



Home Office

# Discretionary Leave

Version 10.0

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# About this guidance

This guidance tells you about the circumstances in which it may be appropriate to grant Discretionary Leave (DL).

## 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 Asylum Policy.

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 **10.0**
- published for Home Office staff on **16 March 2023**

## Changes from last version of this guidance

- Modern Slavery cases (including human trafficking) section updated to implement caselaw
- General updates in line with other policy updates, including section on General Grounds for Refusal, and links amended

### Related content

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# Purpose of instruction

This guidance explains the limited circumstances in which it may be appropriate to grant Discretionary Leave (DL) and applies in both asylum and non-asylum cases applying from within the UK. DL cannot be applied for from abroad. It is intended to cover exceptional and compassionate circumstances and, as such, should be used sparingly.

DL is granted outside the Immigration Rules in accordance with Home Office policy set out in this instruction. It must not be granted where an individual qualifies for asylum or humanitarian protection (HP) or for family or private life reasons.

Asylum caseworkers must read this guidance in conjunction with other key guidance products, in particular:

- Assessing credibility and refugee status
- Humanitarian Protection
- Further submissions
- Exclusion Article 1(F) and Article 33(2) of the Refugee Convention
- Refugee and humanitarian protection leave
- Permission to stay on a protection route
- Restricted leave
- Appeals
- Family and private life
- [Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery](#)

## Background

The Immigration Rules are designed to cover the vast majority of circumstances in which migrants will be granted leave because they are entitled to remain in the UK. However, there are a small number of Home Office policies that recognise there may be individuals who do not meet the requirements of the Immigration Rules, but there are nonetheless exceptional and/or compassionate reasons for allowing them to remain here. There is a separate policy (not covered in this DL guidance) on when to grant leave to remain outside the rules for Article 8 reasons based on exceptional circumstances for those who fail to meet the family and private life Immigration Rules.

Although several concessions outside the rules have been closed and others have been brought inside the rules, most notably as part of the Points Based System, a small number of concessions continue to exist. The circumstances in which someone may be granted leave for exceptional (non-family or private life) reasons are covered either by the policy on Leave outside the Rules (LOTR) for non-Article 8 reasons or this DL instruction.

DL was introduced alongside HP in April 2003 to replace exceptional leave to remain (ELR) and was initially used to grant leave for Article 8 reasons where removal would

breach our obligations under Article 8 of the European Convention on Human Rights (ECHR). However, following the implementation of the family and private life rules on 9 July 2012, DL should no longer be granted where the requirements of those rules in Appendix FM or paragraphs 276ADE(1) to 276CE/Appendix Private Life are met or where LOTR should be granted for Article 8 reasons.

Transitional arrangements apply to those granted DL for Article 8 reasons before 9 July 2012.

From 6 April 2013, the policy of granting DL to unaccompanied asylum-seeking children ended. Leave for this group must now be considered in accordance with paragraphs 352ZC to 352ZF of the Immigration Rules and not under the DL policy.

Individuals with a positive conclusive grounds decision whose outstanding asylum claim or further submissions (which is based in a material part on a claim to a well-founded fear of re-trafficking / real risk of serious harm due to re-trafficking) has not been finally determined before 30 January 2023 should be considered for DL. DL will normally be granted in these circumstances on the grounds that their 'stay in the UK is necessary' to pursue their asylum claim or further submissions. Cases on or after 30 January 2023 – this includes individuals who received a positive conclusive grounds decision before 30 January 2023 but did not claim asylum or lodge further submissions until after 30 January 2023 (or vice versa) – will be considered under the Temporary Permission to Stay considerations for [Victims of Human Trafficking or Slavery policy](#).

## Policy intention

The policy objective is to maintain a firm, but fair and efficient immigration system that generally requires those who do not meet the rules to leave the UK, but carefully considers exceptional and compassionate individual circumstances that may justify leave on a discretionary basis by:

- providing a mechanism to cover those few cases where it would, at the time leave is granted, be unjustifiably harsh to expect someone to leave or enforce their removal - it is intended to be used sparingly
- carefully considering evidence relating to exceptional compassionate circumstances raised as part of a protection claim to assess whether a grant of DL is appropriate
- granting limited leave appropriate to the individual circumstances but not more than 30 months unless there is compelling evidence to justify a longer period and ensuring that those granted DL generally do not benefit from a faster route to settlement than those who meet the Immigration Rules
- requiring all migrants granted leave to pay the appropriate fee or meet the appropriate fees exemption to extend that leave if they show that they continue to meet the relevant criteria, including failed asylum seekers (FAS)
- being clear that settlement is a privilege, not an automatic right, and that it is generally entirely appropriate for migrants wishing to stay in the UK permanently to complete a minimum period of continuous limited leave before being eligible to apply for settlement

## Application in respect of children and those with children

The application of this guidance must take into account the circumstances of each case and the impact on children, or on those with children, in the UK. Section 55 of the Borders, Citizenship and Immigration Act 2009 places an obligation on the Secretary of State to take account of the need to safeguard and promote the welfare of children in the UK when carrying out immigration, asylum and nationality functions.

In practice, this requires a consideration to be made of the best interests of the child in decisions that have an impact on that child. This is particularly important where the decision may result in the child having to leave the UK, where there are obvious factors that adversely affect the child, or where a parent caring for the child asks us to take particular circumstances into account. All decisions must demonstrate that the child's best interests have been considered as a primary, but not necessarily the only, consideration.

This applies whether the child is claiming in their own right or is dependent on a parent or guardian. The Home Office guidance on 'Processing asylum applications from children' and '[Every Child Matters – Change for Children](#)' sets out the key principles to take into account in all cases involving a child in the UK.

You must be vigilant that a child may be at risk of harm and be prepared to refer cases immediately to the Asylum Safeguarding Hub, for referral to a relevant safeguarding agency where child protection issues arise. In an emergency you must refer the case to the police without delay. The Safeguarding Advice and Children's Champion (SACC) can also offer specialist safeguarding and welfare advice on issues relating to children, including family court proceedings and complex child protection cases.

In cases where it is considered appropriate to grant DL, you must also consider whether to exercise discretion in relation to the length of leave to be granted. This is because a decision about duration of leave granted outside the rules is an immigration function to which section 55 applies. The length of leave must be decided on the individual facts of the case. While a grant of 30 months' leave will generally be appropriate, leave may be granted for shorter or longer periods, including, in particularly compelling circumstances, indefinite leave to remain. You must demonstrate you have had regard to the child's best interests when considering the type and length of leave granted following a decision to grant leave under the DL policy. See [Granting or refusing leave](#) below for further guidance.

### Related content

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# Relevant legislation

## Immigration Act 1971

The Secretary of State has the power to grant leave on a discretionary basis outside the Rules from her residual discretion under the [Immigration Act 1971](#). Discretionary Leave (DL) is a form of leave to remain that is granted outside the Immigration Rules in accordance with this policy. Applications for DL cannot be made from outside the UK.

## Immigration Rules

[Part 8 of the Immigration Rules](#) and [Appendix FM](#) cover applications relating to family members and [Part 7 of the Immigration Rules](#) and [Appendix Private Life](#) covers private life considerations for those not liable to deportation. From 9 July 2012, DL is no longer granted for family or private life reasons though you must be aware that there will be cases where people were granted an initial period of DL on the basis of their Article 8 rights before 9 July 2012 and must refer to [Transitional arrangements](#)

[Part 9 of the Immigration Rules](#) covers the General Grounds for Refusal (GGfR) and must be consulted and applied before DL is granted.

[Part 11 of the Immigration Rules](#) cover applications for asylum and humanitarian protection. When considering such claims you must also consider any evidence provided about exceptional circumstances under this DL policy if the individual is refused protection.

[Part 12 of the Immigration Rules](#) contains provisions under paragraph 353B which are relevant to the application of the DL policy.

[Part 13 of the Immigration Rules](#) covers deportation orders and procedure and Article 8 (ECHR) in relation to deportation cases.

### Related content

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# Reasons for granting Discretionary Leave

## Key principles

Discretionary Leave (DL) must not be granted where an individual qualifies for leave under the Immigration Rules or for Leave outside the Rules (LOTR) for Article 8 reasons. It only applies to those who provide evidence of exceptional compassionate circumstances or there are other compelling reasons to grant leave on a discretionary basis.

A substantive decision should not be made in an asylum case where the individual should be subject to inadmissibility action as an EU national, or where the third country inadmissibility policy applies. See the Home Office guidance on EU/EEA asylum claims and Inadmissibility: safe third country cases for further information.

It is not possible to cover all the circumstances in which DL may be appropriate because this depends on the totality of evidence available in individual cases but the following broad categories may apply

## Medical cases

This applies to asylum and non-asylum cases. Non-asylum medical cases must apply on the [application](#) form, claimants must apply for permission to stay in the UK based on human rights grounds for medical reasons outside the Immigration Rules.

Article 3 and Article 8 medical issues raised by a claimant with an outstanding asylum claim, will be considered with that claim and there is no need to make a separate application. Where there is an ongoing asylum claim, you must consider any relevant medical issues in conjunction with that claim or as part of any further submissions raised. Claimants who make a human rights medical claim in response to enforcement action, for example a deportation notice, do not need to submit an application form.

When considering medical claims you must follow the guidance on Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR).

## Other cases where return would breach the ECHR

This applies to asylum and non-asylum cases. Non-asylum cases making a standalone human rights claim must do so using the FLR (FP) or [FLR \(HRO\) application form](#). Where there is an ongoing asylum claim, you must consider any other ECHR claims in conjunction with the asylum claim or as part of the further submissions. DL may be appropriate where the ECHR breach associated with return would not warrant a grant of humanitarian protection but where return would result in a flagrant denial of the right in question in the individual's country of origin. For guidance on the consideration of other ECHR claims, see the Asylum Instruction on

[Considering human rights](#). It will be rare for return to breach another article of the ECHR in this way without also breaching Article 3.

## Exceptional circumstances

This applies to asylum and non-asylum cases. A grant of DL may be appropriate following consideration under [paragraph 353B](#) of the Immigration Rules. This applies in cases where there are outstanding further submissions to be considered, but also where there are no outstanding further submissions, appeal rights are exhausted, and the case is subject to a review at the removals stage. This may include those who have spent a significant period of time in the UK for reasons beyond their control after having claimed asylum, though such individuals are expected to provide evidence as to why they cannot leave voluntarily. You must carefully consider whether a grant of leave is appropriate under paragraph 353B with reference to the Further submissions guidance.

## Modern Slavery cases (including human trafficking)

From 30 January 2023, victims of human trafficking, slavery, servitude and forced and compulsory labour who are conclusively recognised as such by the National Referral Mechanism (NRM) may be eligible for temporary permission to stay based on the criteria in [Section 65 of the Nationality and Borders Act 2022](#). This criteria includes enabling the individual to co-operate with a public authority in connection with investigation or criminal proceedings in respect of the relevant exploitation, assisting the individual in their recovery from any physical or psychological harm arising from the relevant exploitation, enabling the individual to seek compensation in respect of the relevant exploitation. This route to stay applies across the UK. An individual will not normally qualify for temporary permission to stay solely because they have been identified as a victim of modern slavery or trafficking. The [Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery guidance](#) must be followed.

## Pre-30 January 2023 modern slavery (including human trafficking) cases

Individuals who before 30 January 2023, had both a positive conclusive grounds decision and had made an asylum claim or further submissions, based in a material part on a claim to a well-founded fear of re-trafficking / real risk of serious harm due to re-trafficking, which had not been finally determined, were potentially entitled to DL had their applications for leave been determined under the Home Office policies prior to 30 January 2023.

A claim for asylum is based on a 'well-founded fear of persecution' and a claim for humanitarian protection is based on a 'real risk of serious harm'. Please refer to the Assessing credibility and refugee status or Humanitarian protection guidance for more information. The terms 'risk' and 'fear' are used interchangeably as shorthand for these tests, to cover both instances.

Individuals who meet the requirements above may be entitled to DL because the Home Office policies in force at the time implemented Article 14 (1)(a) of the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (ECAT).

The Court of Appeal in the case of [EOG & KTT v Secretary of State for the Home Department \[2022\] EWCA Civ 307 \(17 March 2022\)](#), referred to as 'KTT', determined that the Home Office approach to applications for Modern Slavery Discretionary Leave was not in accordance with Article 14 (1)(a) of ECAT (which the policy was found to commit to implementing). Article 14 (1)(a) of ECAT leads states to consider whether the victim's "stay is necessary owing to their personal situation". The Court found that a confirmed victim of trafficking, who has an outstanding asylum claim which is trafficking-related, requires a consideration of leave to remain in the UK because their 'stay in the UK is necessary', owing to their personal situation as a victim of trafficking, in order to pursue that asylum claim.

The Upper Tribunal case of [SSA \(Ethiopia\) v Secretary of State for the Home Department \[2023\]](#) gave further guidance on the meaning of when an asylum or protection claim is trafficking-related. The Upper Tribunal said that the outstanding asylum or protection claim must be based "in a material part" on a fear or risk of re-trafficking in order for an individual to be eligible for leave to remain under the KTT judgement.

This is a low threshold, and it does not mean that the fear or risk of re-trafficking must be a substantial part of the claim. The Upper Tribunal said that it would suffice that "a fear of re-trafficking is articulated to the extent that the respondent is bound to consider it." No distinction is drawn between the reasons given for the claim by a claimant themselves and those put forward by their legal representative or immigration advisor.

If an individual mentions their trafficking history incidentally and does not articulate at all in any part of their claim a fear or risk of re-trafficking on return, the claim will not be trafficking-related and DL must not be granted.

In summary, a claim is trafficking-related when it relates to a well-founded fear of re-trafficking / risk of serious harm due to re-trafficking on return, which is articulated to a sufficient extent that the Home Office will have to consider it (make a decision on it, even if that decision may be to reject that element of the claim) when the asylum or protection claim is determined.

## When to consider DL

Under this policy, those individuals who were eligible for consideration of leave to remain under the KTT judgement prior to 30 January 2023, will not have their applications for DL determined under [Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery](#). Instead, where:

- a competent authority made a positive conclusive grounds decision prior to 30 January 2023; and
- the individual had prior to 30 January 2023 articulated an asylum claim or further submissions which were trafficking-related as set out above; and

- the individual's asylum claim or further submissions have at the present date not yet been finally determined (this means that they are still awaiting a decision or still have in-country appeal rights to exercise)

you must consider granting DL. DL will normally be granted in these circumstances.

This leave will either be curtailed or varied once the asylum or further submissions decision has been finally determined. Any future application for an extension of leave will be determined under [Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery](#).

## When to not consider DL

DL does not need to be considered on these grounds where the individual:

- already has leave to remain in the UK – this includes where the individual has been granted Modern Slavery Discretionary Leave
- has had their asylum claim declared inadmissible under the relevant Immigration Rules (as set out in the [Inadmissibility](#) guidance).
- has had their asylum claim or further submissions refused and their appeal rights are exhausted
- received a Modern Slavery Discretionary Leave refusal prior to the KTT judgement
- falls to be refused DL under Part 9 of the Immigration Rules (general grounds for refusal)
- is subject to deportation proceedings (see [Deportation cases](#) section)

## Inadmissibility

A claim which is declared inadmissible is not considered to be an outstanding asylum claim. Consequently, individuals who have received a positive conclusive grounds decision but who also have a claim that has been declared inadmissible will not qualify for DL.

However, where an individual is awaiting an inadmissibility decision, whether or not a Notice of Intent has been issued, they are considered to have an outstanding asylum claim. As a result, in these circumstances, you must consider if DL is required. If DL has been granted whilst an individual is awaiting an inadmissibility decision and subsequently their claim is later declared inadmissible, the DL must be curtailed.

## Duration of DL

Individuals granted DL on this basis should usually be granted for a duration of up to 12 months. Individuals are only eligible for DL on this basis until their asylum claim or further submissions has been finally determined. This means that their leave must be varied or curtailed when their asylum claim or further submissions has been finally determined.

If the asylum decision is a grant of protection status then the individual's leave must be varied to become refugee or humanitarian protection leave for asylum claims

lodged before 28 June 2022, or permission to stay on a protection route for asylum claims lodged on or after 28 June 2022.

If the asylum decision is a refusal but the individual has been granted family/private life or DL on other grounds, then their DL must also be varied accordingly.

If the asylum decision is a refusal with an out-of-country right of appeal, or no right of appeal, and there are no outstanding applications, it must be arranged for the individual's leave to be curtailed. If the asylum decision is a refusal with an in-country right of appeal, then curtailment action must be arranged once the appeal rights have been exhausted in the scenario where the appeal is dismissed, or vary the leave to remain in the scenario where the appeal is allowed and leave to remain is granted.

## Further leave

Where the asylum claim or further submissions remain outstanding (including the exercising of in-country appeal rights) after 12 months, and the claimant wants further leave to remain in the UK, they should complete the application at the following link: [Application to extend stay in the UK: FLR\(HRO\)](#). Further leave applications will be considered following [Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery](#).

## Curtailing DL

DL must be curtailed if the claimant no longer meets the eligibility criteria set out above. This includes but is not limited to:

- the asylum claim has been refused and the claimant has not exercised their right of appeal within 14 days
- their appeal was dismissed and they become appeal rights exhausted
- the asylum claim has been treated as withdrawn under paragraph 333C of the Immigration Rules
- any further submissions have been rejected with no right of appeal
- the asylum claim has been declared inadmissible under the relevant Immigration Rules (as set out in the [Inadmissibility](#) guidance)

You must follow the Cancellation and curtailment of permission guidance to ensure that curtailment action is taken when appropriate, see Curtailment of DL section, or refer to the appropriate team for curtailment of DL.

## Granting leave to remain to an individual with DL

If the claimant qualifies for leave to remain following consideration of their asylum claim or further submission, you must vary their DL to the new form of leave to remain, for example refugee leave. The asylum decision letter should include the following wording:

'You are no longer eligible for discretionary leave as you qualify for [Insert type of leave to remain, for example 'Refugee leave']'. Consequently, your discretionary leave has been varied to become [insert type of leave to remain].

## Deportation cases

Where the individual is currently subject to deportation proceedings, either by way of an extant deportation order or where a deportation decision has been made and deportation continues to be pursued, they must not be considered under the DL policy for modern slavery (including human trafficking) cases pre-30 January 2023. Instead they will be considered under [Temporary Permission to Stay considerations for Victims of Human Trafficking or Slavery](#) upon application.

## Exclusion and criminality

In all asylum and non-asylum cases you must consider the impact of an individual's criminal history before granting any leave.

Where there are reasonable grounds for considering that the claimant should be excluded from asylum or humanitarian protection, you must refer to the guidance on Exclusion. From 2 September 2011, the Restricted leave policy replaced grants of DL for those excluded from protection under Article 1F of the Refugee Convention. The restricted leave policy was updated in January 2015 to cover those refused under Article 33(2) of the Convention. Restricted leave may be granted in these circumstances where removal would breach our obligations under the ECHR. Article 1F cases granted DL before 2 September 2011 should remain on their existing leave until it falls for renewal. If a renewal application is received, it must be considered in line with the restricted leave policy instruction. Restricted leave can only be granted by the Special Cases Unit (SCU) or Foreign National Offenders Returns Command (FNORC). All cases involving exclusion or extremism must be referred to SCU and cases involving criminality where there is no SCU interest must be referred to FNORC.

Where cancellation, cessation or revocation of refugee status or humanitarian protection is considered appropriate, and the individual does not fall within the restricted leave policy it may be appropriate to grant DL. You must refer to the guidance on Revocation of refugee status before considering a grant of leave on this basis.

Where an individual does not fall within the restricted leave policy (for example, where they are not excluded under Article 1F or the criminal sentence was less than 12 months imprisonment), you must consider the impact of any criminal history before granting DL, having regard as appropriate to [Part 9 \(General Grounds for Refusal\)](#) and, where an individual is not liable to deportation, [paragraph 353B\(i\)](#) of the Immigration Rules. Criminals or extremists should not normally benefit from leave on a discretionary basis under this policy because it is a Home Office priority to remove them from the UK.

In cases where there are exceptional reasons for granting DL to someone with a criminal history who does not fall within the restricted leave policy, the duration of

leave to be granted, up to 30 months, will depend on the individual circumstances of the case. You must consider whether removal appears to be reasonably likely and the extent of any risk posed by the individual, which may justify keeping the case under more regular review, for example, by granting 6 months DL. Where DL is granted for 6 months or less, if the individual travels outside the UK their limited leave will lapse whereas leave granted for a longer period allows an individual to leave the UK and be readmitted during the validity of their leave, by virtue of article 13(2)(b) of the [Immigration \(Leave to Enter and Remain\) Order 2000](#).

## Other cases

This applies to asylum cases only. You must refer to the Home Office policy on Leave outside the Immigration Rules for guidance on granting leave outside the Immigration Rules in non-asylum cases in scenarios not covered in the sections above.

The categories under which it would normally be appropriate to grant DL are set out above. There are likely to be very few other cases in which it would be appropriate to grant DL to a failed asylum seeker. However, it is not possible to anticipate every eventuality that may arise, so there remains scope to grant DL where individual circumstances, although not falling within the broad categories listed above, are so compelling that it is considered appropriate to grant leave.

However, the fact that an application fails to meet the requirements of the Immigration Rules for a grant of leave by a small margin (often called a near miss) or fails to meet only one of the requirements, is not in itself a reason to grant DL for compassionate reasons. Expressing a preference not to leave the UK is not a compassionate factor. The Immigration Rules made by the government and approved by Parliament regulate who may enter or stay in the UK as a matter of general policy. The fact that an individual does not qualify in a particular category will generally be a deliberate consequence of that policy and you must not, when considering whether to grant DL for compassionate reasons, undermine those policy objectives.

Where a decision is made to grant DL for reasons not covered by the broad categories listed above, you must discuss the case with a senior caseworker. Detailed file minutes will be required to keep accurate records of what has been decided and why.

## Unaccompanied asylum-seeking children

Where an unaccompanied asylum-seeking child (UASC) applies for asylum, you must first consider whether they qualify for asylum, HP, or leave to remain on the basis of family or private life under Appendix FM or paragraph 276ADE(1)/Appendix Private Life of the Immigration Rules (or LOTR for Article 8 reasons), UASC leave and then DL on any other basis.

Where an unaccompanied child does not qualify for protection, it will normally be appropriate for the child to reunite with their family in their country of origin, provided that safe and adequate reception arrangements are in place and subject to an

assessment of their best interests. You must take into account the best interests of children as a primary consideration (although not necessarily the only consideration) when considering whether to grant leave. The starting point is that a child's best interests are likely to be best served by reuniting them with their family, unless there are protection needs or safeguarding concerns. You must refer to the instruction [Processing asylum applications from children](#).

Where an unaccompanied child qualifies for leave on more than one ground, they should normally be granted the leave that provides the longest period of stay. However, all grounds which informed the decision must be recorded in the file minute.

From 6 April 2013, the policy on granting limited leave to unaccompanied children refused asylum and humanitarian protection and where there are no adequate reception arrangements in the country to which they would be returned, was incorporated into [paragraphs 352ZC to 352ZZF of the Immigration Rules](#). Unaccompanied children who meet the requirements of these Rules are granted limited leave, normally for 30 months or until the applicant is 17.5 years of age, whichever was the shorter period.

Unaccompanied children who, prior to 6 April 2013, were granted DL due to the absence of adequate reception arrangements and who apply for further leave on this basis after the new rules came into force, must be considered under [paragraphs 352ZC to 352ZZF of the Immigration Rules](#). However, when considering an application for further leave under paragraphs 352ZC to 352ZF for those previously granted DL due to the absence of adequate reception arrangements, or for those who were previously granted leave under paragraphs 352ZC to 352ZF, you should also consider whether there are particularly compelling reasons in individual cases to grant a longer period of leave having regard to the best interests of the child. For further guidance see [Non-standard grant periods: longer periods of stay](#).

## **Related content**

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# Granting or refusing leave

## Granting Discretionary Leave (DL)

Asylum claimants refused protection but granted DL must be issued with a 'Reasons for Refusal Letter (RFRL)' explaining why the asylum and HP claim has been refused and why they have not been granted leave on the basis of family or private life. The primary reasons for granting DL should also be set out briefly. These reasons do not need to be detailed, but it must be clear why DL has been granted. The letter to the claimant should briefly refer to the basis on which leave was granted.

If an individual qualifies for DL under more than one heading listed in [Reasons for granting Discretionary Leave](#) they should benefit from the one that provides the longer period of leave so as not to disadvantage them. The letter does not need to refer to all the reasons for which they qualify for DL, but the consideration minute on file must show that each reason was considered.

## Refusing DL

Asylum claimants who do not fall to be granted any leave must be refused, and reasons for the refusal should be clearly provided in the RFRL. For full details of how to refuse an asylum claim or further submissions, see Asylum Instructions on Assessing credibility and refugee status and Further submissions.

## Recourse to public funds, work and study

Those granted DL have recourse to public funds and no prohibition on work. They are also able to enter higher education. However, those on limited leave are not eligible for higher education student finance under existing Department for Business, Energy and Industrial Strategy (BEIS) regulations. In addition, a study condition applies to all adult temporary migrants granted DL which prohibits studies in particular subjects without first obtaining an Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office (FCO). Those granted DL who are aged 18 or will turn 18 before their limited leave expires will, in addition to any other conditions which may apply, be granted leave subject to the requirements set out Part 15 in the [Immigration Rules](#).

## UK born children of parents granted DL

Children born in the UK to parents who both have DL and are not British citizens should normally be granted limited leave in line with their parents. If only one parent has DL, the leave to be granted will depend on the status of the other parent. See: Dependants and former dependants.

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# Duration of Discretionary Leave

Where Discretionary Leave (DL) is granted, the duration of leave must be determined by considering the individual facts of the case but leave should not normally be granted for more than 30 months (2 and a half years) at a time.

When an individual is granted an initial period of DL, this does not necessarily mean they will be entitled to further leave or to settlement. Subsequent periods of leave may be granted providing the applicant continues to meet the relevant criteria set out in the published policy on DL applicable at the time of the decision.

From 9 July 2012, those granted DL must normally have completed a continuous period of at least 120 months' limited leave (this means: a total of 10 years, normally consisting of 4 separate 2 and a half year periods of leave) before being eligible to apply for settlement. Separate arrangements exist for those granted an initial period of 3 years' DL prior to 9 July 2012. See [Transitional arrangements](#)

## Exceptional circumstances

Where removal is no longer considered appropriate following consideration of the exceptional factors set out in [paragraph 353B of the Immigration Rules](#) and the guidance in [Chapter 53](#) of the Enforcement Immigration Guidance (EIG), 30 months' DL should be granted, unless one of the following situations applies:

- where the UK Border Agency (as it was) made a written commitment that a case would be considered **either** before 20 July 2011 **or** before 9 July 2012, but failed to do so, and it is later decided that a grant is appropriate
- where the UK Border Agency (as it was) made a decision **either** before 20 July 2011 **or** before 9 July 2012 that a grant of leave on the grounds then listed in Chapter 53 was not appropriate, but after that date reconsidered that decision and – on the basis of the same evidence (such as, the evidence available to the original caseworker) – it is decided that the earlier decision was wrong and leave should have been granted

Where the above applies and the relevant date was before 20 July 2011, Indefinite Leave to Remain (ILR) outside the rules should be granted. This is because before 20 July 2011 ILR was normally granted in cases which met the exceptional circumstances criteria in Chapter 53. Where the above applies and the relevant date was before 9 July 2012, three years' DL should be granted, with the individual normally becoming eligible to apply for settlement after 2 periods of 3 years' DL (6 years' continuous leave). This is because from 20 July 2011 to 8 July 2012 the UK Border Agency (as it was) granted 3 years' DL in cases that met the exceptional circumstances criteria in Chapter 53.

If you consider that there are other exceptional, compelling reasons to depart from the policy of granting 30 months' DL, the case must be referred to a Senior Caseworker for further consideration. In all other cases 30 months' (2.5 years') DL is normally the appropriate period of leave to grant.

## Non-standard grant periods: shorter periods of stay or deferral of decision or removal

There may be some cases where it is clear from the individual circumstances of the case that the factors leading to DL being granted will be short lived. In such cases it may be appropriate to grant a shorter period of leave. Non-standard grants of less than 30 months should be used only where the information relating to the specific case clearly points to a shorter period being applicable. Reasons for granting a shorter period must be included in the letter to the applicant.

There will also be some cases where the factors meriting a grant of DL are expected to be sufficiently short lived that the question arises whether to grant a short period of leave or to refuse the claim outright whilst giving an undertaking not to remove the individual or expect them to leave the UK voluntarily until the circumstances preventing their return have changed. Such cases could arise at the decision-making stage or following an appeal. Where it is considered that return will be possible within 6 months of the date of decision, it will normally be appropriate to refuse the claim outright, not grant a period of DL and defer removal until such time as it is possible. If you consider that there are reasons to depart from the policy of granting 30 months' DL, the case must be referred to a senior caseworker for further consideration.

## Non-standard grant periods: longer periods of stay

There may be cases where a longer period of leave is considered appropriate, either because it is in the best interests of a child (and any countervailing considerations do not outweigh those best interests), or because there are other particularly exceptional compelling or compassionate reasons to grant leave for a longer period (or ILR). In cases not involving children (as the main applicant or as dependants), there must be sufficient evidence to demonstrate that the individual circumstances of the case are not just unusual but can be distinguished to a high degree from other cases to the extent that it is necessary to deviate from a standard grant of DL under this policy.

In cases involving children, you must regard the best interests of the child as a primary consideration (although not necessarily the only consideration) and one that can affect the duration of leave granted. This does not alter the expectation that in most cases a standard period of 30 months' (2.5 years') DL will be appropriate, but it does mean that there may be cases where compelling evidence is available that justifies a longer period of leave (or ILR) to reflect the best interests of the individual child.

Factors such as the length of residence, whether the child was born in the UK and strong evidence to suggest that the child's life would be adversely affected by a grant of limited leave rather than ILR need to be weighed against the wider requirements to ensure a fair, consistent and coherent immigration policy, including the requirement for migrants generally to complete a qualifying period of limited leave before being eligible to apply for settlement. For example, there may be cases where a child has a serious and chronic medical condition which may not be able to be treated in the country of return and it is considered in their best interests to grant ILR

to the child to provide a greater degree of certainty for the purposes of their continued treatment or mental wellbeing.

An example of where it would not normally be appropriate to grant a child ILR may be because they would like to qualify for a student loan in order to go to university. This would not normally be a sufficiently exceptional or compelling reason without additional factors. Individuals in this position may be aged 18 or over and are not prevented from going to university by a grant of limited leave – rather they would not be eligible for a student loan. Some universities may have other funding which they could apply for, such as bursaries, scholarships or other types of support or fee waiver; likewise, some commercial companies and charities.

Higher education institutions also have discretion to treat an ‘overseas’ student as a home student and charge the home student tuition fee, which is usually lower. A grant of limited leave provides permission to work and individuals could choose to seek employment before they attend university, study part time and work part time to fund their course, or wait until they qualify for ILR after completing an appropriate probationary period of limited leave and access a student loan at that point.

Where a decision is taken to grant ILR to a child because it is considered to be in their best interests, this does not necessarily mean the parents should be granted ILR in line. It will normally be appropriate to grant them a standard period of leave and require them to complete the usual probationary period before being eligible to apply for settlement themselves, unless they can demonstrate exceptional compelling or compassionate factors in their own right that warrant departure from the standard grant of DL under this policy.

In all cases the onus is on the applicant to provide evidence as to why it is in the best interests of the child to be granted a period of leave that is different from the standard period of 30 months’ DL. Where you consider that it is in the best interests of the child or there are exceptional compelling or compassionate reasons to depart from the policy of granting 30 months’ DL, the case must be referred to a senior caseworker for consideration.

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# Curtailing Discretionary Leave

This section sets out the circumstances where consideration must be given to ending (or curtailing) Discretionary Leave (DL).

## Voluntary actions leading to curtailment

It will not usually be appropriate to curtail an individual's leave simply because they have returned to their own country or have travelled on their own national passport (those granted DL will normally be expected to keep their own national passport valid). This is because we will not have accepted that the individual has a well-founded fear of return to their country and will have been granted DL for reasons other than protection. However, where it comes to light that an individual has obtained a national passport following a grant of DL under paragraph 353B, or cases where there is an outstanding protection claim, the case must be reviewed.

There may be other occasions where leave should be curtailed because the reasons which led to the grant of DL no longer persist for example if their medical condition improves.

## Curtailment on grounds of character, conduct, or fraud

DL should normally be curtailed if an individual becomes subject to any of the grounds for exclusion in the 'Exclusion under Article 1F of the Refugee Convention' instruction, where there is criminality or where the individual is a danger to national security, for example, through extremist behaviours. This will usually apply where an individual's actions after the grant of DL bring them within the scope of those grounds. There may also be situations where the Home Office becomes aware that an individual is subject to one of the grounds of exclusion after a grant of DL. It will normally be appropriate to curtail leave in such cases and pursue removal or consider whether a grant of leave under the restricted leave policy is appropriate.

DL should normally be curtailed if an individual becomes liable to deportation and when a deportation order is made, it will have the effect of invalidating any extant leave. Action to curtail or vary leave will only be necessary where an individual is liable to deportation but it is not possible to make a deportation order (for example, for ECHR Article 3 reasons).

An individual who fraudulently obtains leave to enter by deception is an illegal entrant. If it is decided to take illegal entry action against that individual (under Schedule 2 to the Immigration Act 1971), any leave previously granted is no longer valid. Where an individual has obtained leave to remain by deception under this policy, that individual should have their leave curtailed following which they would be liable to removal under section 10 of the Immigration and Asylum Act 1999 as amended.

Separate action to vary DL will be required only where a decision to remove cannot be made or removal directions set (for example, for ECHR Article 3 reasons). For

example, where it is not possible to remove an individual but it is appropriate, given the circumstances of the case, to vary the amount of DL such that there is a shorter period of leave remaining.

## **Other situations where the basis for the grant of leave has ceased**

There may be other occasions where due to a change in circumstances it would be appropriate to curtail DL. For example, it would normally be appropriate to curtail leave where a child who was granted leave under the UASC policy and who is still a child is subsequently contacted by an adult family member who can care for them in their own country. It is normally considered to be in the best interests of a child to be reunited with family members in their country of origin.

All such cases must be assessed on a case-by-case basis to ensure that this does not give rise to protection issues, for instance, where the family members are themselves the cause of the child's need for protection. This may arise where domestic servitude, forced labour, trafficking or sexual exploitation are involved in the situation and there is insufficient of protection for the child. The views of children's services and/or those currently caring for the child should be sought so that these can inform consideration of the child's best interests.

A senior caseworker must always be consulted before any action is taken to consider curtailment of leave under this category. For further guidance see the Asylum Instruction, 'Processing asylum applications from children'.

### **Related content**

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# Further leave applications

This section applies to those granted an initial period of Discretionary Leave (DL) on or after 9 July 2012. For cases where DL was granted before 9 July 2012 see [Transitional arrangements](#).

In most cases, an individual will not become eligible to apply for settlement until they have completed a continuous period of 120 months' (10 years') limited leave. An individual should apply for further DL on the appropriate application form no more than 28 days before their existing leave expires if they wish to remain in the UK. If they apply after their limited leave has expired their application will be considered out of time.

From 27 June 2015, all applications for further DL, including those from failed asylum seekers, must be made on a specified form and meet the requirements of a valid application under [paragraph 34 of the Immigration Rules](#). They must also be accompanied by the correct fee in line with the requirements of the [Immigration and Nationality Fees Regulations](#), unless applying for a fee waiver under the Fee waiver guidance. See [UK Visas and Immigration](#) on GOV.UK for the current forms and guidance.

Where a further leave application amounts to a request for an upgrade from DL to refugee leave or HP, you must refer to the Further submissions guidance. Protection claims or further submissions following the refusal of asylum must be made in person and cannot be lodged on a postal application form (unless exceptions apply). You are able to grant further DL in such cases where the individual qualifies for further leave under this policy but should not consider any protection-based submissions. Where a request for an upgrade from limited leave to ILR is received, you must apply the guidance [Non-standard grant periods: longer periods of stay](#).

An individual granted DL before 2 September 2011 to whom the policy on restricted leave applies and who continues to be excluded from asylum and HP should be considered under the restricted leave policy and must not be granted further DL. From January 2015, this also includes those refused protection under Article 33(2) of the Refugee Convention.

## Considering further DL applications

All applications for further DL must be considered in line with this guidance, taking into account all information available at the date of decision, including the contents of the application form, country reports and any other relevant information, including that provided at the time of the original grant of DL. In most cases applications for further DL may be considered and decided without the need for interview, unless you are not satisfied you have all the necessary information or evidence in order to make an informed decision on the application. However, you should first write to applicants to request further information before considering whether an interview is necessary.

Out of time applications must still be considered on the basis of all the evidence put forward and the fact that the application was late should not, on its own, be used as

a reason to refuse further leave where the individual otherwise qualifies under the policy. Those who apply out of time will be unable to accrue continuous leave towards settlement.

## Unaccompanied children who have turned 18

Unaccompanied children granted leave in accordance with [paragraphs 352ZC to 352ZF of the](#) Immigration Rules who have turned 18 by the time they apply for further leave or whilst a pending application is being considered must be considered in the same way as an adult applying for further leave. They will no longer qualify for further leave as an unaccompanied child but you must consider whether they qualify under another category before refusing the further application. Those granted DL as an unaccompanied child may also apply on another route if they wish to extend their limited leave.

## Granting further DL

Where an individual meets the requirements for a grant of further DL, they should normally be given leave in accordance with the [duration of grants section](#) even if this means that they become eligible to apply for further leave or settlement before that period of leave expires.

## Refusing further DL

Where an application for further DL is considered and it is decided that the individual no longer qualifies for DL, the application should be refused. There is no automatic right to further leave or settlement and those who apply for further leave must qualify under the policy in force at the time of the decision.

## Further leave applications - General Grounds for Refusal (Criminality)

On 1 December 2020, the Immigration Rules were amended to introduce a single threshold for a mandatory refusal on the basis of a custodial sentence of at least 12 months. The policy for this change is set out in the [General grounds for refusal-Criminality](#) (GGfR) guidance. The new criminality rules apply to applications made after 9 am on 01 December 2020 and state the following:

- ‘9.4.1. An application for entry clearance, permission to enter or permission to stay must be refused where the applicant:
- (a) has been convicted of a criminal offence in the UK or overseas for which they have received a custodial sentence of 12 months or more; or
  - (b) is a persistent offender who shows a particular disregard for the law; or
  - (c) has committed a criminal offence, or offences, which caused serious harm.’

This means that claimants who have applied for permission to stay on or after 1 December 2020 and who have a custodial sentence of 12 months or more must be refused.

## Considering further DL

There is a cohort of claims where a claimant:

- has a previous custodial sentence of 12 months or more but has previously been granted DL (in the knowledge of this sentence); and
- is now applying for a further grant of DL

Under Part 9 of the Immigration Rules this application must be refused. However, for this cohort an exception may be made if certain criteria apply. You may grant a further period of DL to a claimant if all of the following criteria apply:

- the claimant has previously been granted DL
- the circumstances prevailing at the time of the claimant's original grant of DL continue to apply
- the claimant's offending occurred before their previous grant of DL which means they were last granted DL in the full knowledge of their previous conviction / convictions
- the claimant has not received any subsequent convictions since they were last granted DL; and
- the claimant does not fall within the scope of the restricted leave policy

If all the above criteria apply and the claimant otherwise meets the requirements of the DL policy, you may issue a further grant of DL. If the claimant does not meet the criteria set out above, you must apply the GGfR policy and refuse to grant DL accordingly.

Where there have been no further instances of criminality since their last grant of DL but the circumstances which led to that grant have changed, you will need to consider whether it is appropriate to grant DL on any other basis or whether to refuse DL.

## Considering settlement

Settlement is a privilege and not an automatic right. This is a longstanding position. Being granted leave on a particular route gives no expectation of anything further other than leave for the period originally granted. Therefore, further DL can be granted where the above criteria applies. However, any Indefinite Leave to Remain applications fall to be considered by reference to the Immigration Rules at the point of the application unless there are exceptional mitigating circumstances that would otherwise warrant a grant of leave. You must continue to consider all applications for settlement on a case-by-case basis, applying the current GGfR rules and policy.

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# Settlement applications

This section applies to those granted an initial period of limited leave under the Discretionary Leave (DL) policy on or after 9 July 2012 and who do not, at the date of decision, fall within the restricted leave policy. For cases where an initial period of DL was granted before 9 July 2012 see [Transitional arrangements](#).

An individual will normally become eligible to apply for settlement after completing a continuous period of 120 months' (10 years') limited leave. The application will be considered in light of the circumstances prevailing at that time. All settlement applications must be made on the appropriate form no more than 28 days before existing leave expires. Any time spent in prison in connection with a criminal conviction will not count towards the 10 years. However, leave can be aggregated either side of a period of imprisonment providing that the continuous residence requirement is met.

Any leave accrued whilst waiting for a valid application for further leave to be considered, may count towards the required period of leave for settlement, providing the application was made in time and leave was automatically extended in accordance with section 3C(2) of the Immigration Act 1971. For further guidance see: Section 3C and 3D leave.

## Considering settlement applications

As with an application for further leave, the application should be considered in accordance with this policy to assess whether they still qualify for DL. Those who have accrued leave under the LOTR policy and later granted DL may be able to have all periods of leave taken into consideration in calculating the leave accrued towards the qualifying period when applying for settlement. This will depend on the individual circumstances, including the reasons for the grant of LOTR.

## Granting settlement

Where an individual has held DL for a continuous period of 10 years and continues to qualify for DL under the policy, they should be granted settlement unless there are any criminality or exclusion issues. See [Criminality and Exclusion section](#).

## Further grants of DL

There may be cases where it is clear that the basis for the (continuing) grant of DL is temporary. Settlement should not normally be granted if there is a clear basis for considering that within 12 months the factors giving rise to the grant of DL will cease to apply. An individual may not be denied settlement under this section for more than 12 months beyond the normal qualifying period.

## Refusal of settlement and further leave

Where an individual no longer qualifies for DL, the application for settlement should be refused and further DL should not be granted.

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# Travel documents

An individual granted Discretionary Leave (DL) will normally be expected to keep their own national passport valid or obtain a passport from their country of origin (in cases where there is not an outstanding protection claim). This is because it has not been accepted that the individual has a well-founded fear of return to their own country or of their own authorities and DL has been granted for other reasons.

However, an individual who has DL following an unsuccessful asylum claim may apply for a Home Office Certificate of Travel (COT) on the appropriate application form and payment of the correct fee. Applicants must normally provide evidence to show that they have been formally refused a national passport or evidence to demonstrate they have made efforts to obtain a passport which have proved unsuccessful in the absence of a formal refusal from the relevant embassy. Where the applicant has Indefinite Leave to Remain, the COT will usually be valid for 5 years. Otherwise it will usually expire when the holder's current leave to enter or remain expires.

It should be noted that even if all the criteria are met, an application for a COT can be refused for compelling reasons of national security and public order. Further information about applying for travel documents is available on [GOV.UK](https://www.gov.uk).

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# Transitional arrangements

All decisions made on Discretionary Leave (DL) on or after 9 July 2012 will be subject to the criteria set out in this guidance. Where a decision was taken before 9 July 2012 but an appeal is allowed on or after 9 July 2012 on Article 8 family life or private life grounds, staff must refer to [IDI CH8 \(Family Members transitional cases\)](#), except in deportation cases.

Those granted DL before 9 July 2012 may apply to extend that leave when their period of DL expires. All such applications, including settlement applications under the transitional arrangements, must be made on the appropriate application form no more than 28 days before their existing leave expires. You must apply the following guidance:

## Applicants granted DL before 9 July 2012

Those granted leave under the DL policy in force before 9 July 2012 will normally continue to be dealt with under that policy through to settlement if they continue to qualify for further leave on the same basis as their original DL was granted (normally they will be eligible to apply for settlement after accruing 6 years' continuous DL (or where appropriate a combination of DL and LOTR, see [settlement applications](#) section)), unless at the date of decision they fall within the restricted leave policy.

You must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same, the individual does not fall within the restricted leave policy and the criminality thresholds do not apply, a further period of 3 years' DL should normally be granted. You must consider whether there are any circumstances that may warrant departure from the standard period of leave.

If there have been significant changes that mean the applicant no longer qualifies for leave under the DL policy or the applicant falls for refusal on the basis of criminality (see [exclusion and criminality](#) section above), the further leave application should be refused.

Those granted DL for 6 months because of the refusal or withdrawal of asylum or humanitarian protection on grounds of criminality and who do not fall within the restricted leave policy, must normally wait 10 years before being eligible to apply for settlement. Where an individual has accrued 10 years' lawful residence under the DL policy and applies for settlement, you must consider [Part 9 of the Immigration Rules](#).

## Validity of further applications

You may continue to see applications for further periods of leave made on the HP or DL Form. These should be accepted and considered providing the application was received before 13 December 2012.

From 6 April 2015, all applications for further leave under the DL policy must be made on the FLR(DL) form and are chargeable unless the applicant falls within the

scope of the fee waiver policy. For failed asylum seekers this applies only to further leave applications – the initial grant of leave is still processed free of charge. Those who are applying for further leave on the basis of family or private life should use the FLR(FP) form. All applications must meet the conditions in force at the time the application is made.

Applications for further DL must be accompanied by the correct fee in line with the requirements of the [Immigration and Nationality Fees Regulations](#) and Fee waiver guidance for FLR(FP) and FLR(HRO). See GOV.UK for the current forms and guidance.

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