

30 March 2007

Amendment to Discretionary Leave Policy relating to Asylum Seeking Children

This note sets out changes to the Discretionary Leave (DL) policy as it is applied to children seeking asylum in their own right. This instruction must be read in conjunction with the instruction "Asylum Applications from Children". The Operational Guidance Notices will be updated in due course to reflect the changes set out in this notice.

Background

2. The general policy relating to children is that if they do not qualify for asylum or Humanitarian Protection (HP), or DL under the standard criteria, the Border and Immigration Agency will not seek to enforce removal if we are not satisfied that adequate reception and accommodation arrangements are in place in the proposed country of return.

3. Instead a period of DL will be granted. For decisions made before **1 April 2007** this was for 3 years (12 months if from a particular country) or to their **18th birthday** whichever was the shorter period of time.

4. This policy applies primarily to unaccompanied asylum seeking children (UASC), but may also be applied to accompanied children where the adult cannot be removed with the child. It applies to cases being dealt with under the Legacy programme and by the regional Asylum Teams.

Changes to DL policy

5. With effect from **1 April 2007** this policy is being amended. The purpose behind the change is to enable the Border and Immigration Agency to deal with any application to extend or to vary leave and any subsequent appeal prior to the young person turning 18, providing more clarity to the young person about their future.

6. For all decisions made on or after **1 April 2007** (where asylum/HP is being refused) DL must only be granted to **17.5 years** (or for 3 years (or 12 months for certain countries) whichever is the shorter period of time).

Access to support

7. The young person's access to support is unaffected by this change. Unaccompanied asylum seeking children are supported whilst they remain in the UK under the terms of the Children Act 1989 and this support is not

dependent upon a grant of DL. Their ongoing entitlement to support post 18 under the terms of the Children (Leaving Care) Act 2000 is also unchanged.

Appeals

8. Appeal rights in general are unaffected by this change. However, under section 83 of the Nationality, Immigration and Asylum Act 2002 anyone aged 16.5 years or over will not be entitled to appeal as they will have been only granted less than 12 months' leave.

9. Any appeal heard before the young person turns 18 should be heard on the basis that the Secretary of State will not seek to remove the young person before they turn 18 unless adequate reception and accommodation arrangements are in place.

What to do with those approaching 17.5 years

10. Young people who are approaching 17.5 years, if their asylum/Humanitarian Protection/standard DL applications are refused, should be granted DL up to 17.5 years. This may mean that some applicants are granted DL for a short period of time.

What about those who don't make an application for further leave at 17.5 years?

11. Case Owners must urge the legal representative/social worker to encourage the young person to make sure that any application for leave to remain, if it is the young person's intention to make one, is made in time.

12. Any out of time application made after the young person has turned 17.5 years, but prior to the young person turning 18, must be processed in the same way as any other out of time application. If the application is refused, no further leave must be granted, but as set out above, the Secretary of State will not seek to enforce removal until the young person has turned 18 unless adequate reception and accommodation arrangements are in place.

13. If no application is made, the case must be dealt with according to existing instructions on overstayers.

14. Any queries about this notice must be referred to AAPD/Children and Family Asylum Policy Team