

# Asylum Casework Instruction

Subject      **Restricted Leave (formerly Restricted Discretionary Leave)**  
Valid from    28 May 2012  
Expires        Ongoing

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## INTERIM ASYLUM INSTRUCTION : RESTRICTED LEAVE

### 1. Article 1F of the Refugee Convention and Restricted Leave policy

1.1 Article 1F of the Refugee Convention excludes certain individuals from eligibility for refugee status. The text of Article 1F is as follows:

*“The provisions of this Convention shall not apply to any person 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 country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”*

1.2 The purpose of Article 1F is, firstly, to deny the benefits of refugee status to individuals who are undeserving of protection because there are serious reasons for considering that they committed war crimes, crimes against peace or humanity, serious non-political crimes or acts contrary to the purposes and principles of the UN, and secondly, to ensure that such persons do not avoid being returned to their home country to be held to account for their acts. Article 1F is therefore intended to protect the integrity of the asylum process.

1.3 Those individuals refused asylum and Humanitarian Protection because Article 1F applies and there are no barriers to their removal must be prioritised for enforcement action and removal (see also section 10).

1.4 The following guidance relates to the handling of individuals who are refused asylum and Humanitarian Protection on exclusion grounds but who cannot be removed to their home country because removal would be contrary to the UK's ECHR obligations.

## Summary Policy Statement on Restricted Leave

1.5 With effect from 2 September 2011, all individuals excluded from the protection of the Refugee Convention by virtue of Article 1F but who cannot be immediately removed from the UK due to Article 3 of the European Convention of Human Rights (ECHR) are subject to a new, tighter, Restricted Leave policy (formerly known as Restricted Discretionary Leave). Such individuals should usually only be granted Restricted Leave to remain for a maximum of six months at a time, with some or all of the following restrictions:

- on the person's employment or occupation in the UK;
- on where the person can reside;
- a requirement to report to an immigration officer or the Secretary of State at regular intervals; and
- a prohibition on the person studying at an educational institution.

1.6 In addition, relevant information on individuals to whom this guidance applies will be referred by the UK Border Agency to the Independent Safeguarding Authority (ISA) to consider whether the individuals concerned should be barred from working or volunteering in ISA-regulated fields.

1.7 This policy applies to all relevant individuals whether they are seeking leave or renewal of leave to remain, including cases in which a previous grant of leave to remain was for a period longer than six months.

1.8 The power to attach conditions to leave is provided by s.3 (1)(c) of the Immigration Act 1971. A person who knowingly fails to observe a condition of their leave commits an offence by virtue of s.24 (1)(b)(ii) of the 1971 Act. Where appropriate, this policy will be enforced by the prosecution of individuals who do not comply with the conditions of their leave.

1.9 The policy imposes a short period of leave and appropriate conditions while removal options continue to be pursued. Persons excluded from refugee protection (and from Humanitarian Protection) continue to be a priority for removal even where removal cannot currently be enforced. Such cases will remain under close review by UK Border Agency and will be removed at the earliest opportunity. These reviews will be conducted at six monthly intervals as a minimum, prior to the expiry of the Restricted Leave.

1.10 The rationale for the imposition of these conditions is:

- **Public interest.** The public interest in maintaining the integrity of immigration control justifies frequent review of these cases with the intention of removing at the earliest opportunity. Therefore we want to ensure close contact and give a clear signal that the person should not become established in the UK.
- **Public protection.** It is legitimate to impose conditions designed to ensure that the UK Border Agency is able to monitor where an individual lives and works and/or prevent access to positions of influence or trust.

- **Upholding the rule of law internationally.** The policy supports the principle that those excluded from refugee status, including war criminals, cannot establish a new life in the UK and supports our broader international obligations. It reinforces the message that our intention is to remove the individual from the UK as soon as is possible.

It is for these reasons that only Article 3 considerations will normally outweigh the public interest in securing removal. Where qualified rights are engaged, such as Article 8, only the strongest factors would prevail over the public interest in removal.

## **Children**

1.11 Some individuals excluded by virtue of Article 1F and granted Restricted Leave will have dependent children. In applying the policy the caseworker must have regard to the need to safeguard and promote the welfare of children in the UK, as provided by s.55 Borders Citizenship and Immigration Act 2009. In such cases, the decision maker must have regard to the likely impact the imposition of any conditions may have on dependent children and consider what is appropriate in that particular case. Conditions should be set having regard to the published guidance on the s.55 duty.

## **Conditions**

1.12 The following sections 2 – 6 set out the basis on which specific restrictions should be considered, and agreed with SCD.

## **2. Duration of leave**

2.1 Restricted Leave should be limited to a maximum of six months at a time, so as to emphasise its short-term nature and because it would be at odds with the aim of this policy to permit such a person to re-enter the UK. A grant of leave for longer than six months permits a person to leave the UK and to be readmitted during the validity of their grant of leave (A.13(2)(b) Leave to Enter and Remain Order 2000).

2.2 A shorter period than six months should be granted where removal appears to the decision maker to be reasonably likely within six months or where, in exceptional cases, the risk posed by the individual warrants the case being kept under review more frequently than six monthly.

## **3. Employment restriction (including referral to the Independent Safeguarding Authority)**

3.1 The presumption is that permission to work will normally be restricted rather than denied outright where any condition is imposed.

3.2 Any employment restriction should also apply to voluntary work, self-employment or engagement in any kind of business, paid or unpaid. The type of restriction

imposed should be in proportion to the public protection risk posed by the individual. The options for restricting employment are:

(i) **To notify the Secretary of State of all employment and volunteering roles**

This should be used for the lowest-risk cases in order that UK Border Agency can notify corporate partners, where appropriate, about the person's employment.

(ii) **To apply restrictions on working or in particular occupations/professions**

Generally, this condition will be expressed as a condition not to take any employment or engage in any business unless the Secretary of State has given prior consent in writing. When consent is sought for a particular job, the precise type of work to be restricted will depend entirely on the risk factors posed in individual cases. The condition should generally be used to prevent the person from working in roles with unsupervised contact with vulnerable people, or in roles which could be inappropriate according to the alleged crimes or acts for which the individual is being excluded, e.g. working with migrant communities from the country of origin where war crimes were allegedly committed. If an individual is already in employment then details of that employment ([see 3.4](#)) must be obtained and an assessment undertaken as to its continuing suitability prior to a grant of restricted leave.

(iii) **A total ban on employment in any capacity, whether paid or as a volunteer**

This should be used exceptionally in cases posing a particularly high public protection risk. Such cases should also be referred to the local police force for handling under the Potentially Dangerous Person (PDP) regime.

## **Operation of the employment restriction**

3.3 At the initial grant of leave, and at subsequent renewals, the Immigration Status Document/Biometric Residence Permit will in most instances be completed with a remark indicating that employment is permitted only with the consent of the Secretary of State. This must be accompanied by a letter explaining that consent will normally only be given in relation to a specific job or business activity. Where the individual seeks to change his employment, or to take up an additional role, he must apply for fresh consent.

3.4 An individual may apply for consent either in writing to the designated UK Border Agency case owner or at a reporting event (where under a condition to report to the Secretary of State). In either case the individual should provide the following details to enable a decision to be made:

- Name, address, contact details of employer;
- Job title / position Job advertisement (if applicable)
- Person specification for the role (if applicable)
- Detail of role and responsibilities.

3.5 The individual should be told that his request will be submitted to the caseworker and a decision reached within ten working days to be notified in writing to

his home address, with a copy sent to the legal representatives. It is important that the response is sent to the notified home address as this is a key way of checking that the individual continues to live at the address given.

3.6 In considering whether to give consent to proposed employment, the decision maker should revisit the case background to make a judgement on whether previous behaviour suggests the person would be unsuitable for the proposed role in a UK context. The decision maker should pay particular attention to unsuitable behaviour that occurred when the person previously held:

- a position of authority over others (e.g. police, teacher, security guard, soldier);
- a position of trust (e.g. doctor, nurse);
- a role allowing unsupervised access to children or vulnerable people;
- a professional role that involved working unsupervised to a significant degree or instructing/supervising others.

3.7 The presumption is that a person excluded from the Convention under Article 1F should not be permitted to work or volunteer in any of the roles that require a standard or enhanced CRB check. These include (not an exhaustive list):

- healthcare, e.g. doctors, nurses, chiropractors, opticians;
- roles involving the humane killing of animals;
- public sector roles e.g. police, court, prison and probation services;
- roles requiring contact with children e.g. teaching and training roles or foster carers;
- roles in the legal profession, including immigration advisers; and
- other miscellaneous roles e.g. locksmiths, taxi drivers, security guards.

For more information go to <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/CRB/about-the-crb/eligible-positions-guide>.

## **Independent Safeguarding Authority (ISA) Referral Process**

3.8 Regardless of the employment condition being imposed, all cases excluded from the Convention by virtue of Article 1F should be referred to the ISA as soon as an individual is granted Restricted Leave and the conditions attached to this leave, which will have been agreed with SCD.

3.9 The UK Border Agency will use the template letter (**ASL.4468**) to refer cases to the ISA. This letter and supporting evidence should be sent electronically via SCD.

3.10 The referral will include information relevant to the case, including the serious reasons for considering the individual has committed crimes/offences that led to the exclusion under Article 1F. This would normally be the asylum decision letter or the Tribunal appeal determination, together with details of the restrictions being applied. It should not be the interview transcript, except on request by the ISA.

3.11 The ISA will consider whether it is appropriate to bar the person under their discretionary barring procedure. If the ISA is minded to bar the person, the individual will be invited by the ISA to make representations within eight weeks which will be considered before a final decision is taken on barring. The ISA may contact the UK Border Agency in relation to any representations received and will inform the Agency of the decision, so that this may be taken into account if the individual seeks permission to take or engage in a particular form of employment.

### **Professional/regulatory bodies**

3.12 Where the applicant seeks consent to employment in a role under the supervision of a professional body (other than the ISA), decision makers should consider whether public protection is best served by disclosure of the details of the criminality to that professional body. This can be done even where the decision maker is not proposing to refuse consent to employment in that role – informing a regulatory body can serve to ensure a person's behaviour at work is kept under supervision. The UK Border Agency has not made prior contact with professional bodies because, for many of them, there may never be a referral. Contact should be made by the case owner when such cases arise.

3.13 After making a referral, the case owner should request disclosure from the professional/regulatory body about the action taken in respect of the individual. Knowledge of how seriously the professional body regards the risk posed by the individual may help to inform the precise nature of conditions that should be imposed by the UK Border Agency, in particular the restrictions relating to employment.

### **Disclosure**

3.14 Relevant information of alleged past criminality can be shared with the ISA or professional and statutory regulatory bodies, consistent with our obligations under the Data Protection Act (see link to Horizon page). Where in doubt about whether information can be disclosed case owners should seek advice.

## **4. Residence restrictions**

4.1 These cases remain a priority for removal and it is consistent with the policy objectives to ensure the UK Border Agency maintains contact with individuals. A requirement to notify the Agency of a change of address is to ensure that the individual can be located when removal is possible. Requiring the person to live in a specific area where the accommodation is publicly provided or funded may also be legitimate in order to reduce the cost of providing housing.

4.2 One or both of the following residence conditions should usually be imposed:

- (i) to notify the Secretary of State of the home address and any change of address, and/or
- (ii) to seek the prior consent of the Secretary of State to any change of address.

4.3 Option (i), to notify the Secretary of State of changes of address, should normally be imposed in all cases. In cases requiring the additional condition in option (ii), the individual will be subject to a requirement to seek the consent of the Secretary of State before changing address. This condition will be on the face of the Immigration Status Document/Biometric Residence Permit and must be explained in an accompanying letter (**ASL.4527 or 4528**). It is important that requests for consent to change address are dealt with promptly as the person, including their family, may have to change address and should not be left homeless or in breach of conditions.

4.4 In deciding whether to give consent, decision makers must have regard to known risk factors and consult the advice of partners (e.g. police, local authorities) where appropriate. If specific risk factors are known, it may be appropriate to advise the individual that he will not be given permission to live within a certain area.

4.5 In this section, 'residence' should be given the meaning of habitual residence. A person subject to a residence condition should also be subject to a condition to not spend more than 3 consecutive nights away from that address without the prior written consent of the Secretary of State. In addition, the person must not spend more than 10 nights away from that address in any rolling six month period. These conditions will be specified in the Notice (**ASL.4526**) explaining the conditions attached to the leave.

4.6 Each case should be considered on the individual facts and risks. Particular risks may arise where:

- the individual concerned may pose particular risks to individuals in the community on the basis of past behaviour – for example, the UK Border Agency may want to prohibit residence close to a school or other facility;
- there is a significant community from the applicant's country of origin in that locality. The risk may be to the individual (e.g. from members of the community seeking retribution), or there may be a general public order risk if it becomes known that the person is living in the community. It also may be suspected that an excluded individual will seek to use his influence within the community to intimidate others or to exert undue influence. Where that is a real concern, the individual should be informed that permission will not be granted to live at an address within a specified area.

4.7 A residence restriction may also be imposed where it would facilitate the progression of the individual to removal.

4.8 In cases that pose a particularly high risk of public order or crime, the local police should be informed as part of the Potentially Dangerous Person regime.

4.9 A residence condition may have an adverse impact on child dependants. Where a child lives within the household of the excluded person, care should be taken to consider the impact on the child's welfare in accordance with the UK Border Agency's s.55 duty. An example of this might be where a residence condition disrupts a child's education at a crucial stage, or where it takes the child away from an extended family. Removing a child from the influence of a wider community may

not be in the best interests of the child. A view may be sought from the Office of the Children's Champion about child welfare issues.

## Compliance

4.10 Any letter or notice setting out the basis of the leave given should make clear the consequences of non-compliance. Case owners should keep compliance with conditions under close review. They must liaise with reporting centres to use the reporting event as a means of monitoring compliance with any residence and employment conditions.

4.11 Case owners must maintain contact with reporting centre staff and request that they are vigilant to signs that a person is no longer complying with conditions. An example of this might be if they consistently arrive late for reporting events and their explanation does not stand up to scrutiny, for example, if their travel tickets consistently show they have travelled to the reporting event from another location.

4.12 Case owners should ask reporting centres to request evidence of recent utility bills or other evidence that corroborates the stated address. Reporting centre staff can also ask to see return bus or train tickets where the individual does not live within walking distance of the reporting centre or has not driven there.

4.13 Where there are doubts about a person's compliance with conditions, the case owner should contact the Local Immigration Team (LIT) to commission investigation, which may include a home visit. In some cases it may be appropriate to make a referral to an intelligence team to establish if there is evidence of a person living elsewhere, in breach of the residence condition.

4.14 Case owners should also consider the use of random home visits even where there is no obvious evidence of a breach of this condition. This can be justified, given the high priority of these cases for removal, in order for UK Border Agency to have confidence that it is maintaining contact.

## 5. Reporting restrictions

5.1 The presumption is that **all** cases subject to this policy will be made subject to a condition to report regularly to the Secretary of State. This condition is designed to maintain contact with the individual and monitor compliance with the other conditions. Contact management is a priority because these cases remain under review for removal at the earliest possible stage.

5.2 The precise frequency and location of the reporting event will depend upon the following factors:

- the imminence of removal;
- the perceived risk of absconding;
- the need to maintain contact with the individual to monitor compliance with conditions,

- the impact of the reporting requirement on the individual taking into account:
  - the location of the reporting centre;
  - health and mobility;
  - domestic responsibilities;
  - employment.

5.3 As a guide, monthly reporting should be considered the normal standard for Restricted Leave cases. This frequency can be modified up or down, taking into account the factors specified above. Where, in exceptional circumstances, it would be unreasonable to expect the individual to report each time in person, other options should be considered, such as home visits.

5.4 Before setting up the reporting regime, case owners must liaise with the relevant reporting centre manager to ensure they are aware of the facts relating to the individual, and in particular any risks they may pose when reporting. The reporting centre manager may wish to suggest an alternative reporting venue or specify a time when known victims or people at risk will not also be reporting.

5.5 An individual may apply for the condition to be varied, to take account of domestic or other commitments. Such requests should be considered in line with the overall aims of the policy and this guidance and, if appropriate, the condition should be amended in writing.

5.6 Case owners should be aware that asylum seekers supported under s.95 will cease to be eligible for support when their claim is determined. In this scenario, the reporting condition should be set for the current address and then amended when the applicant finds an alternative address. During this period it is important to maintain contact with the applicant so that proposed addresses can be considered before the applicant needs to move into the new accommodation.

## **Compliance**

5.7 Through liaison with the reporting centre, and monitoring of the case on UK Border Agency records, the case owner should ensure compliance with the reporting condition. Where an individual breaches the reporting condition without explanation, the case owner should liaise with the LIT to arrange an enforcement visit to establish the reason for the breach and to take appropriate action.

5.8 In imposing the reporting condition, the individual should be told in writing of how to notify the reporting centre in the event that he is unable to attend a scheduled reporting event.

5.9 These cases are amongst the highest priority cases for compliance action. Any more than one notified failure to report must be followed up by the case owner. Missed reporting events without satisfactory explanation should be referred to the local prosecution team for consideration.

## **6. Restriction on studies**

6.1 Grants of Restricted Leave in Article 1F exclusion cases should generally be subject to a condition which prevents them from undertaking a course of study, whether by attending in person or remote learning.

6.2 These individuals are in the UK on a temporary form of leave, pending their removal from the UK when circumstances permit. The rationale for restricting study is that it underlines the temporary nature of the leave. It also reduces pressure on public finances and, for privately funded courses, ensures that the person does not occupy course spaces that would otherwise be taken up by British Citizens or lawful migrants. It is also in the wider public interest to ensure that migrants who are welcome in the UK are afforded the opportunities that come from education, ahead of those on Restricted Leave.

## **7. Authority levels and scrutiny/oversight**

7.1 All proposed initial grants of Restricted Leave, and 'conversions' from Discretionary Leave to Restricted Leave following an active review (see section 9 below) must be approved by the UK Border Agency Chief Executive or the Chief Operating Officer in his absence. The submission to the Chief Executive must specify that the particular conditions suggested have been agreed with SCD, with advice sought where needed from Legal Advisers Branch (LAB).

7.2 There is a need in the early stages of the policy to ensure that conditions of leave are being imposed in a consistent and proportionate manner, and are properly addressing the aims of the policy. This approval mechanism is intended to establish an appropriate overview of the types of conditions being used. The evidence collected will inform revised guidance on the handling of Article 1F cases in the future. Case owners should not hesitate to seek advice on any proposed changes to restrictions.

## **8. The grant of Restricted Leave with conditions**

8.1 The reasons for and nature of the conditions being imposed should be explained in the letter and notices accompanying the grant of leave to remain. This letter must include the precise meaning of the conditions, how to apply to vary the conditions and a statement that a failure to comply with conditions may result in prosecution.

8.2 When case owners reach the stage of issuing a vignette, they should follow the guidance which gives details of how to update UK Border Agency records and generate the vignette.

8.3 Where dependants have not made a protection claim in their own right, they should be granted leave in line with the main applicant. It is generally not appropriate

to impose similar restrictions as apply to the main applicant. The restrictions applied should be at the minimum level necessary to maintain contact with the individual.

## **9. Active reviews**

9.1 Grants of Restricted Leave will normally fall for renewal every six months. It remains the responsibility of the individual to apply for further leave to remain, but case owners should review the case in good time before the expiry of the leave to re-assess any protection needs and the prospects of removal. In many cases, the country situation will not have changed sufficiently to make removal possible within the next review period, but this must always be checked against COI at the time. In this scenario, case owners should seek information either in writing or via a reporting event about the person's work and future intentions and, on application consider a further grant of Restricted Leave in line with this policy. At the active review stage case owners should also review whether the conditions attached to the leave remain appropriate.

9.2 Where the circumstances have changed to the extent that the individual's removal would not be in breach of our ECHR obligations, the individual should be refused further leave and appeal rights notified in the usual way and, subject to those appeal rights, progressed to removal.

9.3 Article 1F cases which were granted Discretionary Leave before 2 September 2011 should remain on their existing leave until it falls for renewal. When the renewal application is received, the application should be considered in line with the policy on Restricted Leave and be granted Restricted Leave unless exceptional circumstances justify a deviation from the published policy.

9.4 All initial grants of Restricted Leave following a previous grant of Discretionary Leave should be approved by the Chief Executive (or Chief Operating Officer). Subsequent renewals require approval for the grant of further Restricted Leave at an appropriately senior level but do not need Chief Executive authority unless the case is high profile or a significant change to the conditions or duration of leave is proposed.

## **10. Appeal rights exhausted failed asylum seekers**

10.1 The instructions above relate to the handling of Article 1F cases who cannot be removed for legal reasons. Those who are refused asylum because Article 1F applies and there are no remaining ECHR or other legal barriers to their removal must be prioritised for enforcement action.

10.2 Pending removal, these individuals should be on bail/temporary admission/temporary release as appropriate. It is essential that the bail conditions imposed in these cases replicate the conditions that would be attached were a person to fall within this policy. Case owners should impose the same restrictions that

they would impose with a grant of leave to remain. The only difference is that employment is prohibited.

## 11. Enquiries

Until further notice, any enquiries about the contents of this guidance should be sent to the NAM+ Protection inbox.

## Document Control

### Change Record

Version	Authors	Date	Change Reference
2.0	B.G	28/05/2012	First approved version on Horizon Previous version published only on UKBA website on 02/09/11.