

THE HOSTILE ENVIRONMENT REMAINS IN PLACE.

A study of how thousands of lawfully resident migrants are wrongly deprived of their rights each year.



Ramfel

The Refugee and Migrant Forum of Essex and London (RAMFEL) is a company limited by guarantee (no. 08737163) and a registered charity (no. 1155207).

We provide advice to migrants in the community on issues related to their immigration and asylum claims, welfare/benefits, access to housing and prevention of destitution, and integration support. Our immigration and asylum advice service is accredited by the Office of the Immigration Services Commissioner (OISC). In addition to our advice service, RAMFEL actively campaigns for migrants in the UK to be treated more humanely and challenges discriminatory practices and procedures.

In 2021, we had a total of 2,410 open cases, 87% of which were immigration cases. We submitted 855 immigration applications in this period, and secured 658 grants of immigration status.

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And most importantly, thanks to our clients who have suffered at the hands of the government's hostile environment but remained determined to prevent others suffering in the same way.

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Executive summary and recommendations

In 2012, the coalition government overhauled the way foreign nationals apply for and secure leave to remain on the basis of their family and private life in the UK. This led to far more prescriptive rules, less discretion for Home Office decision-makers, longer waiting periods before securing indefinite leave to remain and more applications for further leave to remain.

Two years later, the government formally introduced its “hostile environment”. The expansion of this scheme has steadily made the UK less hospitable for migrants, and seen more officials and bodies, from doctors to schools, effectively become de facto immigration gatekeepers.

The hostile environment led to the “Windrush scandal”, which saw British nationals who had lived in the UK for decades stripped of basis rights essentially because they were non-white. The national outrage that followed saw the government re-name the hostile environment the “compliant environment”. The apparatus remains in place though, unchanged, and the passing into law of the Nationality and Borders Act 2022 coupled with plans to permanently exile refugees to Rwanda demonstrates that policies are in fact getting even crueler.

The Windrush scandal happened not because those impacted did not have lawful residence but because they did not hold physical documentation. This is the exact situation facing those who are lawfully resident in the UK on what is called “3C leave”, a temporary form of status issued whilst a person renews their leave to remain.

Since 2020, RAMFEL have been monitoring how clients on 3C leave have suffered due to having no formal visa documentation. In around a third of our cases, clients have suffered detriment, whilst in at least 17% of our cases, clients have suffered serious detriment such as being wrongly suspended from work, wrongly denied access to employment or having benefits suspended. If these trends are replicated nationwide, and we suspect they are, then we estimate that around 63,000 people per year on 3C leave could be suffering serious detriment with 40,000 or more people seeing their employment wrongly suspended or terminated. Things have gotten worse in 2022 due to increased visa waiting times and the Home Office’s failure to respond to employment verification checks in a timely manner.

It is clear that the current system is not fit for purpose if tens of thousands of lawfully resident migrants are wrongly suffering each year at the hands of the government’s current policies.

This report sets out our findings on 3C leave, based on over 2 years of data collection, and draws on real-life case studies from our clients. We conclude by making 4 recommendations that the government should consider if they wish to ensure that lawfully resident migrants do not continue being denied and stripped of their basic rights.

Recommendations



Remove the duty on employers to confirm a person’s right to work



Provide comprehensive training to the DWP on 3C leave and the ongoing right to claim benefits



Remove the hostile environment provisions that lead to those without proof of their status repeatedly suffering discrimination



Reduce the 10-year period required for settlement or increase visa lengths

Introduction

Many aspects of the hostile environment were obviously likely to see those from minority backgrounds discriminated against irrespective of their immigration status. The “Windrush scandal”, which saw British citizens who had lived in the UK for decades wrongly classified as undocumented migrants, is of course the most well-known example of the hostile environment trapping those lawfully in the UK. The victims of this scandal were denied access to state support, despite having often worked for decades and paid into the system, detained under immigration powers and, in some extreme cases, even removed or deported.

Following national outrage at the treatment of the Windrush victims, the government renamed the hostile environment, calling it the “compliant environment”. The laws and policies though remain unchanged, meaning the apparatus that led to Windrush is still in place.

The introduction of the hostile environment coincided with the Immigration Rules being drastically overhauled. These changes meant most migrants were now required to complete either 5 or 10-year “qualifying periods” before qualifying for indefinite leave to remain (‘ILR’). These 5 and 10-year periods are broken down into 2.5 year visas, meaning applicants have to renew their visas every 30 months until they reach the relevant period to qualify for ILR.

Each time a person’s LTR is due to expire, they have to submit a further leave to remain (‘FLR’) application before the expiry date. This will rarely be decided before their existing period of leave expires, meaning the applicant is placed on 3C leave provided their application is “in time”, i.e. made before the previous visa expired. During this period, they will not have a physical visa document but

retain all rights held under their previous period of leave, most importantly the right to work and claim public funds.

3C leave was designed to ensure that those waiting for visa renewal decisions did not lose their existing rights after their previous period of leave expired. Whilst likely well-intentioned, when 3C leave was introduced there were far less people having to make repeat FLR applications. It is increasingly unsuitable for repeat applications in the context of the hostile environment.

The report opens by detailing why 3C leave was introduced and how the hostile environment sees those on 3C leave suffer detriment. It is also explained how the 10-year qualifying period in particular contributes to more and more people suffering whilst on 3C leave.

Our findings are detailed, with specific examples of the more serious forms of detriment clients suffered in the period of data collection. Our data comes from 329 FLR applications submitted over a 2 year period, with nearly 1 in 3 of these people suffering detriment whilst on 3C leave, with 56 people (17%) suffering what we have termed more “serious detriment”, such as being wrongly suspended from work. If extrapolated over a larger pool and reflective of nationwide trends, it is likely that tens of thousands of lawfully resident migrants in the UK suffer serious detriment each year as a result of being on 3C leave.

The report closes with 4 recommendations for how to prevent migrants in the UK suffering similar detriment in the years to come. We hope they will be considered if the aim, as espoused by the government, is to create a more fair and humane immigration system.

Section 1

Methodology and terminology

METHODOLOGY

All data relied upon in this report comes from casework completed by RAMFEL.

Between January 2020 and 17 May 2022, RAMFEL submitted at least 329 in-time further leave to remain (‘FLR’) applications. For all 329 cases, the applicants and linked dependants were on 3C leave as they made in-time FLR applications. Many will have submitted fee waivers, whilst a smaller number will have paid the Home Office’s application fees. Whether a fee waiver was requested or not will have had no impact on whether the applicant was placed on 3C leave, so the breakdown of this data has not been recorded. Additional information about the fee waiver request and FLR application process is contained in section four.

Within those 329 cases, at least 109 people experienced some form of detriment whilst on 3C leave. Each instance in which a client experienced detriment due to being on 3C was broken down into the following categories:

- a. Employment stopped
- b. Benefits stopped
- c. Employer threatened to terminate employment
- d. DWP threatened to stop benefits
- e. Refused employment
- f. Refused benefits
- g. Other issue, generally related to housing to higher education

Our figures have been calculated using this method, with categories a, b, e, f and g classified as “more serious detriment” whilst on 3C leave.

We have relied on publicly available materials and information obtained through requests for information under the Freedom of Information Act 2000 to extrapolate our findings to a larger sample.

Others migrants’ rights organisations – Praxis and the Joint Council for the Welfare of Immigrants – were also consulted about our figures. These organisations work with similar client groups to RAMFEL and confirm that our figures reflect the trends they see. Both agreed too that the nationwide picture was likely worse as migrants represented by specialist organisations such as ours are better protected from 3C detriment.

TERMINOLOGY

Throughout the report we have interchangeably referred to people applying for FLR and extending their visas. Whilst for the purposes of this report, there is no material difference, it more reflects Home Office terminology to refer to FLR rather than visa extensions.

Common abbreviations used throughout the report include:

FLR	ILR
Further leave to remain	Indefinite leave to remain
ECS	BRP
Employer checking service	Biometric residence permit
PIP	PVN
Personal independence payment	Positive verification notice

Section 2

What is *3C leave*?

3C LEAVE

Section 3C of the Immigration Act 1971 extends a person's leave to remain in the UK pending the outcome of an application to vary/extend it as long as the person's further leave to remain ('FLR') application is made before their original leave expires. 3C leave covers the period during which an administrative review or an appeal can be sought or brought respectively and the waiting period until an in-time application, administrative review or appeal is decided or determined.

With 3C leave, a person can remain lawfully in the UK rather than becoming an overstayer and, in theory, it should operate as protection against the hostile environment. Once 3C leave is triggered, a person's existing legal residence is automatically extended and the conditions of their leave remain the same unless specifically varied by the Secretary of State. This means the right to work, rent and drive are protected whilst waiting for the person's application to be decided. The period on 3C leave waiting for a decision counts towards the period required to qualify for indefinite leave to remain ('ILR').

Crucially, in order for 3C leave to be triggered, an FLR application must be valid. This means that the requirements of Paragraph 34 of the Immigration Rules must be met or one of the exceptions in Paragraph 34 must apply. The courts have held that when an application is rejected as invalid, 3C leave does not apply.¹

HISTORY OF 3C LEAVE

3C leave stems from section 3C of the Immigration Act 1971, which was initially inserted by way of Section 3 of the Immigration and Asylum Act 1999. The need for this statutory mechanism arose following the case of *Suthendran v Immigration Appeal Tribunal* [1977] AC 359, where the House of Lords held that an appeal right under (the then) section 14 of the 1971 Act only arose if the applicant had leave at the date of both the application to vary and the filing of the notice of appeal (not if leave had expired beforehand).

Prior to this, an Immigration (Variation of Leave) Order (otherwise known as a '1976 Order') was a mechanism to renew leave to remain. Unlike today, there were no specified application forms to complete, and applicants simply needed to make a request to the Secretary of State to vary leave in "unambiguous terms".²

By way of changes to the Immigration Rules in 1996, the government introduced a requirement for variation applications to be made on prescribed forms accompanied by specific documents, stating that any other attempt at a variation application was invalid. Following this, section 14 of the 1971 Act and the 1976 Order were replaced by provisions in the Immigration and Asylum Act 1999, which inserted a new section 3C into the 1971 Act. This enabled a person's leave to be extended subject to an application to vary it being made prior to its expiry.

Whilst the introduction of 3C leave was a welcome development, simplifying the process significantly for those renewing their status, subsequent changes to the FLR application process and the evolution of the hostile environment created barriers to realising the safeguard.

Over time, the requirements for making a valid FLR application (warranting 3C protection) also became more prescriptive particularly when contrasted with the simplicity of the 1976 Order. This greatly increased the risk of applicants making an invalid application, and in turn not benefitting from 3C leave, thereby losing their lawful right to remain and seeing their continuity of residence broken.

Eventually, section 31A of the 1971 Act and section 5 of the 1999 Act were repealed by the Immigration, Asylum and Nationality Act 2006. Section 50 of the 2006 Act enabled the Secretary of State via the Immigration Rules to lay down the procedure for applications, including the requirement to use specified forms and the payment of a fee. The Immigration and Nationality (Fees) Regulations 2011 specified in Regulation 37 that an application was not validly made unless it was accompanied by the requisite fee.

Section 5 of the UK Borders Act 2007 created the power to require biometric information, detailing the consequences of a failure to comply with a requirement. Regulation 23 of the Immigration (Biometric Registration) Regulations 2008 enabled the Secretary of State to treat a person's FLR application as invalid where there had been a failure to comply with the biometric requirements.

The procedural requirements of an application must therefore be carefully understood in order to avoid 3C leave protection from being denied, and the increase in procedural hurdles has inevitably made submitting a valid FLR application and triggering 3C leave more onerous for those looking to extend their visas.

Section 3

The Hostile Environment

WHAT IS THE HOSTILE ENVIRONMENT AND WHEN WAS IT INTRODUCED?

The 'hostile environment' is a government policy designed to create substantial hardship for those with irregular immigration status in the UK, with the aim of compelling them to leave the country. As Theresa May, the then Home Secretary declared in 2012, *"the aim is to create, here in Britain, a really hostile environment for illegal immigrants."* The hostile environment did not though begin in 2012. It is instead an ongoing legal, political and cultural agenda pursued by successive governments over multiple decades and its provisions have been expanded since through ever crueller primary and secondary legislation.

The language of the hostile environment is dehumanising; migrants are referred to in disdainful terms and reduced to numbers to be weaponised for political gain. A visible representation of the hostile environment policy under Theresa May was her 'Go Home Vans' in 2013 in which vans carrying slogans stating *"go home or face arrest"* were dispatched to areas with high immigrant populations with the intention of scaring people into departing the UK.³

Although so-called illegal entry into the UK and being unlawfully present in the UK were already criminal offences under the Immigration Act 1971, the Coalition Government expanded the consideration and prioritisation of immigration control to communities and public services, compounding mistrust and discrimination towards migrants. In 2013, Theresa May stated that *"it is vital we work together across government so that our immigration policy is built into our benefits system, our health system, our housing system and other services."*⁴ Thereafter, more and more measures came into effect that would make everyday life harder for migrants in the UK.

The Immigration Acts of 2014 and 2016 required banks,⁵ charities, landlords and even the NHS to conduct identification checks with a view to making their services inaccessible to undocumented migrants. Adults were also disqualified from driving in the UK unless they were in the UK lawfully.⁶ In other words, as the government has embedded its hostile environment, undocumented migrants have been denied access to ever more services.



Go Home Vans

One of the cruellest aspects of the hostile environment is the fact that professionals traditionally tasked with helping others are now expected to behave as de-facto border guards. Healthcare and charity workers, instead of assisting those suffering from ill-health or hardship, were now required to refuse help without payment and/or report suspected irregular migrants to the Home Office.⁷ By way of section 39 of the Immigration Act 2014, only British, EEA nationals and those with indefinite leave to remain ('ILR') were considered "ordinarily resident" in the UK and therefore automatically protected from being charged by the NHS for relevant services.⁸ The National Health Service (Charges for Overseas Visitors) Regulations 2015 (SI 2015/238) set out the current NHS charging regime and were amended in 2017 to introduce upfront charging and extend the scope of healthcare provision caught by the Regulations. The consequences were devastating with people being wrongly denied cancer treatment⁹ or being too afraid to seek treatment⁹ out of fear of being reported to the Home Office.¹⁰ In 2018, it was reported that a pregnant woman was forced to deprive herself of food to save enough money to cover an NHS bill.¹¹

Home Office

● This article is more than 2 years old

Asylum seeker denied cancer treatment by Home Office dies

Kelemua Mulat had advanced breast cancer but was refused NHS care for six weeks

Immigration and asylum

How the hostile environment crept into UK schools, hospitals and homes

Few people who do not see the daily workings of the government's immigration policy have any idea how doctors, teachers and even landlords have effectively been made to patrol a border within

Is our personal data fair game in the drive to create Theresa May's "hostile environment" for migrants?

Patients are dying as politicians use the NHS crisis to undermine what we love most about it – a service for all, free at the point of access, that protects our confidential health data.

[Jess Potter](#)

The Right to Rent Scheme introduced by section 21(2) of the Immigration Act 2014¹² is another particularly cruel aspect of the hostile environment. It left landlords who failed to check the immigration status of prospective tenants, sub-tenants and lodgers facing fines of up to £30,000 if they rented to someone without lawful immigration status. Section 39 of the Immigration Act 2016 added criminal liability if the landlord had reasonable cause to believe this to be the case, potentially leading to a 5-year prison sentence. This scheme is a good illustration of where discrimination against those with lawful leave occurs.

In a legal challenge brought by the charity, JCWI, the scheme was initially declared unlawful by the High Court on the basis that it caused landlords to racially discriminate against ethnic minorities and those without British passports.¹³ JCWI produced evidence of landlords being overly cautious to minimise their risk of falling foul of the scheme; this included 42% of landlords within their research saying that the Right to Rent requirements made them less likely to consider someone without a British passport and 27% being reluctant to engage with those with foreign accents or names.¹⁴

The Home Office successfully appealed this decision to the Court of Appeal, which found that although the policy had caused landlords to discriminate against potential tenants on the grounds of their race and nationality, such discrimination could be justified on the basis of deterring illegal migration. JCWI has requested the European Court of Human Rights to consider this case after being refused permission to appeal by the Supreme Court. Presently, discrimination against those with lawful immigration status including those on 3C leave can and does continue in the housing sector by way of the Right to Rent Scheme.

Following Wendy Williams' report into the Windrush Scandal, the government re-branded the hostile environment as the 'compliant environment.' There have been no meaningful or substantive changes to warrant this re-branding however. Conversely, on 28 April 2022, the government's Nationality and Borders Act 2022, described as "*inhumane*"¹⁵ and "*brutal*"¹⁶ by legal charities, was signed into law. Among other things, it allows for differential treatment of refugees based on their method of entry into the UK and off-shore processing of asylum claims. The hostile environment not only persists but is now harsher, more dismissive and draconian.

HOW DOES THE HOSTILE ENVIRONMENT AFFECT THOSE ON 3C LEAVE AND OTHER LAWFUL MIGRANTS WITHOUT VISA DOCUMENTATION?

While the government's hostile environment was explicitly intended to discriminate against undocumented migrants, its reach has extended also to those lawfully in the UK, including those with 3C leave who lack formal documentation to prove their status. A lack of documentation is treated synonymously to unlawful immigration status, therefore subjecting those on 3C leave to discriminatory treatment, as well as other categories of lawfully resident migrant. This can partly be explained by the fact that employers, landlords and other professionals are more likely to be willing to engage in wrongful discrimination against such migrants rather than risk facing harsh state penalties.

The most notable example of undocumented migrants living lawfully in the UK being subjected to the hostile environment is of course those affected by the Windrush Scandal. This saw a generation of black and brown people who were lawfully in the UK but without documentation (for good reasons and/or reasons beyond their control) wrongfully removed, deported and denied employment, housing and healthcare. The Windrush Lessons Learned Review by Wendy Williams was damning in its conclusion that, *"what happened to those affected by the Windrush scandal was foreseeable and avoidable."*¹⁷

Following Brexit, EEA Nationals who had the right to enter the UK as visitors have been detained at the UK border and removed.¹⁸ Others who had lived and worked in the UK prior to the end of the transition period were detained and threatened with removal despite being eligible to apply for settled status under the EU Settlement Scheme.¹⁹ In all of these examples, the rights of migrants lawfully in the UK were trumped by exclusionary hostile environment considerations.

Similar to landlords, employers employing a person without permission to live in the UK face a civil penalty with maximum fines per employee being increased from £5,000 to £20,000 in 2014 and by way of the 2016 Act, a criminal conviction.²⁰ Such draconian penalties have led to employers becoming excessively cautious by refusing employment to those who cannot prove their immigration status via official documentation. This is particularly problematic for those on 3C leave who have no meaningful documentation whilst their FLR application is processed. These measures have led to harsh and sometimes underhand actions at the expense of migrant workers; for example, in 2016, the Hamburger Chain, Byron Burgers, allegedly entrapped staff under the guise of an urgent training, only to allow immigration enforcement to conduct an immigration raid.²¹

When an existing employee's period of leave to remain expires, and the employer wishes to continue their employment, 3C leave permits them to do so. However, the employer must be 'reasonably satisfied' that the employee has either submitted an in-time FLR application to extend or vary their leave to be in the UK (i.e. they are on 3C leave), has an outstanding appeal or administrative review against an application or they present 'acceptable' evidence that they are a long-term lawful UK resident who entered the country before 1988.²² The burden is therefore on the employee to satisfy the employer of this to a reasonable standard.

The Home Office's online Employer Checking Service ('ECS'), which enables employers to enter prospective or current employees' details on to an online system to check whether they have valid leave, should act as a safeguard. The purpose of this process is to prevent the employer from being liable to pay a civil penalty.

After being provided evidence from their employee that they have made an in-time FLR application, the employer then has a grace period of 28 days following expiry of the employee's period of leave to obtain a positive verification notice from the ECS. The 28-day grace period does not apply to checks carried out before employing a person; in that instance, employers are instructed by the Home Office to delay employing the individual until they receive a positive verification notice ('PVN') from the ECS.²³

If a PVN is issued, an employer receives notification that they can employ the person for the next 6 months and is able to establish a legal defence/statutory excuse if they are accused of employing someone without lawful leave. If a negative verification notice is issued, the employer does not obtain a statutory excuse; despite this, they are not told specifically not to employ the individual or terminate their contract.

Whilst the ECS was designed as a safeguard, it does not eradicate employment discrimination against migrants, including those on 3C leave. For example, many employers are unaware of the service or unwilling to use it. There can also be a loss of earnings for migrant workers whilst checks are carried out alongside a loss of certain employment rights with contractual terms and annual leave being amended unfavourably. Those applying for work are also often denied opportunities as employers are unwilling to employ them due to a lack of physical visa document. Furthermore, the service is not infallible with the Home Office being responsible for data protection errors on occasion. It is therefore easy to see how notwithstanding the ECS, the harsh civil and criminal sanctions employers face can lead to a chilling effect, deterring them from hiring migrant workers even if they have lawful leave to remain in the UK.

Without stable employment or sufficiently high salaries, migrants with lawful leave often rely on mainstream benefits to support themselves. However, access to benefits can also be fraught with challenges whilst on 3C leave, with benefit suspensions and refusals issued wrongly due to a misunderstanding about a person's status and continued right to access public funds.

RAMFEL have observed that when Personal Independence Payment ('PIP') is wrongly stopped for those on 3C leave, it is not automatically reinstated and instead people have been asked to reapply to prove their eligibility. Those receiving PIP are particularly vulnerable so the hardship caused by this interruption can be devastating, heightened by the fact that payments are not always backdated. Even those eventually able to get other benefits reinstated by the Department of Work and Pensions are forced to contend with unnecessary delay and the practical, emotional and financial difficulties that come with it. Again, the absence of knowledge on the part of other government bodies shifts the burden on to individuals to prove their immigration status, despite those on 3C leave having no physical visa document.

Those on 3C leave cannot prove and assert their legal rights and are therefore trapped in the hostile environment. The likelihood of this happening is compounded by the culture of suspicion and fear fostered within public, private and charitable sectors, and also by 2012 changes to the Immigration Rules that now see more people spending more time on 3C leave than ever before.

INTRODUCTION OF APPENDIX FM AND THE 10-YEAR ROUTE TO SETTLEMENT

Appendix FM of the Immigration Rules²⁴ came into force on 9 July 2012 and prescribed the requirements to qualify for ILR under 5 and 10-year routes. The 10-year route was designated for people unable to meet certain requirements for settlement under the 5-year route but whose removal would breach their right to private and family life under Article 8 of the European Convention on Human Rights. Whilst the 5-year route is of course quicker, the requirements are much stricter, and invariably prevent those on the route from receiving any public funds for the entirety of the 5-year period.

The stated purpose of Appendix FM was to reflect the "qualified" nature of Article 8 claims for those seeking to enter or remain in the UK to among other things, "safeguard the economic well-being of the UK by controlling immigration."²⁵ In practice, Appendix FM has proven to be convoluted and restrictive; those

unable to qualify under the 5-year route must meet high legal tests to succeed in arguing that a refusal of leave would breach their right to private and/or family life to instead qualify under the 10-year route.

Even when granted leave under the 10-year route, people must consistently renew their immigration status over a 10-year period in order to eventually qualify for ILR. Periods of leave are usually issued for 30 months, meaning that 4 applications for 30 months' residence and a fifth application for ILR are required, with regular intervals on 3C leave whilst the Home Office processes these repeat applications.²⁶ In sum, the introduction of the 10-year route has seen more people spend more time on 3C leave.

As set out above, those residing in the UK under 3C leave face various challenges with respect to accessing work, benefits and housing. For those on the 10-year route to settlement, the challenges may be particularly acute. This is because they would have qualified after satisfying a high legal test including often establishing that it would be "unreasonable" for their child to be removed to their country of origin or that there would be "insurmountable obstacles" to their family life with their partner continuing outside of the UK. Often, such tests are met by establishing vulnerabilities (such as physical or mental illnesses) on their part or that of their families. Being required to repeatedly apply for FLR can exacerbate such vulnerabilities, and if an application is submitted even one day late then a person will not benefit from 3C protection, lose all rights to work and, if held, the right to receive public funds whilst that application is processed.

Notwithstanding existing challenges, the Home Office has recently expanded its use of tiered forms of leave for EEA nationals with pre-settled status (who must apply for settlement after 5 years) and even intends to do so for refugees. The Nationality and Borders Act 2022 enables refugees to be treated differently based on whether they travelled "directly" from the country where their life or freedom was threatened (so, without travelling through a country deemed to be safe) and whether they presented themselves "without delay" to the UK authorities. For those deemed not to meet the stipulated criteria, the Home Office intends to give temporary refugee permission encompassing a minimum of 30 months' leave unless "exceptional circumstances" apply. Such refugees would qualify for ILR after 10 years, effectively creating a whole new pool of people on the 10-year route and in turn a new pool of people spending significant time and frequent periods on 3C leave.

Section 4

RAMFEL's research on 3C leave and case studies of severe detriment suffered

FURTHER LEAVE TO REMAIN APPLICATION PROCESS

Those with leave to remain in the UK have this endorsed on a biometric residence permit ('BRP'). This BRP contains the duration and conditions of the person's stay, e.g. their right to work, study and/or access public funds.

Throughout the period in which RAMFEL collected this report's data, applicants will have submitted further leave to remain (FLR) applications online using specified forms, most commonly Form FLR(FP),²⁷ which is designed for what the Home Office terms "family and private life" applications. Applicants completing Form FLR(FP) are typically applying for 30-month visas, as part of either the 5 or 10-year route to settlement.

Since April 2022, FLR(FP) applications have cost £1,048.00, with an additional Immigration Health Surcharge ('IHS') of £1,560.00 (equivalent to £624.00 for each year of the visa) per person. If applicants cannot afford to pay these fees, they can request a fee waiver, which if successful will see the Home Office waive the entire fees or in some instances part-waive the fees, e.g. by requiring the applicant to pay the application fee but not the IHS. Application fees cannot be paid in instalments.

FLR applications should only be submitted in the 28 days before an applicant's present period of leave expires; if an applicant's period of leave is expiring on 28 April 2023, they should therefore not apply before 1 April 2023 and not after 28 April 2023 (i.e. they should apply between 1 and 28 April 2023). Provided a valid application is submitted on or before the visa expiry date, the person will automatically be placed on 3C leave the day after their visa expires. These timeframes also apply to fee waiver requests.

When submitting a fee waiver request,²⁸ the same process should be followed but applicants must submit 2 separate applications to the Home Office. The fee waiver request should first be submitted within the 28-day window prior to the applicant's leave expiring. It is rare for a fee waiver request to be decided prior to an applicant's leave to remain expiring even if they submit the request as early as possible. Consequently, the day after their leave expires, the applicant is again placed on 3C leave.

If the fee waiver is approved, the applicant is then assigned a code and given 10 working days to make a free of charge FLR application. The date of the FLR application is the date the fee waiver request was submitted, not the date the FLR application itself was submitted.

Once an FLR application is submitted, the applicant will either need to enroll their biometrics at a designated visa centre or may be eligible for the biometric reuse service, whereby they are exempted from enrolment and can instead just send an up to date "selfie" to the Home Office. Failing to meet the biometric enrolment/reuse requirement enables the Home Office to invalidate the application after the deadline for doing so has passed. The applicant's supporting submissions and evidence are currently uploaded to an online portal.

With so many steps needed to make a valid FLR application, inevitably they are rarely if ever processed before the applicant's present period of leave expires and FLR applicants will almost without exception be placed on 3C leave and no longer possess a valid BRP.

Upon submission of an online application – whether it be a fee waiver request or a FLR application – all that the applicant receives is an automated email confirming receipt of the application. This does not specify what rights they now have, nor make any reference to 3C leave, but does confirm the date of application. The email also only refers to the lead applicant, not dependant partners or children included in the application. This is the only evidence the Home Office provides that an applicant has made an FLR application (see Annex 1).

Once an FLR application is processed, and if approved, the applicant is issued a fresh BRP. They need to repeat the application process ahead of this BRP expiring.

Throughout the period between the applicant's BRP expiring and their new BRP being issued, their time on 3C leave, the applicant has no identification document proving their lawful residence in the UK. All they have is the automated Home Office email confirming submission of their application.

NUMBERS OF PEOPLE ENCOUNTERING 3C ISSUES

Between 1 January 2020 and 17 May 2022, RAMFEL submitted 329 FLR applications. Within this pool of cases, we observed at least 109 instances where clients suffered detriment as a result of being on 3C leave. Being on 3C leave therefore led to clients suffering detriment in 31% of our cases, or close to 1 in 3.

Most commonly, clients faced issues with continuing employment or accessing public funds whilst on 3C leave. However, more specific issues – such as continued access to higher education / student finance and in 1 instance an inability to complete a DBS check – were also encountered. A full breakdown is included below.

Migrants' rights organisations JCWI and Praxis confirm that these figures reflect trends that they see when making FLR applications and working on behalf of those on 3C leave. They also confirm that our figures on more serious detriment whilst on 3C leave, detailed below, reflect the trends they see.

HOW RAMFEL ASSISTS CLIENTS ON 3C LEAVE

Upon identifying that many clients were facing issues whilst on 3C leave, especially with the Home Office providing nothing confirming their ongoing lawful residence, RAMFEL prepared a standard letter (our '3C letter') to be presented to employers, the DWP or other bodies as needed. This letter explains that the individual has made an in-time FLR application and that their leave to remain has been automatically extended by virtue of 3C leave (see Annex 2).

This has proved effective at satisfying employers, the DWP and other bodies that clients have made in-time applications and continue to enjoy the same rights as they did during their previous period of leave. Praxis, JCWI and The Unity Project follow a similar approach.

Whilst providing 3C letters has proved effective at aiding those on 3C leave, obviously not all FLR applicants are represented by organisations such as RAMFEL, who have become uniquely familiar with issues facing those on 3C leave. For those who do not have a charity acting for them in their FLR application, the alternative options are fairly stark with legal aid no longer available: pay a solicitor to act; or apply yourself without representation.

Neither option acts as a similar safeguard against an employer or the DWP threatening to terminate employment or access to benefits. Private solicitors who are not well versed in 3C matters may not know how best to advocate on their client's behalf, or may view it as an additional service they are providing, meaning the client must pay them additional fees for assistance. For someone who has just paid a solicitor for representation – legal fees are usually anywhere between £1,000.00 and £2,000.00 for FLR applications – and possibly also paid the Home Office application fees and IHS, over £2,600.00 in total, the option

LINDA, PIP wrongly suspended on 2 occasions whilst on 3C leave

Linda had leave to remain alongside her son, valid until May 2021. The pair made a paid-for FLR application ahead of their visa expiry, so were protected by 3C leave.

In March 2022, the DWP stopped Linda's PIP. This was because they did not accept her continued lawful residence, despite having been provided the Home Office email acknowledging receipt of her FLR application.

After FLR was granted in April 2022, Linda had to reapply for PIP and is going through the entire assessment process again. As of July 2022, she was still waiting for her claim to be concluded.

Worse still, exactly the same thing happened when Linda last renewed her leave to remain, meaning she has now had to prove her eligibility for PIP 3 times. With the loss of income from PIP, Linda has had to drain her savings to support herself. She and her son describe the constant need to re-evidence her eligibility for PIP as particularly upsetting.

of expending more on legal fees may simply not be possible. This is especially so if their income has been slashed due to an employer wrongly suspending them from work or DWP wrongly suspending receipt of a public fund due to an incorrect conclusion that they no longer hold valid immigration status.

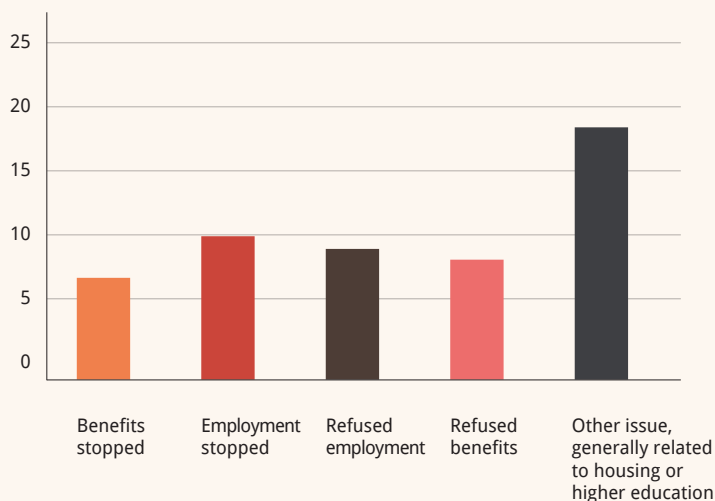
Should the applicant make their FLR application without representation, the possibility of them successfully explaining the intricacies and protections offered by 3C leave are even more remote. In sum, as one of RAMFEL's partner organisations has described it, "not everyone has a RAMFEL" acting on their behalf.

If our findings that 1 in 3 FLR applicants suffer some form of detriment whilst on 3C leave reflect nationwide trends, it is probable that many affected are not seeing their issues resolved by having an organization provide satisfactory evidence of their ongoing right to work etc. It is therefore likely that those suffering more serious detriment whilst on 3C leave will be a higher proportion than that identified by RAMFEL. JCWI and Praxis both agree that our figures likely underestimate the scale of the problem.

MORE SEVERE DETRIMENT SUFFERED BY THOSE ON 3C LEAVE

Although RAMFEL and similar organisations are adept at preventing clients from seeing their employment or benefits stopped, or suffering other form of detriment, whilst on 3C leave, we have still encountered far too many instances where more serious detriment has occurred.

In 56 of our 329 cases, or around 17% of cases, clients suffered what we have termed "serious detriment" whilst on 3C leave. We have broken down the detriment into the following categories:



Whilst issues related to housing and education are obviously important, and can have devastating short and long-term consequences if someone is wrongly denied access, seeing benefits or employment wrongly stopped has immediate financial repercussions.

"I was wrongly denied a job because of my immigration status. I want to work, like everyone else, but instead I am forced to spend my savings and rely on limited family support."

SHANTEL,

Denied employment whilst on 3C leave despite living in the UK since age 9

Shantel arrived in the UK aged 9 and has lived here for nearly 20 years. Despite this, she is on the 10-year route to settlement. This year, she applied to renew her visa for what she hopes will be the final time before securing ILR. She paid the full application fee, exceeding £2,500.

Whilst on 3C leave, Shantel was actively looking for a new job. She secured an interview but when she attended, the prospective employer refused to proceed as she could not provide a "share code", a new proof of work primarily designed for EU citizens and their family members to evidence their lawful residence in the absence of a physical document. Despite RAMFEL intervention and explaining that Shantel would not be issued a share code, the employer refused to use the ECS and Shantel was unable to take up employment even though she was entitled to.

Shantel has already been waiting 6 months for her FLR application to be processed. She is likely to wait at least another 5 months based on current processing timeframes. During this period, she will likely be unable to secure employment due to being on 3C leave. Shantel states:

"Despite being in the UK for 20 years, sounding and feeling British, without a passport I continue to face discrimination and micro-aggressions. I have consistently paid the Home Office nearly £3,000.00 to renew my visas, but now I am wrongly denied a job because of my immigration status. I want to work, like everyone else, but instead I am forced to spend my savings and rely on my limited family support."

In 37 of our 329 cases (11%), clients were either wrongly prevented from working or claiming benefits or, perhaps of even greater concern, in 18 instances they saw their employment or access to benefits wrongly curtailed. In these 18 cases, clients suffered immediate financial hardship despite having followed the FLR application process correctly.

21 clients were either suspended from work or denied access to employment. This is over 6%, meaning that over 1 in 20 people on 3C leave are likely to face discrimination in continuing or securing employment. This is especially troubling as so many of our clients work in core front-line services, such as the care sector.

If these figures are extrapolated to a larger pool and reflect nationwide trends, then the number of people suffering serious detriment whilst on 3C leave will be in the thousands. RAMFEL have twice made requests under the Freedom of Information Act 2000 (FOIA) for data about the number of FLR applications submitted each year. The Home Office refused to disclose this data, citing cost limits (see Annex 3).

However, another FOIA request regarding the number of ECS requests received was instructive. The Home Office confirmed that in 2021, they issued 161,290 positive ECS verification notices (see Annex 4).

This suggests that at a minimum the same number of FLR applications were submitted in 2021. If RAMFEL's figures are extrapolated, this would mean that nearly 27,500 FLR applicants likely experienced serious detriment during 2021. Further, around 17,700 are estimated to have been wrongly denied employment or access to benefits, with around 10,000 wrongly being denied access to employment. As detailed, we suspect that for FLR applicants not represented by organisations such as RAMFEL, the proportion suffering more serious detriment will be higher than our figures of 17% and 11% for specific work and benefits related issues.

However, the reality is likely even worse. Whilst the Home Office insists that it cannot confirm the number of in-time FLR applications per year, they have confirmed that they estimated in 2019 that 372,015 people were on 3C leave at some point during the year (see annex 5).

If our figures are extrapolated to this number then over 63,000 people will suffer some form of serious detriment each year whilst on 3C leave. Around 40,921, which is 11%, will also be wrongly suspended from work or see benefits wrongly suspended, and over 22,000 people will be wrongly denied access to employment. This is all due to these people being on 3C leave, lacking a physical visa document and therefore being trapped in the hostile environment.

40,000**people per year suffer serious detriment on 3C leave**

Basing our estimates on government data, we project that at a minimum **27,500** people suffer serious detriment whilst on 3C leave each year. The figure is probably much higher, with likely more than **40,000** people impacted.

22,000**people denied access to employment or wrongly suspended from work.**

In 6% of our cases, clients were wrongly suspended from work or denied access to employment when they applied for work. If reflected nationwide, around 22,000 people will suffer in this way each year.

EXISTING SAFEGUARDS ARE BECOMING EVEN LESS EFFECTIVE

Worryingly, the safeguards in place to ensure those on 3C leave can evidence their rights are proving increasingly ineffective. This is especially so for those seeking to establish their ongoing right to work in the UK.

The ECS is specifically designed so that employers can:

"Check an employee's or potential employee's immigration status if they cannot show their documents or online immigration status. This could be, for example, because they have an outstanding appeal, review or application with the Home Office"

In RAMFEL's experience, few employers are even aware of the existence of the ECS until signposted on production of a 3C letter. This is troubling, and again supports our view that for FLR applicants not represented by an organization such as RAMFEL, the chance of them being wrongly suspended from work is even higher.

Even fewer employers understand the precise laws and rules surrounding using the ECS and the timeframes in which they have a "statutory excuse" for continuing to hire someone after their period of previous leave has expired. This was problematic even when FLR applications were taking 2-3 months to process, but has become even more of an issue in 2022.

Currently, the average waiting time for an FLR application to be processed is 11 months.²⁹ This means that applicants spend the best part of a year on 3C leave waiting for a decision. Throughout this lengthy period, they will as detailed have no BRP or alternative physical document confirming their lawful residence and right to work.

Assuming an applicants' employer completes the ECS check within the 28 days of their previous period of leave expiring, the employer will receive a positive verification notice. This confirms the employer can continue to employ the applicant for 6 months, but should complete a fresh check at the end of this period if the employee has not produced a physical visa document, e.g. no BRP has been issued because the application remains outstanding (see annex 6).

"I fear I can now wrongly lose my job at any moment, which is compounded by knowing I need to renew my visa again and face the exact same problem."

CHRISTOPHER, wrongly suspended from work as his employer completed the ECS verification late

Christopher, his wife and the couple's 3 children all had leave to remain on the 10-year route to settlement. Expiring in December 2021, the entire family submitted a fee waiver request ahead of this date. After this was granted, they submitted their FLR application, and have been on 3C leave since December 2021.

In February 2022, Christopher's work advised him that he had been suspended as his visa had expired. He received a letter stating:

"His Visa expired in December 2021 and at the time, Christopher is unavailable to work until his application for renewal will be verified with Home Office right to work checking service."

RAMFEL attempted to intervene, but Christopher's employer refused to let him return to work until the ECS verification was received. They reasoned, perhaps correctly, that:

"There is a grace period of 28 days from the date that the visa expires and so this grace period has also expired. Unfortunately, and the Home Office has confirmed it, we must wait for the PVN before Christopher can return to work."

However, the 28-day grace period had only expired as Christopher's employer had not requested the ECS verification in a timely manner.

Christopher was wrongly suspended from work without pay for 11 days until the Home Office provided a positive ECS verification. Christopher was recalled to work as a temporary staff member only, despite having previously been advised that due to his performance he would be offered a permanent contract. Christopher says:

"My experience was inequitable, disappointing and worrying and was undoubtedly only because I am an immigrant. I was unpaid for those 11 days and struggled to provide for my family. I fear I can now wrongly lose my job at any moment due to my lack of proper documents proving my right to work. This is compounded by the fact that I know I need to renew my visa again and will face the exact same problems."

As application waiting times have increased, so too has the need for repeated use of the ECS. RAMFEL have observed that employers view increased delays in processing FLR applications with suspicion, assuming that there must be something nefarious about the person's application as it surely should not take so long to process. They are also unaware of the laws and statutory excuses that exist for repeat ECS checks. This means they often mistakenly believe that they no longer have a statutory excuse to continue hiring an employee whilst awaiting a second ECS verification. RAMFEL has now encountered 3 instances where employers have simply suspended employees rather than await the outcome of the second ECS verification.

This is compounded by the fact that ECS outcomes are themselves now also subject to delays, meaning employers face an extended period to receive verification. Whilst problematic if an employee is wrongly suspended from work for 48 hours whilst awaiting verification, the consequences are potentially devastating for someone who now faces weeks suspended without pay because it is taking so long for the ECS verification to come through.

2022 TRENDS — THINGS ARE GETTING EVEN WORSE

RAMFEL's research demonstrates that things are actually getting worse for those on 3C leave. This is a result of the Home Office not only taking longer to process FLR applications but also to respond to ECS verification checks.

Of the 56 instances where client suffered more serious detriment, 26 of these occurred in 2021. Considering the UK was still in the midst of Covid-19 restrictions throughout much of 2021, with people facing all sorts of associated financial pressures, these figures are even more concerning.

As of August 2022, we have already though seen 24 instances of serious detriment in 2022. Worryingly as well, 7 of the 11 instances we have identified of employment being wrongly suspended occurred in 2022.

Some of our clients who have suffered serious detriment in 2022 will have actually lodged their FLR application in 2021, making it difficult to give an exact percentage of instances for our 2022 FLR applications. However, it is clear that figures are rising, as we have already seen more instances of serious detriment with 4 months of the year remaining than we did for the whole of 2021.

"I secured a job, but was not allowed to start because I was waiting for my visa to be renewed. The offer was withdrawn, which was a huge blow and I wept with sadness."

EUNICE, denied access to her dream job as a teacher

Eunice is the sole carer of 4 children (19, 17, 13, 4). She has leave to remain as a parent, which expired in April 2021. She made a paid-for FLR application ahead of her leave expiring and was placed on 3C leave.

Whilst awaiting a decision, Eunice received a conditional offer for a teaching job starting in September 2021. She had self-funded her training, borrowing money, so keen was she to improve her career prospects. Eunice's offer was placed on hold due to immigration checks.

RAMFEL provided the college evidence that Eunice was on 3C leave, and also referred them to the ECS. By January 2022, Eunice's job offer remained on hold because of her immigration status and her prospective employer had confirmed over the phone that "they will suspend everything until she gets her visa".

Ultimately, in March 2022, Eunice was granted FLR. The college had withdrawn its offer of employment and Eunice was unable to commence the position. This devastated Eunice, who says:

"My course was supposed to lift my career, so that I could live an independent life without relying on the government. I secured a job, but was not allowed to start because I was waiting for my visa to be renewed. By the time my visa was issued, my offer had been withdrawn. This was a huge blow and I wept with sadness. I remain in debt, and despite completing my course and being offered a job, I am stuck in the same position."

If these trends are reflected nationally, and using only the same conservative Home Office figure of 161,290 FLR applications rather than the larger figure of 372,015, our earlier estimates of how many people suffer serious detriment on 3C leave will need revising upwards.

What we can definitively say is that it is likely that tens of thousands of lawfully resident migrants are being wrongly prevented from working and/or accessing benefits to which they are entitled every year. This is a direct result of the government's hostile environment intentionally and by design making it difficult for those without a physical ID document from establishing their lawful residence and therefore accessing services to which they are entitled.

"My work provides me with a sense of purpose. Being suspended had a significant impact on my mental health."

ANNMARIE,

wrongly suspended from her position as a care worker as her 6-month positive ECS verification expired

Annmarie had leave to remain as a parent of a British child, valid until July 2021. She applied for a fee waiver ahead of this, which was approved and her FLR application was submitted within 10 working days. Annmarie has been on 3C leave since July 2021.

In June 2022, Annmarie was wrongly suspended from work without pay from her position as a care worker. This was because her employer was waiting on a second ECS verification, after the initial check's 6-month validity had expired. They stated:

"Unfortunately, we have not received your verified ECS check back from the Home Office. With this in mind, we legally have no statutory excuse on file that would enable us to allow you to continue to work, even though we are aware an in-date application has been made and you may well have right to work."

Despite the employer acknowledging that they believed Annmarie was entitled to work, they still felt no option but to suspend her.

Annmarie was prevented from working and went unpaid for a week. She says:

"This was a very difficult time for me as I rely on my pay check to help with supporting my 13 year old daughter. My work also provides me with a sense of purpose and I am proud of the support and care I provide to my service users. Being suspended from work had a significant impact on my mental health. I now worry even more about my FLR application being rejected, and losing my employment. Thankfully I was able to get advice and assistance on this matter but my heart goes out to the people who may be stuck in the situation I was in and have nowhere to turn."

Section 5

Conclusions

Based on nearly three years of research, it is clear that the government's hostile environment continues to trap and victimize lawfully resident UK migrants who do not have physical proof of their immigration status due to complying with existing further leave to remain application processes. This is not surprising, as this is how the scheme was designed and, as the Windrush scandal proved, it is effective in this sense but thoroughly ineffective at distinguishing which undocumented migrants do and do not hold valid immigration status. Consequently, those on 3C leave will remain likely to be trapped by the hostile environment and denied basic rights.

In 109 of RAMFEL's 329 cases, our clients on 3C leave suffered detriment, and in 56 of these cases they suffered more serious detriment. 21 of our clients were wrongly suspended from work or wrongly denied access to employment. Many of these worked in front-line services, such as the care sector where there are acute staff shortages.

We are confident our findings reflect nationwide trends as there is nothing unique about the FLR applications we work on, and migrants throughout the UK are subject to exactly the same provisions. We therefore estimate that tens of thousands of lawfully resident migrants are wrongly being suspended from work, prevented from starting work or denied access to benefits each year. In sum, this is not a small pool of people being wrongly trapped, it is a systemic problem caused by the ongoing existence of the hostile environment.

This is partly because employers simply do not understand the rules and procedures surrounding the criminal offence of so-called "illegal working" and their own culpability. It is therefore often simpler to just suspend a foreign national employee on 3C leave than to continue hiring them and risk sanction. Likewise, it is far easier to hire someone who can evidence their valid status through production of a physical document than someone who is seeking to explain their 3C status and referring to the Employer Checking Service.

Though the hostile environment explains why employers are warier about hiring undocumented people, the 2012 introduction of the 10-year route to settlement also saw far more people spending periods on 3C leave. Pre-2012, probationary periods to secure ILR were far shorter, with people relying on family and private life usually needing to complete no more than 6 years of lawful residence. This was split over two separate 3 year periods, requiring people to renew visas just once before qualifying for ILR.

Those on the 10-year route to settlement, by contrast, renew their visas at least 3 times before they qualify for ILR. This has meant more people renewing visas more regularly and therefore in turn more people spending time on 3C leave. These problems have been exacerbated in 2022 with lengthy delays in the Home Office processing FLR applications and now even delays in completing ECS verifications. It is almost certain that a lengthy Home Office backlog will continue to make things worse for those on 3C leave.

In fact, the government seems determined to actually create more work for the Home Office by introducing further groups of people who need to not just wait 10 years to secure ILR but renew their visas every 30 months. On 28 June 2022, the 2-tier refugee scheme came into force. Until this point, almost all refugees in the UK were given a 5-year visa and qualified for ILR at the end of this period. Since 28 June 2022, large numbers of refugees will also need to wait 10 years and apply to renew their visas at 30-month intervals. The increased workload at the Home Office will not do anything to improve application processing times, reduce the length of time people spend on 3C leave or increase the speed at which ECS verifications are completed.

In view of our findings, and assuming the government does not intend to see tens of thousands of lawful migrants wrongly suspended from or denied access to employment, we conclude that 3C leave may simply not be suited to protecting the increased number of people having to renew their visas. Certainly too, the government's priority should be reducing the number of people on 3C leave, not increasing it.

A simple but effective solution to this would be to decrease the waiting time to qualify for ILR, therefore reducing the number of people renewing their visas. There is scope for this, as the government has recently introduced a 5-year route to settlement for young adults aged 18-24 who have grown up in the UK but on reaching adulthood discovered they did not hold valid status.

An alternative, if the government remains committed to its 10-year probationary period, is to reduce the amount of times people must renew their visas within this period. This could easily be done by increasing the length of visas from 30 to 60 months, thereby requiring people to only renew their visa once before accruing 10 years of lawful residence. There is again precedent for this, with the government also recently introducing a 60-month visa for young adults, meaning they can complete their entire 5-year probationary period on a single visa before qualifying for ILR, thereby removing any periods on 3C leave.

On a more immediate level, one step the government could take to protect people on 3C leave is to change the way it acknowledges receipt of FLR applications. As detailed, at present the Home Office sends an automated email that makes no reference to the applicants' ongoing rights and status on 3C leave. A simple tweak could be to adapt this automated email to make it clear what rights the applicant continues to possess whilst their application is processed.

We are certain that official Home Office correspondence confirming a person's right to work would immediately reassure employers. This would also prevent employers from having to proactively confirm their employees' ongoing right to work, removing a bureaucratic hurdle and the positive obligation that currently exists on employers, who should not be acting as immigration gatekeepers.

Ultimately, there appears a decision for the government to make though. Does it wish for tens of thousands of lawfully resident migrants to suffer each year and be wrongly denied the right to work under the pretense that this somehow prevents a far smaller number of migrants without valid status from working? If not, then it is clear that the government must eventually dismantle and scrap its hostile environment, which has been shown repeatedly to not distinguish between undocumented migrants with or without valid immigration status.

Recommendations

We have four recommendations that the government can implement if it wishes to ensure that lawfully resident migrants on 3C leave are no longer wrongly denied their rights and deprived of access to basic services.



1. Remove the duty on employers to confirm a person's right to work

This could be immediately introduced by the Home Office simply improving the information an FLR applicant receives when their application is acknowledged. As detailed, presently applicants receive an email confirming the date the application was submitted, but saying nothing about the person's ongoing rights and 3C status.

The Home Office should introduce an automated email confirming the applicant's status on 3C leave and their ongoing right to work and, if relevant, claim public funds whilst their FLR application is processed. This would ensure that applicants had some form of confirmation of their rights whilst on 3C leave, and would also remove the need for employers to complete the ECS verification process.

This step would see far fewer people on 3C leave wrongly suspended from or denied employment, as their employers would be satisfied of their right to employ them. It would also remove the burden on employers to proactively confirm a person's right to work, reducing the number of ECS verifications sought, in turn saving the Home Office valuable resources.



2. Provide comprehensive training to the DWP on 3C leave and the ongoing right to claim benefits

All too often, staff at the Department of Work and Pensions simply do not understand what 3C leave is, far less a person's rights to continue receiving benefits whilst on this temporary status.

The Home Office providing full training to their colleagues at DWP should instill the knowledge needed for DWP staff members to ensure that those on 3C leave do not wrongly see their benefits suspended/refused. This will encourage a cultural shift that sees DWP assuming that those renewing their leave to remain will retain their existing rights until proven otherwise.



3. Reduce the 10-year period required for settlement or increase visa lengths

The introduction of the 10-year route to settlement has seen more people renewing visas more frequently, in turn increasing the number of people on 3C leave. This could easily be reduced by reducing the 10-year period to 5-years. People would then only need to serve a 5-year probationary period before qualifying for ILR, meaning they would only renew their visas once and would spend far fewer periods of time on 3C leave.

If the government is unwilling to reduce the 10-year period, then visa lengths should be increased from 30 to 60 months. This would see people only needing to renew their visas once before qualifying for ILR, again reducing the periods of time people spend on 3C leave.



4. Remove the hostile environment provisions that lead to those without proof of their status repeatedly suffering discrimination

Ultimately, all of the previous recommendations will reduce the risk of those on 3C leave being wrongly denied their rights. However, whilst the hostile environment remains in place, it is inevitable that lawfully resident migrants will continue to suffer whenever they do not hold a physical immigration status document, which is currently inevitable whilst on 3C leave.

Nothing less than scrapping the whole apparatus of the hostile environment will fix this problem, but a first step would be to repeal sections 34 and 35 of the Immigration Act 2016, which greatly expanded the scope for penalizing those found guilty of the offence of illegal working and expanded the penalties for employers hiring such people.

Endnotes

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28. The form can be found online here: <https://visas-immigration.service.gov.uk/product/fee-waiver>
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Annex 1 - Email acknowledging FLR application

Nick Beales

From: noreply@visas-immigration.service.gov.uk
Sent: 22 January 2022 [REDACTED]
To: Nick Beales
Subject: UK visa application: submission confirmation - what to do next [REDACTED]

UK Visas & Immigration

UK Visas and Immigration

Online application submitted

Date: 22 Jan 2022
Name: [REDACTED]
Visa: Family Route
Fee paid: No payment required
Reference: [REDACTED]

This email includes your application / request reference number and confirms that there are no fees payable.

What you need to do next

If you have not already done so, **you must** [return to your application](#) to:

- download and print your supporting documents checklist
- book and attend an appointment to provide your documents and biometrics (fingerprints and facial photograph)

If you want to, you can also download a copy of your application form.

Your application may not be successful if you do not complete the mandatory actions.

Travel assistance or biometric exemptions

If you need travel assistance, are physically unable to travel to an appointment centre or have any biometric exemptions, you will need to phone our Service and Support appointment line instead of booking an appointment online. Follow the instructions when you [return to your application](#).

Change your application

Your application details cannot be changed. If you need to change any of your information, you must submit a new application.

[Take a short survey to help us improve the service](#)

PLEASE DO NOT REPLY TO THIS EMAIL

This email was sent to nick.beales@ramfel.org.uk as a user of the UK Visas and Immigration (UKVI) visa application service. Read our [Privacy Policy](#). Information about the visa application process is available on [the visas and immigration pages of the gov.uk website](#).

This service is provided by [GOV.UK](#), the website for the UK government.

Annex 2 - Template RAMFEL 3C letter



RAMFEL, the people's place
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Level 3 Specialist
F201601016



To Whom it May Concern

10th September 2020

Our Ref: [REDACTED]

Dear Sir/Madam,

RE: [name of client]

I write on behalf of my above named client. Should you need to confirm my identity with her, I am sure she will be happy to oblige.

I can confirm that we have lodged an application for further Leave to Remain for [name] on [date]. [name] therefore has a pending application for further leave to remain with the Home Office.

[name] period of leave to remain in the United Kingdom (UK) expiry date was [date]. On [date], we submitted an application for her to be granted further leave to remain. This application was submitted online (Ref: [REDACTED], case ID [REDACTED]). [name] has therefore made an **in-time** application for further leave to remain.

Consequently, by virtue of Section 3C of the Immigration Act 1971, our client's leave has been extended and so at least until a further decision is made on her case. Section 3C also extends the conditions attached to our client's previous grant of leave. **As a result, our client remains allowed to work/allowed to claim public funds**

To confirm this fact, I would encourage you to make use of the Home Office's online Employer Checking Service (ECS). The ECS exists so that people who "can't show you their documents, eg they have an outstanding appeal or application with the Home Office" can establish their right to work and/or right to access public funds. As outlined, this is exactly the position [name] is in. I have included the link for the ECS below and hope that this check can be completed if necessary.

<https://www.gov.uk/employee-immigration-employment-status>

Do not hesitate to contact me by email (above) if you need further information.

Yours faithfully,

[name]
[title]
RAMFEL

Annex 3 - Freedom of Information responses on numbers of FLR applications



UK Visas
& Immigration

Freedom of Information
Central Correspondence Team
Central Operations
PO Box 3468
Sheffield
S3 8WA

Nick Beales
Email: Nick.Beales@ramfel.org.uk

Email:
FOIRequests@homeoffice.gov.uk

www.gov.uk/ukvi

FOI Reference: 69798

10 June 2022

Dear Nick Beales

Thank you for your enquiry of 11 May in which you requested information on further leave applications. Your request has been handled as a request for information under the Freedom of Information Act 2000.

Information Requested

I am writing to request information about the number of in-time applications for further leave to remain submitted using the following application forms in each of the following years. I am not requesting information related to applications submitted by applicants who did not hold valid immigration status.

Form FLR (FP) 2019 2020 2021 2022

Form FLR (M) 2019 2020 2021 2022

Form FLR (DL) 2019 2020 2021 2022

Response

Under section 12 (2) of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it

because our cases are not stored in a way that allows us to search for the application form used, only the case type that has been created.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. Under Section 16 advice and assistance you may find it useful to know that we do not store data by application form used, instead these would be considered simply as further leave applications.

Please note that if you simply break your request down into a series of similar smaller requests, we might still decline to answer it if the total cost exceeds £600.

Even if a revised request were to fall within the cost limit, it is possible that other exemptions in the Act might apply.

If you are dissatisfied with this response, you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference 69798. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request will be reassessed by staff not involved in providing you with this response. If you remain dissatisfied after this internal review, you have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

A link to the Home Office Information Rights Privacy Notice can be found in the following link. This explains how we process your personal information:
<https://www.gov.uk/government/publications/information-rights-privacy-notice>

Yours sincerely

J Slater
Central Operations

We value your feedback, please use the link below to access a brief anonymous survey to help us improve our service to you:

<http://www.homeofficesurveys.homeoffice.gov.uk/s/108105TAZNG>



Freedom of Information
Central Correspondence Team
Central Operations
PO Box 3468
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S3 8WA

Nick Beales

Email: nick.beales@ramfel.org.uk

Email:
FOIRequests@homeoffice.gov.uk

www.gov.uk/ukvi

FOI Reference: 70326

7 July 2022

Dear Nick Beales

Thank you for your enquiry of 10 June in which you requested information on change of condition applications. Your request has been handled as a request for information under the Freedom of Information Act 2000.

Information Requested

I am writing to request information about the number of in-time applications for further leave to remain submitted in each of the following years. I am not requesting information related to applications submitted by applicants who did not hold valid immigration status. If disclosure of this information can be limited to applications on the basis of family/private life grounds, I would be grateful. If though the data cannot be disaggregated in this way, please provide the data for all further leave to remain applications, 2020, 2021 & 2022.

Response

Under section 12(1) of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it. The cost limit would be exceeded because of the manual search needed to identify relevant applications.

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The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again however any request involving manual searching through applications is likely to exceed the cost limit regardless of how it is refined.

Please note that if you simply break your request down into a series of similar smaller requests, we might still decline to answer it if the total cost exceeds £600.

Even if a revised request were to fall within the cost limit, it is possible that other exemptions in the Act might apply.

If you are dissatisfied with this response, you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference 70326. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request will be reassessed by staff not involved in providing you with this response. If you remain dissatisfied after this internal review, you have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

J Slater
Central Operations

We value your feedback, please use the link below to access a brief anonymous survey to help us improve our service to you:
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Annex 4 - Freedom of Information response on ECS checks



Freedom of Information
Central Correspondence Team
Central Operations
PO Box 3468
Sheffield
S3 8WA

Nick Beales
Email: Nick.Beales@ramfel.org.uk

Email:
FOIRequests@homeoffice.gov.uk

www.gov.uk/ukvi

FOI Reference: 69781

8 June 2022

Dear Mr Beales

Thank you for your enquiry of 10 May, in which you requested information the UKVI Employer Checking Service. Your enquiries have been handled as a request for information under the Freedom of Information Act 2000.

Information Requested

I am writing to request information about the use of the Home Office's online Employer Checking Service (ECS).

Specifically, I wish for disclosure of the following information regarding the use of the ECS. You will note that we have requested for this information to be broken down by year from 2019 to present

Table provided in PDF.

Response

Details of requests and subsequent decisions

In relation to the number of ECS checks received and subsequent decisions the HO currently does not record the date of receipt of the request against a decision. On this matter we can only provide disaggregated information as requests received and decisions made by year. To provide an answer to the questions posed would require a review of every individual record within the time periods in question.

Under section 12 of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We hold the information concerning the number of checks received by the ECS in 2019, 2020, 2021 and 2022 and the number of these ECS checks that confirmed a customer's permission to work. We have estimated that the cost of meeting this part of your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Section 17(5) of the Act states that we must provide a brief explanation or example why the cost limit is exceeded. Information is stored separately concerning the number of ECS checks received and the actual decision issued. Decision making information will contain the date of decision but not the date the check was received. To answer the question every request would need to be reviewed and categorised manually which would exceed the 24 hours of work threshold.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

Information available

The Home Office is able to disclose the number of ECS checks requested and the number of Positive Verification Notices issued per calendar year as disaggregated totals. A number of the positive decisions may not relate to the calendar year in question.

	2019	2020	2021	2022
The number of ECS checks requested	77, 865	93, 994	187, 836	90, 962
Number of Positive Verification Notices issued	61, 731	80, 053	161, 290	77, 820
Note: Information for 2022 relates to 1 January to 31 March 2022.				

Please note that the figures provided are provisional internal management information and may be subject to change. The information has not been quality assured under National Statistics protocols and does not constitute part of National Statistics. Information relating to the number of ECS checks requested is based on a daily census of checks received per day.

If you are dissatisfied with this response, you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference **69781**. If you ask for an

internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request would be reassessed by staff who were not involved in providing you with this response. If you were to remain dissatisfied after an internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the FOI Act.

Yours sincerely

C. Walls
Central Operations Team

We value your feedback, please use the link below to access a brief anonymous survey to help us improve our service to you:

<http://www.homeofficesurveys.homeoffice.gov.uk/s/108105TAZNG>

Annex 5 - Freedom of Information response on numbers of people on 3C leave



UK Visas
& Immigration

Freedom of Information
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Central Operations
PO Box 3468
Sheffield
S3 8WA

Email: [REDACTED]

Email:
FOIRequests@homeoffice.gov.uk

www.gov.uk/ukvi

FOI Reference: 61258

09 March 2021

Dear [REDACTED]

Thank you for your enquiry of 15 November in which you requested information on leave under section 3C of the Immigration Act 1971. Your request has been handled as a request for information under the Freedom of Information Act 2000.

Information Requested

You first submitted an FOI request under reference 59372

Original FOI request 59372

- 1. How many individuals, on average, are the beneficiaries of leave pursuant to section 3C of the Immigration Act 1971 at any one time?*
- 2. Considering the last complete year for which data is available, how many individuals, on average, were beneficiaries of leave pursuant to section 3C of the Immigration Act 1971 in that year?*
- 3. If the statistic at 2 is not available, how many individuals does the Home Office estimate are beneficiaries of leave pursuant to section 3C of the Immigration Act 1971 per annum and what is the basis of that estimate?*
- 4. What is the average length of time that an individual is a beneficiary of section 3 C leave (i.e. before a determination is ultimately made)?*

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5. *What confirmation of the individual's continuing rights under section 3C Immigration Act 1971 does the individual receive from the Home Office when an 'in time' application has been made?*
6. *Please provide a sample pro forma of any communication provided to the individual who has applied 'in time' to extend their leave and enjoys continuing rights under section 43C IA 1971?*

We responded to this FOI request 59372 and asked you to clarify some questions

Clarified points from FOI 59372

Please can provide a list of immigration routes or application types and timescales that you would like this information to relate to. This is because 3C leave can apply in multiple circumstances which are as follows:

Pending decision on application A person will have section 3C leave if:

- they have limited leave to enter or remain in the UK
- they apply to the Secretary of State for variation of that leave
- the application for variation is made before the leave expires
- the leave expires without the application for variation having been decided
- the application for variation is neither decided nor withdrawn

Pending appeal Section 3C leave continues during any period when:

- an in-country appeal could be brought (ignoring any possibility of appeal out of time with permission)
- the appeal is pending (within the meaning of section 104 of the Nationality, Asylum and Immigration Act 2002), meaning it has been lodged and has not been finally determined.

Pending Administrative Review Section 3C leave continues during any period when:

- an administrative review could be sought
- the administrative review is pending, in that it has not been determined
- no new application for leave to remain has been made

You then submitted a new FOI request under reference number 61258

You have asked for clarity on the list of immigration routes or application types and timescales that I would like this information to relate to. You then set out that 3C leave applies to multiple circumstances, referencing in fact 3 circumstances (i) pending application (ii) pending appeal and (iii) pending administrative review. The bullet points you set out under each heading are simply the conditions to be met for that form of 3C leave, not further alternative routes.

I can confirm that I am seeking information relating to those subject to section 3C IA 1971 leave overall – so by any of the 3 routes referenced above. If the Home Office would find it easier to break that down into the (i) - (iii) above then I have no objection to that.

If the Home Office will find the overall data too time-consuming to collate under the FOIA 2000, then we would prioritise information relating to section 3C leave (i) pending decision first, and then (ii) pending appeal.

In terms of timeframes – I have asked at Question 2 for information relating to the last complete year for which data is available. That is likely to be the year 2019. Please do apply that timeframe to Questions 1-4 if that assists.

As to questions 5 and 6 I am seeking information about the current position – i.e. what confirmation do applicants currently get from the Home Office (Q5) and a copy of any pro forma or standard wording (Q6).

Please note there is a typing error in question 6, it should plainly be a reference to s.3C not s.43C IA 1971.

Our Response to FOI 61258 is

The number of persons granted in 2019 with the beneficiaries of leave pursuant to section 3C of the Immigration Act 1971.
372,015

Figures are rounded to the nearest 5 and these figures have been taken from a live operational database. As such, numbers may change as information on that system is updated.

Is not possible to provide you with any data re the average length of time that an individual is a beneficiary of section 3C leave (i.e. before a decision is made). This is because section 3C applies to many different case types and all of these do not have the same average length of decision time (not including appeals which also extend s3C leave) therefore an average cannot be reported on.

In relation to your question about what confirmation applicants are provided with when they submit an application which benefits from section 3C leave. This data provided when an application is submitted can be found in the attached 2 Annexes. This does not itself confirm whether or not the applicant has section 3C leave as will not have been identified at the point the application is submitted.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to foirequests@homeoffice.gov.uk, quoting reference **61258**. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

As part of any internal review the Department's handling of your information request will be reassessed by staff not involved in providing you with this response. If you

remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

C Heap
Central Operations

We value your feedback, please use the link below to access a brief anonymous survey to help us improve our service to you:
<http://www.homeofficesurveys.homeoffice.gov.uk/s/108105TAZNG>

Annex 6 - Freedom of Information response on ECS checks



UK Visas
& Immigration

Employer Checking Service (ECS) Positive Verification Notice

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Date of Notice: 17.07.2021

Unique ECS Reference: [REDACTED]

This Notice is issued in respect of your duty to prevent illegal working set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006.

You have requested an ECS check

This means that you contacted the Employer Checking Service to verify the right to work in the UK of the named person below.

Our response:

1	Who we have checked and for what type of work	Name: [REDACTED] Date of Birth: [REDACTED] Nationality: [REDACTED]
2	Outcome of our check	This person has the right to work subject to the restrictions in section 4
3	Expiry date of our check	The result of this check is valid for 6 months. It expires on 15 January 2022 . You should carry out a follow-up right to work check on this person on or before this date.
4	Work restrictions	None
5	What this means	<p>This Positive Verification Notice will provide you with a time-limited statutory excuse, for 6 months, against liability for a civil penalty in respect of this person. You must retain this Notice.</p> <p>If this person has provided you with an Application Registration Card (ARC) or a Certificate of Application, you should retain a copy of this document.</p> <p>Information on taking on additional employment when sponsored under skilled worker route can be found on www.gov.uk</p>

		You should see our Shortage Occupation List for a list of the restricted roles for people with an Application Registration Card (ARC) with SOL restriction.
6	Ensure your compliance	You should note that your time-limited statutory excuse will not apply if at any time you become aware that this person no longer has the right to do the work in question and you may also be prosecuted for knowingly employing an illegal worker which means you may face an unlimited fine and/or imprisonment.
7	If you need further information	You should visit www.gov.uk to view our range of guidance, Codes of practice and helpful tools to assist you to comply with your duty as an employer to conduct right to work checks.



CONTACT US AT:

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Please keep in touch with our
work on Facebook and Twitter.



@RAMFELCharity



@RAMFEL

The Refugee and Migrant Forum of Essex and London (RAMFEL) is a company limited by guarantee (no. 08737163) and a registered charity (no. 1155207).