

Applications from overstayers (non family routes)

This guidance is based on the [Immigration Rules](#).

Applications from overstayers (non family routes)

About this guidance

[Refusal on grounds of overstaying](#)
[Armed forces cases](#)

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, and
- most discharged Her Majesty's (HM) forces.

It does not apply to:

- Applications for leave to remain under the above routes made before 9 July 2012. You must decide these in line with the rules in place on 8 July 2012.
- Applications to switch from a study route to Tier 2 general, minister of religion or sportsperson. Migrants applying to switch in this way must have valid leave at the point they apply, see paragraph 245HD(b)(ii) of the Immigration Rules.
- 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.

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

Contacts – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.

In this section
[Changes to this guidance](#)

[Contact](#)

[Information owner](#)

Related links
Links to staff intranet removed

External links
[Paragraph 245 of the Immigration Rules](#)

	<p>Information owner – This page tells you about this version of the guidance and who owns it.</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	
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Changes to this guidance

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This page lists changes to the applications from overstayers (non family routes) guidance, with the most recent at the top.

Date of the change	Details of the change
12 September 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• Minor housekeeping changes.
28 March 2013	Six month review by the modernised guidance team: <ul style="list-style-type: none">• About this guidance:<ul style="list-style-type: none">○ this page has been rewritten• Refusal on grounds of overstaying:<ul style="list-style-type: none">○ new page• Armed forces cases:<ul style="list-style-type: none">○ new page• Contact details:<ul style="list-style-type: none">○ changed• Information owner:<ul style="list-style-type: none">○ details changed.
	For previous changes to this guidance you will find all earlier versions in the archive. See related link: Overstayers - archive.

Related links

See also
[Contact](#)

[Information owner](#)

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This page tells you about the 28 day period of overstaying and what you can consider as exceptional circumstances.

Any applicant who is applying for leave to remain must not have remained in the UK for longer than 28 days after the expiry of their original grant of leave, on the date of their application. This is commonly known as overstaying.

The 28 day period of overstaying is calculated from the latest of:

- the last day of their latest grant of leave to enter or remain
- the end of any extension of leave they were given under sections 3C or 3D of the Immigration Act 1971, or
- the date the applicant is deemed to have received a written notice of invalidity, in line with paragraph 34C or 34CA of the Immigration Rules, relating to an in-time application for leave to remain.

If you are refusing an application because of overstaying

You must consider any exceptional circumstances that stopped the applicant applying within the 28 days. The 'exceptional circumstances' threshold is high, but can include:

- The migrant or their representative could not submit an application on time because of:
 - serious illness (supported by the appropriate medical documentation)
 - travel or postal delays. Or
- They are not able to provide the necessary documents because of exceptional or unavoidable circumstances beyond the applicant's control. For example:
 - The Home Office has lost or delayed returning travel documents.
 - The applicant is having problems replacing lost documents as a result of theft, fire or flood. They must provide evidence to show the date of loss and the date they requested replacement documents.

Related links

External links

[Paragraph 34C of the Immigration Rules](#)

[Section 3C of the Immigration Act 1971](#)

	<p>If you decide to use discretion it must be authorised by a senior caseworker, at senior executive officer (SEO) grade or above. In these circumstances you 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 you have accepted there were exceptional circumstances which prevented the applicant from applying within the 28 day period.</p> <p>Migrant's status following submission of an application within 28 days of overstaying The submission of an application within the 28 day period of overstaying does not mean the migrant's previous leave is either re-instated or extended. Therefore applicants without valid leave at the point they submit their application continue to be an overstayer throughout the period their application is pending.</p>	
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Applications from overstayers (non family routes)

Armed forces cases

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This page tells you how to calculate the 28 day period for armed forces cases and what you can consider as exceptional circumstances.

For armed forces cases the 28 day period runs from the last date of leave after their discharge.

Foreign and Commonwealth cases (including Gurkhas) are 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. You must not assume the last date of leave will be 28 days after discharge from Her Majesty's (HM) forces.

Exceptional circumstances

For armed forces cases exceptional circumstances also covers reasons which directly relate to the individual's armed forces service. For example:

- deployment abroad at short notice, or
- 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.

Related links

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Contact

About this guidance Refusal on grounds of overstaying Armed forces cases	<p>This page explains who to contact for more help with a specific case in the applications from overstayers (non family routes) category.</p> <p>If you have read the relevant Immigration Rules and this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <p>If the question cannot be answered at that level, you may email the enforcement policy team in the immigration and border policy directorate (IBPD), for guidance on policy. See related link.</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the enforcement policy team, who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	<p>Related links</p> <p>Changes to this guidance</p> <p>Information owner</p> <p>Links to staff intranet removed</p>
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This page tells you about this version of the applications from overstayers (non family routes) guidance and who owns it.

Version	3.0
Valid from date	12 September 2013
Policy owner	Enforcement Policy
Cleared by director	Sonia Dower
Director's role	Director, operational policy and rules
Clearance date	28 September 2012
This version approved for publication	Richard Short
Approver's role	Grade 7, modernised guidance team
Approval date	11 September 2013

Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the enforcement policy team in the immigration and border policy directorate (IBPD), who will ask the MGT to update the guidance, if appropriate.

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