



Home Office

# Refugee Leave

Version 4.0

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# About this guidance

This instruction provides guidance on the duration of leave to be granted to those who have been recognised as refugees in accordance with our international obligations under the Refugee Convention and the Immigration Rules. This includes those granted at initial decision stage or following an allowed appeal.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Asylum Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Clearance and publication

Below is information on when this version of the guidance was cleared:

- Version **4.0**
- published for Home Office staff on **02 March 2017**

## Changes from last version of this guidance

- new section included on settlement and the need for a safe return review when considering settlement applications from those granted refugee status
- new guidance template applied, and section and paragraph numbering removed in line with guidance requirements

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# Introduction

## Purpose of instruction

This instruction provides guidance to asylum caseworkers on the duration of leave to be granted to those recognised as refugees in accordance with our international obligations under the Refugee Convention and the Immigration Rules. This includes those granted at initial decision stage or following an allowed appeal.

This instruction must be read in conjunction with the main asylum policy instructions, in particular:

- Assessing credibility and refugee status
- Exclusion (Article 1F) and Article 33(2) of the Refugee Convention
- Revocation of refugee status
- Settlement Protection

For guidance on granting humanitarian protection, caseworkers must refer to the Humanitarian Protection instruction.

## Background

The UK has a proud record of providing protection for those who genuinely need it, in accordance with our obligations under the Refugee Convention. Those recognised as refugees because they have a well-founded fear of persecution for reasons covered by the Refugee Convention are normally granted refugee status and a period of limited leave in the UK. They are able to work, have access to broadly the same rights and benefits as British citizens and can apply for settlement after a probationary period of limited leave if they still need international protection.

When someone with limited refugee leave applies to extend that leave a safe return review will be carried out. Where they no longer need protection they will not qualify for further refugee leave or settlement protection and will need to apply to stay on another basis or leave the UK. All those granted refugee leave may also have their case reviewed in light of any criminality and such leave may be revoked if they are no longer entitled to protection.

## Policy intention

The policy objective in granting refugee leave is primarily to provide protection and a period of limited leave to those who need it. The policy is designed to:

- meet our international obligations under the Refugee Convention and EU law by granting refugee status and an appropriate period of leave to those who need our protection
- maintain a fair immigration system that requires all migrants, including those granted refugee status, to earn the right to settlement, and all the benefits that come with it, by completing an appropriate period of limited leave
- ensure that safe return reviews are carried out so that protection is provided for as long as it is needed, but make clear that those who no longer need protection will need to apply to stay on another basis or leave the UK

## Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to ensure that immigration and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. This applies to children who claim asylum in their own right and those dependent on their parents' asylum claim.

Those who are recognised as refugees are normally granted limited leave for 5 years and any children who are under 18 and dependent on the asylum claim will be granted leave in line with the main claimant. Unaccompanied children who claim asylum and qualify for refugee status are also normally granted limited leave for 5 years. However, there may also be exceptional reasons to grant a longer period of leave and caseworkers should refer to the section on [applications for longer periods of leave](#) below.

Caseworkers must carefully consider any evidence provided as to how a child will be affected by a grant of limited leave rather than immediate settlement. In the vast majority of cases the impact will not be significant because limited leave provides appropriate protection in accordance with our international obligations and access to benefits and services that a child may require. It is therefore very unlikely that best interests considerations in an individual case will override the wider policy intention to require all migrants to complete an appropriate period of limited leave before being able to apply for settlement. Any grant of a longer period of leave would fall under the Discretionary Leave policy.

Although a child's best interests are not a factor in assessing whether their refugee leave, or that of their parents, should be revoked caseworkers must have regard to the section 55 duty in considering whether other leave may be appropriate following such action. The statutory guidance, [Every Child Matters – Change for Children](#), sets out the key principles to take into account in all actions. See also Revocation of refugee status.

Where there are child welfare or protection concerns that may involve safeguarding issues within the family unit the case must be referred immediately to the local safeguarding team, who will refer the case to the relevant local authority in accordance with guidance on making safeguarding referrals. In an emergency the case must be referred to the police. The Office of the Children's Champion can also offer advice on issues relating to children, including family court proceedings and complex cases.

For further information on the key principles to take into account, see: Section 55 children's duty guidance. See also: Processing asylum applications from children guidance.

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# Legislation

## The 1951 Refugee Convention

The [Refugee Convention](#) provides the framework for international refugee protection. It has been supplemented in the European Union (the EU) by a subsidiary protection regime, and the progressive development of international human rights law. The Convention requires signatory states to uphold the principle of non refoulement but does not impose requirements on the length of leave (if any) to be granted to those recognised as refugees –this is for signatory states to determine.

## European legislation

[Council Directive 2004/83/EC](#) (the Qualification Directive) lays down provisions and criteria for interpreting the Refugee Convention to be adopted across the EU. It has been transposed into UK law through [The Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#) and the [Immigration Rules](#).

**Article 24(1)** requires that as soon as possible following the grant of asylum, refugees are issued a residence permit for a minimum of 3 years unless compelling reasons of national security or public order otherwise require

[Council Directive 2005/85/EC](#) (the Procedures Directive), sets minimum standards for Member States for granting and withdrawing refugee status and has been transposed into UK law via the [Asylum \(Procedures\) Regulations 2007](#) and [the Immigration Rules](#).

## Domestic legislation

[Section 72 of the Nationality Immigration and Asylum Act 2002](#) is the UK's definition of when the serious criminality provision in Article 33(2) is to be applied. In particular, section 72(2)(a)-(b) states:

A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is:

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least two years.

However, the presumption that a person constitutes a danger to the community is rebuttable by that person.

## Immigration Rules

[Part 11 of the Immigration Rules](#) sets out the provisions for considering asylum claims and reflects our obligations under the Qualification and Procedures Directives.

- [Paragraph 334](#) sets out the criteria that must be met for an individual to be granted asylum and recognised as a refugee

- [Paragraph 339Q](#) sets out the conditions for granting a residence permit and 5 years' limited leave as a refugee

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# Granting refugee leave

## Duration and conditions of leave

Those who qualify for refugee status under [paragraph 334](#) of the Immigration Rules should normally be granted limited leave to enter or remain under [paragraph 339Q](#). This will normally include the following period of leave and associated benefits:

- an initial period of **5 years'** limited leave
- immediate and unrestricted access to the labour market, recourse to public funds and the opportunity to apply for a refugee integration loan
- a **5 year** route to settlement for those who continue to need protection
- no requirement to demonstrate a knowledge of language and life in the UK when applying for settlement

## Family members

Family members who have been accepted as dependants on the asylum claim in accordance with [paragraph 349](#) of the Immigration Rules will normally be granted leave and refugee status in line with the main claimant under [paragraph 339Q](#). See [Dependants and former dependants](#).

Those who are granted refugee status are also able to sponsor their partner and children under the age of 18 to join them in the UK under the family reunion provisions in [paragraphs 352 to 352FJ](#). This would normally be through an application for entry clearance but family members can also apply in country. See the published policy on Family Reunion for further guidance.

## Applications for longer periods of leave

Those who are recognised as refugees and granted asylum are normally expected to complete the appropriate qualifying period of limited leave before being eligible to apply for settlement. A grant of 5 years' limited leave will be a sufficient length of time save in the most exceptional of circumstances.

Article 20(3) of the Qualification Directive requires Member States to consider the particular circumstances of vulnerable people. In some cases there may be compelling reasons to justify a longer period but this would only apply in the most exceptional of circumstances, which means not only a situation which is unusual but one which is distinguished to a high degree from others who need international protection, to the extent that it is necessary to deviate from the normal grant of limited leave. Where, in light of the specific situation of a vulnerable person a longer period of leave to remain is appropriate, this may be considered in accordance with the published policy on Discretionary Leave.

The claimant must provide specific evidence in support of why a longer period of leave is appropriate. In the case of medical or mental health issues, the evidence must specifically address why the longer period of leave is relevant to the claimant and why a grant of limited leave (with an opportunity to renew that leave) is insufficient. It is highly unlikely that a request for indefinite leave to remain (ILR) on

account of, for example, employment or educational opportunities will succeed but decision makers must consider if there are any other reasons to divert from a normal period of leave. Any immediate grant of ILR must be approved by a senior manager at senior executive officer (SEO) or above.

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# Refusing refugee leave

## Exclusion

The Refugee Convention contains specific exclusion provisions under Article 1F for those who would otherwise be refugees but who have committed war crimes, crimes against humanity or other serious crimes outside the country of refuge. Those who fall within these provisions are excluded from refugee status and must not be granted refugee leave in the UK.

## Criminality

Those who are refugees but they are considered to be a danger to nationality security or, having been convicted by a final judgement of a particularly serious crime, they constitute a danger to the community will not benefit from refugee status. Such individuals do not qualify for refugee status under [paragraph 334\(iii\) and \(iv\)](#) and must not be granted refugee leave in the UK.

## Extremism

Those who promote extremist views or engage in extremist activities that represent a danger to the security of the UK may engage Article 14(5) of the Qualification Directive and therefore they must be refused asylum under the corresponding provisions of the Immigration Rules set out in [paragraph 334\(iii\) and \(iv\)](#).

For further guidance on those considered to represent a danger to the security of the UK on grounds of extremism see Exclusion (Article 1F) and Article 33(2) of the Refugee Convention and the cross-government [Counter-Extremism Strategy](#).

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# Settlement

This section applies to all those who are applying for settlement protection. Those granted refugee status will be eligible to apply for settlement (also referred to as indefinite leave to remain) once they have completed the required probationary period of 5 years' limited leave.

The settlement application must be made using the appropriate application form, which is available on the Gov.UK website:

<https://www.gov.uk/government/publications/application-to-settle-in-uk-as-refugee-form-set-protection-route>.

## Safe return review

All those who apply for settlement protection after completing the appropriate probationary period of limited leave will be subject to a safe return review with reference to the country situation at the date the application is considered. Those who still need protection at that point will normally qualify for settlement.

Caseworkers must refer to the Settlement Protection instruction for more detailed guidance on considering such applications.

A person's case may also be reviewed at any point in the process either when triggered by their actions, for example, they are convicted of a serious crime, or in light of a significant and non-temporary change in conditions in their country of origin such that they no longer need protection. Refugee leave may be revoked where someone no longer needs, is no longer entitled to protection due to their actions, or should not have been given protection under the Refugee Convention. See Revocation of refugee status for further guidance.

## Refugees who do not apply for further leave

Where an individual with refugee status leave does not apply for settlement before their current leave expires or does not apply for further leave at all, they become an overstayer and are no longer entitled to the benefits associated with a valid period of limited leave to enter or remain, for example permission to work or access to mainstream benefits. They also become liable to removal though remain recognised refugees until and unless that status is formally revoked. Therefore, revocation action must be taken, where appropriate, before they are removed.

Where any overstaying comes to light as part of a settlement application, decision makers must follow the guidance in the Settlement Protection instruction. Where evidence comes to light that an individual has overstayed and has not made an application for further leave, their case must be referred to the Status Review Unit in the first instance where an in-depth review of that person's entitlement to refugee status will be conducted.

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