

# HUMANITARIAN PROTECTION

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## Introduction

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Humanitarian Protection and Discretionary Leave were introduced on 1 April 2003 following the abolition of exceptional leave on 31 March 2003. On 30 August 2005, the policy on Humanitarian Protection was revised in line with new policies on the granting of refugee leave. On 9 October 2006, the policy changed again to reflect the requirements of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the “Qualification Directive”). The UK should apply the provisions of the Directive to all live claims in the system, including those at appeal, on 9th October 2006. Where an asylum applicant does not qualify for refugee status, the caseworker should always consider whether they qualify for a grant of Humanitarian Protection and, if not, consideration should be given as to whether they qualify for Discretionary Leave (see the Asylum Instruction on [Considering the Claim](#)). It is important that claims should be considered for asylum first, then for Humanitarian Protection and finally for Discretionary Leave.

This instruction explains the limited circumstances in which it would be appropriate to grant Humanitarian Protection. For guidance on Discretionary Leave please refer to the Asylum Instruction on [Discretionary Leave](#).

For details on family reunion and on dependants accompanying an applicant who is granted Humanitarian Protection, see the Asylum Instructions on [Family Reunion](#) and [Dependants](#) respectively. Broadly speaking, anyone who is granted leave on Humanitarian Protection grounds on or after 30 August 2005 is entitled to apply for family reunion immediately.

The great majority of claims for Humanitarian Protection are likely to arise in the context of asylum claims. However, where an individual claims that although they are in need of international protection they are not seeking asylum **and** the reasons given clearly do not engage our obligations under the Refugee Convention (i.e. the fear of persecution is clearly not for one of the five Convention reasons), then this should be accepted as a standalone claim for Humanitarian Protection.

Separate instructions may be issued in relation to handling of claims for Humanitarian Protection. For example, particular circumstances may arise in a country which may give rise to alternative arrangements such as differing periods of leave to be granted. The instructions will be in the form of APU Notices, Country Policy Bulletins or Operational Guidance Notes (OGNs). Where such instructions are in force, they will take precedence over the contents of these instructions, to the extent that they make different provisions.

## Key Points

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### Qualifying criteria

Under paragraphs 339C and D of the Immigration Rules, Humanitarian Protection may be granted to a person who is in the United Kingdom and is not a refugee if:

- there are substantial grounds for believing that the person would face a real risk of suffering serious harm in the country of return ( this refers to a country or territory listed in paragraph 8(1)(c) of Schedule 2 to the Immigration Act 1971; and
- the person cannot obtain effective protection from the authorities of that country (or will not because of the risk of suffering serious harm).

“Serious harm” means:

- the death penalty or execution; or
- unlawful killing; or
- torture or inhuman or degrading treatment or punishment in the country of return; or
- serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in
- situations of international or internal armed conflict.

A person who cannot be removed from the UK on these grounds but who it is reasonably believed can make a voluntary return to the country of return without facing a real risk of serious harm will not be eligible for a grant of Humanitarian Protection. On that basis a reference in this instruction to a return (in whatever form and unless otherwise stated) includes a voluntary return and an enforced return.

### Leave to be Granted

Those granted Humanitarian Protection will normally be granted leave to enter or remain for a period of five years in the first instance. The Qualification Directive specifies that one year’s leave is the minimum period that can be given to those who qualify for subsidiary protection. A grant of five years’ leave to remain will be a sufficient grant of leave for those granted humanitarian protection save in the most exceptional circumstances. However, in accordance with Article 20 of the Qualification Directive where, in light of the specific situation of a vulnerable person with special needs, a longer period of leave to remain is considered appropriate, the advice of a Senior Caseworker **must** be sought.

Please also refer to the Asylum Instruction on [Refugee Leave](#) (section “Refugee Leave”) and the Asylum Instruction on [Considering the Claim](#).

There will be an avenue for settlement (ILR) after 5 years of leave subject to checks detailed in the Asylum Instruction on [Refugee Leave](#) and any other requirements that may be imposed by the settlement policy in force at the time.

A review of Humanitarian Protection will only be conducted during a period of leave in specified circumstances. These are listed below, but see also the Asylum Instruction on [Refugee Leave](#).

### Other considerations

In assessing whether a person qualifies for Humanitarian Protection the principles of internal relocation and sufficiency of state protection should be applied. See the Asylum Instructions on [Internal Relocation](#) and [Considering the Claim](#).

Humanitarian Protection is not the same as, and is separate from, Temporary Protection. Temporary Protection will be granted only to individuals in a category of persons covered by a declaration of the Council of the European Union on the existence of a mass influx situation. Further guidance can be from APU via a senior caseworker.

Leave should not be granted on Humanitarian Protection grounds to EU nationals or their third country national family members who are exercising treaty rights.

Humanitarian Protection leave should not be granted where another EU Member State or Norway / Iceland has accepted responsibility for an asylum claim under the Dublin arrangements or where an individual may otherwise removed on third country grounds.

Those granted leave on Humanitarian Protection grounds have access to public funds and are entitled to work. Those granted such leave after 30 August 2005 also have the right to family reunion. Further enquiries should normally be made in writing to the Children and Family Asylum Policy Team (CFAPT) via a senior caseworker.

## Family Reunion for those granted Humanitarian Protection

### Pre August 30<sup>th</sup> 2005

Where the sponsor was granted HP before 30 August 2005 family members will normally not benefit from the family reunion policy until the sponsor has obtained ILR (normally after three years).

Similarly, if the family are seeking entry clearance it would normally be granted if the sponsor has been granted ILR. Applications for entry clearance may be considered before the sponsor has obtained ILR but will be granted only where there are exceptional compassionate circumstances.

### Post August 30<sup>th</sup> 2005

Where the sponsor was granted HP on or after August 30<sup>th</sup> 2005 family members who are abroad may seek entry clearance for immediate family reunion.

### Dependants and Eligibility

From the 9<sup>th</sup> October 2006 dependants eligible to apply for family reunion are spouses, minor children, civil partners, same sex or unmarried partners, who are related as claimed to the principal applicant, formed part of the pre-existing family unit abroad and were wholly dependent on the principal applicant immediately prior to arrival in the UK.

It should be noted that to be eligible as a dependant an unmarried or same sex partner, is a person who has been living together with the principal applicant in a subsisting relationship akin to marriage or a civil partnership for two years or more

## Humanitarian Protection and the Qualification Directive

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The Qualification Directive, agreed by the European Union in 2004, is a key step towards a Common European Asylum System. The provisions of the Directive required the UK to bring into force, laws implementing the Directive by 9 October 2006, when the Immigration Rules and Regulations implementing the Qualification Directive came into force. They apply to all live applications from 9 October, including those at appeal. The Directive establishes common European qualifying standards for refugees and a new category of persons eligible for subsidiary protection, as well as setting out the minimum rights and benefits that must attach to these categories across Member States.

The provisions on subsidiary protection are similar to the UK's former provisions on Humanitarian Protection, which have been amended and incorporated into the Immigration Rules to meet the new requirements. Changes in the qualifying criteria were required under Article 15 of the Qualification Directive, and are set out in paragraphs 339C and D of the Immigration Rules. The main changes are to the criteria on torture and ill treatment and on situations of international and internal armed conflict. They are discussed below, but we do not anticipate that either change will result in a significant increase in grants of Humanitarian Protection leave.

Further details about the Qualification Directive and the statutory framework can be found in the AI on [Refugee Leave](#)) and in the AI on [Considering the Claim](#).

## Eligibility for Humanitarian Protection

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Eligibility for humanitarian protection should be considered after consideration of the application for asylum, if the applicant has made one. A person will be granted Humanitarian Protection in the United Kingdom if the Secretary of State is satisfied that the following eligibility requirements, as set out in paragraphs 339C and D of the Immigration Rules, are met:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and
- (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006; and
- (iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such a risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.

**Serious harm** consists of:

- (i) the death penalty or execution; or
- (ii) unlawful killing; or
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international armed conflict. This is a new category included into the Immigration Rules to implement article 15(c) of the Qualification Directive. To qualify for Humanitarian Protection on this basis the applicant must establish substantial grounds for believing that if returned to the country of return he would face a real-risk of a serious and individual threat to his life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

**Country of return** means a country or territory listed in paragraph 8(1)(c) of Schedule 2 to the Immigration Act 1971:

- (i.) a country of which the applicant is national or citizen; or
- (ii.) a country or territory in which the applicant has obtained a passport or other document of identity; or
- (iii.) a country or territory in which the applicant embarked for the United Kingdom; or
- (iv.) a country or territory to which there is reason to believe that the claimant will be admitted.

### Standard of proof

In considering whether there are substantial grounds for believing that a person would face a real risk of suffering serious harm, the standard of proof to be applied is that which applies in asylum and ECHR Article 3 cases – i.e. a *reasonable degree of likelihood* or a *real risk* (these two tests reflect the same standard of proof).

## Death penalty or execution

Where there are substantial grounds for believing that, a person if they returned would face a real risk of the death penalty being imposed **and** carried out they will qualify for Humanitarian Protection, subject to the section below on Exclusion Criteria.

## Unlawful killing

Where a person satisfies us that, if they returned, they would face a real risk of being unlawfully killed they will, qualify for Humanitarian Protection, subject to the section below on Exclusion Criteria.

This would include a person who if returned to a war/conflict situation would face a real risk of being killed (and therefore overlaps with the category 'Serious and individual threat' below).

Examples of cases that would not be included are where the threat to life is:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Applications from those who face a real risk of being unlawfully killed on return should be considered in the same way as those from people who face a real risk of torture or inhuman or degrading treatment or punishment. If there is a real risk that a person, if they returned to the country of return, would be unlawfully killed by the state (or by agents of the state), or by non-state agents where there is no sufficiency of protection, then Humanitarian Protection should be granted, subject to the section entitled Exclusion Criteria.

Decision makers should see the **Asylum Instructions on European Convention on Human Rights** and **Assessing the Claim** for further information on the application of this element of the definition.

## Return that would expose a person to torture or inhuman or degrading treatment

The terms in this section are based upon Article 3 of the ECHR which states that: *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

### Relationship between Article 3 and Persecution

In the starred determination of *Kacaj* in July 2001, the Immigration Appeal Tribunal noted the close link between asylum and Article 3. It said that: *We recognise the possibility that Article 3 could be violated by actions which did not have a sufficiently systemic character to amount to persecution, although we doubt that this refinement would be likely to be determinative in any but a very small minority of cases. But apart from this and a case where conduct amounting to persecution but not for a Convention reason was established, we find it difficult to envisage a sensible possibility that a breach of Article 3 could be established where an asylum claim failed.*

There are two types of case where a person whose asylum claim is unsuccessful may qualify for Humanitarian Protection by virtue of the application of Article 3, Namely:

- The treatment feared amounts to persecution but is not for one of the five Convention reasons.
- The treatment or punishment is in the narrow category of actions which are of a severity and nature to amount to Article 3 treatment but not to amount to persecution – for example, where the actions feared do not have a sufficiently systemic character to amount to persecution. As the Tribunal noted in *Kacaj*, few cases are likely to fit this description.

A person may establish that if they returned they would, in the country of return, be subject to treatment contrary to Article 3 yet have failed in their asylum claim because they are excluded by virtue of Article 1F or 33(2) of the Refugee Convention. However, all such persons would also be excluded from Humanitarian Protection (see section 3.6 below). They may instead qualify for Discretionary Leave (see the Asylum Instruction on [Discretionary Leave](#)).

### Prison conditions

Poor prison conditions may reach the threshold for Article 3 where they attain a minimum level of severity. Where an applicant states that they face a real-risk of imprisonment on return, decision makers should first look at the reasons why the applicant faces imprisonment. If the reason is because the applicant falls within the exclusion criteria, the decision maker should not grant Humanitarian Protection as the applicant will not be eligible for a grant of Humanitarian Protection. If the decision maker considers that although an applicant is excluded from a grant of Humanitarian Protection s/he does face a real risk of imprisonment on return and prison conditions reach the threshold of Article 3, they should propose to grant Discretionary Leave in accordance with the provisions in the Asylum Instruction on [Discretionary Leave](#). The proposal to grant should be referred to a Senior Caseworker.

If the decision maker is satisfied that the reasons for imprisonment given by the applicant do not result in exclusion from Humanitarian Protection, then they should consider whether there are substantial grounds for believing that there is a real risk that the applicant will be imprisoned on return. If so, decision makers should go on to consider whether the conditions of detention the applicant will face are likely to reach the Article 3 threshold.

The Asylum Instruction on [Considering Human Rights](#) sets out the issues for consideration. See the exclusion criteria below.

### Deliberate ill treatment/ill treatment in the country of return

Before 9 October 2006, Humanitarian Protection was granted where there was a serious risk of “torture or inhuman or degrading treatment arising from the deliberate infliction of ill treatment.” The new definition removes the need for the applicant to show deliberate ill treatment but only applies to “torture or inhuman or degrading treatment or punishment of a person *in the country of return*” (paragraph 339C of the Immigration Rules, with emphasis added). Due to this geographical limitation, the new definition should not result in a significant increase in grants of Humanitarian Protection leave. Where a person can show that removal from the UK will involve ill treatment in the UK then of course removal would be unlawful and cannot proceed. However, a claim that succeeds on this ground will attract Discretionary Leave instead of Humanitarian Protection (see the [Discretionary Leave](#) Asylum Instruction for further guidance).

## Medical cases

Where a person claims that their return would be in breach of Article 3 of the ECHR because of their medical condition, they are not in need of international protection and are not eligible for Humanitarian Protection. The breach of Article 3 arises because the healthcare available to the applicant in the UK is not available in the country of return and because of the applicant's own exceptional circumstances. Individuals who cannot return for this reason may qualify for Discretionary Leave but the threshold for establishing an Article 3 breach in such cases is very high.

For more details see the Asylum Instruction on [Considering Human Rights, Chapter 1 Section 8 of the IDIs on Medical Examination](#) and the Asylum Instruction on [Discretionary Leave](#).

## Other severe humanitarian conditions meeting the Article 3 threshold

There **may** be some cases (although any such cases are likely to be rare) where the general conditions in the country – for example, absence of water, food or basic shelter – are so poor that return in itself could, in extreme cases, constitute ill treatment under the Immigration Rules. Decision makers need to consider how those conditions would impact upon the individual if they were returned. Any such cases, if granted, would qualify for Discretionary Leave rather than Humanitarian Protection (because they are not protection-related cases), but leave should not be granted without reference to a senior caseworker. See the Asylum Instruction on [Discretionary Leave](#).

## Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict

This is a new category included into the Immigration Rules to implement article 15(c) of the Qualification Directive (see the definition of serious harm in paragraph 339C of the Immigration Rules). To qualify for Humanitarian Protection on this basis, the applicant must show that there are substantial grounds for believing that if they returned to the country of return, they would face a real risk of a serious and individual threat to life or person by reason of indiscriminate violence in a situation of international or internal armed conflict. The main effect of this provision is to clarify the instances in which Article 3 of the ECHR can be engaged in a situation of armed conflict. It reflects existing European caselaw in that respect (notably the cases of *Vivaharajah* and *HLR* cited below). Article 15(c) makes it clear that, whilst a situation of international or internal armed conflict does not, in itself, give rise to a claim for protection, it **can** provide the basis for such a claim where applicants can show that they are **individually** at risk.

Paragraph 26 of the recitals to the Qualification Directive states that

*“risks to which a population of a country or a section of the population is generally exposed do not normally create in themselves an individual threat which would qualify as serious harm”.*

Applicants cannot rely on the assertion that this ground is met simply because in the country of return there is an international or internal armed conflict where there is indiscriminate violence. The examination of the threatened return (enforced or voluntary) must focus on its foreseeable

consequences, taking into account the personal circumstances of the applicant (*Vilvaharajah v United Kingdom (1991)14 EHRR*), and the risk posed must be specific to the individual. A general situation of violence in the receiving state is not sufficient (*HLR v France (1997) 26 E.H.R.R.29*). Decision makers should consult Home Office country information and Operational Guidance Notes in each case on the question of whether a situation of international or internal armed conflict exists.

**This is a narrow category. Humanitarian Protection is only likely to be granted on this basis in exceptional circumstances.**

### Exclusion Criteria

A person will not be eligible for a grant of Humanitarian Protection if he is excluded from it because one of the following provisions in paragraph 339D of the Immigration Rules apply:

- (i) there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes; or
- (ii) there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or induced others to commit, prepare or instigate such acts; or
- (iii) there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or
- (iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment were it committed in the United Kingdom and the person left his country of origin solely to avoid sanctions resulting from the crime.

A “serious crime” for these purposes is:

- one for which a custodial sentence of at least twelve months has been imposed in the United Kingdom; or
- a crime considered serious enough to exclude the person from being a refugee in accordance with Article 1F(b) of the Convention (see the Asylum Instruction on [Exclusion](#)); or
- conviction for an offence listed in an order made under section 72 of the Nationality, Immigration and Asylum Act 2002 (see the Asylum Policy Notice Section 72 of the NIA Act 2002: Particularly Serious Crimes).

People who may represent “a danger to the community or to the security of the UK” include:

- those included on the Sex Offenders Register (this would apply to those convicted of an offence after 1997).
- those whose presence in the United Kingdom is deemed not conducive to the public good by the Secretary of State, for example on national security grounds, because of their character, conduct or associations.
- those who engage in one or more unacceptable behaviours (whether in the UK or abroad). The list of unacceptable behaviours includes using any means or medium including:
  - writing, producing, publishing or distributing material
  - public speaking including preaching

- running a website or
- using a position of responsibility such as teacher, community or youth leader

to express views which:

- foment, justify or glorify terrorist violence in furtherance of particular beliefs
- seek to provoke others to terrorist acts
- foment other serious criminal activity or seek to provoke others to serious criminal acts, or foster hatred which may lead to inter-community violence in the UK.

This list is indicative, not exhaustive.

A person may also be regarded as a danger to the community or to the security of the United Kingdom in the light of their character, conduct or associations, insofar as this is not covered by the categories listed above. For example, where deportation action has been considered and has not been pursued or has been abandoned only because Article 2 or Article 3 considerations render return impossible for the time being.

Where a person is excluded from Humanitarian Protection, consideration should be given to whether they qualify for Discretionary Leave (see the Asylum Instruction on [Discretionary Leave](#)).

### **ECHR claims that fall outside the scope of asylum and Humanitarian Protection**

ECHR considerations falling outside the scope of asylum and Humanitarian Protection should be considered after consideration of eligibility for status in those categories. Other claims under the ECHR, such as those involving a flagrant denial of a non-article 3 right, should be considered in accordance with the Asylum Instruction on [Discretionary Leave](#).

## Other Issues Relevant to the Consideration of the Claim

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The general principles involved in considering a claim for Humanitarian Protection, either after considering an asylum claim or as a free-standing application, are broadly similar to those involved in assessing an asylum claim. Subject to the different criteria set out above, decision makers should conduct their examination in the same way. Two of the main considerations are mentioned below, but for detailed guidance on the decision making process as a whole, see the Asylum Instruction on [Considering the Asylum Claim](#).

### Sufficiency of protection

In deciding whether a person qualifies for Humanitarian Protection, the sufficiency of protection test should be applied in the same way as it is applied in considering asylum claims. For further information on the sufficiency of protection test, see the Asylum Instruction on [Considering the Asylum Claim](#). The Asylum Instruction on the [Considering Human Rights](#) also contains guidance on the question of effective protection in human rights cases.

### Internal Relocation

In considering whether a person qualifies for Humanitarian Protection, the internal relocation test set out in paragraph 339O of the Immigration Rules should be applied. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of Humanitarian Protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied. See the Asylum Instruction on [Internal Relocation](#).

## Granting or Refusing Humanitarian Protection

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### Granting Humanitarian Protection

A grant of Humanitarian Protection grounds should only be considered **after** any asylum claim has been substantively considered, and it has been decided that asylum should be refused. In cases where Humanitarian Protection is granted, applicants should be issued with full reasons for refusal of asylum.

The Reasons for Refusal Letter (RFRL) should briefly set out the reasons why a person is being granted leave on Humanitarian Protection grounds. It should also state clearly whether the grant of Humanitarian Protection leave has been made on the basis of a fear of mistreatment by the national authorities or by non-state actors. This is important because, unless we accept that the individual has a fear of their own national authorities, we will expect those without a travel document at the time of decision to apply for a national passport rather than a Home Office travel document should they wish to travel abroad.

### Refusing Humanitarian Protection

An asylum claim will always be deemed to be a claim for Humanitarian Protection. Therefore where it is decided that an applicant does not qualify for Humanitarian Protection the RFRL, as well as setting out why the asylum claim has been refused, should provide reasons why Humanitarian Protection is being refused.

The reasons for refusing any aspect of a human rights claim which are not covered by the reasons for refusing the Humanitarian Protection claim should also be given where no leave is being granted (this will normally be done, where applicable, when setting out why Discretionary Leave is also not being granted).

Where we are refusing Humanitarian Protection but granting Discretionary Leave, the reasons for refusing to grant Humanitarian Protection should still be addressed in the letter. There will be no need in such cases to address aspects of any human rights claim except in so far as this is done in explaining why asylum and Humanitarian Protection are being refused.

## Request for Humanitarian Protection After the Initial Decision and Appeal Stage

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Occasions may arise when, following the refusal of asylum and exhaustion of all appeal rights, a request is nonetheless made for Humanitarian Protection, probably in the form of a human rights claim.

By the time all rights of appeal have been exhausted, there will be very few cases that would merit a grant of Humanitarian Protection because the relevant factors will have been considered at an earlier stage. However, caseworkers should give full and careful consideration to the reasons given for requesting such leave, and decide whether Humanitarian Protection leave or Discretionary Leave would be appropriate. See the Asylum Instruction on [Further Representations and Fresh Claims](#) for further guidance.

### Requests for Humanitarian Protection at removal stage

Those whose asylum and/or human rights claims were refused before April 2003 did not have the possibility of being granted leave on Humanitarian Protection grounds at the time of refusal. Those whose claims were refused before 9 October 2006 did not have their claims considered under the revised framework introduced to implement the Qualification Directive. However, in both cases applicants would have had the opportunity to raise all issues relevant to their asylum and/or human rights claim and leave to enter or remain would have been granted in circumstances where Humanitarian Protection would now be granted under the terms of this instruction

Paragraph 353 of the Immigration Rules should therefore be applied to a request for Humanitarian Protection in such a case, in order to determine whether the request should be treated as further representations or a fresh claim. If treated as a fresh claim, consideration should be given to certifying the request under section 96 of the Nationality, Immigration and Asylum Act 2002. These cases should be treated in accordance with normal principles since the individuals concerned have had the opportunity to raise any facts relevant to the present Humanitarian Protection request at the time of their original claim (on asylum/human rights grounds). For more information see the Asylum Instruction on [Further Representations and Fresh Claims](#). See also the Asylum Instruction on [Rights of Appeal in Asylum Claims](#)

### Requests to upgrade from Discretionary Leave to Humanitarian Protection

Situations may arise where a person previously refused leave on Humanitarian Protection grounds but granted Discretionary Leave seeks to “upgrade” their status to Humanitarian Protection. Such requests should be considered.

### Tribunal determinations and court judgments

Where the Asylum and Immigration Tribunal or a court hears an appeal and finds that the appellant qualifies for Humanitarian Protection, leave should be granted on Humanitarian Protection grounds (subject to any appeal against that determination being lodged) provided the exclusion criteria detailed above do not apply. An appellant whose proposed removal is found to be unlawful will not be granted leave if that person can reasonably be expected to return voluntarily. In such cases, which it is believed will be relatively rare, UK Border Agency will give effect to the court’s decision by not enforcing removal.

## Duration of Humanitarian Protection

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Where Humanitarian Protection has been granted under paragraph 339C of the Immigration Rules, leave will normally be granted for a period of five years in the first instance. The Qualification Directive specifies that one year's leave is the minimum period that can be given to those who qualify for subsidiary protection. A grant of five years' leave to remain will be a sufficient grant of leave for those granted humanitarian protection save in the most exceptional circumstances. However, where, in light of the specific situation of the vulnerable person with special needs, a longer period of leave to remain is considered appropriate, the advice of a Senior Caseworker **must** be sought. Please also refer to [Refugee Leave](#) and [Considering the Claim](#).

Refer to the Duration of grants and Recording the consideration on the Minute in the [Considering Human Rights Claim](#) instruction.

## Revocation of Humanitarian Protection

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

A grant of leave on Humanitarian Protection grounds will normally be reviewed during its currency only when certain events occur to trigger such a review. The triggers are discussed further in the Asylum Instruction on [Refugee Leave](#)

**Where the circumstances which led to the grant of humanitarian protection have ceased to exist or have changed to such a degree that such protection is no longer required**  
**Where the actions of the individual suggest that the need for protection has ceased**  
(Paragraph 339G(i) of the Immigration Rules )

This criterion will only apply where the change of circumstances is of such a significant and “non-temporary” nature that the person no longer faces a real risk of serious harm. Given that the majority of grants of leave on Humanitarian Protection will have been made on the grounds of fear of persecution by non-state actors, it is unlikely that the Humanitarian Protection criteria will cease to apply simply because the holder accepts the protection of the country of nationality in some temporary or limited way. Obtaining a passport is the obvious example. A refugee who obtains a national passport risks ceasing to be regarded as a refugee (though that is by no means an inevitable consequence), but a person with Humanitarian Protection does not normally run a similar risk. However, each case that arises will need to be considered on its individual merits to see whether the actions of the person provide clear grounds for concluding that they no longer qualify for Humanitarian Protection.

For example, where a person has taken to spending periods of time in the country where they previously feared serious harm, which would be very strong evidence that they no longer qualified. On the other hand, if a person has merely re-acquired the nationality of their country that will not necessarily mean they no longer qualify for Humanitarian Protection. For instance, that person may continue to fear treatment contrary to Article 3 from non-state actors against which the state is unable to protect them, and may not have claimed that the state was ever persecuting or mistreating them.

Caseworkers should also refer to the Asylum Instruction on [Cessation, Cancellation and Revocation of Refugee Status](#), especially in Humanitarian Protection cases involving a fear of the state as opposed to non-state agents.

**Where there is a significant and non-temporary change in the conditions in a particular country**

The details of this trigger are set out in the Asylum Instruction on [Refugee Leave](#). When Ministers decide to review the refugee status of people from a particular country, the Humanitarian Protection status of people from that country should also be reviewed. A person will no longer be eligible for Humanitarian Protection where the change of circumstances is of such a significant and non-temporary nature that there are no longer substantial grounds for believing that the person faces a real risk of serious harm. Note that this test is worded slightly differently to that in refugee cases.

### Where protection should not be continued because of a person's actions

Under Paragraph 339G (ii) - (vi) of the Immigration Rules, Humanitarian Protection will be revoked or not renewed if the Secretary of State is satisfied that one of the following applies:

- (ii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes; or
- (iii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed or prepared or instigated such acts; or
- (iv) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or

the person granted humanitarian protection misrepresented or omitted facts, including the use of false documents, which were decisive to the grant of humanitarian protection; or  
the person granted humanitarian protection should have been or is excluded from humanitarian protection because prior to his admission to the United Kingdom the person committed a crime outside the scope of (ii) and (iii) that would be punishable by imprisonment had it been committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

See above for definitions of "serious crime" and examples of cases in which the claimant should be regarded as a danger to the community or to the security of the United Kingdom. Further guidance is available in the Asylum Instruction on [Refugee Leave](#). Cases in which these exclusions may apply range from crimes against peace and acts contrary to the purposes and principles of the United Nations to extradition requests and court recommendations for deportation.

Limited leave should normally be curtailed if Humanitarian Protection is revoked or not renewed under any of the exclusion criteria set out above (paragraph 339H of the Immigration Rules). This will usually cover situations where a person's actions after the grant of Humanitarian Protection leave bring them within the scope of those criteria. There may also be some situations where we become aware that a person is already subject to one of the disqualifying criteria only after the grant of leave on Humanitarian Protection grounds. Again, it will normally be appropriate to curtail any leave granted in such cases.

If the individual is liable to deportation, the deportation order will have the effect of cancelling leave. Separate action to revoke or vary leave will only be necessary, therefore, where a person is liable to deportation but deportation action is not possible (e.g. for Article 3 ECHR reasons).

If it transpires that a person has obtained their Humanitarian Protection leave by deception (paragraph 339G(v)) then they are liable to removal either as an illegal entrant under Schedule 2 to the Immigration Act 1971 or under section 10 of the Immigration and Asylum Act 1999. The decision to remove someone under either section 10 or Schedule 2 invalidates any leave given previously. In these deception cases, separate action to curtail leave granted on Humanitarian Protection grounds will only be required where a person may not be removed (e.g. for Article 3 ECHR reasons).

## Where evidence emerges indicating that an individual acquired leave by deception

Please see the section above for guidance.

### Consequences

When a person no longer qualifies for Humanitarian Protection, the expectation is that leave granted on that basis will be curtailed and that either the person will leave voluntarily or removal will follow, subject to any appeal. However, there may be cases where return is not appropriate as the person qualifies for leave under the Immigration Rules or under another policy. There may also be cases where return is intended but is prevented for the time being – for example, because of ECHR barriers. In such cases consideration will need to be given to granting Discretionary Leave, but note that practical obstacles to return (such as difficulty in obtaining a passport and absence for the time being of a viable route of return) would not, in themselves, justify Discretionary Leave.

Chapter 9, section 5 of the IDI on [General grounds for the refusal of entry clearance, leave to enter or variation of leave to enter or remain](#) provides further guidance on curtailing leave.

Paragraph 3 of that instruction covers the curtailment of leave granted outside the Immigration Rules.

## Five Year Review: Granting or Refusing Settlement

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People who have completed five years' Humanitarian Protection leave will be eligible to apply for Indefinite Leave to Remain (ILR), also known as settlement.

The individual should apply for settlement shortly before the expiry of their leave. It will not normally be necessary to conduct an in-depth review to determine whether the individual is still entitled to Humanitarian Protection, as long as the application is made before the existing leave expires. Background character and conduct checks will usually suffice, unless the individual concerned should have been subject to a previous case review on the grounds of the triggers listed in the Revocation section above.

If the application for settlement is made out of time, however, a full review should be conducted to determine whether the individual still qualifies for Humanitarian Protection.

The Five-Year Strategy included a proposal to introduce English language and knowledge of British life tests, which applicants granted limited leave should be required to pass before qualifying for ILR. The policy on this is still being developed. This Asylum Instruction will be updated once the tests are introduced.

Where a person has held leave on grounds other than Humanitarian Protection, the following are the qualifying periods for settlement purposes:

- Leave on Humanitarian Protection grounds and Refugee Leave in any combination: five years' leave
- Leave on Humanitarian Protection grounds and
- Discretionary Leave in any combination: six years' leave. However where a person is granted Discretionary Leave after having been excluded from Humanitarian Protection, they will have to complete a cumulative total of ten years' leave before being eligible to apply for settlement.

The criteria to be applied on considering an application for settlement are those relevant to the category in which the applicant currently holds leave. So a person who holds Discretionary Leave that has been "upgraded" to Leave on Humanitarian Protection grounds should be considered for settlement after six years in accordance with the criteria on Humanitarian Protection.

Leave on other grounds (for instance, under the Immigration Rules) will not count towards the qualifying periods for settlement under this policy.

Where settlement is refused, consideration will need to be given to whether or not the applicant qualifies for leave on any other basis, including Discretionary Leave.

## Appeal Rights

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See the IDI on [Appeals](#).

## Issuing of Travel Documents

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Paragraph 344A of the Immigration Rules sets out the criteria under which a travel document may be issued to a person granted Humanitarian Protection leave. A person who holds leave on Humanitarian Protection grounds should in most cases travel on a national passport. They may be eligible to apply for a Home Office Certificate of Identity (CID) if they can show that they have been formally and unreasonably refused a national passport.

Alternatively, where UK Border Agency has accepted that they have a well-founded fear of their national authorities, they will not be required to approach these authorities for a passport before becoming eligible for a CID. A CID may also be issued where a person has made reasonable attempts to obtain a national passport or identity document, particularly where there are serious humanitarian reasons for travel. For further information, see the guidance on applying for travel documents on the UK Border Agency website.

## Transitional Arrangements for Cases in Which Exceptional Leave was Granted Before 1 April 2003

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Up until 2007 there will be individuals who were granted exceptional leave before April 2003 whose leave will be ending and who will be seeking to extend their stay.

Those applicants who were granted a four-year period of exceptional leave in one block and who apply for ILR at the end of that period should be considered for settlement with background character and conduct checks and war crimes screening, but without a full review. In other words, they will not need to show that they would necessarily qualify for Humanitarian Protection or Discretionary Leave at the time of the ILR decision.

Where a person seeks an extension of stay having spent less than four years on exceptional leave (or where they have spent four years on exceptional leave and this has been granted in more than one block), their application should be subject to a full active review. It will be necessary for them to show that they qualify for Humanitarian Protection or Discretionary Leave at the time of the decision on their extension request. If they do not qualify on either of these grounds or qualify for leave on any other basis (such as under the Immigration Rules) their claim for an extension of stay should be refused.

If they do qualify for Humanitarian Protection the period of leave granted will depend on how long they have already spent on exceptional leave. Where the period spent on exceptional leave is:

- One year or less – grant three years' HP leave.
- Over one year – grant the balance of leave to take the total leave to four years (for example, where the person has spent two years on exceptional leave, grant two years' HP leave).

See the Asylum Instruction on [Active Reviews](#) for further instructions on handling cases of this kind.

**Enquiries:** Further enquiries should normally be made in writing to the Operational Policy and Process Improvement team via a senior caseworker.

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0	G N	26/02/07	New web style implemented
2.0	K G	08/08/08	Qualification Directive
3.0	JL	04/11/08	Update branding only