



Home Office

Military service and conscientious objection

Version 2.0

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About this guidance

This guidance tells you about the points you must consider when considering asylum or human rights claims based on military service including evasion or desertion.

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 email the Guidance Rules and Forms team.

Publication

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

- version **2.0**
- published for Home Office staff on **28 July 2022**

Changes from last version of this guidance

- updated to provide the relevant and most up to date links
- reformatted onto the latest guidance template
- updated to provide relevant case law

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Purpose of instruction

This instruction gives guidance on the points which caseworkers must consider when dealing with asylum and human rights claims based on military service including evasion or desertion.

The majority of claims on these grounds come from those who object to performing compulsory military service and this instruction is primarily concerned with these cases. However, the guidance on desertion and conscientious objection can equally be applied to claims where an individual has volunteered for military service.

Article 1F of the Refugee Convention 1951 (“the Convention”) excludes individuals where there are serious reasons for considering they have committed serious crimes, including war crimes, crimes against humanity and/or serious non-political crimes or have been guilty of acts contrary to the purposes and principles of the United Nations from the provisions and protections enshrined in the Convention. Where there are serious reasons for considering that an individual has carried out any of those crimes during their military service and has subsequently left for fear of reprisal, Article 1F still applies.

You must refer to guidance on Exclusion under Article 1F and Article 33(2) of the Refugee Convention before excluding an individual under this provision.

The guidance must be read in conjunction with the main asylum policy instructions on considering protection needs in asylum claims. In particular:

- Assessing credibility and refugee status
- Refugee leave
- Humanitarian protection
- Discretionary leave
- Exclusion (Article 1F) and Article 33(2) of the Refugee Convention

You must also refer to the relevant [country policy and information notes](#) which include guidance on individual countries of origin.

The guidance takes account of the [UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status](#) (paragraphs 167-174) and other key case law.

Background

There is no international human rights treaty-based definition of conscientious objection. Conscientious objection to military service is based on the right to freedom of thought, conscience and religion, as set out in Article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Application in respect of children

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#) requires the Home Office to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. In dealing with parents and children, you must see the family both as a unit and as individuals. Although a child's best interests are not a factor in assessing whether a fear of persecution is well-founded, the way you interact with children throughout the decision-making process and any decisions following the determination of refugee status must take account of the section 55 duty.

You must comply with this duty when carrying out actions set out in this instruction in respect of children and those with children. You must follow the principles set out in the statutory guidance [Every Child Matters - Change for Children](#).

Our statutory duty to children means you must demonstrate:

- fair treatment which meets the same standard a British child would receive
- the child's best interests being a primary, although not the only, consideration
- no discrimination of any kind
- timely processing of asylum claims
- identification of those who might be at risk from harm

Considering claims from those who are under eighteen must be conducted by decision-makers who have completed the requisite training and are qualified to interview and decide them. See Children's asylum claims guidance. 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.

When a child does not qualify for refugee status, you must next consider whether they qualify for a grant of humanitarian protection (HP). As with a grant of asylum, a decision to grant HP will normally be in keeping with a duty to take account of the need to safeguard and promote the welfare of the child.

The application of exclusion clauses to asylum claims from children must always be exercised with great caution, given the particular circumstances and vulnerabilities of children where exclusion is being considered in respect of a child claimant. For further information see guidance on Exclusion under Article 1F and Article 33(2) of the Refugee Convention.

You must keep this duty in mind throughout the asylum decision-making process and refer to other specific guidance available, as relevant, in the Dependants, the Children's asylum claims guidance, and the Family asylum claims guidance.

See guidance on Processing children's asylum claims for information on child soldiers.

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Relevant legislation

Current UK asylum law is derived from a range of sources; international and European Law (remaining applicable following EU Exit), primary and secondary legislation, the Immigration Rules (which are in turn supported by policy and guidance) and a substantial body of caselaw.

The Refugee Convention (the ‘Convention’)

The [Refugee Convention](#) is the primary source of the framework of international refugee protection. As a post-Second World War instrument, it was originally limited in scope to those fleeing events occurring before 1 January 1951 and within Europe. The 1967 Protocol removed these limitations to give the Convention universal coverage. It has since been supplemented in the European Union and other regions by a subsidiary protection regime, as well as through the progressive development of international refugee and human rights law.

Under [Paragraph 328](#) of the Immigration Rules, all asylum applications have to be decided in accordance with the Convention. Many of the principles set out in the Refugee Convention have been incorporated into and interpreted by UK law, through statute, caselaw, and policies.

The European Convention on Human Rights (ECHR)

The [ECHR](#) (formally the Convention for the Protection of Human Rights and Fundamental Freedoms) is an international convention to protect human rights and political freedoms in Europe. Drafted in 1950 by the [Council of Europe](#), the Convention entered into force on 3 September 1953. The Convention established the [European Court of Human Rights](#) (ECtHR).

The ECHR is incorporated into UK law through the Human Rights Act 1998. This makes it unlawful for a public authority to act in breach of the UK’s obligations under the ECHR. Any individual who feels that their ECHR rights have been violated by a public authority can make arguments based on the ECHR in any of the UK courts, without needing to apply directly to the ECtHR. Decision-makers are in some cases required to assess whether an individual has protection needs related to their rights under the ECHR and this is dealt with through separate guidance on claims for Humanitarian Protection and Family Life.

The following Articles of the ECHR are addressed in this guidance:

- Article 3 - Inhuman or degrading treatment
- Article 4 - Prohibition of slavery and forced labour
- Article 9 - Freedom of thought, conscience and religion

Draft evasion and desertion

Both draft evasion and desertion are usually criminal offences and are therefore punishable by law. It is legitimate for countries to require their citizens to perform compulsory military service. Punishment for failing to complete this duty does not in itself necessarily constitute persecution. Similarly, where an individual has volunteered to carry out military service (rather than this being a requirement on them) punishment in accordance with the law for desertion will not automatically constitute persecution.

The UNHCR Handbook notes:

“Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft-evader”.

A deserter or draft-evader may also be considered a refugee if it can be shown that they would suffer disproportionately severe punishment for the military offence on account of their race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that they have a well-founded fear of persecution on these grounds above and beyond the punishment for desertion.

Conscientious objection

A conscientious objector is someone who can show that their performance of military service would require participation in military action contrary to their genuine religious or moral convictions.

A distinction can be made between "partial" and "absolute" conscientious objectors. A partial objector is someone who claims that they are not opposed to military service in principle but to a certain aspect of it such as a particular military action (for example, an individual who believes they have to fight against people of their own nationality or ethnicity). An absolute objector is someone who is opposed to any form of military service in principle (for example, pacifists or members of religious orders that are fundamentally opposed to military service).

The House of Lords held in [Sepet and Bulbul](#) that punishment for refusing to perform military service either because of an "absolute" or a "partial" conscientious objection will not in itself give rise to a well-founded fear of persecution. The Court held that there is no provision in international law which requires States to recognise the right to conscientious objection or to provide some form of alternative service. Therefore, it is legitimate for States to treat conscientious objectors in the same way as any other draft evader. As a result, punishment for refusing to perform military service due to genuine reasons of conscience does not amount to persecution except in the limited circumstances as outlined below (see [Circumstances in which persecution will arise](#)).

An individual's conscientious objection to military service, even if it is on moral rather than political grounds, may be construed by others as the expression of a political opinion (for further guidance on political opinion see the guidance on Assessing credibility and refugee status). Similarly, an individual may have a religious basis for their conscientious objection. Punishment for draft evasion and desertion can, in particular circumstances, amount to persecution on political or religious grounds. However, if the state was simply punishing a conscientious objector for their failure to comply with its laws rather than being motivated by a Convention reason (see– [Persecution of Convention Reason](#)) that would not amount to persecution. Subsequently, if reassignment to a non-combatative role or discharge (without arbitrary punishment) is offered an individual, persecution will also not be established.

In [Bayatyan v. Armenia \(Application no. 23459/03\)](#) the Grand Chamber found a violation of the applicant's rights under Article 9 (freedom of thought, conscience and religion) and found that his punishment for a refusal to perform military service constituted as an interference with the right to manifest religion or belief.

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Circumstances in which persecution will arise

There are certain situations where punishment for refusing to perform military service would amount to persecution which derive from [Sepet & Bulbul](#). The existence of persecution in one of these 3 situations alone would not be grounds for a successful claim for refugee status unless the individual also establishes that the persecution occurred for a Convention reason.

These situations are:

- where the military service would involve acts, with which the individual may be associated, which are contrary to the basic rules of human conduct - this can include war crimes, crimes against humanity and grave human rights violations such as rape, torture or genocide
- where the conditions of military service would be so harsh as to amount to persecution (for example, where they are at a risk of a threat to life (not exclusively in relation to combat), torture, security or freedom such as modern slavery, servitude, forced or compulsory labour and they have no viable opportunity to object)
- where the punishment for draft evasion or desertion is disproportionately harsh or severe (for example, where prison conditions breach Article 3 of the ECHR (inhuman or degrading treatment) and they may face a real risk of torture or threat to life)

Where these circumstances arise, you must consider the individual facts in each case taking into account the following:

- the credibility of the claim
- the availability of any alternatives to military service (including alternatives to military service which might involve acts contrary to the basic rules of human conduct)
- how the law is applied in practice in the relevant country

Even where the punishment is not overly harsh, if the individual is still required to complete military service, which may involve association with acts contrary to the basic rules of human conduct or where the conditions of service would be so harsh as to amount to persecution, then the punishment may amount to persecution.

Where military service involves acts contrary to the basic rules of human conduct

The key issue is whether a conflict in which an individual might be involved is contrary to the basic rules of human conduct.

The test to be applied, as adopted in the case of [Foughali](#) and followed in [VB \(Desertion-Chechnya War-Hamilton\) Russia CG \[2003\] UKIAT 00020](#), is whether a person can evidence that they have or would be required to participate in acts contrary to 'the basic rules of human conduct', that is participation in a particular armed conflict said to be contrary to international law. For this test to be satisfied, there would need to be proof of violations of the laws of war occurring on a widespread and systemic basis. The fact that a conflict has received international condemnation is not, in and of itself, sufficient to satisfy this test.

In PK and OS (basic rules of human conduct) Ukraine CG [2020] UKUT 00314 (IAC), it was found that the individual concerned must demonstrate that it is reasonably likely that their military service would involve the commission of acts contrary to the basic rules of human conduct, or that it is reasonably likely that, by the performance of their tasks, they would provide indispensable support to the preparation or execution of such acts.

You must also refer to the relevant [country policy and information notes \(CPIN\)](#) which includes guidance on individual countries of origin and refer to a Senior Caseworker before making an assessment of whether a particular conflict is contrary to the basic rules of human conduct.

Where the conditions of military service are so harsh as to amount to persecution

Although the conditions in many armed forces may be described as harsh, in order for an individual to establish that these conditions amount to persecution they would need to show:

- that this harsh treatment amounted to persecution; and
- that there is a reasonable likelihood that they may face this harsh treatment

For an individual to succeed under this heading there would have to be both evidence of treatment, such as serious and condoned bullying, in the military of that country and evidence that the individual would be singled out for being part of a group of people who were at real risk of being subject to such treatment and that the treatment was incurred for a Convention reason.

You must also refer to the relevant Country Policy Information Note (CPIN), which includes guidance on individual countries of origin, and a senior caseworker before making an assessment of whether the conditions of military service are so harsh as to amount to persecution.

Where punishment for draft evasion or desertion is disproportionately harsh or severe

In order for a punishment to be considered disproportionately harsh or severe it would need to be of a particularly serious nature.

Long prison sentences will not normally be enough to engage the protection of the Convention. The tribunal found in Foughali that a substantial period of imprisonment (2-10 years in this particular case) was not disproportionate in itself for refusing to perform military service (see below [prison conditions](#) and potential breach of [Article 3 ECHR](#)).

Persecution for a Convention reason

The question of whether persecution is directed against an individual for a Convention reason is not always a simple one. You must assess carefully the real reason for the persecution, looking at the real reason in the mind of the persecutor (rather than the reason which the victim may impute to the persecutor). In any particular case, there may be more than one real reason in the mind of the persecutor.

Where it can be established that punishment for refusing to perform military service would be persecutory, in order for that persecution to be for a Convention reason it must be shown that there is discrimination in the application of the punishment and that the discrimination is based, or partly based, on a Convention reason. For instance, if punishment for draft evasion and desertion is so harsh as to constitute persecution but is applied to all draft evaders regardless of their reasons for draft evasion or desertion then, the persecution would not be for a Convention reason. However, if certain ethnic or religious groups were treated less favourably than other draft evaders then there would be an element of discrimination and any persecutory treatment would be for a Convention reason.

The result of this is that even where punishment for draft evasion or desertion is persecutory, conscientious objectors will not be able to raise a valid claim to refugee status if that punishment is applied equally to all draft evaders and deserters. Even if it is not applied equally care must be taken in assessing whether there is a Convention reason present. The question of whether such punishment attracts protection under ECHR should be considered separately. If any cases arise in which there is uncertainty regarding this issue, then you must seek advice from a senior caseworker.

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ECHR, humanitarian protection and discretionary leave

Any claim where a risk of persecution is established due to any of the circumstances outlined in above, but where the persecution is not for a Convention reason, then you must go on to consider whether the individual is at real risk of treatment in breach of the ECHR.

Where an individual is found not to be a refugee under the Convention, but they are nevertheless at risk of serious harm on return to their country of origin, a grant of humanitarian protection may be appropriate. Further guidance on these issues can be found in the guidance on Humanitarian Protection and Discretionary Leave

Prison conditions and Article 3: inhuman or degrading treatment

In many cases where asylum claims are made based on a fear of persecution owing to a refusal to perform military service, an individual may also claim that if imprisoned the conditions would be so severe as to make removal from the UK a breach of their rights under Article 3 of the ECHR.

Article 3 may be breached if, due to the individual's personal circumstances, imprisonment would amount to inhuman or degrading treatment. This will depend on any relevant factors, including but not limited to:

- likely length of detention
- type and conditions of detention facilities
- individual's age, gender, vulnerability, physical or mental health

If the sentence or prison regime, irrespective of its severity, is discriminatory or disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion, the individual may qualify as a refugee. CPINs will normally provide information about prison conditions in the relevant country of origin and whether they are severe enough to meet the Article 3 threshold. If further information is necessary, you must complete a country information request.

See the Home Office guidance on Humanitarian Protection for further information. Further information on conditions in particular countries may also be found in the relevant [CPINs](#).

Articles 4: Prohibition of slavery and forced labour

Article 4 of the ECHR would not be breached by removal of a conscientious objector because Article 4.3(b) states that the Article does not include "any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service".

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