

## CURTAILMENT

1	<a href="#">Introduction</a>
2	<a href="#">When is Curtailment permitted</a>
2.1	<a href="#">General - Paragraph 323 of HC395</a>
2.2	<a href="#">If he is a Tier 1 (Entrepreneur) Migrant</a>
2.3	<a href="#">If he is Tier 1 (Investor) Migrant</a>
2.4	<a href="#">If he is a Tier 2 Migrant or Tier 5. Also Tier 4</a>
2.5	<a href="#">If he is a refugee seeking further leave as such (paragraph 323(iv) of HC395 and paragraph 339A(i)-(vi)</a>
2.6	<a href="#">If he has Humanitarian Protection</a>
2.7	<a href="#">Discretionary leave and Leave outside the Rules</a>
2.8	<a href="#">Use of discretion</a>
3	<a href="#">Curtailment &amp; Alternative Remedies</a>
3.1	<a href="#">False Reps &amp; Material Non-disclosure</a>
3.2	<a href="#">Failure to comply with conditions</a>
3.3	<a href="#">Public Funds</a>
3.4	<a href="#">Character Conduct &amp; Association</a>
3.5	<a href="#">Ceasing to meet the requirements of the Rules</a>
3.5.1	<a href="#">HP/DL/LOTR</a>
3.5.1.1	<a href="#">Humanitarian Protection</a>
3.5.1.2	<a href="#">Discretionary Leave and Leave Outside The Rules (formerly Exceptional Leave)</a>
3.5.2	<a href="#">Marriage break-up</a>
3.5.3	<a href="#">Doubt cast by subsequent application in another category on intention behind original grant</a>
3.5.3.1	<a href="#">Asylum applications</a>
3.5.4	<a href="#">Points Based changes in employment or study status</a>
4	<a href="#">Process</a>
4.1	<a href="#">Timing</a>
4.2	<a href="#">Context of when to allow the individual to explain himself</a>
4.2.1	<a href="#">Consequence of nil response</a>
4.2.2	<a href="#">Subject is outside the country</a>

<b>4.3</b>	<a href="#"><u>Deciding the immediacy of curtailment</u></a>
<b>4.4</b>	<a href="#"><u>Service of decision</u></a>
<b>4.4.1</b>	<a href="#"><u>Advising of curtailment - forms and letters</u></a>
<b>4.4.2</b>	<a href="#"><u>Passports, Vignettes, Residence permits</u></a>
<b>4.4.3</b>	<a href="#"><u>IT case management</u></a>
<b>4.4.4</b>	<a href="#"><u>Service on file</u></a>
<b>4.5</b>	<a href="#"><u>Appeals</u></a>
<b>4.5.1</b>	<a href="#"><u>Effect of the appeal</u></a>
<b>4.5.2</b>	<a href="#"><u>Allowed appeal</u></a>
<b>4.5.3</b>	<a href="#"><u>Dismissed appeal &amp; extra-statutory recommendation</u></a>
<b>4.5.4</b>	<a href="#"><u>Examples of when curtailment action is appropriate</u></a>

## **1 INTRODUCTION**

The power to curtail a person's limited leave to enter or remain is contained in Section 3(3)(a) of the Immigration Act 1971. It may be used when a person has failed to comply with certain requirements of the Rules or has lost the justification for his presence here.

The Immigration (Leave to Enter and Remain) Order 2000 provides the power to curtail or cancel non-lapsing leave (either indefinite or limited) where the person is outside the United Kingdom. (Part IV paragraph 13 (6) and (7) of the Order refers.)

The Nationality, Immigration and Asylum Act 2002 provides the power to revoke indefinite leave to enter or remain where (i) a person is liable to deportation or removal but they cannot be deported for legal reasons or (ii) where the leave was obtained by deception which would render the person removable but they cannot be removed for legal or practical reasons or (iii) where a person ceases to be a refugee as a result of their own actions. (Section 76 of the Nationality, Immigration and Asylum Act 2002 refers.) For further guidance see the API on Revocation of Indefinite Leave.

Section 10(1)(b) of the Immigration and Asylum Act 1999 (as amended) provides the power to initiate administrative removal action where evidence suggests that deception was used to obtain either limited or indefinite leave. This leave would become invalidated by virtue of Section 10 (8) once removal directions have been set. Note that normally the offender would need to be interviewed under caution by an immigration officer before the service of an IS151A notice of liability to removal. Guidance on Section 10 can be found in chapter 50 of Enforcement Guidance.

[Back to contents](#)

## **2 WHEN IS CURTAILMENT PERMITTED**

Curtailment under the Rules is allowed in any of the following circumstances:

### **2.1 GENERAL- PARAGRAPH 323 OF HC395**

- if false representations have been made or material facts not disclosed in order to obtain leave to enter or a previous variation of leave;
- if the person has failed to comply with any conditions attached to his leave;
- if the person has failed to maintain and accommodate himself and any dependants without recourse to public funds;
- if, in the light of his character, conduct or associations it is undesirable to permit him to remain in the United Kingdom;
- if the person represents a danger to national security; or
- if the person ceases to meet the requirements of the Rules under which that leave was granted.

**2.2 IF HE IS A TIER 1 (ENTREPRENEUR) MIGRANT** and fails to register with appropriate authorities within 3 months

**2.3 IF HE IS TIER 1 (INVESTOR) MIGRANT** and fails to invest at least £750,000 within 3 months.

**2.4 IF HE IS A TIER 2 MIGRANT OR TIER 5 (TEMPORARY WORKER) MIGRANT** and either his sponsor ceases to have a licence or he ceases to work for the sponsor. Also if he is a **TIER 4 MIGRANT (STUDENT)** where he ceases to study at an approved centre or the centre ceases to have a licence.

**2.5 IF HE IS A REFUGEE SEEKING FURTHER LEAVE AS SUCH (PARAGRAPH 323(IV) OF HC395 AND PARAGRAPH 339A(I)-(VI)** and there are good grounds to cancel that status as he no longer needs protection and/or he should be excluded from refugee status under Article 1F of the Refugee convention. See Exclusion: Articles 1f and 33(2) of the Refugee Convention.

**2.6 IF HE HAS HUMANITARIAN PROTECTION** (paragraph 323(iv) of HC395 and paragraph 339G(i)-(vi) and the circumstances which led to the grant of humanitarian protection have changed significantly or he should be excluded on criminal grounds.

[Back to contents](#)

## **2.7 DISCRETIONARY LEAVE (DL) AND LEAVE OUTSIDE THE RULES (LOTR)**

Whilst curtailment is normally considered under paragraph 323 and elsewhere under the Rules it is not appropriate in DL cases or LOTR because that leave is given outside the provisions of the Rules. Curtailment is still an option however but it is carried out under Section 3(3)(a) of the 1971 Act instead.

## **2.8 USE OF DISCRETION**

It should be borne in mind that the curtailment provisions are discretionary. Therefore curtailment should not follow automatically if one of the above criteria applies. When curtailing a person's leave the burden of proof rests with the Secretary of State. Careful consideration should accordingly be given to all the person's circumstances. However we would not routinely offer the individual the opportunity of submitting representations against a curtailment proposal if there is sufficient evidence already available to show that he does not qualify for his current period of leave and there do not appear to be immediately apparent factors which suggest that curtailment may not be appropriate. In a marriage breakdown case, for example, such factors might include the presence of children or indications that the person had been the victim of domestic violence. There will, of course, also be cases where the person's address is not known.

[Back to contents](#)

## **3 CURTAILMENT & ALTERNATIVE OPTIONS**

Limited leave should not normally be curtailed where the person has less than 6 months leave remaining, except in cases where an asylum/human rights application is refused, or where there are significant factors which would lead the individual to be more appropriate for removal action at an early stage (e.g. marriage breakdown cases where the sponsor alleges that they have been the victim of domestic violence). Cases only need to be referred to a SEO or Grade 7 where doubts exist as to whether the person's leave falls to be curtailed or there are exceptional circumstances, such as the presence of young children here.

Where deception has been practiced to gain the leave in the first place then it will be normal to seek to deal with the person as an illegal entrant, where the deception was used to gain entry, or under section 10, where they gained leave to remain

For deception in leave to enter cases see chapter 3 of Enforcement Guidance

For deception in leave to remain cases see Chapter 50 of Enforcement Guidance

Removal of illegal entrants or under Section 10 does not normally attract an in-country right of appeal.

### **3.1 FALSE REPS & MATERIAL NON-DISCLOSURE**

Where a person has failed to disclose relevant facts or has made false representations in order to obtain leave, consideration may be given to curtailing any subsisting leave. However, it will be more usual to proceed directly to administrative removal or in the case of leave to enter, removal for illegal entry. Under Section 10 of the Immigration and Asylum Act 1999 where either limited leave to enter or remain or indefinite leave to enter or remain has been obtained by deception the act of setting removal directions would invalidate any subsisting leave.

Note though that curtailment will not be appropriate if the leave would have been granted even if the true situation had been known at the time of the decision.

[Back to contents](#)

### **3.2 FAILURE TO COMPLY WITH CONDITIONS**

Although the provision to curtail exists where a person fails to observe the conditions of leave to enter or remain, it will be more usual to proceed direct to administrative removal for breach of conditions see chapter 50 of Enforcement Guidance.

**In the event that the LEO/LIT/CIT are unable to take action due to a lack of resources or other reasons then curtailment action should be considered as an alternative way forward rather than leave the individual with leave to which they are no longer entitled.**

### **3.3 PUBLIC FUNDS**

Before a person is given limited leave to enter or remain he will normally have to provide evidence of the means available to him. Curtailement may be appropriate if,

nevertheless, he is in receipt of public funds as listed in Paragraph 6 of HC 395. This will normally be appropriate if the person is clearly going to be a continuing and significant burden on the State, and not where the person has claimed for a short period in an emergency. A person who has been given leave to enter or remain with a condition restricting access to public funds will also be in breach of his conditions, see paragraph 3.2 above. (See also **Chapter 1, Section 7, "Public Funds"**)

[Back to contents](#)

### **3.4 CHARACTER CONDUCT & ASSOCIATION**

Curtailment of stay may be appropriate where a person's behavior or some aspect of his conduct is reprehensible but not so bad as to justify deportation, for example, where a person is convicted of a minor offence which would nevertheless be sufficient to justify refusal of any subsequent application for leave to remain.

### **3.5 CEASING TO MEET THE REQUIREMENTS OF THE RULES**

A person's leave may also be curtailed if he no longer meets the requirements of the Rules under which his leave was given, for example, a person here for permit free employment who leaves his job. However, such a person may qualify for leave to remain in another capacity or, in the case of a spouse whose marriage breaks down, may subsequently be reconciled with their partner. Curtailment should not therefore follow automatically when a person's basis of stay no longer exists. Each case will need to be considered on its merits before a decision is reached.

#### **3.5.1 HUMANITARIAN PROTECTION/DISCRETIONARY LEAVE/LEAVE OUTSIDE THE RULES**

##### **3.5.1.1 HUMANITARIAN PROTECTION**

Humanitarian Protection granted under paragraph 339C will be revoked or not renewed if the Secretary of State is satisfied that at least one of the provisions in paragraph 339G of the Immigration Rules applies. See instruction on revocation of Humanitarian Protection

[Back to contents](#)

##### **3.5.1.2 DISCRETIONARY LEAVE AND LEAVE OUTSIDE THE RULES (FORMERLY EXCEPTIONAL LEAVE)**

Whilst curtailment is normally considered under paragraph 323 of the Rules it is not appropriate in DL cases because that leave is given outside the Rules. Curtailment is still an option however but is carried out under Section 3(3)(a) of the 1971 Act instead.

Forms are ASL3566 and ICD2240 but note you will need to delete "Insert paragraph of HC 395 (as Amended)" and replace with "Section 3(3)(a) of Immigration Act 1971"

You should use the following wording when curtailing:

"On \_\_\_\_\_ you were granted leave to enter/remain in the United Kingdom until \_\_\_\_ (as a \_\_\_\_/in order to \_\_\_\_), but you have ceased to meet the requirements of the concession under which the leave to enter/remain was granted, and having considered the exercise of his discretion, the Secretary of State has decided to restrict the limit on the duration of your leave. The Secretary of State therefore curtails your leave to enter/remain in the United Kingdom so as to expire on \_\_\_\_\_."

You should also add something in the letter to make clear that this is in line with our published policy on DL e.g. "In accordance with the published Home Office Asylum Policy Instruction on Discretionary Leave there may be occasions where due to a change in circumstances it would be appropriate to revoke Discretionary Leave. You were granted leave as an Unaccompanied Asylum Seeking Child (UASC) but it has since been established that your mother has subsequently arrived in the United Kingdom and would be able to care for you were you to return to \_\_\_\_ or perhaps ..that your age has now been assessed by the local authority as being...etc..."

[Back to contents](#)

### **3.5.2 MARRIAGE BREAK-UP**

When information is received that a marriage has broken down during the probationary period, a person's stay in the United Kingdom may be curtailed.

### **3.5.3 DOUBT CAST BY SUBSEQUENT APPLICATION IN ANOTHER CATEGORY ON INTENTION BEHIND ORIGINAL GRANT**

It may arise that an applicant applies for a variation of leave which indicates that the grounds on which they were granted leave no longer apply (e.g. a person who has already been granted 4 years in employment subsequently applies for 12 months as a foreign husband). There is no right of appeal against a variation of conditions attached to the leave.

When dealing with such applications caseworkers should endorse the passport with the new leave and conditions. The new endorsement will supersede any previous leave and conditions, and therefore for clarity the new endorsement should be annotated to read "Leave varied to supersede previous endorsement on page ..."

In such cases there is no requirement to issue a formal decision notice.

Where however the new application falls to be refused and the applicant has existing leave to enter or remain in a category that he no longer qualifies for then as well as refusing the current application consideration should also be given to curtailing his current leave as well

[Back to contents](#)

### **3.5.3.1 ASYLUM APPLICATIONS**

#### **CURTAILMENT FOLLOWING AN UNSUCCESSFUL ASYLUM/HUMAN RIGHTS APPLICATION**

Where a person is being refused on asylum or human rights grounds and has outstanding leave to enter or remain then reference should be made to the Asylum process instruction: Curtailment of Limited Leave in cases where an Asylum or Human Rights application is refused.

### **3.5.4 POINTS BASED CHANGES IN EMPLOYMENT OR STUDY STATUS**

PBS guidance contains advice on when it is appropriate to curtail leave given under Tiers 1-5.

[Back to contents](#)

## **4 PROCESS**

Once information is received which suggests the individual no longer qualifies for the leave they currently hold then a new CID case should be created to show that curtailment is being considered see 4.4.3.

### **4.1 TIMING**

If there is any suggestion that the individual is violent or otherwise of concern then the case should be considered at an early stage. An example might be in a domestic violence case where the victim is a British citizen or settled here. Where, however, there is less than 6 months leave remaining and there are no grounds to take action now update CID to show curtailment not pursued – see 4.4.3

### **4.2 CONTEXT OF WHEN TO ALLOW THE INDIVIDUAL TO EXPLAIN HIMSELF**

There may be occasions when the information available is not sufficiently detailed to justify curtailment action straightaway. It may then be appropriate to write to the individual for clarification of his situation .

#### **4.2.1 CONSEQUENCE OF NIL RESPONSE**

It is for the individual to put forward sufficient information that we can be satisfied he continues to qualify to remain under the rules. If he fails to do so curtailment is likely to be the next option

#### 4.2.2 SUBJECT IS OUTSIDE THE COUNTRY

Where a person is currently outside the UK but has leave to enter/remain which would continue to apply on his return here it is possible to cancel the leave under paragraph 321A of Rules in accordance with Article 13(7) of the Immigration (Leave to Enter and Remain) Order 2000. See also note on powers of cancellation

An example might be where the wife of a student seeks a visa abroad to join him in the UK and it transpires that he is actually abroad also and no longer qualifies for the leave to remain he gained here as a student having been expelled from the course. In such circumstances we could instruct the visa officer along the following lines.

Authorisation for the existing leave to remain (UKRP) to be formally cancelled by you is hereby given – please could you cancel the leave on the residence permit and advise the applicant by letter as follows:

“The Secretary of State has decided, in accordance with Article 13(7) of the Immigration (Leave to Enter/Remain) Order 2000, to cancel your existing leave to remain (which expires on ..... ) under paragraph 321A(1) of the Immigration Rules as there has been a change in your circumstances in that .....

.....”  
In such cases there would be a right of appeal from abroad

#### 4.3 DECIDING THE IMMEDIACY OF CURTAILMENT

In a marriage case normal practice would be to curtail leave so that as a result no period of leave remains. Where however the reasons for the change of circumstances are outside of the individual's control (such as where the college he attends decides not to run the course) then it may be appropriate to leave them with a period of a month or two so as to allow for them to find another course.

[Back to contents](#)

#### 4.4 SERVICE OF DECISION

This is governed by the Immigration (Notices) Regulations 2003. The notice can be given by hand, by fax or by (first class) recorded delivery post to an address provided by the applicant or representative. Where no address for correspondence has been given, the notice can be served at the last-known or usual place of abode (or place of business of the person or his representative). If we have a reliable employment address the notice can be served there if no other address for the person is available. With an employers address it may be an idea to contact the employer first to check that the person still works there. They may also be content to provide an address or agree to the letter being sent to the person at the firm's address. Obviously we shouldn't notify employers of the reason for our wanting to contact the individual but if pushed for an explanation we can advise that it is a personal matter for the individual and does not affect his immediate permission to stay in the United Kingdom or his right to work etc. Where we have no address for the individual see 4.4.4

[Back to contents](#)

#### **4.4.1 ADVISING OF CURTAILMENT – FORMS AND LETTERS**

##### **Curtailment notices**

Where it is decided to curtail any outstanding leave then notice of decision should be served on ICD.2240 which allows a right of appeal. In cases where following curtailment action a period of extant leave remains the notice of decision should be served using form ICD.2270 which does not attract a right of appeal. For cases involving DL or leave outside the Rules see Section 3.5 above for the forms to serve.

Note: Curtailment decision will only attract a right of appeal if it removes all of the remaining extant leave completely.

##### **CURTAILMENT WORDINGS**

###### **GROUND ON WHICH LEAVE TO ENTER OR REMAIN MAY BE CURTAILED**

"On ...(date) you were granted leave to [enter/remains in] the United Kingdom until ... (date)  
[as a .../in order to ...]

###### **Ceases to meet requirements of the Rules**

"... but you have ceased to meet the requirements of the Immigration Rules under which your leave to [enter/remains] was granted and, having considered the exercise of his discretion, the Secretary of State has decided to restrict the limit on the duration of your leave. The Secretary of State therefore curtails your leave to [enter/remains in] the United Kingdom so as to expire on ...(date)"

###### **Paragraph 323**

###### **False representations/material facts not disclosed**

"... but [? in view of ... ] you [made false representations/failed to disclose [a] material fact[s]] for the purpose of obtaining [leave to enter/a previous variation of leave] and, having considered the exercise of his discretion, the Secretary of State has decided to restrict the limit on the duration of your leave. The Secretary of State therefore curtails your leave to [enter/remains in] the United Kingdom so as to expire on ... (date)."

###### **Paragraph 323 with reference to 322(2)**

[Back to contents](#)

###### **Failure to comply with conditions**

"... but you have failed to comply with the conditions attached to the grant of your leave to [enter/remain] and, having considered the exercise of his discretion, the Secretary of State has decided to restrict the limit on the duration of your leave. The Secretary of State therefore curtails your leave to [enter/remain in] the United Kingdom so as to expire on ...(date)"

### **Paragraph 323 with reference to 322(3)**

#### **Recourse to public funds**

"... but you have failed to maintain and accommodate yourself [and your dependants] without recourse to public funds and, having considered the exercise of his discretion, the Secretary of State has decided to restrict the limit on the duration of your leave. The Secretary of State therefore curtails your leave to [enter/remain in] the United Kingdom so as to expire on ...(date)"

### **Paragraph 323 with reference to 322(4)**

#### **Character, conduct, etc**

"... but the Secretary of State considers it undesirable to permit you to remain in the United Kingdom [in the light of your [character/conduct/associations]/as you represent a threat to national security] and, having considered the exercise of his discretion, has decided to restrict the limit on the duration of your leave. The Secretary of State therefore curtails your leave to [enter/remain in] the United Kingdom so as to expire on ..."

### **Paragraph 323 with reference to 322(5)**

#### **Example of wording for marriage break-up case**

You entered the United Kingdom on..... with a visa valid from ..... to ....., as the spouse of....., a person present and settled in the United Kingdom.

The decision has been made to curtail your leave so that it expires on the date shown at the end of this notice.

In view of the fact that you and ..... are no longer living together as spouses, the Secretary of State is not satisfied that you and ..... intend to live permanently with each other as spouses or that your marriage is subsisting. You accordingly no longer meet the requirements of the Immigration Rules under which your leave to enter was granted. It is not considered that your circumstances are such that discretion should be exercised in your favour.

### **Paragraph 323**

[Back to contents](#)

#### 4.4.2 PASSPORTS, VIGNETTES, RESIDENCE PERMITS

Where leave was previously given in a passport and that is available then the passport should be endorsed

"Leave curtailed so as to expire on (date of action or new expiry date).

Any valid ICFN should be retained and kept secure on file. It should not be destroyed at this stage in case any appeal is successful.

#### 4.4.3 IT CASE MANAGEMENT

Create a new **CID** Case with one of the following Case Types:

- Curtailement Consideration – Spouse/Partner
- Curtailement Consideration – Student (NBF College)
- Curtailement Consideration – Student (Non-Attendance)
- Curtailement Consideration – Employment
- Curtailement Consideration – Dependand
- Curtailement Consideration – Other

'Application Raised Date':

If the Curtailement Consideration is prompted by a Notification of Premature End of Employment (NPEE), this should be the date the NPEE was received. Otherwise it should be the date the case is created on CID.

Outcome the Case as appropriate:

- Curtailement Not Pursued
- Curtaile – No R.O.A.
- Curtaile – R.O.A.

Always insert an appropriate Stats Category from the following:

In association with 'Curtailement Not Pursued' Outcome:

- Curtailement NP – Not enough leave
- Curtailement NP – Transferred to another College
- Curtailement NP – Has leave in another capacity
- Curtailement NP – Permission not granted by Settled Spouse/Partner
- Curtailement NP – Other reasons

In association with 'Curtaile – R.O.A.' and 'Curtaile – No R.O.A.' Outcomes:

- Curtaile leave – Non-conducive grounds
- Curtaile leave – Main applicant left country and no longer sponsors dependand
- Curtaile leave – Domestic Violence
- Curtaile leave – Other reasons

Update CID Case notes

The following 4 CID fields must be completed for every Case, including those not pursued, (this is to enable MI to correctly report that the Case has been closed):

Document Type: 'Decision Letter'  
Document Event Type: 'Despatched'  
Despatch Method: 'Served by Post'  
Despatch Address: 'Applicant'

OR where there is no address available, or where no document has been despatched, e.g. because there is not enough leave to Curtail:

Despatch Method: 'Served on File'  
Despatch Address: 'No Known Address'

[Back to contents](#)

#### 4.4.4 SERVICE ON FILE

Where there is no available address the notice can be served on file. The circumstances and reasons why normal service is not possible should be clearly noted, in case of legal action later. It may be necessary to provide the note in evidence as well as the original notice of decision, which should be signed and dated in the normal way and placed in a pouch at the bottom of the file. It should be docketed to the file, or its presence and location on the file clearly minuted. Serving a notice on file will terminate the application and start the period for appealing. If the application was made in time, service will also trigger the winding-up provisions of section 3D of the 1971 Act (ie 3D leave will end at the end of the period for appealing if no appeal is lodged and from that point on the person will be an overstayer).

Service on file is only possible where:

- we know of no fixed place where notice could be served on the applicant; **and**
- no address for correspondence has been provided and there is no "last-known" address **OR** the address which was provided is defective, false or known to be no longer in use; **and**
- no representatives appear to be acting for the applicant.

**When notice has been served on file and the person concerned is located, they must be given a copy of the notice as soon as possible, together with the additional papers related to the right of appeal. The option of an out of time appeal remains open but the AIT would need to be persuaded that it would be particularly unjust to prevent the appeal from proceeding (for more information on appeals see chapter 12 section 2 of IDI on Appeals).**

## **4.5 APPEALS**

In curtailment cases there is an in country right of appeal where all existing leave is being taken away. If however it is decided to leave the individual with some period of leave there is no statutory right of appeal.

### **4.5.1 EFFECT OF THE APPEAL**

Whilst the appeal is outstanding the individual's leave is extended under Section 3(D) of the Immigration Act 1971 as amended. The individual may not make an application to vary leave to enter or remain during this period.

### **4.5.2 ALLOWED APPEAL**

In curtailment cases the effect of allowing an appeal means that the original leave continues to apply. In such circumstances the file will not be passed to Appeals Implementation Unit (AIU) except where the Immigration Judge has made a specific ruling as to the form of leave to be granted and Specialist Appeals Team have decided not to challenge the decision.

In other cases the file will be returned to the section that curtailed leave to note the outcome and re-impose the original period of leave.

In cases where the passport was not available at the time of the curtailment it may be sufficient to simply write to the individual to explain the position but if the old vignette had been cancelled then a new one should be issued. CID should be updated accordingly.

Where restoring the original leave would mean the person would be left with less than 3 months leave then a period of 3 months on the same code as before should normally be given. This then gives the individual the opportunity of submitting an in time application for further leave should they wish to do so

### **Suggested wordings: Over 3 months leave remaining**

I am writing to inform you that, following the Immigration Judge's decision to allow your appeal on [date allowed appeal is notified], the earlier decision to curtail your leave to enter the United Kingdom is of no effect and you still have leave to enter the United Kingdom until [date of expiry of leave].

I should advise you that, by [date of expiry of leave], you should either have left the United Kingdom or have submitted an application for further leave to remain, if you consider that you qualify for an extension of stay under the Immigration Rules.

You can find further information about making an application for an extension of stay, such as what form you would need and when you should apply, by visiting our website at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk) . Alternatively, if you do not have access to the internet, you can contact our Application Forms unit on 0870 241 0645 on Monday-Thursday 09:00 to 16:45 and Friday 09:00 to 16:30. Please be aware that this unit only deals with issuing forms and guidance notes. If you have a more general enquiry regarding any future application, you should contact the Immigration Enquiry Bureau on 0870 606 7766 during the opening

hours referred to above.

### **Less than 3 months remaining**

I am writing to inform you that, following the Immigration Judge's decision to allow your appeal on [date allowed appeal is notified], the earlier decision to curtail your leave to enter the United Kingdom is of no effect and you still have leave to enter the United Kingdom until the [date of expiry of leave].

As that period is about to expire, you have been granted leave to remain in the United Kingdom until [period to be determined so that subject still has total of 3 months' leave remaining], by which time you should either have left the United Kingdom or have submitted an application for further leave to remain, if you consider that you qualify for an extension of stay under the Immigration Rules.

You can find further information about making an application for an extension of stay, such as what form you would need and when you should apply, by visiting our website at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk) . Alternatively, if you do not have access to the internet, you can contact our Application Forms unit on 0870 241 0645 on Monday-Thursday 09:00 to 16:45 and Friday 09:00 to 16:30. Please be aware that this unit only deals with issuing forms and guidance notes. If you have a more general enquiry regarding any future application, you should contact the Immigration Enquiry Bureau on 0870 606 7766 during the opening hours referred to above.

### **Leave to enter/remain has expired.**

I am writing to inform you that, following the Immigration Judge's decision to allow your appeal on [date allowed appeal is notified], the earlier decision to curtail your leave to enter the United Kingdom is of no effect.

As your leave to enter has now expired, you have been granted leave to remain in the United Kingdom until [3 months from date of letter], by which time you should either have left the United Kingdom or have submitted an application for further leave to remain, if you consider that you qualify for an extension of stay under the Immigration Rules.

You can find further information about making an application for an extension of stay, such as what form you would need and when you should apply, by visiting our website at [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk) . Alternatively, if you do not have access to the internet, you can contact our Application Forms unit on 0870 241 0645 on Monday-Thursday 09:00 to 16:45 and Friday 09:00 to 16:30. Please be aware that this unit only deals with issuing forms and guidance notes. If you have a more general enquiry regarding any future application, you should contact the Immigration Enquiry Bureau on 0870 606 7766 during the opening hours referred to above.

[Back to contents](#)

### **4.5.3 DISMISSED APPEAL & EXTRA-STATUTORY RECOMMENDATION**

If the appeal is dismissed without a recommendation, Enforcement action may be pursued.

In the event of an extra-statutory recommendation see chapter 12 section 5 of IDI on Appeals

[Back to contents](#)

### **4.5.4 EXAMPLES OF WHEN CURTAILMENT ACTION MAY NORMALLY BE APPROPRIATE**

#### *Scenario 1*

A person applies for indefinite leave to remain on the basis of a number of years here on a work permit but it transpires that he has switched employers without approval. He does not qualify for ILR so that application falls to be refused. He has however LTR for a further 9 months given for a job he no longer has. Curtailment is accordingly appropriate.

#### *Scenario 2*

A UK resident contacts UKBA with information that her husband who arrived 4 months ago with a 2 year spouse visa has left her. She also states he subjected her to domestic violence which the police are aware of. As the marriage no longer subsists curtailment action is appropriate.

#### *Scenario 3*

Application under domestic violence rules falls to be refused. Subject still has 12 months leave outstanding as a spouse so as that marriage has clearly broken down curtailment would also seem appropriate.

#### *Scenario 4*

Person given entry clearance as an investor has his visa cancelled on entry as he is no longer seeking entry in that capacity. He is however given LTE for 6 months. He then seeks to remain further but that application is being refused. In considering the case it transpires that his wife and children travelled separately to him and were admitted as his dependants on the original Investor entry clearance. They have continuing leave for more than 6 months and it is appropriate to consider curtailing their leave as they no longer qualify for it

### *Scenario 5*

Person is applying for further leave to remain in the United Kingdom as a domestic worker in a private household. The applicant is employed by a different household to the one he obtained Entry Clearance with and, following investigations, it transpires that the family cited on his Entry Clearance application never came to the UK and the applicant had always arranged to work for their current employers. A fact withheld from the Entry Clearance Officer.

Had the Entry Clearance Officer known this the application would have been refused. Clearly material deception was practised in this case. The views of the local LEO/LIT/CIT should be obtained but if they are not able to act then a refusal and if appropriate curtailment action should follow.

### *Scenario 6*

An illegal entrant is granted 3 years discretionary leave to remain on the basis of a marriage to a person settled here. After 2 years they apply for settlement and that application is to be refused. It also transpires that the marriage has broken down so as they have 12 months leave still to go curtailment of DL would be appropriate. Note however that if the DL was given for a number of reasons such as length of residence, presence of children and a relationship to someone settled here it might not be reasonable to curtail leave just because the relationship had broken down especially if access to the children continues. Other factors that led to the grant of DL still exist so curtailment may not be appropriate in such circumstances.

[Back to contents](#)