

Periods of discretionary leave granted to those with marriage-based article 8 claims

The purpose of this notice is to advise you that the initial grant of Discretionary Leave made to individuals who qualify on the basis of a marriage-based Article 8 claim has been changed from two years to **three years**.

Criteria to be met

2 The criteria to be met for a grant of Discretionary Leave remains unchanged (see the API on **Discretionary Leave**).

3 This notice concerns cases where it is considered that removal would breach Article 8 of the ECHR on account of the person's marriage to a person settled in the UK. (See the API on ECHR for guidance on considering Article 8 claims.)

4 It relates to both asylum and non-asylum cases. Where an application on the basis of marriage does not meet the requirements of the rules but there are genuine Article 8 reasons that would make removal inappropriate, Discretionary Leave should be granted.

Duration of leave to be granted

5 The period of leave to be granted where a person qualifies for Discretionary Leave on account of a marriage-based Article 8 claim has been changed. As from the date of this notice, an initial grant of **three years** Discretionary Leave should be granted in these cases.

6 Where the person continues to qualify for Discretionary Leave at the end of the initial three-year period they should be granted a further three years. On completion of six years Discretionary Leave they will be eligible to apply for indefinite leave to remain (ILR).

7 This change brings Discretionary Leave grants on the basis of marriage into line with other Discretionary Leave grants made on the basis of Article 8 of the ECHR.

Grants of leave made under the previous policy

8 Prior to the date of this notice, individuals who qualified for Discretionary Leave on account of a marriage-based Article 8 claim were granted an initial period of two years. If they continued to qualify for Discretionary Leave they would be granted two further two-year periods until they were eligible for ILR on completion of six years.

9 Individuals who were granted Discretionary Leave for two years under the

old policy will continue to be granted two-year extensions until they are eligible to apply for ILR.

Date of issue: 11 April 2005