



Home Office

Asylum Policy Instruction

Article 1D of the Refugee Convention: Palestinian refugees assisted by the United Nations Relief and Works Agency (UNRWA)

Version 2.0

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About this guidance

This guidance tells you how to consider asylum claims made by stateless Palestinians whose habitual place of residence is the Occupied Palestinian Territories or one of the neighbouring States of Jordan, Lebanon, and Syria.

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, please email the Asylum Policy team.

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

Clearance

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

Version 2.0
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Official – sensitive: start of section

The information on this page has been removed as it is restricted for internal Home Office use only.

Official – sensitive: end of section

Changes from last version of this guidance

- Policy changes in the light of rulings by the Court of Justice of the European Union (CJEU)
- Rebranding of guidance

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Related external links

[United Nations Relief and Works Agency \(UNRWA\)](#)

Introduction

Purpose of instruction

This guidance applies to the consideration of asylum claims by stateless Palestinians whose habitual place of residence is the Occupied Palestinian Territories or one of the neighbouring States of Jordan, Lebanon, and Syria.

The guidance does not apply to asylum claims by stateless Palestinians habitually resident in other countries in the region, such as Egypt, Iraq or the Gulf states. Their claims must be considered in the same way as any other asylum claim.

Neither does it apply to the consideration of applications to remain as a stateless person. These are considered entirely separately from the asylum process. See Statelessness and applications for leave to remain for further guidance.

This instruction must be read in conjunction with the guidance on Assessing Credibility and Refugee Status, Humanitarian Protection, and country of origin information and guidance on the [Occupied Palestinian Territories and on the neighbouring states](#).

Background

As a result of the 1948 Arab-Israeli conflict, the establishment of the State of Israel, and the exodus of Palestinians into neighbouring countries, the [United Nations Relief and Works Agency for Palestine Refugees in the Near East \(UNRWA\)](#) was established to carry out direct relief and works programmes for Palestinian refugees in the neighbouring countries of Jordan, Lebanon and Syria.

Article 1D is one of the exclusion clauses in the Refugee Convention, but its overall purpose is to ensure the continuing protection of Palestinian refugees until their position is settled in accordance with relevant United Nations General Assembly resolutions. For as long as they are receiving UNRWA protection, they are excluded from Convention refugee protection. Should that protection cease to be available, they become entitled to the protection of the Convention under Article 1D.

UNRWA currently provides assistance and protection to some 5 million registered Palestinian refugees. The Agency's services comprise private and public advocacy, education, health care, relief, camp infrastructure and improvement, community support, microfinance and emergency response, including in times of armed conflict. UNRWA does not administer the refugee camps, is not responsible for security or law and order in the camps, and has no police force or intelligence service. This responsibility has always remained with the relevant host state and other authorities.

The UNRWA areas of operation are the Occupied Palestinian Territories comprising Gaza and the West Bank (including East Jerusalem), and the neighbouring states of Jordan, Lebanon and Syria. UNRWA has a liaison office in Cairo but does not provide direct services to Palestinians in Egypt or Iraq, where UNHCR is mandated to assist and protect Palestinians outside the UNRWA areas of operation.

With the exception of Jordan, where the majority of Palestinian refugees hold Jordanian citizenship with the same political and civil rights as Jordanian nationals, Palestinian refugees resident in the UNRWA areas of operation are mostly stateless. Many will hold travel documents issued by a neighbouring state which do not confer nationality but which allow them to leave and return to that state. Palestinians who are habitually resident in a neighbouring state, including those born in Palestine before 1948, have no right of entry to the Occupied Territories of Gaza and the West Bank, including East Jerusalem.

Only those Palestinians resident in the Occupied Territories and holding relevant Israeli permits are able to re-enter, although this is subject to considerable limitations. For example, Palestinians resident in Gaza who hold Gaza identity documents (IDs) are not entitled to enter the West Bank without a special permit. Further, Palestinians with Gaza IDs are not permitted to enter Israel (even if only for purposes of crossing into the West Bank or Jordan) unless given a special permit. Similarly, West Bank ID holders need a special permit to enter Jerusalem.

Policy intention

The policy intention is to ensure that the UK complies with its international obligations under the Refugee Convention by:

- applying Article 1D of the Refugee Convention to exclude from its protection those Palestinian refugees who are receiving UNRWA protection
- ensuring that refugee status is granted to Palestinian asylum claimants who were previously registered and assisted by UNRWA where such assistance has ceased to be available to them.

Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to ensure that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. In dealing with parents and children, caseworkers must see the family both as a unit and as individuals.

The definition of a refugee contained in the Refugee Convention (including the provisions of Article 1D) applies to all claimants, irrespective of age, but child-specific forms of persecution, a child's stage of development, knowledge and/or memory of conditions in their country of origin and vulnerability are all relevant to an age-sensitive and gender-sensitive approach to considering protection claims.

When assessing whether the child has a well-founded fear of persecution or if there is a real risk of serious harm, the assessment must take into account the child's age, gender and other characteristics which may influence the type of persecution to which the child may be subjected. It is necessary to analyse up-to-date information on circumstances in the country of origin and to apply this knowledge in assessing the child's need for international protection.

Although the best interests of the child do not determine their qualification for refugee status or subsidiary protection, the way that caseworkers interact with

children and make decisions affecting them must take account of the section 55 duty in the 2009 Act. The statutory guidance under section 55, '[Every Child Matters - Change for Children](#)', sets out the key principles to take into account in all activities. Considering claims from those who are under 18 must be conducted by caseworkers who are training and qualified to interview and decide them. See the Asylum Instruction, Considering asylum applications by children.

Even if a separate claim is not being made, it is important not to lose sight of the child as an individual, as well as part of a family, to be vigilant and responsive to their protection and welfare needs and to consider how this could impact on the needs of the family as a whole.

Caseworkers have discretion to interview dependent children where the child is of an appropriate age, bearing in mind the need to consider the best interests of the child and avoid putting children through an interview unnecessarily. See the guidance on Dependants and former Dependants.

The Asylum Instruction on [Processing Family Cases](#) sets out the policy, processes and procedures to be followed when considering an asylum claim from a family with at least one child under 18 years of age.

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Relevant legislation

The Refugee Convention

Article 1D of the [Refugee Convention](#) states:

‘This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.’

European Union and UK law

The provisions of Article 1D are reflected in Article 12(1)(a) of the [Qualification Directive 2004/83/EC](#) and have been transposed into the Immigration Rules. Under the Rules, in order to be granted asylum, an individual must satisfy the criteria in paragraph 334 of the [Immigration Rules](#). Sub-paragraph (ii) states that the applicant ‘...is a refugee as defined in regulation 2 of the [Refugee or Person in need of International Protection \(Qualification\) Regulations 2006](#) (‘the 2006 Regulations’)’. Regulation 2 of the 2006 Regulations defines a ‘refugee’ as a person who falls within 1(A) of the Convention and to whom regulation 7 does not apply. Regulation 7(1) sets out that a person is not a refugee if he or she falls within the scope of Article 1D of the Convention.

Domestic and European case law

Domestic case law on interpreting Article 1D was first laid down by the Court of Appeal in [El-Ali v SSHD \[2002\] EWCA Civ 1103 \(26 July 2002\)](#). The Court interpreted the words ‘at present receiving’ as limiting the effect of Article 1D to those Palestinians who became refugees as a result of the 1948 conflict and who were receiving UNRWA assistance when the Convention was adopted on 28 July 1951.

This aspect of the El-Ali judgment was effectively overturned by the Court of Justice of the European Union (CJEU), on 17 June 2010 in [Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal \(Hungary\)](#). It ruled that Article 12(1)(a) of the Directive (and therefore Article 1D by extension) applied in the present, and not merely to those receiving assistance in July 1951. It potentially applied to all Palestinian refugees currently eligible to receive UNRWA protection or assistance. The CJEU’s other principal finding was that only those who had actually availed themselves of UNRWA assistance could come within the exclusion clause.

The CJEU ruling also found that while registration with UNRWA would be sufficient proof of having received assistance, such assistance could be provided in the absence of registration, in which case the applicant must be permitted to provide evidence of that assistance by other means.

The interpretation of the second paragraph of Article 1D ('When such protection or assistance has ceased for any reason...') was clarified in a further ruling by the CJEU on 19 December 2012, in [Mostafa Abed El Karem El Kott and others \(C-364/11\)](#).

The CJEU decided that cessation of UNRWA protection or assistance 'for any reason' should not only refer to the cessation of UNRWA itself but should also include situations in which a person ceased to receive assistance for a reason beyond their control or independent of their volition. The Court made it clear that it did not mean that a Palestinian in receipt of UNRWA assistance and who decided to leave the UNRWA areas of operation would automatically be entitled to Convention refugee status on application. It would be for the Member State responsible for examining the asylum claim to ascertain whether its assistance had ceased to be available to that person, being outside the UNRWA area of operations.

The CJEU went on to decide that if UNRWA protection or assistance had in fact ceased to be provided, the applicant must be recognised as a refugee within the meaning of Article 2(c) of the Directive ('therefore entitled to the benefits'), provided that they were not excluded by virtue of Article 12(1) (b) or (2) and (3) of the Directive (equivalent to Articles 1E and 1F of the Convention).

The CJEU's rulings on Article 12(1)(a) of the Directive are binding on the UK and Article 1D must be interpreted in a way which is compatible with its findings. In practice, they mean that refugees who were previously assisted by UNRWA and who seek asylum outside the area of UNRWA operation are excluded from the scope of the Refugee Convention, unless they can show that UNRWA assistance or protection has ceased for reasons beyond their control or independent of their volition.

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Applying Article 1D

Establishing the facts

In assessing an individual's protection needs and whether the provisions of Article 1D apply, caseworkers must establish:

- if the claimant is a Palestinian habitually resident in the Occupied Territories or in one of the neighbouring states of Jordan, Lebanon and Syria
- details of the refugee camps or location(s) where the claimant lived, and when, if at all, they have previously been registered with and in receipt of UNRWA assistance or protection
- details of the assistance or protection provided to the claimant by UNRWA, for how long, and in which locations
- the members of the claimant's immediate family to whom UNRWA protection or assistance has been provided, in addition to the claimant
- the circumstances in which UNRWA protection or assistance ceased to be available, if at all, prior to leaving the country of habitual residence

If a claim to have been registered with UNRWA needs to be verified, this can be checked by email to [UNRWA](#) but this first requires the claimant's consent, using the 'Registration Verification Form for Persons Registered with U.N.R.W.A.'. This form must not be used to undertake checks if the claimant denies (and there is no other evidence) that they were registered with, or in receipt of assistance from, UNRWA.

The information provided by the claimant, and its credibility, must then be considered within one of the following policy frameworks.

Those not previously in receipt of UNRWA assistance

Palestinians who were not receiving or eligible to receive the protection or assistance of UNRWA as per the first paragraph of Article 1D may qualify as refugees if they fulfil the refugee criteria of Article 1A(2) of the Refugee Convention and are not excluded under the provisions of Article 1F. Article 1D does not apply to them and their asylum claims should be considered in the normal way.

Those previously in receipt of UNRWA assistance

A Palestinian eligible for UNRWA protection or assistance and previously registered with UNRWA, or (though not registered) in receipt of UNRWA protection or assistance, is not entitled to Convention refugee status simply by leaving the UNRWA areas of operation and claiming asylum elsewhere. To qualify automatically for refugee status under the second paragraph of Article 1D, individuals previously assisted by UNRWA must show, to a reasonable degree of likelihood, that the assistance or protection they previously received has ceased to be accessible for reasons beyond their control or independent of their volition.

The phrase 'ceased for any reason' in the second paragraph of Article 1D originally envisaged the termination of UNRWA as an agency or the discontinuation of its

activities. However, the CJEU's ruling, in the case of [Mostafa Abed El Karem El Kott and others \(C-364/11\)](#) means that the cessation of UNRWA protection or assistance 'for any reason' also includes the situation in which a person ceased to receive assistance for a reason beyond their control or independent of their volition. In practice, the most likely situation in which the protection or assistance of UNRWA could not be accessed by an individual will be in one of the following circumstances:

threats to life, physical integrity or security or freedom, or other serious protection related reasons, including:

- situations such as armed conflict or other situations of serious violence, unrest and insecurity, or events seriously disturbing public order
- more individualised threats or protection risks such as sexual and/or gender-based violence, human trafficking and exploitation, torture, inhuman or degrading treatment or punishment, severe discrimination, or arbitrary arrest or detention

practical, legal and/or safety barriers, including:

- being unable to access UNRWA assistance because of long-term border closures, road blocks or closed transport routes
- absence of documentation to travel to, or transit, or to re-enter and reside, or where the authorities in the receiving country refuse their re-admission or the renewal of their travel documents
- serious dangers such as minefields, factional fighting, shifting war fronts, banditry or a real risk of other forms of violence or exploitation

The UNRWA website is an essential source of information about the situations in each of the countries in which UNRWA operates. Its information about [conditions in each of the UNRWA areas of operations](#) and the [camps or neighbourhoods in which Palestinians live](#), must be consulted before and after an asylum interview.

Palestinians in Syria

Palestine refugees in Syria have been severely affected by the ongoing armed conflict, with virtually all of their residential areas experiencing armed engagements or the use of heavy weapons. Many have fled to neighbouring countries. Despite immense challenges, UNRWA continues to provide assistance to those remaining in [Syria](#) as well as those in [Jordan](#), and [Lebanon](#). Those who have been forced to flee Syria and cross into Lebanon or Jordan are able to access UNRWA assistance in those countries.

While Palestinians from Syria may be able to access UNRWA services in Lebanon and Jordan, they will generally not be able to access governmental services offered to other refugees. The Government of Jordan has declared a policy of non-admission of Palestinians from Syria and it will generally not be possible for them to enter Jordan legally (unless they do so as Jordanian or Syrian nationals). Those who have obtained admission to Jordan face a considerable risk of being deported for lack of legal status.

The situation in Lebanon is also difficult for Palestinian refugees from Syria. There are strict restrictions regarding entry into Lebanon and duration of stay, with many

Palestinian refugees having exceeded the stay permissible under the visa issued to them. If they leave Lebanon or Jordan, it is unlikely Palestinians from Syria would in practice be able to return to those countries, and access to UNRWA services would then have effectively ceased.

Further information about the position of Palestinians in Syria is available in the September 2014 Country of Origin Information Request, the [UNRWA website](#), and the [UNHCR paper: International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic \(Update IV\)](#) of November 2015. If necessary, further information can be obtained from the Country Policy and Information Team.

Decisions

In conclusion, UNRWA continues to provide protection and assistance to Palestinian refugees in the Occupied Territories and in neighbouring countries within its mandate, and an individual must demonstrate that UNRWA protection or assistance has ceased to be accessible. That is likely to be the case for Palestinian refugees from Syria, but each claim must be considered on its individual merits.

If that is accepted, no further analysis of protection needs is required. In view of the substantial benefits which automatically accrue from the second paragraph of Article 1D – refugee status under the Refugee Convention (subject to the provisions of Article 1F) – a decision to accept assistance has ceased to be available must be agreed by a senior caseworker.

If it is not accepted that assistance ceased to be available, the claimant is not eligible for refugee status. However, exclusion under Article 1D does not automatically exclude an individual from humanitarian protection as there are no parallel exclusion clauses in the Directive's provisions. Whether HP is justified must be decided on by considering the claim on its merits in accordance with the [Asylum Instruction on HP](#).

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