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'3C LEAVE'

This information sheet explains what '3C leave' is, some of the problems with '3C leave' that can arise in practice and the recent Supreme Court judgment in *R (Mirza & Ors) v Secretary of State for the Home Department* [2016] UKSC 63 (14 December 2016).

What is '3C leave'?

When a person has leave to enter or remain (permission to stay) for a limited period and makes a valid application 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 (normally) until 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.

Problems with '3C leave' following the Immigration Act 2014

The Immigration Act 2014 introduced administrative review to replace rights of appeal in certain cases (see ILPA's information sheet on [administrative review](#)). The same Act changed the wording of section 3C of the Immigration Act 1971 to enable leave to be extended during an administrative review of a decision as well as during appeals. The way in which the law was changed, however, created a problem.

The changed wording of section 3C of the Immigration Act 1971 has led to a situation where leave is not extended in one unusual circumstance. This is where the Home Office makes a decision on an application for further leave *before* the person's original leave has expired. In this case, leave will not continue for the duration of the administrative review or appeal. This is an odd situation because if the Home Office decision is made later, after the person's original leave has expired and during their section 3C leave, leave continues until the administrative review or appeal is completed. To avoid this, some people make their application for further leave a short time before their leave expires to ensure that any Home Office decision on their application is made after their original leave has expired so that their leave continues during any administrative review or appeal. This can cause other difficulties, however, as discussed below.

The Home Office is aware of this issue in the law but has so far chosen not to change it. People who receive a negative decision on their further leave application before their original leave expires should therefore seek legal advice.

Problems with '3C leave' and invalid applications

Another problem with '3C leave' was highlighted by the Supreme Court in the case of *R (Mirza & Ors) v Secretary of State for the Home Department* [2016] UKSC 63 (14 December 2016). This case concerns whether leave is extended under section 3C of the Immigration Act 1971 if it later turns out that the application for further leave to enter or remain making was invalid even though the application had been made in time. The Supreme Court was forced to conclude that, because of the way in which the law is drafted, leave is not extended.

This means that a person whose application to extend their leave turns out to be invalid after their leave has expired does not benefit from 3C leave, including during the period before the mistake was discovered. In one of the cases considered, and dismissed, by the Supreme Court, the application was invalid as the applicant had not paid the correct application fee which had increased shortly before he made his application. As the application had been made close to the expiry of his leave, there was no time to correct the mistake and make a valid application before his leave expired.

The Supreme Court criticised the Home Office for failing to address the difficulties caused by the lack of flexibility in the provisions and which have been known since the problems were identified in a legal case brought by ILPA some ten years ago.

Problems evidencing '3C leave'

People with leave under section 3C of the Immigration Act 1971 can face difficulties proving this as the Home Office does not acknowledge their application or provide confirmation of their status and entitlements when they apply to extend their stay in the UK. This is a problem due to the increased need to provide evidence of immigration status to access employment and rented accommodation as a result of the 'hostile environment' aimed at those living unlawfully in the UK but which has a wider impact.

Employers risk a civil or criminal penalty if they are found to have employed someone who is not permitted to work because of their immigration status. These penalties do not apply where someone has the legal right to work. They are only imposed where a person does not the right to work where the employer did not carry out reasonable right to work checks which act as a defence. Home Office guidance to employers¹ advises that, to check the right to work of employees who indicate they have made a valid application to extend their leave and so have 3C leave, employers should contact the Home Office Employer Checking Service to confirm immigration status. The guidance states that if the right to work check is being carried out before the person is employed, the employer should wait for the service to confirm status, but if the individual is already employed and the right to work check is being carried out as part of follow up checks, the employer can continue employing them for up to 28 days after the expiry of their original leave without risking a penalty if they are found to no longer have the right to work. Unfortunately, ILPA is aware of many cases where the Employers Checking Service has given wrong information to employers, often as a result of the underlying Home Office databases being out of date, and people dismissed unfairly.

The Home Office provides guidance for landlords² obliged to check immigration status. This advises that where a person cannot provide the required documents proving their status because these have been submitted to the Home Office, for example in an application to extend their leave, the landlord can ask the Home Office to conduct the right to rent check by completing an online form or telephoning the Landlords Helpline.

¹ UK Visas and Immigration, *An Employer's Guide to Right to Work Checks*, 12 July 2016 at: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide> (see pp.21-22)

² UK Visas and Immigration, *A short guide on right to rent*, 14 June 2016 at:

<https://www.gov.uk/government/publications/landlords-right-to-rent-checks-guide>