

Section 3C Leave and Employer Responsibilities: A Guide

This document has been created by Refugee & Migrant Justice (formerly Refugee and Migrant Forum of Essex and London), a legal action charity based in east London and one of the largest immigration and asylum advice charities in the UK.

Current Home Office guidance on “Section 3C leave” lacks clarity on employer obligations, which leaves many employers confused and unsure of how to confirm their employees’ right to work while they’re on 3C leave. This document provides clear guidance on using the Home Office’s Employer Checking Service (ECS) to ensure compliance and minimize disruption for both employers and employees.

What is Section 3C Leave?

- Section 3C leave automatically applies when a person has made an in-time application to extend their leave to remain. It ensures their immigration status continues under the same conditions until the Home Office makes a decision on the application.¹
- Due to Home Office processing times, people can be waiting for up to 12 months for a decision, meaning they spend a whole year on 3C leave.
- The employee **will not receive a formal notification** of their 3C leave status, but **their right to work remains valid under Section 3C**.

The Problem:

- In 2022, we estimated that **at least 40,000 people a year struggled to prove their right to work²** under Section 3C leave. Many face this problem **because they can’t generate the Home Office “share code”** that most employers now use for right to work checks.
- **When a person is on 3C leave, employers must rely on the online ECS instead of the share code system³**. Many employers are unsure how to handle this situation, leading to unnecessary suspensions of employees.

Key Points for Employers:

1. What to Do When You Can’t Get a Share Code:
 - **Don’t panic if the employee cannot generate a share code. This happens to everyone on Section 3C leave.**
 - Instead, perform a manual right to work check using the Home Office’s [online ECS](#). You have 28 days to complete the ECS form and **you are legally allowed to employ someone while awaiting the ECS result provided they have presented evidence that they’ve made a valid in-time application** for further leave to remain. This will

¹ Home Office (2023), Leave extended by section 3C. Available at:

https://assets.publishing.service.gov.uk/media/64da0b283fde6100134a51c8/3C_and_3D_leave.pdf

² RAMFEL (2022), Hostile Environment remains in place. Available at:

https://www.ramfel.org.uk/uploads/1/1/8/6/118604888/the_hostile_environment_remains_in_place.pdf

³ Right to Remain (2024) – Section 3C leave case win. Available at:

<https://righttoremain.org.uk/section-3c-leave-case-win/>

usually be an automated email from the Home Office confirming receipt of their application. Provided the date of the email is earlier than the date of the employee's previous leave to remain expiry date, their application is in-time⁴.

- ECS results can take up to **a week**⁵ to process, but delays can be longer during busy periods. Be prepared for this and continue employing the person while awaiting confirmation. Provided you have used the ECS, you have nothing to worry about.

2. What Constitutes a Valid Immigration Application:

- A **valid immigration application** can include:
 - **Visa extension applications** made before the current visa expires.
 - **Indefinite Leave to Remain (ILR)** applications made before the current visa expires.
 - **Fee waiver applications** made before the current visa expires if the individual cannot afford the application fee.
- As long as the **employee has made a valid application**, their Section 3C leave will continue, and **they can keep working until their application is processed**.
- **The Home Office acknowledges all applications with an automated email only**. The key thing to note is the date of this email, which is the date of the person's application.

3. Avoiding Unnecessary Suspensions:

- Employers **should not suspend employees on 3C leave without doing an ECS check**.
- Home Office Guidance states that 'you must ask the Home Office to check an employee's or potential employee's immigration status if they cannot show their documents or online immigration status'.⁶ This applies to employees on 3C leave who cannot generate a share code.
- Provided the employee has shown evidence of an in-time application, employers have a 28-day statutory excuse period to complete the ECS check⁷. Suspending an employee before even initiating this check is both unnecessary and contrary to Home Office guidance.

4. Waiting Times:

- Waiting times for ECS results can be lengthy, especially during busy periods.

⁴ Home Office (2024), Employers guide to right to work checks. Available at: https://assets.publishing.service.gov.uk/media/66f1384102970476b261ab08/3_WORKING_COPY_-_Post_21_06_2024_Guidance_Right_to_work_checks_-_an_employer_s_guide_003_.pdf

⁵ Shoosmiths (2023), Employer Checking Service Checks: when to carry them out and things to watch out for. Available at: <https://www.shoosmiths.com/insights/articles/employer-checking-service-checks-when-to-carry-them-out-and-things-to-watch-out-for>

⁶ Home Office (2024), Checking a job applicants right to work. Available at: [Checking a job applicant's right to work - GOV.UK](#)

⁷ Home Office (2024), Full guide on preventing illegal working in the UK. Available at: [Full guide for employers on preventing illegal working in the UK](#)

- During this period, it's important to continue employing the person, provided you've followed the right to work guidance and completed the manual ECS check.

What You Should Not Do:

1. Do Not Suspend Employees Without Cause:
 - **Suspension of someone on 3C leave is not necessary** under Home Office rules and immigration law. As long as the employee provides evidence they have made an in-time application and you have used the ECS, your employee can continue working. Only if the ECS is negative should you be concerned.
2. Do Not Assume the Employee's Leave To Remain Has Expired:
 - If your employee has made a valid, in-time application, their leave automatically extends under Section 3C. **Trust the process and complete ECS check.**
3. Do Not Delay Action:
 - As soon as you know the employee is on Section 3C leave, use the ECS to confirm their ongoing right to work.

Conclusion:

Stay calm when an employee is on Section 3C leave. Perform manual right to work checks via the **online ECS** and keep the employee on board while awaiting the ECS result. The delays are not your fault or the employee's, but following the right process will ensure compliance and reduce unnecessary stress for you and your employee.