

# ACTIVE REVIEW

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# 1 Introduction

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This instruction provides guidance to decision-makers (caseworkers or case-owners) on:

- When an active review is required.
- The purpose of an active review.
- How an active review should be conducted.
- The possible outcomes.

Decision-makers should read this instruction in conjunction with the Asylum Instructions on [Humanitarian Protection](#) and [Discretionary Leave](#) and [Refugee Leave](#). This is necessary as these instructions give caseworkers guidance on whether an individual is still eligible for leave and if so, what period of leave they should be granted.

## 1.1 Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

This instruction includes consideration of the use of enforcement action. Consideration must be made of the Code Of Practices statement that there must always be a presumption in favour of not detaining a family and each family's case must be considered on its individual merits. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/keepingchildrensafe/>

## 2 When is an Active Review required?

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An active review will be required where an application is made for further limited, or indefinite leave to remain by a person who has been granted:

- (Their first period of) Humanitarian Protection prior to 30th August 2005.
- Discretionary Leave
- a period of less than four years' exceptional leave to enter or remain (ELE/R) prior to 1 April 2003 (following refusal of asylum).

In some cases, a review will also be required for persons granted Humanitarian Protection on or after 30th August 2005 or refugee status and limited leave on or after 30th August 2005 (for these cases see the Asylum Instructions on [Refugee Leave](#) and [Humanitarian Protection](#)).

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## 3 The purpose of an Active Review

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### 3.1 Qualifying for an extension

The purpose of the active review is to determine whether a person continues to qualify for leave to remain in the UK. Applicants will qualify for further leave only if they satisfy the criteria for either Humanitarian Protection or Discretionary Leave (or qualify for leave on another basis) *at the date of the review* (i.e. not the original decision nor at the date of the application).

### 3.2 Consequences of failing to qualify for an extension

Where a person does not qualify for further leave, their application will be refused and, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.

### 3.3 Recording new applications on CID and applications not already recorded on CID

Where an application for further leave (form HPDL) is received, this must be recorded on CID. The applicant must be sent the letter ASL.4043 (available on DOCGEN) to acknowledge the receipt of the application. Select option 1 for in time applications or option 2 for out of time applications (see ['In time and out of time applications'](#) below).

All applications for further leave (HPDL forms) must be recorded on CID as an 'Associated Case' on the main applicants record, including new applications and those forms identified on the Home Office file which have **not already** been recorded on CID.

#### 3.3.1 Date of application

CID (date of application field) and manual records must accurately reflect the correct date of application. Active Reviews are likely to be made by post, but may be made in person, and the date of application will be:

- For postal applications the date of posting (as post mark) ;
- For applications sent by courier the date of delivery to the UKBA;
- For hand-delivered applications the date received by a Case Owner or other member of UKBA staff (e.g. at Reporting Centre).

(Refer to IDI Chapter 1A Section 1 paragraph 6 [POISE](#) / [INDIGO](#) )

**Any errors must be amended as the date of application will determine whether the application was made in time, or out of time and will reflect on the applicants immigration status and, in the event of any refusal, the decision paperwork served.**

### 3.4 In time and out of time applications

Applications for Active Review should be **made no more than 28 days before** the applicant's current leave to enter or remain expires (**in time application**).

Where the application is made after the limited leave has expired (**out of time application**), the delay in applying for further leave is a factor to take into consideration and should be balanced against the other aspects of the case. The fact that the application is late should not, on its own be a reason to justify refusal. The application should be considered without prejudice and ultimately, entitlement for leave should be considered.

For example, where the criteria for HP/DL are met, the fact that the application was out of time should not override the reasons to grant leave. Similarly, applicants should not be penalised if there has been an administrative error on the part of UKBA.

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## 4 Conducting an Active Review

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### 4.1 General points

This instruction provides advice on active reviews where individuals whose initial grant of leave is about to expire, or those whose leave has already expired, apply for an extension. This will cover an initial grant of leave under the Discretionary Leave or Humanitarian Protection categories granted before 30 August 2005 or of Exceptional Leave of less than four years granted before 1 April 2003. A review may also be triggered in specified circumstances for those with refugee leave or for those granted Humanitarian Protection on or after 30th August 2005 (for guidance, see the Asylum Instructions on [Refugee Leave](#) and [Humanitarian Protection](#)).

In all active review cases, whether the person originally had Humanitarian Protection, Discretionary Leave, or exceptional leave, attention should be paid to the *current* basis on which further leave is being requested. Although in many cases an applicant will be seeking leave on very similar grounds to their original claim this will not always be the case. Where the extension request contains information which explicitly or implicitly amounts to a request to stay on a different basis (for example, a person with Discretionary Leave now raising Humanitarian Protection issues or raising different Discretionary Leave issues), that information will need to be assessed to determine whether a grant of leave is appropriate. Where the extension request is made on the same basis as the previous grant, decision-makers should assess whether the applicant remains eligible for the leave sought.

### 4.2 Evidence

In many cases an active review will be conducted on the papers without the need for interview. However, an interview may be necessary where further information is required in order to make a decision on the application, for example:

- where applicants make new representations that warrant exploration at interview.
- where evidence comes to light that places in doubt information previously provided by the applicant, e.g. the applicant's purported nationality or credibility more generally.

It will normally be necessary to interview those who have not previously been given the opportunity to be interviewed (such as applicants who were unaccompanied asylum seeking children who have applied for an extension of leave to remain now that they have reached the age of eighteen and applicants who were granted exceptional leave to enter or remain under a country policy without interview).

The review will take account of the information supplied by the applicant on the application form for further leave, current country information and any other information we are aware of which is relevant to the application. The application will be considered in the light of circumstances prevailing at the time of the review.

### 4.3 Non-Compliance

If the applicant is required to attend an active review interview and fails to do so consideration may be given to applying paragraph 339M of the Immigration Rules to the claim. Where an applicant fails to provide information that has been requested, decision-makers should make a decision on the application for further leave on the basis of the evidence available to them (for further details see the Asylum Instruction on [Non-Compliance](#)).

### 4.4 Applications for further leave on asylum grounds

When considering an application for further leave, consideration should first be given to whether the reasons for seeking an extension given by the applicant amount to an asylum application. If the applicant demonstrates that they now have a well-founded fear of persecution for a Convention reason then asylum should be granted (for further details see the Asylum Instruction on [Handling Claims](#)).

If the applicant originally claimed asylum unsuccessfully and was granted leave on other grounds/for another reason (e.g. human rights grounds) and the application for further leave amounts to a request to stay on asylum grounds which falls to be refused, it must then be determined whether or not the submissions contained in the application for further leave amount to a fresh asylum claim within the meaning of paragraph 353 of the Immigration Rules. Paragraph 353 states:

*When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submission will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:*

- i. has not already been considered; and*
- ii. taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.*

*This paragraph does not apply to claims made overseas.*

If further submissions are refused but it is accepted that they amount to a fresh claim under paragraph 353, this gives rise to an immigration decision and an in-country right of appeal. However if the submissions do not amount to a fresh claim under paragraph 353 they must be treated as further representations (see the Asylum Instruction on [Further Representations and Fresh Claims](#) for further detail).

A fresh asylum claim cannot be certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 because that would be inconsistent with the view taken that it has a realistic prospect of success.

Where a person does not qualify for further leave, their application will be refused and, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.

#### 4.5 Applications for further leave on human rights grounds

Paragraph 353 should not be applied to any human rights elements in the application for further leave.

Any application to remain on human rights grounds should be treated as a fresh claim (but not in the paragraph 353 sense) and considered in the usual manner. If the human rights claim is assessed as “clearly unfounded”, consideration may be given to certifying the claim under section 94 of the Nationality, Immigration and Asylum Act 2002. (See the Asylum Instruction on [Certification under Section 94 of the NIA Act 2004](#) for guidance on certification).

Where a person does not qualify for further leave, their application will be refused and, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.

#### 4.6 Active reviews for those with Humanitarian Protection

Those who have been granted Humanitarian Protection before 30 August 2005 will be subject to an active review of their case when they make an application for settlement upon completion of three years' leave in this category. In some cases a period of less than three years Humanitarian Protection may have been granted in which case there will also be an active review when they apply for further leave. For guidance on review for those granted Humanitarian Protection on or after 30 August 2005, see the Asylum Instruction on [Humanitarian Protection](#).

When considering whether the applicant qualifies for settlement or further leave, decision-makers should assess whether they qualify for Humanitarian Protection *as at the date of the active review* (see the Asylum Instruction on [Humanitarian Protection](#) for details of the criteria to be met).

Decision-makers should give particular regard to the contemporary situation in the country of nationality (or of former habitual residence if appropriate) as this may have changed since the time of the original decision to grant Humanitarian Protection.

Decision-makers should also consider an applicant's character and his or her conduct during the time that he or she has been in the United Kingdom (including conducting criminal checks). (See Annex A of the Asylum Instruction on [Humanitarian Protection](#) for more information about the issues to consider at the review stage.)

Applicants who continue to qualify for Humanitarian Protection and have completed the full period in that capacity (i.e. 3 years if the initial grant of leave was made before 30 August 2005) should be granted ILR unless a separate instruction for a specific category of cases provides otherwise.

Applicants who continue to qualify for Humanitarian Protection but were granted less than 3 years leave (before 30 August 2005) should be granted sufficient leave so that at its end they have completed a total of 3 years limited leave or, if a separate instruction in regard to this category of claim is still in force, for a period of time in accordance with that instruction.

If applicants no longer qualify for Humanitarian Protection then decision-makers should consider whether they qualify for Discretionary Leave (see the Asylum Instruction on [Discretionary Leave](#) for details of the criteria to be met).

Applicants who qualify for Discretionary Leave should be granted a period of leave in accordance with the Asylum Instruction on [Discretionary Leave](#). When they are notified of the decision, applicants should be advised of the reasons why they qualify for Discretionary Leave, as well as the reasons why they no longer qualify for Humanitarian Protection. Applicants who do not qualify for either Humanitarian Protection or Discretionary Leave (or leave on any other basis) should be refused further leave and advised of the reasons why they no longer qualify for Humanitarian Protection. Reasons for refusal of Discretionary Leave should also be provided if relevant representations were made in the application.

Where a person does not qualify for further leave, their application will be refused and, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.

#### 4.7 Active reviews for those with Discretionary Leave

As a person with Discretionary Leave will not be eligible for indefinite leave for six years (or at least ten years for persons covered by the exclusion provisions), the first active review will always be to consider further leave rather than settlement. A person whose Discretionary Leave is extended may be subject to a number of further active reviews (where less than three years' leave is given, for example).

When considering whether to grant further leave to remain or settlement, decision-makers should assess whether the applicant qualifies for Discretionary Leave *as at the date of the active review* (see the Asylum Instruction on [Discretionary Leave](#) for details of the criteria to be met). Decision-makers will need to satisfy themselves that the applicant meets the criteria for Discretionary Leave. The exact considerations will vary depending on the particular reasons for the original grant of Discretionary Leave if further leave is sought on the same basis. For example, where leave was granted for ECHR Article 8 reasons, decision-makers would need to consider the applicant's current family situation and whether the applicant's removal would still constitute a breach of Article 8 (see the Asylum Instructions on [Considering Human Rights](#) and [Article 8 of the ECHR](#)). The section below sets out particular considerations required in the case of applicants who were unaccompanied asylum seeking children.

Applicants who continue to qualify for Discretionary Leave should be granted an appropriate extension or settlement. (See the Asylum Instruction on [Discretionary Leave](#) for details of the appropriate period to grant.)

Applicants who do not qualify for Discretionary Leave (or leave on any other basis) should be refused further leave and advised of the reasons why they no longer qualify for Discretionary Leave. This should indicate that, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.

#### 4.8 Unaccompanied asylum-seeking children (UASC)

This section applies to applicants who were under the age of 18 and unaccompanied at the time of the decision on their original asylum claim and who were granted leave on the basis of the UASC Discretionary Leave policy.

If they have not previously been given the opportunity to be interviewed, applicants in this category should not be refused leave to remain outright without first being invited to attend an interview.

When considering whether to grant further leave to remain or settlement to a child applicant, decision-makers should give consideration to whether satisfactory reception and care arrangements now exist in the country of nationality (or former habitual residence if appropriate) which would enable the child's removal there to take place. If child applicants are found no longer to qualify for Discretionary Leave because there are now satisfactory reception and care arrangements in place, they should be refused further leave to remain unless decision-makers are satisfied that they qualify for an extension on other grounds. Applicants who are refused should be advised of the reason why they no longer qualify and, subject to the outcome of any in-country appeal, they will be expected to leave the UK.

#### **4.9 Applicants who have turned eighteen**

Applicants who were granted leave to remain under the UASC Discretionary Leave policy and have since turned 18 (whether by the time they make their application or during the time we are considering it) should be considered at active review in the same way as an adult

They will no longer qualify for further leave under the UASC Discretionary Leave policy. Former UASCs who have not previously been given the opportunity to be interviewed should not be refused leave to remain outright without first being invited to attend an interview.

#### **4.10 Active reviews for those granted a period of less than four years' exceptional leave to enter or remain**

The cases of people who were granted exceptional leave to enter or remain but for a period of less than four years should be actively reviewed when an application is made for further leave to remain. A grant of further leave will be appropriate only where the applicant qualifies for Humanitarian Protection or Discretionary Leave (or leave on some other basis). Applications for further leave or settlement from persons granted four years exceptional leave in one block do not require a full active review, though they do require character and background checks.

Decision-makers should consider whether the applicant qualifies for Humanitarian Protection or for Discretionary Leave *at the time of the active review* (see the Asylum Instructions on [Humanitarian Protection](#) and [Discretionary Leave](#)).

Decision-makers will need to satisfy themselves that the application meets the criteria for either Humanitarian Protection or Discretionary Leave. It is important to note that the criteria for granting Humanitarian Protection or Discretionary Leave are much narrower than the criteria for granting exceptional leave under the pre-1 April 2003 policy. Decision-makers should also give due regard to the current country situation as this may have changed since the original grant of exceptional leave.

Applicants who qualify for Humanitarian Protection and have completed at least one year's exceptional leave to enter or remain should be granted a period of Humanitarian Protection sufficient so that at its end they will have completed a total of four years' leave to enter or remain (for example, a person who qualifies for Humanitarian Protection and has already completed two years' exceptional leave should be granted a further two years' Humanitarian Protection). On completion of four years' limited leave, they will be eligible to apply for settlement and will be subject to a further active review at that time.

Where applicants qualify for Humanitarian Protection and have completed less than one year with exceptional leave to enter or remain, they should be granted three years' leave on Humanitarian Protection grounds. On the completion of this period of three further years' leave to remain, they will be eligible to apply for settlement and will be subject to a further active review at that time.

Where applicants qualify for Humanitarian Protection and have already completed a cumulative and consecutive period of four years' exceptional leave to enter or remain, they should be granted settlement.

Applicants who qualify for Discretionary Leave should be granted a period of leave consistent with the Asylum Instruction on Discretionary Leave or, if shorter, a period of Discretionary Leave to take them to a total of six years' leave to enter or remain when consecutive periods of exceptional leave and Discretionary Leave are added together. They will be eligible to apply for ILR on the expiry of this cumulative period of six years, unless they have been granted Discretionary Leave in the excluded category: such individuals must complete a cumulative period of ten years (including any time spent on exceptional leave) before being eligible to apply for ILR. Applicants who do not qualify for Humanitarian Protection or Discretionary Leave (or leave on any other basis) should be refused further leave and advised of the reasons for the refusal.

Where a person does not qualify for further leave, their application will be refused and, subject to the outcome of any in-country appeal, they will be expected to leave the UK. Should they fail to do so, they will be liable to enforcement action.

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## 5 Rights of Appeal

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The Asylum Instruction on [Appeals - Rights of Appeal](#) gives guidance on rights of appeal arising from decisions made following active review.

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## 6 Employment

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Refugees and beneficiaries of Humanitarian Protection or Discretionary Leave are entitled to work. As part of the Active Review process, the applicant has to surrender their original status document when they apply for further leave. This means that the applicant will not be immediately able to show his right to work to a current or future employer.

The UK Border Agency will provide an acknowledgment letter (ASL.4043) when an application is made, which will inform the timeliness of the application. If the application was made in time, the applicant remains entitled to work. If the application was made after the leave had expired/out of time, the applicant will not be entitled to work. Provided the application was made in time this letter, together with a photocopy of the Status Document (that the applicant is advised to keep when the application is made), will be sufficient to provide a statutory excuse for existing employees while the Employer Checking Service responds to a request.

For further information on employment rights see AI on [Permission to take employment](#)

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## Document Control

### Change Record

Version	Authors	Date	Change Reference
1.0	BF	27/02/07	Changed to new website format
2.0	S.K	23/07/09	Employment
3.0	C.C.	26/10/09	Children's Duty reference added

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