

REFUGEE LEAVE

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1 Introduction

This AI provides guidance on the leave granted to individuals who have been granted asylum under immigration rule 334 on or after 30th August 2005 (whether the grants are made at initial decision or following an allowed appeal). This AI does not apply to individuals granted leave after having been brought to the UK under resettlement schemes.

Similar provisions have been put in place for grants of Humanitarian Protection made on or after 30th August 2005. Please see the AI on [Humanitarian Protection](#).

The policy changes relating to refugee leave and Humanitarian Protection do not affect the Government's commitment to upholding the UK's obligations under the 1951 Refugee Convention and the European Convention on Human Rights (ECHR).

1.1 Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

It should be noted that this instruction includes guidance on dealing with individuals with special needs, defined to include minors and unaccompanied minors.

It should also be noted that this instruction offers guidance on the consideration of dependants in line with principle applicants, any consideration of which will require case owners to meet the requirements of the duty where the case involves a child or children.

2 Refugee Leave

2.1 Summary of changes to Refugee Leave

The Five Year Strategy for Asylum and Immigration, published in February 2005, provided that most categories of immigrants should be subject to a minimum five year residency requirement before becoming eligible for permanent settlement. This includes refugees. Where the requirements in paragraph 334 of the Immigration Rules are satisfied, refugees should normally be granted five years Leave to Enter / Remain (LTE / LTR) under paragraphs 330 or 335 of the Immigration Rules rather than being given immediate Indefinite Leave to Enter or Remain (ILE / ILR) as previously,

Reviews during the course of the leave may be triggered by the actions of the individual or on the basis of a significant and non-temporary change in the conditions in a country which has produced refugees (see Trigger 2 below). The nature of the review will vary depending on the particular trigger.

If it is found following review that a refugee no longer requires, or is no longer entitled to, protection in the UK, the person's refugee status will cease and leave will be curtailed under paragraph 323 of the Immigration Rules, unless he qualifies for leave on another basis, in which case leave may be varied.

At the end of five years limited leave, subject to the outcome of any review and to the policies in place at the time, a refugee will be eligible to seek ILR.

2.2 Vulnerable persons with special needs

Article 20(3) of the Qualification Directive states that when implementing Chapter VII of the Directive, "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence."

Article 20(4) of the Qualification Directive states that paragraph 20(3) "shall only apply to persons found to have special needs after an individual evaluation of their situation."

The Qualification Directive specifies that three years leave is the minimum period that can be given to those with refugee status. Five years leave to remain will be a sufficient grant of leave save in the most exceptional of circumstances. However, in accordance with Article 20, 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.

2.3 Access to benefits, labour market and family reunion

As soon as a person is granted leave as a refugee, they have immediate access to the labour market and to all key mainstream benefits. They also enjoy the same access to family reunion as refugees with ILE/ILR and access to Refugee Convention Travel Documents

2.4 Gateway and other resettlement schemes

Refugees arriving under Gateway and other resettlement schemes are granted immediate settlement. For further information on Gateway, see the [Gateway Protection Programme](#).

3 Settlement Tests

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 API will be updated once the tests are introduced.

4 Review

This section should be read in conjunction with the AIs on: [Cessation, Cancellation and Revocation of Refugee Status](#); [Humanitarian Protection](#); [Discretionary Leave](#); and [Active Review](#).

4.1 The triggers for review

A review of refugee status may be triggered in the following ways:

- On the basis of information relating to actions (or alleged actions) of an individual refugee (see Trigger 1 below);
- Where there has been a significant and non-temporary change in the conditions in a particular country (see Trigger 2 below); and/or
- When a refugee applies for ILR or reaches the five year point (see Trigger 3 below).

Any of these triggers may give rise to a review of refugee status – the review should be undertaken when the relevant trigger occurs, it should not wait until the five years limited leave has been completed.

4.2 Consideration of cases at the point of review

This section should be read in conjunction with the AI on [Cessation, Cancellation and Revocation of Refugee Status](#)

All reviews should be considered on an individual basis. Withdrawing an individual's refugee status, curtailing their refugee leave and/or refusing their application for a further grant of leave on the basis of their refugee status are important decisions. The burden of proof is upon UKBA to show that a person is no longer eligible for refugee status and clear evidence will be required to justify that decision.

Where a refugee applies for a further period of leave towards the end of their period of limited leave, it will not normally be necessary to conduct an in-depth review to determine whether the individual is still a refugee. Nevertheless, where a person will be subject to an active review, the individual concerned must be informed in writing that their refugee status is under review, the reasons for this reconsideration and the consequences of withdrawal/cessation of refugee status on their leave. The individual should be offered the opportunity to submit reasons as to why their refugee status should not be withdrawn, as well as any other reasons why they should be permitted to remain in the UK before a decision on their refugee status is made. A decision will normally be made on the basis of the information on file and country information, but it may be necessary to conduct an interview where the case is particularly complex. [If the refugee is interviewed, caseworkers should have regard to the AI on [Conducting the Asylum Interview](#).]

Where a review is conducted on the basis of information relating to actions (or alleged actions) of an individual refugee (see Trigger 1 below), either during or at the end of the five year period of limited leave, UNHCR should be consulted on any cessation, cancellation or revocation decision. However this may not always be possible where refugee status is revoked on the basis of Articles 1 F (a) and (c) of the Convention (see section 9 of AI on [Cessation, Cancellation and Revocation of Refugee Status](#) for further guidance). In addition, where reviews of individual cases are conducted following a Ministerial Statement to Parliament relating to a significant and

non-temporary change in the conditions in a particular country (see Trigger 2 below), whether during or at the end of the five year period of limited leave, it will not normally be necessary to contact UNHCR, because they will have been consulted prior to the decision to initiate such reviews.

4.3 Failure to provide requested information

Where we have initiated a review of refugee status and the refugee has not applied to extend their leave, and the individual does not provide information in response to a written request and/or does not attend interview, the decision on whether to take away refugee status should be taken on the information available. Paragraph 339M of the Immigration Rules on non compliance does not apply.

Paragraph 339M of the Immigration Rules, on non compliance, is applicable where a refugee has applied to extend their leave and has failed to provide information/attend interview as requested. However, any decision must still be taken in the light of the information available. In order to refuse status, the Secretary of State must be satisfied that the person is no longer a refugee.

See the AI on [Non-compliance](#) for further information on non-compliance.

5 Trigger 1: Review on the basis of information relating to actions (or alleged actions) of an individual refugee

This section should be read in conjunction with the AI on [Cessation, Cancellation and Revocation of Refugee Status](#). As set out in 4.1 above, refugee status may be reviewed on the basis of information relating to actions (or alleged actions) of an individual refugee. Such a review should be triggered in the following circumstances:

- Where an individual's own actions (or alleged actions) suggest that the provisions in Article 1C(1) to (4) of the Refugee Convention may apply to them;
- Where evidence emerges indicating that an individual acquired leave by deception;
- Where an individual's own actions (or alleged actions) suggest that the exclusion provisions in Article 1F of the Refugee Convention may apply to them; and/or
- Where other reasons arise which may cause the Government to want to remove an individual from the UK.

5.1 Where an individual's own actions suggest that the provisions in Article 1C(1) to (4) of the Refugee Convention may apply to them (Cessation)

Paragraphs 339A(i)-(iv) of the Immigration Rules provide that an individual's grant of asylum may be revoked or not reviewed if, through his own actions, he brings himself within the scope of the cessation provisions in the Refugee Convention (Article 1C(1) to (4)). Where these circumstances apply, the refugee status and leave of the individual concerned should be subject to review.

Where a Senior Caseworker is satisfied that the person does fall within the cessation provisions, refugee status should be withdrawn and refugee leave should be curtailed under paragraph 323 of the Immigration Rules.

Circumstances in which cases should be subject to review with a view to possible cessation action are:

- Voluntary re-availment of the protection of the country of nationality;
- Voluntary re-acquisition of a lost nationality;
- Acquisition of a new nationality and protection;
- Voluntary re-establishment in the country where persecution was feared.

Please see the AI on [Cessation, Cancellation and Revocation of Refugee Status](#) for further information.

5.2 Where evidence emerges indicating that an individual should not have been recognised as a refugee (Cancellation)

Review of refugee status and leave will also be triggered if evidence emerges suggesting that an individual should never have been recognised as a refugee in the first place.

For example, evidence may come to light which suggests that:

- Refugee status was obtained by a misrepresentation or omission of material facts such as the possession of another nationality, perhaps through the use of false documents (deception case), and as such refugee status may be revoked or not renewed in accordance with Paragraph 339A(viii) of the Immigration Rules.

or

- The exclusion clauses would have applied had all the relevant facts been known (see the information on Paragraph 339A(vii) below).

In deception cases, an interview under caution may be appropriate. Even if deception is admitted or proved, the individual concerned may still qualify for refugee status or leave to remain on another basis.

Where a Senior Caseworker is satisfied that a person should never have been recognised as a refugee in the first place, refugee status should be cancelled. This decision should be authorised by an Assistant Director.

Cancellation of refugee status does not of itself affect leave. However a person who obtains leave to enter by deception is an illegal entrant. If it is decided to take illegal entry action against him (under Schedule 2 of the 1971 Immigration Act) the leave can be voided. Where leave to remain has been obtained by deception, the subject is liable to removal under section 10 of the 1999 Immigration and Asylum Act. Removal directions given under section 10 invalidate any leave that has been given previously.

Please see the AI on [Cessation, Cancellation and Revocation of Refugee Status](#) for further information.

5.3 Where an individual's own actions suggest that the exclusion provisions in Article 1F of the Refugee Convention may apply to them (Revocation)

Paragraph 339A(vii) of the Immigration Rules provides that a person's grant of asylum will be revoked or not renewed if the Secretary of State is satisfied that he should have been or is excluded from being a refugee in accordance with regulation 7 of the Refugee or Person in need of International Protection (Qualification) Regulations 2006.

Regulation 7 sets out that a third country national or stateless person is not a refugee if he or she falls within the scope of Article 1(F) of the Geneva convention.

Article 1(F) excludes a person from being a refugee with respect to whom there are serious reasons for considering that:

- (a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) He has committed a serious non-political crime outside the UK prior to his admission to the UK as a refugee; and/or
- (c) He has been guilty of acts contrary to the purposes and principles of the UN.

Regulation 7(2) provides a statutory interpretation of Article 1F(b). It states that “the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;” and that “the reference to prior to his admission as a refugee shall be taken to mean the time up to and including the day on which a residence permit is issued.”

Regulation 7 also provides that third country nationals and stateless persons shall also be excluded for instigating or otherwise participating in actions falling within the scope of Articles 1F(a) and (b). Article 1F(c) shall also apply in such circumstances by virtue of section 54 of the Immigration, Asylum and Nationality Act 2006, which states that “the reference to acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular –

- (a) acts of committing, preparing and instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and
- (b) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).

Situations may arise where there are serious reasons for considering that a person has committed the crime or act falling within the scope of Article 1F(a) or 1F(c) of the Refugee Convention after they have been granted refugee status. In such situations, the individual’s refugee status should be reviewed and, if we conclude the person should be excluded from asylum, that status should be revoked.

Where a Senior Caseworker is satisfied that the person falls within Article 1F(a) or (c), refugee status should be revoked and refugee leave should be curtailed under paragraph 323 of the Immigration Rules.

For further information see the AI on [Cessation, Cancellation and Revocation of Refugee Status](#)

5.4 Other circumstances which may cause the Government to want to remove an individual from the UK

The above three categories (5.1 – 5.3) are based on information coming to light which, if verified, would mean an individual is no longer a refugee.

There are other situations where information relating to an individual may come to light which, if verified, may or may not of itself mean that individual is no longer a refugee, but which will in any event be of sufficient seriousness to trigger a review of the person’s status, primarily because the Government may wish to seek that person’s removal from the UK.

Such a review would involve an assessment of whether this information of itself justifies the withdrawal of refugee status (be it through cessation, revocation or cancellation). This assessment should include considering whether the provisions in Article 1C(5) or (6) apply in the circumstances of the particular case.

See Trigger 2 below for definitions of Article 1C(5) and (6).

This should be done regardless of whether the individual is from a country subject to a Ministerial statement (see 6 below), as these Articles cover changes relevant only to that individual. Withdrawal of refugee status will be appropriate if (but only if) either or both of these assessments provide a supportable basis for withdrawal.

Examples within this category include:

- Where a person's actions bring them within the scope of Article 33(2) of the Refugee Convention, which provides that a refugee may be removed where:

“there are reasonable grounds for regarding him as a danger to the security of [the UK], or who, having been convicted. . . of a particularly serious crime, constitutes a danger to the community of [the UK].”

This includes where a person has been convicted of an offence and sentenced to two or more years' imprisonment, or convicted of an offence listed in an order made under section 72 of the Nationality, Immigration and Asylum Act 2002, and in either case represents a danger to the community - please refer to the API on *Article 1F and 33(2) of the 1951 Refugee Convention*.

Someone who falls within Article 33(2) will still be a refugee (unless they have lost that status for another reason) but will no longer qualify for asylum under the immigration rules. If they cannot be removed it may be appropriate to change their refugee status to Discretionary Leave and to vary their period of leave accordingly [for further details see the API on *Discretionary Leave*];

- Where a court has recommended the individual concerned for deportation after conviction.
- Where the individual concerned is on the Sex Offenders Register.
- Where an extradition request arises relating to a recognised refugee either from the country of origin or from a third country where removal to the country of origin is a possibility. In such cases, the individual's refugee status could prevent extradition. Therefore consideration should be given to whether there are grounds to withdraw that status,
- Where the Secretary of State considers that the presence of a refugee in the UK is not conducive to the public good. There is not a complete list of circumstances in which the Secretary of State will decide a person's presence is not conducive to the public good but it will apply to any individual who engages 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
 - 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 and not exhaustive.

6 Trigger 2: Review on the basis of a significant and non-temporary change in the conditions in a particular country (cessation)

Paragraphs 339A (v) and (vi) provide that a third country national or stateless person shall cease to be a refugee if he or she can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality.

This will apply, for example, where there is a significant and non-temporary change in country conditions such that a refugee from that country or part no longer has a well-founded fear of persecution. In such situations, Ministers may decide to review all grants of refugee status made to refugees who are potentially affected by that change and who have been granted limited leave within the previous five years of that decision. Sometimes, the improved circumstances will be limited to a specific category of refugees in a given country or part and the review will be limited to that category.

A decision that a country or part has improved sufficiently to justify the review of the status of those refugees potentially affected by that change will be communicated to Parliament and will be taken only after consultation with UNHCR. Country information will be the basis of such a decision being reached.

Caseworkers will then conduct reviews of refugee status and refugee leave for refugees within the scope of the ministerial statement on a case by case basis to assess whether any individual refugees fall within the cessation provisions of the Refugee Convention as a result of the change in country conditions. In particular, caseworkers will have regard to Article 1C(5) and (6) of the Refugee Convention, which provide that the Refugee Convention will cease to apply to a person if:

- he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; or
- being a person who has no nationality he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence.

Where caseworkers are instructed to review cases on the basis of such a change in circumstances in a particular country, a Senior Caseworker should be consulted in any cases in which cessation clauses are applied.

7 Trigger 3: Review at the end of the period of limited leave

Refugees who apply for a further period of leave before the expiry of their limited leave

Where a refugee applies for a further period of leave before the expiry of their limited leave, it will not normally be necessary to conduct an in-depth review to determine whether the individual is still a refugee. However, caseworkers should always check that the individual concerned should not have been subject to a previous case review on the grounds of the triggers listed in 5 and 6 above.

7.1 Refugees who fail to apply for a further grant of leave prior to the expiry of their existing leave, or fail to apply for a further grant of leave at all

Where an individual with refugee status fails to apply for a further grant of leave prior to the expiry of his existing leave, or fails to apply for a further grant of leave at all, caseworkers should initiate a more in-depth review of that person's refugee status.

Such a review will encompass the basic review described above for individuals who apply prior to the expiry of their existing leave (see 7.1) but also include an assessment of whether the cessation provisions in 1C(5) or (6) of the Refugee Convention apply. This should be done regardless of whether the individual is from a country subject to a Ministerial statement.

8 Implementing the Decision

8.1 Grant of ILR

Refugees who have completed a period of five years limited leave will, subject to the policies in place at the time and any review (see Trigger 3 above), be eligible for a grant of ILR. Please note, however, that the Five Year Strategy commits the Government to the introduction of settlement tests before ILR is granted. This API will be updated once the new tests are introduced.

8.2 Withdrawal of refugee status: Grant of Humanitarian Protection or Discretionary Leave

[Please refer to the AIs on [Humanitarian Protection](#) and [Discretionary Leave](#).]

Where it is found that a person is no longer a refugee, consideration should be given to whether they qualify for Humanitarian Protection (HP) or Discretionary Leave (DL).

A person's period of refugee leave should count towards the time a person needs to spend on HP or DL to be eligible to seek ILR.

The period of leave to be granted in cases where a person ceases to be a refugee but is eligible for HP/DL will vary depending on the circumstances:

8.2.1 Humanitarian Protection

Where a person has spent five years as a refugee and now qualifies for HP they should be granted ILR.

Where a person has spent less than five years as a refugee and qualifies for HP, the balance of their five years' leave should be varied to HP rather than refugee leave. The individual concerned should be informed that the leave that remains is based on HP and not on refugee status.

8.2.2 Discretionary Leave

Where a person has spent five years as a refugee (or as a refugee/beneficiary of HP) and now qualifies for DL they should be granted a period of one year (unless a shorter (or nil) period of leave is appropriate in accordance with the policies on Discretionary Leave). On completion of one year's DL, subject to an active review (see the API on *Active Reviews*), they will be eligible for a grant of ILR unless they are in the excluded DL category. (This is because the five years' refugee leave will count towards the six year qualifying period for ILR for those with DL.)

Where a person has spent less than five years as a refugee (or a refugee/ beneficiary of HP) the period of DL granted should be the lesser of (i) the period of DL they would normally be granted and (ii) the balance between the time spent as a refugee (or a refugee/ beneficiary of HP) and six years.

Where a person has completed a period of DL and is subsequently granted refugee status or HP, they will be eligible to apply for ILR once they have completed a combined total of six years' leave. They would be subject to the same review process as applies to refugees at the end of their five year period of limited leave.

[For further guidance, please see the API on [Discretionary Leave](#).]

Where a person is granted leave (including ILR) but that leave is not as a refugee, this should be clearly set out in a letter and the reasons for the change of status explained.

8.3 Refusal to vary leave

Where a person who is no longer a refugee qualifies for neither HP nor DL and where they do not qualify to stay on any other basis their application for (further) leave should be refused. The RFRL should set out why they are considered no longer to be a refugee, why they do not qualify for HP and why there are no other grounds for considering they should remain in the UK.

[For further guidance see the AI on [Cessation, Cancellation and Revocation of Refugee Status](#)]

8.4 Dependants

In the consideration of whether refugee status should be taken away and/or whether a refugee's leave should be curtailed/not extended, it will normally be appropriate to treat the dependants in line with the principal applicant, if they have applied in line.

[For further guidance, please refer to the AI on [Dependants](#).]

9 Appeal Rights

For guidance, please refer to the IDI on [Appeals](#)

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	SS	27/02/07	New web style implemented
2.0	JW	11/08/08	Qualification Directive considerations
3.0	CC	26/10/09	Children's Duty reference added