



Home Office

Restricted leave

Version 8.0

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About this guidance

This guidance tells you who should be granted restricted leave, how to consider the duration of leave to be granted and what, if any, conditions should be imposed.

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 Migrant Criminality 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.

Publication

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

- version **8.0**
- published for Home Office staff on **17 October 2023**

Changes from last version of this guidance

- amended to incorporate change from paragraph 276ADE (private life) to Appendix Private Life
- introduce requirement to notify the Home Office of change of residential address within 14 days
- remove reference to Case Information Database

Related content

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Introduction

This section tells you about the background to the restricted leave policy and who it applies to.

Background

The government's policy is that foreign nationals who are not welcome in the UK because of their conduct, will be deported or administratively removed from the UK, unless to do so would breach the UK's obligations under the European Convention on Human Rights (ECHR) or the Refugee Convention.

Restricted leave is a form of leave outside the Immigration Rules that may be granted to a foreign national where to remove the person from the UK would breach the UK's ECHR obligations and any of the following apply:

- they are excluded from protection under Article 1F of the [Refugee Convention](#) or excluded from a grant of humanitarian protection under [paragraph 339D](#) of the Immigration Rules or excluded from the 1954 Convention relating to the Status of Stateless Persons
- they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the United Kingdom
- the Secretary of State considers that they are a person to whom either of the previous 2 bullet points would apply except that either:
 - the person has not made a protection claim
 - the person made a protection claim which was refused without reference to Article 1F of the Refugee Convention or paragraph 339D of the Immigration Rules
- they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they pose a danger to the community of the United Kingdom - in respect of Foreign National Offenders, we would normally consider them to be in scope of the Restricted Leave Policy where the person is liable to deportation under section 3(5) of the Immigration Act 1971 or where the offending was sexual, drugs, weapons or trafficking related

The purpose of exclusion from asylum or humanitarian protection and associated provisions is to deny the benefits of protection status to those who do not deserve international protection. This may be because there are serious reasons for considering that they have committed war crimes, crimes against peace or humanity, serious non-political crimes or acts contrary to the purposes and principles of the United Nations, including terrorism-related activity. It is also intended to protect the integrity of the asylum process and to ensure that foreign nationals cannot avoid being returned to their country of origin or nationality to be held to account for their actions by claiming protection.

The purpose of the Article 33(2) 'refoulement' provision is to deny the principle of non-refoulement to those who are a danger to the security of the host country, or who, having committed a particularly serious crime, are a danger to the community.

Policy objectives

The policy objectives in granting temporary periods of restricted leave with specific conditions to those who are or would be denied the benefits of protection status, are:

Public interest

The public interest in maintaining the integrity of the immigration control justifies frequent review of these cases with the intention of removal at the earliest opportunity. The Home Office wants to ensure close contact and give a clear signal that the person is not welcome and should not become established in the UK.

Public protection

It is legitimate to impose conditions designed to ensure that the Home Office is able to monitor where a person 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 whose conduct excludes, or would exclude them from refugee status, or humanitarian protection, including those who have been involved in war crimes, crimes against humanity, serious non-political crimes or other conduct contrary to the purpose and principles of the United Nations, cannot establish a new life in the UK. It supports our broader international obligations, reinforcing the message that our intention is to remove the person from the UK as soon as possible.

The lawfulness of the restricted leave policy was upheld by the Upper Tribunal in [MS, R \(on the application of\) v SSHD \(excluded persons: Restrictive Leave policy\) \(IJR\) \[2015\] UKUT 539 \(IAC\)](#) and by the Court of Appeal in [MS & Anor v SSHD \[2017\] EWCA Civ 1190 \(31 July 2017\)](#).

Related content

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Relevant law and Immigration Rules

This section tells you about the legislation and Immigration Rules relevant to the restricted leave policy.

Refugee Convention

Article 1F of the [Refugee Convention](#) excludes persons from protection where there are serious reasons for considering that they have:

- 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
- committed a serious non-political crime outside the country of refuge prior to their admission to that country as a refugee
- been guilty of acts contrary to the purposes and principles of the United Nations

Section 36 of the Nationality and Borders Act 2022 (2022 Act) sets out how the courts are to construe Article 1F of the Refugee Convention and how they are to construe exclusion from the Refugee Convention in cases of serious crime.

Article 33(2) of the [Refugee Convention](#) provides an exception to the principle of non-refoulement set out in Article 33(1), providing for refugees to be returned to their country of origin where either:

- there are reasonable grounds for regarding the person as a danger to the security of the country in which they are
- having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of that country

The 1954 Convention relating to the Status of Stateless Persons

[The 1954 Convention relating to the Status of Stateless Persons](#) regulates the status of non-refugee stateless persons. Article 1(2)(iii) of this Convention excludes from its scope those people for whom there are serious reasons for considering that they have:

- 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
- committed a serious non-political crime outside the country of their residence prior to their admission to that country
- been guilty of acts contrary to the purposes and principles of the United Nations

Immigration Act 1971

Provision to impose conditions on a grant of limited leave to enter or remain is set out in [section 3\(1\)\(c\) of the Immigration Act 1971](#) (1971 Act). A person who knowingly fails to observe a condition of leave commits an offence by virtue of section 24(1)(b)(ii) of the 1971 Act.

Nationality, Immigration and Asylum Act 2002

[Section 72\(2\) of the Nationality, Immigration and Asylum Act 2002](#) (2002 Act), as amended by section 38 of the 2022 Act, sets out how the serious criminality provision in Article 33(2) is to be interpreted. Section 72 provides that a person is convicted by a final judgment of a particularly serious crime if they are:

- convicted in the UK of an offence and sentenced to a period of imprisonment of at least 12 months
- convicted outside the UK of an offence and sentenced to a period of imprisonment of at least 12 months and could, if convicted in the UK for a similar offence, have been sentenced to a period of imprisonment of at least 12 months

Section 72(5A) provides that a person convicted by a final judgment of a particularly serious crime (whether within or outside the UK) is to be presumed to constitute a danger to the community of the UK. The presumption that a person's 'particularly serious crime' means they are a danger to the community of the UK is rebuttable. This means that this presumption is taken to be true, unless there is evidence which demonstrates that the person is not a danger to the community.

If a person was convicted before commencement of section 38 of the 2022 Act on 28 June 2022, the previous definition in section 72 of the 2002 Act of a 'particularly serious crime'; that is a period of imprisonment of at least 2 years, continues to apply.

[Section 76](#) of the 2002 Act sets out the circumstances in which a person's indefinite leave to enter or remain may be revoked, including where a person is liable to deportation but cannot be deported for legal reasons.

[Section 82](#) of the 2002 Act sets out the rights of appeal given to protection and human rights claims. Sections [94](#), [94B](#) and [96](#) of the 2002 Act set out the certification powers in respect of appeals.

UK Borders Act 2007

[Section 32](#) of the UK Borders Act 2007 (2007 Act) states that the deportation of a foreign criminal convicted in the UK of an offence and sentenced to a single period of imprisonment of at least 12 months is conducive to the public good.

Section 32(5) requires the Home Secretary to make a deportation order against a foreign criminal unless one of the exceptions in [section 33](#) of the 2007 Act is met.

Section 33(7) provides that where an exception to ‘automatic deportation’ applies because removal would breach the Refugee Convention or the ECHR, the foreign criminal’s deportation remains conducive to the public good despite the fact that they cannot presently be deported.

Immigration Rules

[Part 9 of the Immigration Rules](#) sets out the suitability grounds for the refusal or cancellation of entry clearance or permission (leave) to enter or stay in the UK. This includes:

- [paragraphs 9.3.1 and 9.3.2](#), which provide for refusal or cancellation on non-conducive grounds, where the person’s presence in the UK is not conducive to the public good because of their conduct, character, associations or other reasons (including convictions which do not fall within the criminality grounds)
- [paragraphs 9.4.1 - 9.4.5](#), which set out the criminality grounds for refusal or cancellation
- [paragraphs 9.5.1 and 9.5.2](#), which provide for refusal or cancellation on the grounds that the person is excluded or would be excluded from the Refugee Convention or from a grant of humanitarian protection

[Part 11 of the Immigration Rules](#) includes provisions for revoking refugee status or humanitarian protection and for excluding a person from the Refugee Convention or humanitarian protection. This includes:

- [paragraph 339AA](#), which provides that refugee status shall be revoked or not renewed where the person is or should have been excluded from the Refugee Convention
- [paragraph 339AC](#), which provides that refugee status may be revoked or not renewed where the Secretary of State is satisfied that either:
 - there are reasonable grounds for regarding the person as a danger to the security of the UK
 - having been convicted by a final judgment of a particularly serious crime, the person constitutes a danger to the community of the UK
- [paragraph 339D](#), which sets the grounds for exclusion from a grant of humanitarian protection
- [paragraph 339GB](#), which sets out the exclusion grounds that provide for the revocation of humanitarian protection

[Part 13 of the Immigration Rules](#) contains the provisions relating to deportation including the framework for considering Article 8 ECHR claims from those liable to deportation because of criminal convictions.

Part 14 of the Immigration Rules provide the procedural and policy framework for considering stateless leave applications. These rules were introduced in 2013 by the statement of changes to the Immigration Rules: HC1039. This includes:

- paragraph 402, which sets the grounds for exclusion from recognition as a stateless person

- paragraph 404, which provide the basis of refusal for leave to remain as a stateless person

[Paragraph 8\(ca\) of Appendix Armed Forces](#) sets out grounds for refusing an application for limited or indefinite leave to remain, which are those that apply to a person who falls under the restricted leave policy.

[Paragraph S-LTR.1.8 of Appendix FM: family members](#) sets out grounds for refusing an application for limited leave to remain, which are those that apply to a person who falls under the restricted leave policy.

[Paragraph S-ILR.1.10 of Appendix FM: family members](#) sets out grounds for refusing an application for indefinite leave to remain, which are those that apply to a person who falls under the restricted leave policy.

[Paragraphs EU16\(d\) and \(e\) of Appendix EU](#) provide that an application made for leave under Appendix EU may be refused on suitability grounds, which are those that apply to a person who falls under the restricted leave policy, where doing so is proportionate, see: [EU Settlement Scheme \(EUSS\)](#).

Related content

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Application of the restricted leave policy

This section tells you about the application of restricted leave.

Official - sensitive: start of section

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Official - sensitive: end of section

The period of restricted leave to be granted and the conditions to apply must be considered on a case-by-case basis taking into account the policy objectives and the guidance in this document. See:

- [Duration of leave](#)
- [Conditions to impose](#)

Although restricted leave should be used sparingly, there is no limit on the number of times that restricted leave can be granted. Provided the individual continues to come within the scope of the restricted leave policy, including that there continues to be an ECHR barrier to removal, a further period of restricted leave can be granted.

If there is no longer an ECHR barrier to removal, the individual will not qualify for a further grant of restricted leave and enforcement action must be prioritised. An ECHR barrier to removal includes, but is not limited to:

- Article 2 – right to life
- Article 3 – prohibition of torture
- Article 6 – right to a fair trial
- Article 8 – right to respect for private and family life

Application in respect of children – section 55 duty

When considering granting restricted leave to someone who has a child or children in the UK under the age of 18, you must have regard to the need to safeguard and promote the welfare of the children in accordance with the duty set out in [section 55 of the Borders, Citizenship and Immigration Act 2009](#).

This means that when you assess whether an individual meets the requirements for a grant of restricted leave you must also have regard to the best interests of their child or children as a primary, but not the only consideration. Your decision must show that you have considered any information and evidence about the impact that a grant of restricted leave to the parent or guardian may have on the child. Documentary evidence from official or independent sources will generally be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests.

In [MS, R \(on the application of \) v SSHD \(excluded persons: Restrictive Leave policy\) \(IJR\) \[2015\] UKUT 539 \(IAC\) \(22 September 2015\)](#), the Upper Tribunal saw no reason why the restricted leave policy is in principle in conflict with the section 55 duty. It was acknowledged that where the [duration and conditions of restricted leave](#) may impact on family life and the best interests of a child those matters can, consistent with the section 55 duty, be properly taken into account when decisions are reached.

For more information on the duty to make arrangements to safeguard and promote the welfare of children see the statutory guidance issued under section 55 - [Every Child Matters: Change for Children](#).

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Revocation of Refugee Status

Safeguarding Advice and Children's Champion

Safeguard and promote child welfare

Grant of restricted leave

This section tells you how to grant restricted leave and the factors to consider.

Initial grants of restricted leave

If it is clear at the outset that there is a human rights barrier to a person's removal from the UK, and they are in scope of the restricted leave policy, you should grant a period of restricted leave with conditions.

If the person currently holds another form of leave to enter or remain but you intend to grant restricted leave, you will need to cancel or curtail limited leave or revoke indefinite leave. There is a right of appeal against a decision to cancel, curtail or revoke EU Settlement Scheme (EUSS) leave.

Where you are making a decision that attracts a right of appeal, and the person wins their appeal, you must review the grant of restricted leave. If it no longer remains appropriate for the person to remain on restricted leave, for example if the court has found that they are not excluded from the Refugee Convention or that their EUSS should not have been curtailed or revoked, they must be granted the leave that is appropriate to their case.

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Official - sensitive: end of section

Grant paperwork

You must notify the person that they are being granted restricted leave using the 'grant of restricted leave cover letter'. The cover letter and notice of conditions must clearly explain why a grant of restricted leave is appropriate and why certain conditions have been imposed. If the person is being granted restricted leave alongside one of the decisions below, you can refer to that decision without needing to repeat the detailed reasons why they are in scope of the restricted leave policy:

- refusal of a protection claim
- exclusion from the Refugee Convention or from a grant of humanitarian protection
- revocation of protection status
- refusal to renew a grant of protection status

You must explain the conditions imposed and how to apply for a variation of the duration of leave or the conditions imposed.

Dependants

It is not possible for a person with restricted leave to sponsor a family member under the Immigration Rules to join them in the UK. A family member of a person granted restricted leave must apply for entry clearance in their own right if they wish to come to the UK.

Where a partner or child is included as a dependant of the main applicant in an application for leave to remain and restricted leave is granted to the main applicant, the dependant should be granted leave outside the rules. The length of leave granted should be in line with the duration of restricted leave granted to the main applicant. However, it may not be appropriate or necessary to attach the same conditions to the dependant's leave as the main applicant.

The dependants of a person with restricted leave can make an application for leave to enter or remain in their own right using the correct application form and paying any applicable fees and charges, or applying for a fee waiver if eligible.

Dependants wishing to pursue their own application for leave should refer to the [visas and immigration](#) section of GOV.UK.

Once a child of a person granted restricted leave turns 18, they are required to make an application in their own right to regularise their stay in the UK or make arrangements to leave the UK.

Disability

The fact that a person has a disability (mental or physical) does not mean that they are necessarily incapable of engaging in, or having engaged in, the types of activities or behaviour that bring them within scope of the restricted leave policy. Consequently, they are not precluded from the application of the policy. However, in deciding on the duration and conditions of leave, you must consider any known factors that might cause real and unreasonable hardship for the person or have a detrimental effect on an existing health condition. This could include mobility or other health issues that could make it difficult for the individual to report in person on a regular basis or travel some distance. It should also take account of the effect that restricted leave might have on any pre-existing mental health condition. Where this is raised as an issue it will be important to have cogent, independent evidence of the harm that the duration and or conditions of restricted leave is causing.

Duration of leave

The period of restricted leave to be granted is at the discretion of the Secretary of State. The starting point should normally be 6 months. A shorter period than 6 months should be granted where removal appears to be reasonably likely within the next 6 months or where the risk posed by the individual is such that it warrants the case being kept under review more frequently. A longer period than 6 months may be justified by the particular circumstances of the case, but it must be the minimum

necessary to satisfy the justification for a longer grant. Where it is proposed to grant a longer period of restricted leave to someone who was last granted 6 months, you must obtain grade 6 approval. It would risk undermining public confidence in the immigration system if people subject to restricted leave were to be given additional benefits to those who are welcome in and contribute positively to, the UK. However, all cases must be assessed individually on their merits.

If it is claimed that a short period of leave would be contrary to a child's best interests, you must consider whether those interests are outweighed by the reasons in favour of granting a particular period of leave. A grant of restricted leave for a period of 6 months is unlikely to impact on a parent's ability to adequately care for their child. It should also not impact on the child's ability to attend school or to access medical care when needed.

When considering the period of restricted leave to be granted you must take account of any relevant factor including the following:

- the likely prospect of early removal from the UK
- the reason why the person qualifies for a grant of restricted leave including the seriousness of any offence or crime they are suspected of committing, or have been convicted of, or the level of harm the person poses, which may require more frequent reviews of the case
- if the person's conduct has caused international outrage, for example, they have committed war crimes or acts of terrorism
- previous and, where relevant, current compliance with immigration laws or conditions of leave

This is not an exhaustive list.

Each case must be considered based on its individual circumstances and any factors weighing in favour of a longer grant of restricted leave must be balanced against the negative factors and the policy intentions.

See also [Applications for indefinite leave to remain](#)

Conditions to impose on a grant of leave

[Section 3\(1\)\(c\)](#) of the Immigration Act 1971 sets out what conditions may be imposed on limited leave to enter or remain in the UK. The conditions which may be imposed, if justified by the particular circumstances of the case, are:

- a condition restricting work or occupation in the UK
- a condition restricting studies in the UK
- a condition requiring the person to maintain and accommodate himself, and any dependants, without recourse to public funds
- a condition requiring the person to report to an immigration officer or the Secretary of State
- a condition about residence

If the imposition of one or more conditions would be contrary to a child's best interests, you must consider whether those interests are outweighed by the reasons in favour of imposing the conditions proposed in the individual case. This will include consideration of the [policy objectives](#).

Guidance on each of these conditions in the context of restricted leave is given below including [compliance with conditions](#) and [breach of conditions](#).

Breaching one or more condition imposed on a grant of restricted leave is serious and can lead to criminal prosecution.

Work condition

The presumption is that permission to work will normally be restricted rather than denied outright in grants of restricted leave. Any work restriction also applies to voluntary work, self-employment or engagement in any kind of business, paid or unpaid. The type of restriction imposed must be in proportion to the public protection risk posed by the person.

The options for restricting work are:

Option 1 - imposing a requirement to notify the Secretary of State of all work and volunteering roles

This option should be used for lower-risk cases so that the Home Office can notify other agencies, where appropriate, about the person's work. The normal requirement will be to notify the Home Office within 14 days of a change in their work situation (for example, taking a new role or leaving a position).

Option 2 - applying restrictions on working, including in certain occupations or professions

This condition will be expressed as a condition not to take any work or engage in any business unless the Secretary of State has given prior permission in writing. Permission should be sought at the earliest opportunity. When permission 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 based on the crimes or acts that led to consideration of restricted leave. This could for example be where a person involved in war crimes would be working with migrant communities from the country of origin where war crimes were committed. If a person is already in work, details of that work must be obtained, and an assessment undertaken as to its continuing suitability. See [Disclosure and Barring Service \(DBS\) referral process](#).

Option 3 - A total ban on work 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 must also be referred to the local police force for

handling under the Potentially Dangerous Person (PDP) regime. Further information on the PDP is available on the [College of Policing's](#) website.

Operation of the employment condition

At the initial grant of restricted leave, and at subsequent renewals, the biometric residence permit (BRP) will normally include a remark showing that employment is permitted only with the permission of the Secretary of State. The grant of restricted leave covering letter must explain that if a person currently allowed to work wants to change their employment, or to take up an additional role, they must re-apply for permission.

A person may apply for permission in writing to the designated decision-maker or at a reporting event (if they have a condition to report to the Secretary of State). The person must provide the following details to enable a decision to be made:

- name, address, contact details of employer
- job title or position
- details of role and responsibilities
- number of days and hours per week the person is expected to work
- salary

A copy of the job advertisement is acceptable if it includes all the above information.

All requests for permission to work should be dealt with as soon as possible (usually within 14 days) after the request is made. The decision must be sent to the person's home address and, where applicable, a copy should be sent to the individual's legal representatives. It is important that the response is sent to the notified home address as this can help to check that the person continues to live at the address given. The person must also be notified of the requirement to update their [biometric residence permit \(BRP\)](#) as employers are not allowed to accept a Home Office letter as proof of permission to work. The old BRP must be returned to the Home Office before a new one is issued.

When considering whether to give consent to proposed work, you must review the circumstances of the case to assess whether the individual's previous behaviour indicates their suitability or not for the proposed role. You must pay particular attention to any unsuitable behaviour that occurred when the person previously held a role such as one of the following:

- a position of authority over others, for example police, teacher, security guard, soldier
- a position of trust, for example 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 or supervising others

The presumption is that a person who falls within the scope of this policy should not be permitted to work or volunteer in any of the roles that require a standard or

enhanced [Disclosure and Barring Service \(DBS\)](#) check or [Security Industry Authority \(SIA\)](#) licence check. These include (not an exhaustive list):

- healthcare, for example doctors, nurses, chiropractors, opticians
- public sector roles, for example police, court, prison and probation services
- roles requiring contact with children, for example teaching and training roles or foster carers
- roles in the legal profession, including immigration advisers
- roles which require a SIA licence, for example locksmiths, door supervision, security guards

If the DBS or SIA is aware of the person's background and relevant behaviour and has given its approval to the person working in a particular role, you may consider giving permission to work in that role provided there are no other concerns.

Disclosure and Barring Service (DBS) referral process

If a person granted restricted leave has previously worked in, is currently working in, or applies for permission to work or change work in an area of regulated activity you must make a referral to the DBS using the ASL.4468 DBS referral proforma.

You must ensure you include sufficient information on what the person has done to fall within the restricted leave policy to enable the DBS to make a decision on the person's suitability to work in areas of regulated activity. This could be details of a conviction, involvement in war crimes, or reasons why the person is considered to be a danger to the community or to the security of the UK. Where relevant you can extract this information from the protection claim decision letter or a Tribunal appeal determination. You should not provide copies of decision letters or transcripts of asylum interviews.

If it is not clear whether the work a person has previously done, is currently doing or wishes to take is in an area of regulated activity, contact the DBS to check before making a formal referral.

With any DBS referral, you must provide as much information as possible on the person's known work history.

For more information on DBS referrals and regulated activities see the [DBS barring referral guidance](#).

Professional or regulatory bodies

Where the person seeks consent to work in a role under the supervision of a professional body (other than the DBS) you must consider whether public protection is best served by disclosure of the details of the criminality or extremist behaviours to that professional body. This can be done even where the decision-maker is not proposing to refuse consent to work in that role – informing a regulatory body can serve to ensure a person's behaviour at work is kept under supervision.

Disclosure

Relevant information of alleged past criminality can be shared with the DBS or professional and statutory regulatory bodies, provided disclosure is consistent with our data sharing obligations, including those under the General Data Protection Regulation and the [Data Protection Act 2018](#). Where in doubt about whether information can be disclosed, you must seek advice from a senior caseworker or chief caseworker in the first instance.

The regulatory bodies also have data sharing obligations and cannot notify you of their barring decisions unless you can show that there is a legitimate reason for needing to know the outcome of a referral.

Employer Checking Service

The Employer Checking Service may contact the Home Office about an individual who has been granted restricted leave and who is subject to a work condition. Where an enquiry is received about a person who has not applied for permission to work or for a variation of their work conditions, the Employer Checking Service must be advised that the person does not have permission to work or to change their work but that it is open to the person to apply for such permission.

Study condition

Grants of restricted leave should generally be subject to a condition which prevents the person from undertaking a course of study, whether by attending in person or remote learning.

Those with restricted leave are in the UK on a temporary basis, pending their deportation or removal from the UK when circumstances permit. The rationale for restricting study is that it reinforces the temporary nature of the leave. It also reduces pressure on public finances and ensures that migrants who are welcome in the UK are afforded the opportunities that come from education ahead of those on restricted leave.

Where permission to study is sought and the person can fund the course without reliance on public money and there are no concerns about allowing the person to pursue the particular course, it must be made clear that any permission given does not entitle the person to remain in the UK to complete the course should their removal become possible. If the person chooses to enrol they should be fully aware of this possibility.

Where permission to study is given, it will only be for the specific course requested. If the person wishes to change their studies a new request must be made to the Home Office.

Any request to study or to change studies must be made in writing and include details of the course content, the course provider, the length of the course, how the

person will fund their studies, and where and how often the person will be expected to attend the course.

No recourse to public funds condition

Where restricted leave is granted, you should normally include a condition of no recourse to public funds, unless the individual would otherwise be destitute. The burden of proof is on the person to show that they are, or would be, destitute, and in need of public funds. This may already have been established if, for example, the person has been in receipt of Asylum Support before being considered for a grant of restricted leave and their circumstances have not changed. If it is already clear that the person is or would be destitute without access to benefits, a further assessment is not needed. If a person is granted access to public funds, their eligibility must be reviewed in the consideration of any subsequent application for restricted leave. This may require a further destitution assessment.

The assessment of destitution must be done in a way that is compatible with the [section 55 of the Borders, Citizenship and Immigration Act 2009](#) duty.

All the information or evidence provided about the individual's circumstances, including those of any dependent family members, must be taken into account by the decision maker in order to consider their financial position. Other factors to consider include:

- how the person has supported themselves in the UK to date
- whether the person has any savings in a UK bank or abroad, or other disposable assets
- whether the person has permission to work, is currently employed, or circumstances (such as age and state of health) are such that they could seek suitable work and request consent from the Secretary of State
- whether the person has any family or others in the UK who can provide financial assistance or accommodation (for example, a partner who is a British Citizen or who has leave to enter or remain which permits work)
- whether the person has any family or others in any other country who could provide financial assistance from abroad

Where a person granted a period of restricted leave subject to a condition of no recourse to public funds applies to have that condition lifted, consideration must be given to whether the individual meets the destitution test. An application must be made in writing by the individual or their representative and must include information and evidence about the individual's personal and financial circumstances.

For guidance on assessing destitution, and the evidence to consider, see [assessing destitution](#).

Where you decide that an individual is destitute, or would be destitute without access to public funds, you must lift the no recourse to public funds condition and apply condition code 2GN allowing recourse to public funds. In such cases, a new BRP must be issued.

When a person granted restricted leave without the no recourse to public funds condition applies for further leave, the decision on public funds should be re-assessed. If the risk of destitution remains, and the person continues to meet the terms of the policy, a further grant of restricted leave without the no recourse to public funds condition must be granted.

Where a person is not destitute, it is only in exceptional circumstances that the leave granted will include access to public funds. Any consideration of exceptional circumstances must take into account anything raised by the person subject to restricted leave, and must be done in line with the [section 55 duty](#).

See: Family life (as a partner or parent) and exceptional circumstances.

There will also be some cases where, depending on the person's nationality, they may still be entitled to access certain public funds due to agreements between the UK and other countries. This does not prevent you from applying the no recourse to public funds condition, but the person must not be penalised for accessing those benefits or allowances to which they have an entitlement.

Reporting condition

The presumption is that all grants of restricted leave will be subject to a condition to report regularly to the Secretary of State. This condition is designed to maintain contact with the person and to monitor compliance with other conditions. Contact management is a priority because these cases must remain under review for removal when possible. 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 person to monitor compliance with conditions
- the impact of the reporting requirement on the person taking into account:
 - the location of the reporting centre
 - physical and mental health
 - domestic responsibilities, including the impact on any child who may be affected
 - work

The frequency with which a person will be required to report will depend on the individual circumstances of the case. As a guide, monthly reporting should be considered the normal standard for restricted leave cases, but the appropriate period should be determined depending on the circumstances of each case. This frequency can also be increased or decreased in the light of changing circumstances, taking into account the factors specified above.

Before setting up the reporting regime, you must liaise with the relevant reporting centre manager to ensure they are aware of the facts relating to the person, 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, vulnerable people or people at risk will not be reporting.

A person may apply for the condition to be varied, to take account of domestic or other commitments. Such requests must be considered in line with the overall aims of the policy and this guidance.

Asylum seekers supported under the Immigration and Asylum Act 1999, including with accommodation, will cease to be eligible for this support when restricted leave is granted and the relevant grace period has come to an end. In this scenario, the reporting condition should be set for the current address and then amended when the person finds an alternative address. During this period, it is important to maintain contact with the person so that proposed addresses can be considered before the person needs to move into the new accommodation.

Residence condition

In this section, 'residence' is given the meaning of habitual residence. All grants of restricted leave must be subject to a requirement to notify the Secretary of State of the home address and of any change of address within 14 days to ensure that the person can be located when removal is possible.

Where accommodation is publicly provided or funded, it may also be reasonable to impose a requirement for a person to live in a specific area to reduce the cost of housing.

In addition, it may be necessary to impose a residence condition requiring the individual to seek the prior consent of the Secretary of State before changing address. It is important that requests for consent to change address are dealt with promptly as the person, and where applicable their family, may have to change address and should not be left homeless or in breach of conditions.

When deciding whether to give consent, you must have regard to known risk factors and seek advice from partners (for example, the police or local authorities) where appropriate. If specific risk factors are known, it may be appropriate to advise the person that they will not be given permission to live within a certain area.

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

- the person concerned may pose particular risks to others in the community on the basis of past behaviour – for example, the Home Office may want to prohibit residence close to a school or other facility
- there is a significant community from the person's country of origin in that locality - the risk may be:
 - to the person (for example, from members of the community seeking retribution)

- a general public order risk, if it becomes known that the person is living in the community
- that the person is suspected of seeking to use their influence within the community to intimidate others or to exert undue influence
- the person is likely to associate with people who will encourage them to engage or re-engage in activities that pose a risk of danger to the community or to the security of the UK

A residence condition may also be imposed where it would facilitate the progression of the person's removal.

In cases which pose a particularly high risk of public order or crime, the local police force should be informed as part of the [Potentially Dangerous Persons \(PDP\)](#) regime.

A residence condition may have an adverse impact on a child or children. Where a child lives in the household of a person granted restricted leave, care should be taken to consider the impact on the child's welfare in accordance with the section 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 Safeguarding Advice and Children's Champion (SACC) about child welfare issues.

Article 8 in respect of duration of leave and conditions

Those granted restricted leave may claim that the duration of leave granted, or the nature of any conditions imposed breaches their right to respect for private and family life as protected by Article 8 of the ECHR.

While it is accepted that a grant of restricted leave may cause some degree of interference with a person's article 8 rights, the level of interference must be proportionate to the legitimate aims of the policy. As to the legitimate aims, the Upper Tribunal held in [MS, R \(on the application of \) v SSHD \(excluded persons: Restrictive Leave policy\) \(IJR\) \[2015\] UKUT 539 \(IAC\) \(22 September 2015\)](#) as follows:

"119. We are in no doubt for reasons which will already have become obvious that the interference which arises under the RLR policy, both as to time limited periods of leave and also as to the conditions which are imposed upon that leave, is necessary for public safety, the economic wellbeing of the country, the prevention of crime and disorder and, in some cases, national security. Leaving aside the fact sensitive assessment of proportionality, we see no objection in principle to the interference with Article 8 rights which may arise through the limitation of the time period for leave or the conditions placed upon it Although as a generality Article 8 may contain in its application some positive obligations, it is a qualified right. The issue in relation to any interference with Article 8, or any obstacle to the development or enhancement of Article 8 rights, is whether that interference is necessary in the various interests of a democratic society set out above. Once it

has been concluded that it is necessary then the interference is justifiable and within the scope of the Article 8 right.”

...

“121. We are therefore satisfied that the RLR policy is in pursuit of a legitimate aim for the reasons set out above.”

On proportionality, the Upper Tribunal considered:

“130. ... bearing in mind the objective of retaining the opportunity to remove someone excluded from the Refugee Convention by virtue of Article 1F at the earliest opportunity, the provision of such time limited leave is not in and of itself disproportionate in so far as it may interfere with the quality of the development of Article 8 rights and insofar as it is subject to the overall governing consideration that there may come a point in time when the failure to grant ILR will be unreasonable bearing in mind the particular circumstances of the case.”

“131. Secondly, similar considerations apply to the restrictions which can be imposed by way of conditions on the time limited leave. In our view in principle they are a proportionate interference provided that they are carefully measured against the individual circumstances of the case (as required by the policy itself) and are no more than is necessary to achieve the objective of the policy set out above. This conclusion does not mean that in each and every case the imposition of time limited leave and all of the conditions contemplated by the policy would be proportionate. The policy must be applied in a fact sensitive manner on a case by case basis.”

“132. Given that family life may continue notwithstanding a time limited grant of RLR, very strong evidence would be needed to prevail over the public interest and public protection considerations which are given effect in the three purposes of the RLR policy ... so as to make it unreasonable for the respondent not to grant RLR for more than six months or not to impose the usual conditions. This is only likely to occur very rarely indeed, save that it may be easier, depending on the circumstances, for an individual to establish a case for departing from the usual condition prohibiting studies than the other three conditions mentioned”.

The Court of Appeal in [MS & Anor v SSHD \[2017\] EWCA Civ 1190](#) agreed with the Upper Tribunal’s findings in relation to Article 8.

Where a person claims that the duration or conditions of their restricted leave interfere with their family and or private life, or with another person’s private or family life, for example that of a partner, child or other close family member, you must consider whether:

- the interference has consequences of such gravity as potentially engaging the operation of Article 8
- the interference is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, of the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others

- the interference is proportionate to the legitimate public end sought to be achieved

You must consider any circumstances raised and consider whether a grant of restricted leave for a period of 6 months subject to the proposed conditions is still appropriate in light of these. Any interference with a person's private or family life is in accordance with the law so long as the decision to grant restricted leave, the duration of leave and the consideration of conditions has been conducted carefully and in accordance with this policy.

Compliance with conditions

Any letter or notice setting out the basis of the restricted leave granted must set out clearly the conditions imposed, how to notify the Home Office of an inability to comply due to reasons outside the person's control (for example, in relation to a reporting condition) and the consequences of non-compliance.

You must keep compliance with conditions under close review. This is essential because non-compliance without reasonable excuse should lead to a consideration of whether the conditions imposed remain appropriate (and, if appropriate, the tightening of conditions) and consideration of possible investigation for prosecution (see [breach of conditions](#)).

You must maintain contact with reporting centre staff and request they monitor carefully a person's compliance with the conditions imposed. Any indication that a person is no longer complying with the conditions should be investigated. For example:

- work – you must ensure that reporting centre staff regularly ask those subject to restricted leave whether they are currently, or have in the past, engaged in work (paid or unpaid) - if they have, details must be e-mailed to you and you must record them on Atlas and on the paper file
- work, study or residence – you must ensure reporting centre staff ask to see travel tickets if someone subject to restricted leave consistently arrives late for reporting events and the person does not live within walking distance and has not driven there - their explanation will not stand up to scrutiny if the travel tickets show they have travelled to the reporting event from a location other than the person's recorded address (photocopies of the travel tickets must be taken in this instance and sent to you)
- residence – you must ask reporting centres to request evidence of recent utility bills or other documentary evidence from official or other independent sources that corroborates the recorded address - any documentary evidence must be photocopied, with a note that the original has been seen, and sent to you: if there is any doubt as to the veracity of the documents, the originals must be retained where possible to be reviewed further

You can also monitor compliance with conditions in other ways, such as the following examples:

- check work by contacting Her Majesty's Revenue and Customs (HMRC) to see if there is any record of the person subject to restricted leave - or a close family member in the UK (for example, a partner) who does not have the right to work - paying tax or national insurance contributions
- check no recourse to public funds condition by contacting the Department for Work and Pensions (DWP) to check whether there is any record of the person subject to restricted leave - or close family members who do not have recourse to public funds - receiving public funds
- check work, study and residence - where there are doubts about a person's compliance with conditions, contact the local immigration, compliance and engagement (ICE) team to commission an 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 - in the case of high harm individuals you may need to make other arrangements on a case-by-case basis

Breach of conditions

Breaching one or more restricted leave conditions is very serious. A person who knowingly fails to observe a condition of leave commits an offence under section 24(1)(b)(ii) of the 1971 Act and may be liable to prosecution. Where there is evidence that a person subject to restricted leave has breached a condition, it must be followed up. Where you consider that one or more condition has been breached without satisfactory explanation, the case must be referred to the local prosecution team to consider whether prosecution would be appropriate.

Travel outside of the UK

Those who are subject to the restricted leave policy are only able to remain in the UK as there is a human rights barrier to their removal. The intention is to remove them from the UK when it becomes possible to do so. Depending on the circumstances, travel outside of the UK could indicate that there is no longer a human rights barrier to the person's removal from the UK.

Where restricted leave to remain is granted for up to six months, that leave will lapse if the person travels outside of the Common Travel Area (UK, Ireland, Isle of Man and Channel Islands). If a person granted longer than six months restricted leave to remain leaves the UK, they could potentially return while that leave remains in force. Allowing such a person to return to the UK risks undermining the objectives of the restricted leave policy, including that the UK must not provide a safe haven to individuals who have engaged in serious crime or other harmful activities.

Where a person is known to have left the UK but has restricted leave that remains in force, consideration should be given to cancelling the leave and excluding them from the UK, where appropriate.

Related content

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Related external links

[Disclosure and Barring Service: Services and guidance](#)

Active reviews

It is the responsibility of the person to apply in writing to request further restricted leave before their current restricted leave expires. There is no application form and no application fee.

Before any new grant of restricted leave, or if relevant information comes to light, you must review the case to re-assess the prospects of removal. If there is no longer a European Convention on Human Rights (ECHR) barrier to removal, further leave must be refused, and the case progressed to [removal](#).

In all cases, you must assess the situation in the country of return against the most recent country information, such as the Home Office's country policy and information. Where it would help with your consideration of whether to grant further restricted leave, you can also ask the person to provide information and evidence. This could include up to date medical evidence or, where the barrier to removal is Article 8 ECHR, information to establish whether there has been any change in family circumstances such as the end of a partner relationship or any children no longer being dependent on the person.

You must seek information either in writing or through a reporting event about the person's compliance with existing conditions (see [compliance with conditions](#)). Any failure to comply with immigration law must be taken into account when considering the duration and conditions of any subsequent grant of restricted leave.

If an application for further leave is not submitted when it should be, you must take account of any explanation provided. If the person is able to provide a credible and reasonable explanation to show why they were unable to apply in time this should not normally be viewed as non-compliance, particularly if they rectified the situation as soon as they were able to do so.

If an application for further leave is received, and further restricted leave is to be granted, you must review the conditions attached to the leave, including any evidence of compliance or non-compliance, and consider whether they remain appropriate.

Those who fall within scope of the restricted leave policy but were previously granted limited discretionary leave before the restricted leave policy was introduced on 2 September 2011 would have remained on that discretionary leave until it expired. When an application for further leave is received, if removal is not possible, the case must be considered in line with the restricted leave policy, including decisions on the duration and conditions of leave, bearing in mind that discretionary leave would normally have enabled the person to work and access public funds. If you intend to grant restricted leave you must therefore consider what the impact would be of imposing [conditions](#) that restrict those rights and whether it would be right to do so.

All initial grants of restricted leave that follow a previous grant of discretionary leave must be approved at SCS PB1 level. Grants of further restricted leave require approval at an appropriately senior level but do not need SCS PB1 approval unless

the case is particularly high profile or a significant change to the conditions or duration of leave is proposed.

Related content

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‘Upgrade’ applications for limited leave

This section tells you how to consider applications for other forms of limited leave from those who fall within the restricted leave policy.

Appendix FM: family members and Appendix Private Life

The Immigration Rules set out requirements to be met by those who wish to remain in the UK on the basis of family life or private life. [Appendix FM](#) to the Immigration Rules governs family life claims from those not liable to deportation and Appendix Private Life of the Immigration Rules governs private life claims from those not liable to deportation.

An application made under Appendix FM or Appendix Private Life for a more generous form of leave to remain than restricted leave must be made on the correct application form and the prescribed fee paid, unless it is made as part of a protection claim or while the person is detained or unless the person qualifies for a fee waiver.

Where appropriate an application made under Appendix FM or Appendix Private Life must be refused with reference to S-LTR 1.8.

Paragraph EX.1. of Appendix FM is not available to those who do not meet all of the suitability requirements.

Where the requirements of Appendix FM or Appendix Private Life are not met, consideration is given to Article 8 and whether there are exceptional circumstances which outweigh the public interest in removal. In restricted leave cases there will not be a requirement to consider any exceptional circumstances, because the person is not removable. In such cases, the application made under Appendix FM or Appendix Private Life must be refused and you must consider whether a further grant of restricted leave is appropriate.

Appendix Armed Forces

An application submitted under [Appendix Armed Forces](#) for a more generous grant of leave will only be considered if it has been made on the correct form and the prescribed fee has been paid.

Where appropriate an application made under Appendix Armed Forces must be refused with reference to Part 2, paragraph 8(ca).

You must refer to the Appendix [Armed Forces guidance](#).

Discretionary leave

Those who fall within scope of the restricted leave policy may request discretionary leave instead of restricted leave and may have previously been granted discretionary leave before the restricted leave policy was introduced in September 2011. An

application for discretionary leave will only be considered if it has been made on the correct form and the prescribed fee has been paid.

The discretionary leave policy sets out that decision-makers must consider the impact of a person's criminal history before granting any leave. It explains that those who fall within scope of the restricted leave policy should not usually be granted discretionary leave. Any proposal to grant discretionary leave to someone who falls within the scope of the restricted leave policy, must be agreed at grade 6 level to ensure a consistent approach across all cases.

EU Settlement Scheme (EUSS)

Applications made to the EUSS for leave may be refused on suitability grounds under paragraphs EU16(d) or (e) of [Appendix EU](#) if the applicant is a 'relevant excluded person'.

A 'relevant excluded person' is defined in Annex 1 to [Appendix EU](#) as a person:

- '(a) in respect of whom the Secretary of State has made a decision under Article 1F of the Refugee Convention to exclude the person from the Refugee Convention or under paragraph 339D of these Rules to exclude them from humanitarian protection; or
- (b) in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because there are reasonable grounds for regarding them as a danger to the security of the UK; or
- (c) who the Secretary of State considers to be a person in respect of whom sub-paragraph (a) or (b) above would apply except that:
 - (i) the person has not made a protection claim; or
 - (ii) the person made a protection claim which has already been finally determined without reference to Article 1F of the Refugee Convention or paragraph 339D of these Rules; or
- (d) in respect of whom the Secretary of State has previously made a decision that they are a person to whom Article 33(2) of the Refugee Convention applies because, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of the UK'

Paragraph EU16(d) applies where a person is a 'relevant excluded person' based on conduct committed before the end of the of the transition period (23.00 GMT on 31 December 2020).

Under paragraph EU16(d), refusal of an application must be justified on the grounds of public policy, public security or public health in accordance with regulation 27 of the [Immigration \(European Economic Area\) Regulations 2016](#) ('EEA Regulations') and applying the 'serious grounds of public policy or public security' and 'imperative grounds of public security' thresholds where necessary. This is the case irrespective of whether the EEA Regulations apply to the person, but references to "with a right of permanent residence under regulation 15" should be read as "who meets the requirements of paragraph EU11 or EU12 of Appendix EU to the Immigration Rules".

References to “an EEA decision” should be read as “a decision under paragraph EU16(d) of Appendix EU to the Immigration Rules”.

The different levels of grounds of public policy or public security to be applied in EUSS cases, are determined by the person’s eligibility under Appendix EU for pre-settled or settled status as follow:

- grounds of public policy or public security applies to those who are eligible for pre-settled status only
- serious grounds of public policy or public security applies to those who are eligible for settled status, but do not meet the ‘imperative’ grounds criteria
- imperative grounds of public security applies to EEA nationals only, who are eligible for settled status and have 10 or more years continuous residence in the UK

The decision to refuse the application must additionally be proportionate taking into account the particular facts and circumstances of the case.

The fact that a person is the subject of a decision to exclude them from the Refugee Convention or humanitarian protection does not automatically mean that a decision to refuse their EUSS application under paragraph EU16(d) is justified on grounds of public policy, public security or public health. The findings of the Court of Justice of the European Union in the joined cases of [K. and H.F.](#), will be relevant to your consideration, and are reflected in the advice below.

You must assess whether the person’s presence in the UK constitutes a genuine, present and sufficiently serious threat affecting a fundamental interest of society. In doing so you must consider the personal conduct of the individual, taking account of:

- the findings of fact in the decision to exclude the person from refugee status
- the factors on which the exclusion decision is based, particularly the nature and gravity of the crimes or acts that the person is alleged or known to have committed
- the degree of their individual involvement in those crimes or acts
- whether there are any grounds for excluding criminal liability, such as duress or self-defence, and whether the person has been convicted

If a decision to exclude or to grant restricted leave has already been taken, some of the factors above are likely to have been considered in those decisions and will be relevant to your assessment.

You must also consider the time that has passed since the crimes or acts are understood to have been committed and the person’s subsequent conduct, particularly whether that conduct shows a ‘disposition hostile to the fundamental values enshrined in Articles 2 and 3 TEU, capable of disturbing the peace of mind and physical security of the population.’ The TEU ([Treaty on European Union](#)) values include, but are not limited to:

- respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities
- the Union's contribution to the protection of human rights, in particular the rights of the child and respect for the principles of the United Nations Charter

For further information on suitability refusals see the EU Settlement Scheme: suitability grounds guidance and the EEA public policy and public security decisions guidance.

Paragraph EU16(e) applies where a person meets the definition of a 'relevant excluded person' based on conduct committed after the specified date (after 23:00 GMT on 31 December 2020). The public policy, public security or public health test does not apply. Instead you must broadly consider whether, as a result of their conduct, the person's presence in the UK is undesirable, accepting that it may not be possible to remove them from the UK for human rights reasons. Although Part 9 of the Immigration Rules does not apply to EUSS applications, the Suitability: non conducive grounds guidance may help your consideration. Note however, that the Part 9 suitability: non conducive grounds provide for a mandatory refusal, whereas refusal under paragraph EU16(e) is discretionary.

Where a valid application under Appendix EU is made on or after 23:00 GMT on 31 January 2020 there is a right of appeal against a decision to refuse that application under [The Immigration \(Citizens' Rights Appeals\) \(EU Exit\) Regulations 2020](#).

Further guidance is available in the Rights of Appeal guidance.

Applicants who are refused EUSS leave under EU16(d) or (e) and are appeal rights exhausted, may be considered for a grant of restricted leave, or will continue to hold restricted leave if it has already been granted, if they cannot be deported or removed due to a human rights barrier.

If the person wins their appeal and all appeal rights are concluded, the person must be considered for a grant of leave under Appendix EU, provided they also meet the relevant eligibility requirements.

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Criminality guidance for Article 8 ECHR cases

Further submissions

Rights of Appeal

EU settlement scheme: suitability requirements

Related external links

[Immigration Rules](#)

Applications for indefinite leave to remain

This section tells you how to consider applications for indefinite leave to remain from those who are subject to the restricted leave policy.

An application for indefinite leave will only be considered if it has been submitted on the correct form and, where relevant, the prescribed fee has been paid.

In most cases, a decision to grant indefinite leave would undermine the intention of the restricted leave policy, damaging the UK's international reputation and undermining international law and the way the international community has decided to deal with those who have committed such serious crimes or acts.

Granting indefinite leave to remain would send a message that there is no longer any public interest in removing the person from the UK and would signal that the person is both established and welcomed in the UK, contrary to the restricted leave policy.

As conditions cannot be attached to a grant of indefinite leave, it would also remove the ability to maintain contact with the person and for example to monitor the type of work they may be doing, that conditions can offer.

Indefinite leave to remain under the Immigration Rules

A person with pre-settled status (limited leave) granted under [Appendix EU](#) of the Immigration Rules may later apply for settled status (indefinite leave). Applications to the [EU Settlement Scheme \(EUSS\)](#) may be refused on suitability grounds under paragraphs 16(d) or (e) of [Appendix EU](#) as described [above](#), if the person is in scope of the restricted leave policy.

Other types of applications for indefinite leave to remain under the [Immigration Rules](#), by a person to whom the restricted leave policy applies, may be refused with reference to the suitability grounds in part 9 of the Immigration Rules, or, where relevant, under the suitability requirements specific to the application made, for example, [Appendix FM](#) or [Appendix Armed Forces](#).

Where refusal is mandatory under the Immigration Rules, it remains open to the Secretary of State to grant indefinite leave to remain outside of the Rules on a discretionary basis (see below).

Indefinite leave to remain outside the Immigration Rules

Where a person applies for indefinite leave to remain outside the Immigration Rules, consideration must be given to all relevant factors, including all representations that have been submitted, to determine whether the application should be granted or refused. It will only be in exceptional circumstances that those within scope of the

restricted leave policy will be able to qualify for indefinite leave to remain outside the rules, and such exceptional circumstances are likely to be rare.

In [MS & Anor v The Secretary of State for the Home Department \[2017\] EWCA Civ 1190](#), it was noted that there was nothing disproportionate in the general approach of the restricted leave policy that migrants who are excluded but irremovable will not normally be eligible for indefinite leave to remain. Lord Justice Underhill acknowledged that there will be some cases where there are no compelling circumstances justifying a departure from this position. Examples included where the person is a risk to national security or has been guilty of serious criminal conduct in the UK, or there is good reason to believe that they can soon be removed. It was also pointed out that where there is a need to impose conditions, indefinite leave will not be appropriate. However, it was also acknowledged that in some cases a person might be able to show compelling circumstances justifying a departure from the general rule.

In considering whether a restricted leave case is sufficiently exceptional as to warrant a grant of indefinite leave to remain outside the Immigration Rules it is helpful to look at 3 factors suggested by the Court of Appeal:

- length of residence
- gravity of conduct
- extent to which the person has changed

The above are not the only factors that may be significant to your consideration and it is unlikely that any of these would warrant a grant of indefinite leave to remain on their own. All applications for indefinite leave must be considered on a case-by-case basis.

Length of residence

There is no limit to how many times a person can be granted restricted leave, as long as they continue to fall within the scope of the policy and no set period after which a person subject to restricted leave will automatically or generally qualify for indefinite leave to remain. This is the case even where it is not known when, or if, a human rights barrier to deportation or removal will be resolved.

At the Court of Appeal Underhill LJ observed:

“120.in principle a particular case may become exceptional because of the length of time that the migrant has been here. I emphasise the word “may”: length of residence is only one of the relevant factors and, as I say below, there will be cases where it would be legitimate to refuse ILR however long the migrant has been here because of the seriousness of the crimes in question.”

Gravity of conduct

Consideration must also be given to whether there are public interest reasons why the person should not be granted indefinite leave to remain outside the rules. Where

a person falls within this policy because of behaviour described in Article 1F or Article 33(2) of the Refugee Convention or paragraph 339D of the Immigration Rules (whether or not the person has made a protection claim), there will almost always be public interest reasons not to grant indefinite leave to remain. This is because even if the adverse behaviour was committed some time ago, the government's view is that such persons are unwelcome here and the UK has international obligations to prevent this country from becoming a safe haven for those who have committed very serious crimes.

This view is supported by the Court of Appeal in [MS & Anor v SSHD \[2017\] EWCA Civ 1190](#):

“124. In all cases involving terrorist offences full weight must be accorded to her [SSHD] view that it is not in the public interest to allow this country to become a safe haven for terrorists and to any other, more specific, aspects of the case requiring a judgement on matters of national security or foreign relations. Particular respect should likewise be paid to any view she may express as to the public acceptability of the grant of ILR to migrants who have committed certain kinds of offending.”

Extent to which the person has changed

There is no set period after which a person who falls within the scope of this policy is considered to have put past actions behind them even if they have not committed any other offences since. Once a person has come within the restricted leave policy, it will not be appropriate to grant indefinite leave solely because of a long period of good conduct. Care must be taken in giving weight to a low or non-existent risk of offending or reoffending in the UK. This is because compliance with the law is a minimum standard of behaviour expected of anyone present in the UK.

Where a person has demonstrably turned their life around, refuted the past behaviour that brought them within the restricted leave policy and have contributed positively to society for a period sufficient to indicate that it is a lasting and genuine change, this may count in their favour. However, if the person remains excluded under Article 1F of the Refugee Convention, expiation (atonement) or the passage of time do not alter the fact that the person is excluded and therefore remains within scope of the restricted leave policy.

If a person subject to the restricted leave policy due solely to the application of Article 33(2) of the Refugee Convention, is able to rebut the presumption that they pose a danger to the community so that Article 33(2) no longer applies, they should be granted refugee leave.

Other considerations

In addition to the above it is relevant to consider public interest factors such as other criminal offending; a risk of reoffending; any adverse immigration history, including for example, any unlawful stay in the UK; any breach of conditions attached to a grant of immigration bail, or to any form of limited leave to enter or remain, without

satisfactory explanation; and any instances of deception, for example if the person obtained or attempted to obtain leave to enter or remain by means of deception, whether successful or not.

The principles in the general grounds for refusal in [part 9 of the Immigration Rules](#) are also relevant to your consideration, alongside the section 55 duty. Where it is proposed to grant leave outside the rules to a person within scope of the restricted leave policy, the decision must be agreed at least at SCS PB1 level to ensure consistency of approach across all cases.

If indefinite leave is to be refused but the person continues to fall within the scope of this policy, they must be granted restricted leave within the terms of the policy. If indefinite leave is to be refused and there is no longer an ECHR barrier to removal, the case must be prioritised for deportation or removal.

Settlement under the discretionary leave policy

Those subject to the restricted leave policy might apply for settlement on the basis of having completed a particular continuous period of discretionary leave. As those within scope of the restricted leave policy no longer qualify for discretionary leave, they will not normally qualify for settlement on this basis.

Information on considering applications for settlement under the discretionary leave policy is set out in the discretionary leave guidance.

Related content

[Contents](#)

Long residence

Leave outside the rules

Rights of Appeal

Removal

This section tells you about enforcing a person's removal from the UK.

Once there is no longer a European Convention on Human Rights (ECHR) or other legal barrier to deportation or removal, the person must be prioritised for enforcement action.

Pending removal, the person should be detained, or granted immigration bail as appropriate. At least one condition must be attached to immigration bail. A residence condition must only be imposed if the person is required to live at a specified address rather than at any address. The reporting requirement would ordinarily be weekly, but decisions must be taken on a case-by-case basis.

You must also consider whether any additional conditions, such as electronic monitoring or curfew, are appropriate.

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