheet on [3C leave](#) for further information.

What are the consequences of overstaying?

Overstaying should always be avoided if possible because it is a breach of immigration law and a person who overstays is at risk of being detained and removed from the UK unless they have taken steps to regularise their stay. Overstaying is a criminal offence but it is very rare for a person to be prosecuted for this.

Overstayers are not entitled to work or access welfare benefits in the UK. They are also disqualified from renting accommodation following measures introduced by the Immigration Act 2014 and the Immigration Act 2016 aimed at creating a 'hostile environment' for people living unlawfully in the UK. A person who overstays therefore risks being evicted from their accommodation. If they then apply to regularise their immigration status, they may also need to seek permission from the Home Office to rent accommodation while their application is considered. See ILPA's information sheet on the [right to rent](#) for more information.

Overstaying can also affect the prospects of success in future applications to enter or remain in the UK.

What are the implications of overstaying for future immigration applications?

People who have overstayed in the UK may be prevented from returning to the UK, for

example for visits, work or study, for a fixed period of time after their departure (a ‘re-entry ban’). The period during which an application will normally be refused varies according to the circumstances, with no re-entry ban applied to those who have overstayed for no more than 90 days and who left the UK voluntarily at their own expenses. Those making subsequent applications to enter as a family member are not subject to re-entry bans but overstaying may lead to a refusal of the application where there are additional aggravating circumstances.

For many applications made under the immigration rules for further leave to remain in the UK, for example as a student or worker, it is a requirement to have existing leave to enter or remain to extend or vary that leave. An application for further leave to remain may therefore be refused because a person did not have leave to enter or remain when they made the application, unless the Home Office disregards the period of overstaying. The circumstances in which the Home Office will do this are discussed below.

There remain certain immigration applications where having leave to enter or remain is not a requirement and these cannot be refused solely because the individual is living in the UK unlawfully. These include applications on asylum or human rights grounds, applications based on 20 years residence in the UK and applications for indefinite leave to remain following the breakdown of a relationship due to domestic violence where the person previously had leave as a spouse, civil partner or partner in a category of the immigration rules leading to permanent stay. As periods of overstaying will need to be explained, it is advisable to obtain legal advice.

Disregarding overstaying: the immigration rules before 24 November 2016

Since 2012, the immigration rules have allowed people who overstay for a period of up to 28 days to apply for further leave to remain, including indefinite leave to remain, in those categories where having valid leave to enter or remain is a requirement for the application. The Home Office therefore disregarded the period of overstaying when considering whether the application was valid, provided the person did not overstay for more than 28 days. The Home Office introduced this rule to deal fairly and consistently with people who may have made an innocent mistake. This changed on 24 November 2016 with the introduction of new rules dealing with applications made by overstayers.

Disregarding overstaying: new immigration rules from 24 November 2016 onwards

Under the new immigration rules, the Home Office will disregard a period of overstaying if an application for further leave to remain is made within 14 days of the person’s leave expiring and they can also show a good reason beyond their or their representative’s control why the application could not be made before their leave expired. It is not yet known what the Home Office will consider a good reason.

The Home Office will also disregard overstaying if an application is made within 14 days of an application for leave to remain being refused; a person’s leave under section 3C of the Immigration Act 1971 ending; a time limit for appealing or bringing an administrative review ending; or an appeal or administrative review being concluded or withdrawn. This is to allow a person whose application for further leave to remain was turned down (for example because they made a simple mistake in the application) the opportunity of making another application if necessary.

The changes came into effect on 24 November 2016 and apply to applications for further leave to remain made on or after this date. Applications made before 24 November 2016 will be considered under the previous rules in which 28 days overstaying was disregarded. For Indefinite Leave to Remain applications, where the Home Office considers whether a person has lived lawfully in the UK for a continuous period, overstaying of up to 28 days will be disregarded if this occurred before 24 November 2016 and the new rule will apply for periods from 24 November 2016 onwards.