



Home Office

# Humanitarian Protection

Version 5.0

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# About this guidance

This instruction explains the circumstances in which it would be appropriate to grant humanitarian protection (HP). It provides guidance on the terms and conditions attached to any grant of leave on this basis and the circumstances that would lead to a refusal to renew or a decision to revoke such leave.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the 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 and publication

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

- Version **5.0**
- published for Home Office staff on **07 March 2017**

## Changes from last version of this guidance

- updated and expanded sections on revocation of HP and appeal rights
- new section included on settlement
- new guidance template applied, and section and paragraph numbering removed in line with guidance requirements

### Related content

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# Purpose of Instruction

This instruction explains the circumstances in which it would be appropriate to grant humanitarian protection (HP) where an individual is found not to be a refugee under the Refugee Convention but they are nevertheless at risk of serious harm on return to their country of origin. HP can only be granted if the individual does not fall to be recognised as a refugee but requires protection nonetheless.

Caseworkers must also refer to the asylum instructions on:

- Assessing credibility and refugee status
- Processing asylum claims from children
- Considering Human Rights claims
- Discretionary leave
- Appendix FM Section 1.0b covering Family Life (as a partner or parent) and Private Life: 10-year route
- Restricted leave
- Drafting, implementing and serving asylum decisions

## Background

Humanitarian protection (HP) was introduced in April 2003 to replace the policy on Exceptional Leave to Remain. The Immigration Rules and our policy on HP reflect the subsidiary protection provisions in Articles 15 to 19 of the [Qualification Directive](#) (2004/83/EC). HP is designed to provide international protection where it is needed, to individuals who do not qualify for protection under the Refugee Convention. It covers situations where someone may be at risk of serious harm if they return to their country of origin but they are not recognised as refugees because the risk is not of persecution for a reason covered by the Refugee Convention.

When someone with limited leave on HP grounds applies to extend that leave a safe return review will be carried out and where they no longer need protection they will not qualify for further HP leave or settlement protection and will need to apply to stay on another basis or leave the UK. All those granted HP may also have their case reviewed in light of any criminality and such leave may be revoked if they are no longer entitled to protection.

## Policy Intention

The policy objective in granting HP is to provide protection and a period of limited leave to those who need protection but do not qualify for refugee leave. The policy is designed to:

- meet our international obligations under EU law by providing protection to those at a real risk of serious harm in their country of origin but who do not qualify for refugee leave because they do not fall under the Refugee Convention
- maintain a fair immigration system that requires all migrants, including those granted HP, to earn the right to settlement, and all the benefits that come with it, by completing an appropriate period of limited leave

- make sure that safe return reviews are carried out so that protection is provided for as long as it is needed, but make clear that those who no longer need protection will need to apply to stay on another basis or leave the UK
- review cases in which someone with HP commits a criminal offence or evidence emerges that they represent a danger to security so that revocation action is taken where appropriate and the individual is removed or placed on more restrictive leave to facilitate removal as soon as possible

## Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to ensure that immigration and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. This applies to children who claim in their own right and to those who are dependants on their parents' claim.

Those who qualify for HP are normally granted limited leave for 5 years and any children who are under 18 and dependent on the claim will be granted leave in line with the main claimant. However, there may also be exceptional reasons to grant a longer period of leave and caseworkers should refer to the section on [applications for longer periods of leave](#).

Caseworkers must carefully consider any evidence provided as to how a child will be affected by a grant of limited leave rather than immediate settlement. In the vast majority of cases the impact will not be significant because limited leave provides appropriate protection in accordance with our international obligations and access to benefits and services that a child may require. It is therefore very unlikely that best interest considerations in an individual case will override the wider policy intention to require all migrants to complete an appropriate period of limited leave before being able to apply for settlement. Any grant of a longer period of leave would fall under the Discretionary Leave policy.

Although a child's best interests are not a factor in assessing whether their HP, or that of their parents, should be revoked caseworkers must have regard to the section 55 duty in considering whether other leave may be appropriate following such action. The statutory guidance, '[Every Child Matters – Change for Children](#)', sets out the key principles to take into account in all actions.

Where there are child welfare or protection concerns that may involve safeguarding issues within the family unit the case must be referred immediately to the local safeguarding team, who will refer the case to the relevant local authority in accordance with guidance on making safeguarding referrals. In an emergency the case must be referred to the police. The Office of the Children's Champion can also offer advice on issues relating to children, including family court proceedings and complex cases. For further information on the key principles to take into account, see: Section 55 Children's Duty Guidance. See also 'Processing asylum applications from children' guidance.

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# Relevant legislation

## European legislation

[Council Directive 2004/83/EC](#) (the Qualification Directive) sets out the provisions and criteria for granting subsidiary protection (referred to as Humanitarian Protection in the UK). It has been transposed into UK law through [The Refugee or Person in Need of International Protection \(Qualification\) Regulations 2006](#) and the [Immigration Rules](#). The relevant articles are:

- **Article 2(e)** provides that those who do not qualify as a refugee but face a real risk of serious harm on return to their country of origin from which the national authorities cannot afford sufficient protection, may be eligible for subsidiary protection
- **Article 15** sets out the definition of serious harm, which includes reference to a serious and individual threat to a civilian's life due to indiscriminate violence in international or internal armed conflict under Article 15(c)
- **Article 16** sets out when it would be appropriate to cease eligibility for leave, where circumstances which gave rise to the need for protection have ceased to exist or have changed such that protection is no longer needed
- **Article 17** sets out the circumstances in which someone is excluded from subsidiary protection, which mirrors provisions in Article 12 relating to exclusion from refugee status under the Directive
- **Article 19** sets out when it would be appropriate to revoke, end or refuse to renew a grant of subsidiary protection and mirrors provisions in Article 14 that relates to revocation of refugee status under the Directive

[The Procedures Directive 2005/85/EC](#) sets minimum standards for Member States for granting and withdrawing refugee status and has been transposed into UK law through the [Asylum \(Procedures\) Regulations 2007](#) and [the Immigration Rules](#). The relevant article is:

- **Article 2(b)** requires Member States to consider any application for international protection as an application for asylum (even if the claimant does not claim to be a refugee under the Refugee Convention)

## Domestic legislation

[Section 72 of the Nationality, Immigration and Asylum Act 2002](#) is the UK's definition of when the serious criminality provision in Article 33(2) is to be applied. In particular, section 72(2)(a) to (b) states:

A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is:

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least two years



However, the presumption that a person constitutes a danger to the community is rebuttable by that person.

[Section 82 of the Nationality Immigration and Asylum Act 2002](#) (as amended by the [Immigration Act 2014](#)) sets out the rights of appeal available against decisions taken under the Immigration Acts. An appeal can only be brought against a decision to refuse a protection or human rights claim, or to revoke protection status. A person has 'protection status' if they are granted leave as a refugee or as a person eligible for a grant of HP. However, it should be noted that those granted HP have a right of appeal against refusal of asylum under section 82(1)(a). This is because although they have been granted 'protection status', an element of the claim has been refused as it has been decided that removal will not breach the Refugee Convention.

## Immigration Rules

[Part 11 of the Immigration Rules](#) sets out the provisions for considering HP and reflects our obligations under the Qualification and Procedures Directives:

- [paragraph 327](#) reflects the requirements of the Procedures Directive that any application for international protection should be considered as an asylum claim (even if the claimant does not claim to be a refugee under the Refugee Convention)
- [paragraph 339C](#) sets out the criteria that must be met for an individual to be granted HP in the UK
- [paragraph 339D](#) sets out the circumstances in which a person will be excluded from a grant of HP
- [paragraph 339Q\(ii\)](#) sets out the conditions for granting a residence permit to those who qualify for HP

### Related content

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# Considering humanitarian protection

Under [paragraph 327 of the Immigration Rules](#) any claim for international protection is treated first as an asylum claim. As such the broad principles that apply to considering asylum claims apply equally to considering whether or not a person qualifies for humanitarian protection (HP). Caseworkers must be familiar with the circumstances in which it may be appropriate to grant HP where someone does not qualify for refugee status and the asylum interview must address such matters to ensure there is sufficient evidence on which to reach an informed decision.

## Standard of proof

HP must be granted where there are substantial grounds for believing that there is a real risk of serious harm. In considering whether there are such grounds the standard of proof to be applied is the same as applies in asylum, that is 'a reasonable degree of likelihood' that the person would face a 'real risk' of serious harm on return to their country of origin. These 2 tests reflect the same standard of proof. See [Assessing credibility and refugee status](#).

## Burden of proof

The burden of substantiating a claim lies with the claimant, who must establish to the relatively low standard of proof required that they qualify for protection. [Paragraph 339I](#) of the Immigration Rules emphasises the burden is on the claimant to provide evidence and the duty of the caseworker to assess the information put forward in co-operation with the person. Caseworkers must examine, investigate and research the available evidence and, if appropriate, invite submission of further evidence, where necessary. See [Assessing credibility and refugee status](#).

## Credibility

In most cases, the same evidence gathered in relation to the asylum claim will form the basis of the assessment of the claim for HP. When assessing credibility, caseworkers must follow the structured approach to assessing credibility asset out in the [Assessing credibility and refugee status guidance](#).

## Internal relocation and sufficiency of protection

In assessing whether a person qualifies for HP, the same principles of internal relocation and sufficiency of state protection that apply when considering refugee status must be applied. See [Assessing credibility and refugee status](#).

## Exclusion, revocation and refusal to renew

A person will not be eligible for a grant of HP if excluded from it under [paragraph 339D](#) of the Immigration Rules. See [exclusion from humanitarian protection](#). The Secretary of State may also decide to revoke or refuse to renew a grant of HP where the conditions set out in the Immigration Rules are met. See section [revocation or refusal to renew humanitarian protection](#).

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# Grounds for humanitarian protection

Where someone does not qualify for refugee status following consideration of their asylum claim, caseworkers must go on to consider whether they qualify for humanitarian protection (HP) under [paragraph 339C of the Immigration Rules](#). HP should normally be granted where there is a real risk of serious harm on account of one or more of the following grounds:

## Article 15(a): Death penalty or execution

Caseworkers must consider whether there is a real risk of the claimant being intentionally deprived of their life or that, on the basis of the available evidence, there is a real risk that they would be convicted and face the death penalty in the country of return. In death penalty cases it will often be necessary to contact the Country Policy and Information (CPI) team for advice on whether the death penalty applies to the crime in question and whether it is actually used in practice. No enquiries should be made directly to the authorities in the country of origin (or their representatives in the UK) about the risk to a particular individual facing the death penalty. The Foreign and Commonwealth Office (FCO) may be able to help in such circumstances but any enquiries must be made through the CPI team.

## Unlawful killing

'Unlawful killing' is a UK provision in addition to those listed in Article 15 of the Qualification Directive. This is where there is a real risk that a person would be unlawfully, that is extra-judicially, killed by the state (or agents of the state), or there is a real risk of targeted assassination by non-state agents and there is no effective protection and no feasible internal flight alternative. It relates to a specific threat to an individual other than by reason of indiscriminate violence in international or internal armed conflict (which is covered by [Article 15\(c\)](#)) and which would be contrary to Article 2 of the European Convention on Human Rights (ECHR).

Examples of situations which must not be accepted as creating the real risk of harm under this category are where the alleged threat to the claimant's life arises:

- in defence of any person from unlawful violence
- to effect lawful arrest or to prevent the escape of a person lawfully detained
- in action lawfully taken for the purpose of quelling a riot or insurrection

## Article 15(b): torture or inhuman or degrading treatment

This reflects Article 3 of the ECHR which provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. HP will normally be granted if there is a real risk of treatment contrary to Article 3 where the mistreatment does not amount to persecution for a Refugee Convention reason. Caseworkers must carefully consider this element because even if the more obvious convention reasons (race, religion, nationality, political opinion) do not apply, it may be that someone qualifies as a refugee on account of their membership of a particular social group. See *Assessing credibility and refugee status guidance*.

## Prison conditions

Prison conditions which are systematically inhumane and life-threatening are contrary to Article 3 of the ECHR. However, even if conditions are not severe enough to meet that high threshold, Article 3 may still be breached if, due to the individual's personal circumstances, detention would amount to inhuman or degrading treatment. This will depend on a combination of the following factors:

- the likely length of detention
- the type and conditions of detention facilities
- the individual's age, gender, vulnerability, physical or mental health
- any other relevant factors taking all evidence into account

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 claimant may qualify as a refugee. CPI reports will normally provide information about prison conditions in the country of origin and whether they are severe enough to meet the Article 3 threshold. If further information is necessary, caseworkers must complete a country information request.

The potential breach of Article 3 will not justify the grant of HP (or refugee status) if the sole purpose is that the claimant is fleeing justice rather than persecution, or their criminal conduct brings them within the exclusion criteria. [Paragraph 339D](#) provides for exclusion from HP where an individual is considered to have committed a crime that would be punishable by imprisonment were it committed in the UK and the person left their country of origin solely to avoid prosecution. If the caseworker nevertheless considers that, although excluded from HP, the claimant faces a real risk of imprisonment on return and prison conditions breach Article 3 for the individual concerned, they must consider whether to grant [Restricted Leave](#).

## General violence and other severe humanitarian conditions

The Article 3 threshold is a particularly high one. In [NA v the UK](#), the European Court of Human Rights (ECtHR) found that a general situation of violence in the country of return will not normally mean that removing an individual would be a breach of Article 3. It would only be in the most extreme cases of general violence, where there was a real risk of serious harm simply by virtue of exposure to such violence.

There may be exceptional situations where conditions in the country, for example, absence of water, food or basic shelter, are unacceptable to the point that return in itself would constitute inhuman and degrading treatment for the individual concerned. Factors to be taken into account include age, gender, ill-health, the effect on children, other family circumstances, and available support structures. Caseworkers must consider that if the state is withholding these resources from the individual, whether it constitutes persecution for a Refugee Convention reason as well as a breach of Article 3 ECHR. If it amounts to persecution for a refugee convention reason, they are likely to be a refugee.

In [Sufi and Elmi v the UK](#) the ECtHR considered how Article 3 applies to the question of generalised violence and a severe humanitarian situation as a result of such violence. It found that following [NA v the UK](#), the sole question for the court to

consider is whether, in all the circumstances of the case before it, there were substantial grounds for believing that the person concerned, if returned, would face a real risk of treatment contrary to Article 3. If this is established then their removal will breach Article 3, regardless of whether the risk arises from general violence, a personal characteristic of the individual or combination of both. However, the court found that it is clear that not every situation of general violence will give rise to such a risk and on the contrary, made it clear that general violence would only be of sufficient intensity to create such a risk in the most extreme cases where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.

The ECtHR went on to address the situation where dire humanitarian conditions, widespread displacement and the breakdown of social, political and economic infrastructures were predominantly due to direct or indirect actions of the parties to the conflict, who were using (in the case of Somalia, for example, at the time of the judgment) indiscriminate methods of warfare in densely populated urban areas with no regard to the safety of the civilian population. Following the approach adopted in [M.S.S v Belgium and Greece](#), the court found that decision makers must consider a claimants' ability to cater for their most basic needs, such as food, hygiene and shelter, their vulnerability to ill-treatment and the prospect of their situation improving within a reasonable time-frame.

### **Article 15(c): Indiscriminate violence**

An assessment of protection needs under Article 15(c) of the Qualification Directive must only take place if a claimant is unable to establish a need for refugee protection or subsidiary protection under [Article 15\(a\)](#) or [Article 15\(b\)](#). Caseworkers must refer to [country policy information reports](#) and UK court assessments on specific countries, referred to as 'country guidance cases', when considering whether the threshold for engaging Article 15(c) is met.

European and domestic case law has established the interpretation of Article 15(c) in the Court of Justice of the European Union (CJEU) in [Elgafaji \[2009\] EUECJC-465-07](#), and in the UK Court of Appeal in [QD \(Iraq\) v SSHD \[2009\] EWCA Civ 620](#). Decision makers must also refer to the relevant country guidance cases which can be found in the Country information and guidance pages. Article 15(c) entails a lower level of harm than Article 3 ECHR and can be engaged by different types of harm. A claim for protection based on indiscriminate violence must be assessed by applying the test set out in [\(QD \(Iraq\) v SSHD \[2009\] EWCA Civ 620\)](#):

“Is there in [country] or a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant would, solely by being present there, face a real risk which threatens their life or person?”

This test comprises of an assessment of the following elements:

#### **Indiscriminate violence arising from armed conflict**

This applies in any situation where there is a high level of indiscriminate violence. It does not matter whether the risk of serious harm arises from actions of the state, the parties to the conflict or an insurgency, so long as the threshold of violence in the test is met. To meet this test, the situation will be one where the level of violence is

such that, without anything to render them a particular target, civilians are at real risk of random injury or death due to indiscriminate violence. It covers real risks presented, for example, by:

- indiscriminate shelling or bombing of civilian areas
- suicide bombers or car bombs in market places
- snipers firing randomly at people in the street
- violent crime as a result of the breakdown of law and order arising out of the conflict

When conducting an assessment, caseworkers must focus on the level of violence and not the nature of the armed conflict. Not every situation of armed conflict will meet the threshold the key issue is the level of the violence and the risk to civilians. Caseworkers must also consider other factors alongside the level of violence which could increase the risk to an individual in the particular country situation. For example, whether the individual may need hospital care in a situation in which hospitals are coming under fire, or they have to travel through military or insurgent checkpoints where the risk of violence is enhanced. Caseworkers must take account of the risk that may, in particular, impact upon children or on those responsible for their welfare.

### **Civilians only**

The test applies only to civilians. They must be genuine non-combatants and not those who are party to the conflict. However, this could include former combatants who have genuinely and permanently renounced armed activity.

### **A material part**

The reference to a 'material part' in the test is a reference to the claimant's home area or, if appropriate, any potential place of internal relocation, where the fear of serious harm is clearly limited to specific parts of the country. Therefore, [paragraph 339O](#) (Internal Relocation) must be applied in the usual way.

### **Serious threat of real harm**

The fear of possible but unlikely risk is insufficient to meet the test as there must be a realistic threat of real harm. In many cases where there is armed conflict in a country civilians may well be fearful of being caught up in violence. However, Article 15(c) is only engaged where an individual can show there is a real risk of serious harm on account of indiscriminate violence. The risk of harm is not only about the threat to life but also the physical or mental integrity of those caught up in violence.

### **The sliding scale and enhanced risk categories**

The tests may also be applied on a sliding scale. The more the claimant is able to show that they are specifically affected due to their personal circumstances, the lower the level of indiscriminate violence required for the test to be met. This may include, but is not limited to a child or someone of advanced age, disability, gender, ill-health, and ethnicity or, someone who is a perceived collaborator, medical professional, teacher or government official. Consideration of these situations may lead to a finding that an individual in fact meets the Refugee Convention requirements for recognition as a refugee, for example, membership of a particular

social group or an imputed political opinion. In those circumstances, refugee status should normally be granted.

**Related content**

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# When humanitarian protection should not be granted

## Refugee status

Humanitarian protection (HP) must not be granted where an individual is recognised as a refugee under the Refugee Convention, even if the claimant specifically requests HP instead. The [Immigration Rules](#) only allow for a grant of HP where the requirements of the Refugee Convention have not been met.

## European Union (EU) and European Economic Area (EEA) cases

HP must not be granted to EU nationals or their third country national family members who are exercising treaty rights. Neither should a claim be considered where another EU Member State, Norway or Iceland has accepted responsibility for an asylum claim under the Dublin Regulation or where an individual may otherwise be removed to a safe country.

## Medical cases

Cases where it is claimed that removal would breach Article 3 on medical grounds are not usually eligible for HP. In [M'Bodj v Kingdom of Belgium \(Case C-542/13\) \[2015\] 1 WLR 3059](#), the Court of Justice of the European Union (CJEU) confirmed that subsidiary protection status requires that the harm from which the applicant seeks protection must emanate from the conduct of a third party, and therefore cannot simply be the result of a naturally occurring illness combined with general shortcomings in the health system of the country of proposed return. As such cases raising medical or mental health issues must usually be considered under the Discretionary Leave policy.

This analysis applies equally to cases where a physical or mental illness may have arisen as a result of torture or serious harm in the past, but where there is no real risk of similar treatment occurring in the future. This position is supported by the decision of the Court of Appeal in [MP \(Sri Lanka\) \[2014\] EWCA Civ 829](#) (see paragraph 48 in particular). This case is under appeal to the Supreme Court, and the latter has made a relevant referral to the CJEU. However, the Secretary of State for the Home Department's (SSHDS) position remains that set out above.

The exception to this analysis is where someone claims that they will be denied future treatment for a Refugee Convention reason. In such circumstances it may be appropriate to grant refugee status or HP.

## Exclusion from humanitarian protection

A person will not be eligible for a grant of HP if they fall to be excluded under [paragraph 339D of the Immigration Rules](#) for one of the following reasons:



- there are serious reasons for considering they have committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes
- there are serious reasons for considering they are guilty of acts contrary to the purposes and principles of the United Nations or they have committed, prepared, instigated or encouraged or induced others to commit, prepare or instigate such acts
- there are serious reasons for considering that they are a danger to the community or to the security of the UK
- there are serious reasons for considering that they have committed a serious crime
- prior to their admission to the UK they committed a crime that would be punishable by imprisonment were it committed in the UK and they left their country of origin solely to avoid sanctions resulting from the crime

[Paragraph 339D](#) mirrors the exclusion provisions in Article 17 of the Qualification Directive (QD). Where the conduct is the same as that in Article 1F of Article 33(2) of the Refugee Convention, they must be interpreted in the same way. Paragraph 339D(i) reflects Article 17(i)(a) of the QD and applies to those who would be excluded from refugee status under Article 1F(a) of the Refugee Convention. Paragraph 339D(ii) reflects Article 17(i)(c) of the QD and applies to those who would be excluded under Article 1F(c) of the Refugee Convention. See Exclusion under Article 1F and 33(2) of the Refugee Convention.

[Paragraphs 339D\(iii\) and \(iv\)](#) reflect Article 17(i)(d) and (b) of the QD and apply where there are reasonable grounds for regarding an individual as a danger to the security of the UK, including those who exhibit extremist behaviours, or to those who have been convicted of a particularly serious crime such that they are deemed to be a danger to the community.

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## Serious crimes

This must be interpreted in a manner consistent with the policy on Exclusion under Article 1F and 33(2) of the Refugee Convention, see section 'particularly serious crime'. A serious crime for the purpose of exclusion from HP was previously interpreted to mean one for which a custodial sentence of at least 12 months had been imposed in the UK, but it is now accepted that a 12 month sentence (or more) should not alone determine the seriousness of the offence for exclusion purposes.

In [AH \(Algeria\) v Secretary of State for the Home Department \[2012\] EWCA Civ 395](#), Lord Justice Ward noted that the sentence is a material factor but not a benchmark.

In deciding whether a crime is serious enough to justify loss of protection, the tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed. Therefore, caseworkers must consider the sentence together with the nature of the crime, the actual harm inflicted and whether most jurisdictions would consider the offence a serious crime.

Examples of serious crimes include, but are not limited to, murder, rape, arson, and armed robbery. Other offences which might be regarded as serious can include those which are accompanied by the use of deadly weapons, involve serious injury to persons, or if there is evidence of serious habitual criminal conduct. Other crimes, though not accompanied by violence, such as large-scale fraud, may also be regarded as serious for the purposes of exclusion.

### Danger to security or the community

Where a person has been convicted of a criminal offence, the court may have considered whether they represent a danger to the community or the security of the UK as part of the sentencing. In addition, depending on the facts of the case, an individual who has not been convicted may also be excluded from HP. People who may represent a danger to the community or to the security of the UK can include:

- those included on the Sex Offenders Register (this would apply to those convicted of an offence after 1997)
- those whose presence in the UK is not conducive to the public good, for example, on national security grounds or due to their character, conduct or associations
- those who engage in one or more unacceptable behaviours in the UK or abroad, see section on [extremism](#)

### Extremism

Those who promote extremist views or engage in extremist activities that represent a danger to the security of the UK may engage Article 17 of the QD and therefore they will be refused HP under [paragraph 339D\(iii\)](#). Caseworkers must explore during the asylum interview any issues that may point towards extremist behaviour or activities. Those considered to represent a danger to the security of the UK on grounds of extremism may include:

- those whose presence in the UK is deemed not conducive to the public good, on national security grounds, due to their character, conduct or associations
- those who engage in unacceptable behaviours, in the UK or abroad, including undertaking, proposing to undertake or espousing extremist views which:
  - foment, justify or glorify terrorist violence to further particular beliefs or provoke others to commit terrorist acts
  - foment other serious criminal activity or seek to provoke others to such acts or foster hatred which may lead to inter-community violence
  - spread, incite, promote or seek to justify hatred on grounds of disability, gender, race, religion, sexual orientation, gender identity or for purposes of overthrowing democracy

This list is indicative, not exhaustive and includes the use of any medium to promote extremist behaviour, including:

- writing, producing, publishing or distributing material
- public speaking, including:
  - preaching
  - running a website or social media
  - using a position of responsibility, for example, teacher, community or youth leader to express extremist views

See the [Counter-Extremism Strategy](#) for further details.

It is Home Office policy to exclude from HP and remove those who are a threat to national security and those who commit serious crimes and are considered to be a danger to the community. However, where removal would breach the Home Office obligations under Article 2 or 3 of the ECHR shorter periods of more restrictive leave may be granted and the case kept under review so that the individual can be removed as soon as possible. See [Restricted Leave](#) for further guidance.

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## Prosecution outside the UK

[Paragraph 339D\(v\)](#) reflects Article 17(3) of the QD and applies where prior to their admission to the UK, an individual committed one or more crimes, outside the scope of Article 17(1) of the QD, which would be punishable by imprisonment, had they been committed in the UK, and they left their country of origin solely in order to avoid sanctions resulting from these crimes. See Assessing credibility and refugee status – section 'prosecution not persecution'.

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# Granting or refusing humanitarian protection

## Granting humanitarian protection

When HP is granted, the decision letter must first provide reasons for the refusal of refugee status. The letter must briefly set out the reasons for the grant of HP and whether this is on the basis of a fear of the national authorities or non-state actors. This is important because if an individual has no fear of their national authorities they will be expected to apply for a national passport rather than a Home Office travel document should they wish to travel abroad.

The consideration minute does not need to repeat information set out in the decision letter and there is no need to consider other European Convention on Human Rights (ECHR) issues in detail but if there is something that may be relevant to the future consideration of the claim, for example, a British spouse or child, this should be mentioned briefly.

## Refusing humanitarian protection

If a claimant does not meet the requirements for HP the decision letter must provide reasons for refusal of both refugee status and HP. Reasons for refusing HP may be brief where little or no reliance is being placed on the claimants' statements and the reasons for rejection are essentially the same as those for the refusal of asylum.

## Duration and conditions of leave

Those who qualify for HP under [paragraph 339C of the Immigration Rules](#) should normally be granted limited leave to enter or remain under [paragraph 339Q\(ii\)](#). This will normally include the following period of leave and associated benefits:

- an initial period of **5 years'** limited leave
- immediate and unrestricted access to the labour market, and recourse to public funds
- a **5 year** route to settlement for those who continue to need protection
- no requirement to demonstrate a knowledge of language and life in the UK when applying for settlement

## Family members

Family members who have been accepted as dependants on the claim will normally be granted leave and receive HP in line with the main claimant under [paragraph 339Q](#) of the Immigration Rules. See Dependants and former dependants.

## Applications for longer periods of leave

Those who are granted HP are normally expected to complete the appropriate qualifying period of limited leave before being eligible to apply for settlement. A grant of 5 years' limited leave will be a sufficient length of time save in the most exceptional of circumstances.

Article 20(3) of the Qualification Directive requires member states to consider the particular circumstances of vulnerable people. In some cases there may be compelling reasons to justify a longer period but this would only apply in the most exceptional of circumstances, which means not only a situation which is unusual but one which is distinguished to a high degree from others who need international protection, to the extent that it is necessary to deviate from the normal grant of limited leave. Where, in light of the specific situation of a vulnerable person a longer period of leave to remain is appropriate, this may be considered in accordance with the published policy on Discretionary Leave.

The claimant must provide specific evidence in support of why a longer period of leave is appropriate. In the case of medical or mental health issues, the evidence must specifically address why the longer period of leave is relevant to the claimant and why a grant of limited leave (with the opportunity to renew that leave) is insufficient. It is highly unlikely that a request for indefinite leave to remain (ILR) on account of, for example, employment or educational opportunities will succeed but caseworkers must consider if there are any other reasons to divert from the normal period of leave. Any immediate grant of ILR must be approved by a senior manager at senior executive officer (SEO) or above.

## Issuing travel documents

[Paragraph 344A](#) of the Immigration Rules sets out the criteria under which a travel document may be issued to a person granted HP. A person with leave to remain on these grounds should in many cases be able to travel on their own national passport.

However, they may be eligible to apply for a Home Office Certificate of Travel (CoT) if they can show that they have been formally and unreasonably refused a national passport by their own authorities. Where it is accepted that they have a well-founded fear of their national authorities, they are not required to approach those authorities for a passport before becoming eligible for a CoT.

A CoT may also be issued where a person has made reasonable attempts to obtain a national passport or identity document, particularly where there are serious humanitarian reasons for travel. For further information, see [the guidance on applying for travel documents on the Home Office website](#).

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# Settlement

This section applies to all those who are applying for settlement protection. Those granted humanitarian protection (HP) will be eligible to apply for settlement (also referred to as indefinite leave to remain) once they have completed the required probationary period of 5 years' limited leave.

The settlement application must be made using the appropriate application form, which is available on the [GOV.UK website](#).

## Safe return review at settlement

All those who apply for settlement protection after completing the appropriate probationary period of limited leave will be subject to a safe return review with reference to the country situation at the date the application is considered. Those who still need protection at that point will normally qualify for settlement. Caseworkers must refer to the settlement protection instruction for more detailed guidance on considering such applications.

## Those who do not apply for further leave

Where an individual with HP leave does not apply for settlement before their current leave expires or does not apply for further leave at all, they become an overstayer and are no longer entitled to the benefits associated with a valid period of limited leave to enter or remain, for example permission to work or access to mainstream benefits. They also become liable to removal.

Where any overstaying comes to light as part of a settlement application, decision makers must follow the guidance in the settlement protection instruction. Where evidence comes to light that an individual has overstayed and has not made an application for further leave, their case must be referred to the Status Review Unit in the first instance where an in-depth review of that person's entitlement to continued protection will be conducted.

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# Revocation of humanitarian protection

A person's humanitarian protection (HP) granted under [paragraph 339C of the Immigration Rules](#) will be revoked or not renewed if any of paragraphs 339GA to 339GB apply. A person's HP granted under paragraph 339C may be revoked or not renewed if paragraph 339GD applies.

## Triggers that lead to a review of humanitarian protection

Where someone has HP, revocation action can be taken at any time if there is sufficient evidence to justify such action. This could be:

- during the initial period of limited leave
- after their leave has expired pending a decision on any settlement application
- whilst they have indefinite leave to remain (ILR)

It is possible to consider revocation on one or more grounds and any criminality by the individual or any dependants should lead to a review to consider whether revocation action is appropriate. The following is not an exhaustive list of triggers. Where there are any concerns about a grant of HP, decision makers must discuss the case with a senior caseworker (SCW) or technical specialist.

## Reasons for the grant cease to apply

A change in personal circumstances or country situation may mean that the reasons that led to the grant of HP no longer apply. Any change must be significant and non-temporary. See [Humanitarian Protection ceases to apply](#) and [paragraph 339GA](#).

## Exclusion

Evidence emerges after a grant of HP that indicates the person should have been or is excluded from HP. See [revocation of Humanitarian Protection on the grounds of exclusion](#) and [paragraph 339GB](#).

## Criminality

Irrespective of the length of sentence, a review of a grant of HP must be conducted where there are criminality issues ([paragraph 339GB\(iii to v\)](#)). Criminality will not normally amount to a change of personal circumstances under paragraph 339GA such that a person no longer needs protection, but it is possible that a review may highlight that protection is no longer needed or that exclusion provisions apply.

## Misrepresentation

Material facts were misrepresented or omitted and this was decisive in the decision to grant HP such that the person did not need protection in the first place. See [Misrepresentation](#) and [paragraph 339GD](#).

## Returning residents

Where a person with HP has been outside the UK for more than 2 years their leave to remain will lapse and their circumstances must be reviewed before any leave is reinstated. Those outside the UK for more than 2 years will be required to apply for a

returning residents visa to return to the UK and must apply using the appropriate form, paying the relevant fee. Further details are available on GOV.UK at [returning residents visa](#). Where leave has lapsed and there is no evidence that revocation action has been considered, the case must be referred to Status Review Unit (SRU).

## Extremist behaviour

Where there is any evidence that a person with HP or their dependants have engaged in unacceptable behaviours (whether in the UK or abroad) considered not conducive to the public good or acted in a way which undermines British values, their status must be reviewed and the case referred to a senior caseworker (SCW).

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## Considering revocation of humanitarian protection

This section applies to decisions to revoke or refuse to renew a grant of humanitarian protection.

## Humanitarian protection ceases to apply

[Paragraph 339GA](#) of the Immigration Rules will only apply where the change of circumstances, whether country or personal, is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm. The majority of grants of HP will be based on a fear of non-state actors against which the state is unable to provide sufficient protection, and it is unlikely that the HP criteria will cease to apply simply because the holder accepts the protection of the country of nationality in a temporary or limited way, for example by obtaining and using a passport. Each case must be considered on its individual merits to see whether the actions of the person and the reasons for returning to the country of origin justify the conclusion that HP is no longer needed.

## Revocation on the grounds of exclusion

Under [paragraph 339GB \(i\) to \(v\)](#) of the Immigration Rules, HP will be revoked or not renewed if the Secretary of State is satisfied that one of the following applies:

- the person granted HP should have been or is excluded because there are serious reasons for considering that they have committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes
- the person granted HP should have been or is excluded because there are serious reasons for considering that they are guilty of acts contrary to the purposes and principles of the United Nations or has committed or prepared or instigated such acts



- the person granted HP should have been or is excluded because there are serious reasons for considering that they constitute a danger to the community or to the security of the UK
- the person granted HP should have been or is excluded because there are serious reasons for considering that they have committed a serious crime
- the person granted HP should have been or is excluded because prior to their admission to the UK they committed a crime outside the scope of paragraph 339GB (i) and (iv) that would be punishable by imprisonment had it been committed in the UK and they left their country of origin solely in order to avoid sanctions resulting from the crime

Caseworkers must refer to [exclusion from Humanitarian Protection](#) and [particularly serious criminality](#) for the relevant definitions of serious crime and examples of when the claimant should be regarded as a danger to the community or to the security of the UK.

## Misrepresentation

[Paragraph 339GD](#) applies when the person granted HP has misrepresented or omitted facts, including the use of false documents, where this was decisive in the decision to grant HP. This means that had the facts been known HP would not have been granted and can include, but is not limited to, misrepresentation of material facts, the individual possessing another nationality that they failed to disclose at the time of the original decision or that the exclusion clauses would have been applied had all the relevant facts been known. Where there is a pending prosecution for obtaining leave by deception, the Home Office will normally await the outcome of the criminal proceedings. However, this is not a formal policy requirement and consideration of revocation action can still proceed where appropriate.

## Considering evidence of misrepresentation

Where there is evidence to suggest that HP was obtained by misrepresentation or omission of material facts, the decision maker must be satisfied that:

- clear and justifiable evidence of deception exists, for example:
  - evidence that the person is not the nationality they claimed to be
  - evidence that documents supplied to support the claim are not genuine
  - evidence of actions after the grant that call into serious question the veracity of the claim
- the deception was material to the grant of HP (were it not for the deception, the claim would have been refused)

Even where deception is admitted or proven, the decision maker must consider whether the person still qualifies for leave for any other protection based reasons. It will only be appropriate to revoke HP on grounds of misrepresentation where an individual does not need protection.

## Possession of another nationality

Where an individual is in possession of another nationality and failed to disclose this during the consideration of their claim, their grant of HP should be reviewed and may be revoked or not renewed. This can apply to an individual holding dual nationality

who failed to declare one or both nationalities as they may have residency rights in a country in which they have no real risk of serious harm. This is different to obtaining a national passport or using it to return to the country of origin temporarily.

### **Evidence obtained through a family reunion application**

Cases involving misrepresentation may be identified following a family reunion application. In such cases, the grant of HP to the sponsor must be reviewed to consider whether the misrepresentation was material to their grant of HP and whether their leave should be revoked. Consideration of the family reunion application must be postponed until the review has been completed. Where the sponsors' grant of HP is revoked, the family reunion application must be refused.

Where evidence of misrepresentation derives from information provided by family members, careful consideration must be given as to whether the accounts are so different that they are incompatible and whether this was material to the grant of HP. Caseworkers must consider the possibility that family members may not confide in each other everything that happened to them. For example, a child may not have been told the reason why their parents left. Minor discrepancies in dates or lack of knowledge will not of themselves be sufficient grounds for revocation. If the 2 accounts are considered to be incompatible, the sponsor is expected to provide an explanation. This will usually be obtained by writing to the sponsor but it may be necessary to arrange an interview. See asylum interview guidance.

### **Curtailing, cancelling or revoking leave**

Limited leave should normally be curtailed in line with [paragraph 339H](#) of the Immigration Rules if HP is revoked or not renewed under any of the revocation criteria set out in the Immigration Rules.

In certain cases this will happen automatically as a result of a separate decision, for example, where an individual is liable to deportation, the deportation order will have the effect of automatically cancelling any extant leave. Separate action to revoke or vary leave will, therefore, only be necessary where a person is liable to deportation but deportation action is not possible, for example, because Article 3 ECHR reasons apply. This may include, for example, revoking ILR or curtailing limited leave on HP grounds and replacing it with a shorter period of more restrictive leave. Where return is not appropriate or is prevented for the time being, consideration must be given to granting [Restricted Leave](#).

A person who obtains leave to enter (limited or indefinite) by deception (misrepresentation) is an illegal entrant. If it is decided to take illegal entry action (under Schedule 2 to the [Immigration Act 1971](#)) the leave can be invalidated. Similarly, where leave to remain (limited or indefinite) has been obtained by deception, an individual is liable to removal under section 10 of the [Immigration and Asylum Act 1999](#) (for cases where the leave was granted after 1 October 1996). In deception cases, separate action to curtail leave granted on HP grounds will only be required where a person may not be removed (for example, for Article 3 ECHR reasons).

Any conditions attached to the persons leave which may have given them certain entitlements (for example, to take employment or recourse to public funds) will also end once leave is curtailed or revoked.

## Revoking leave: ILR

[Section 76\(i\) and \(ii\) of the Nationality, Immigration and Asylum Act 2002](#) provides the power to revoke indefinite leave to enter or remain.

### **Related content**

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# Appeal rights

This section provides details on the appropriate appeal rights in humanitarian protection (HP) cases, when to consider curtailing or cancelling extant leave and considering whether other types of leave should be granted.

## Appeals against refusal of humanitarian protection

The [Immigration Act 2014](#) changed the rights of appeal. **Section 82** of the [Nationality, Immigration and Asylum Act 2002](#) (as amended), provides a right of appeal against a decision to refuse a protection claim, a human rights claim, or the revocation of protection status. Where HP is refused, or where asylum is refused but HP is granted, this is a refusal of a protection claim for the purposes of section 82.

## Allowed appeals

Where the tribunal dismisses an appeal on asylum grounds but allows it for protection reasons under Article 3 European Convention on Human Rights (ECHR) or Article 15(c) of the Qualification Directive, HP should normally be granted (subject to any appeal against that determination being lodged or exclusion criteria applying). If the tribunal has not addressed the exclusion provisions, see [when humanitarian protection should not be granted](#) or new information has come to light since the determination, the caseworker must consider whether any exclusion criteria apply. If they do, a proposal to grant restricted leave may be appropriate.

## Appeals against revocation of humanitarian protection

The [Immigration Act 2014](#) changed the rights of appeal in revocation cases. **Section 82** of the [Nationality, Immigration and Asylum Act 2002](#) (as amended), provides a right of appeal against a decision to revoke protection status. A person has 'protection status' for the purpose of section 82(1)(c), where they are granted HP. Therefore, a decision to revoke HP attracts a right of appeal under **section 82(1)(c)**.

This right is subject to the exceptions and limitations set out in [part 5 of the 2002 act](#). **Section 92(5)** sets out that an appeal under **section 82(1)(c)** must be brought from within the UK if the decision to revoke was made while the appellant was in the UK and must be brought from outside the UK where the decision to revoke was made while the appellant was outside the UK. As such, the revocation process can be initiated and concluded where an individual is not in the UK at the time.

Dependants who do not have HP in their own right do not have a right of appeal against the revocation, but we would not normally remove a dependant whilst the main claimant has an outstanding appeal against revocation. However, caseworkers will need to cancel, curtail or revoke any extant leave as appropriate.

## Cancelling leave when the person is not in the UK

If the individual is not in the UK when the decision is taken to revoke HP, any right of appeal must be brought from abroad. There is no requirement to allow the individual to return to the UK to exercise their appeal rights. Any leave they have can be cancelled under [Article 13\(7\) of the Immigration \(Leave to Enter and Remain\) Order 2000](#) using the grounds in [321A-AC of the Immigration Rules](#) or Section 76 of the Nationality, Immigration and Asylum Act 2002.

## Section 3D of the Immigration Act 1971

Section 3D provided for leave to be extended during the period where an appeal could be brought against the variation or revocation of a person's leave. There is no longer a right of appeal against a decision to vary or revoke immigration leave. A person whose protection status is revoked will have a right of appeal in relation to that decision, but such an appeal is only against the decision to revoke protection status, not against any decision to revoke 'leave'. Accordingly, section 3D has no continuing application under the revised appeals regime.

A decision to vary leave so that there is no leave remaining, often referred to as curtailment with immediate effect, or to revoke leave did carry a right of appeal before 6 April 2015. This means that where there is an in country appeal outstanding against a variation or revocation (of leave) decision made before that date then the applicant continues to be on 3D leave.

## Considering if other types of leave should be granted

[Appendix FM](#) and [paragraph 276ADE\(1\)](#) of the Immigration Rules provide the basis on which a person, who is not a foreign criminal liable for deportation, can apply for entry clearance to or leave to remain in the UK on family life grounds or leave to remain here on private life grounds. Where Article 8 family or private life reasons are raised, caseworkers should consider whether a grant of leave on this basis is appropriate only where HP is being revoked. The person will still have a right of appeal against the decision to revoke their protection status, even where leave on another basis is granted.

## Article 8 in criminal cases

Article 8 claims from foreign criminals are considered under [paragraphs 398 to 399A](#) of the Immigration Rules which are underpinned by sections [117A to 117D of the Nationality, Immigration and Asylum Act 2002 \(as amended by section 19 of the Immigration Act 2014\)](#). For further information see Criminality guidance for Article 8 ECHR cases.

## Resettlement cases

Those resettled to the UK and granted HP under the Syrian Vulnerable Persons Relocation (VPR) Scheme or the Vulnerable Children's Resettlement Scheme may be considered for revocation action where appropriate. Such cases must be referred to the Resettlement team and the Asylum Policy team in the first instance.

## Further submissions

Further submissions must be considered in line with the Asylum Instruction on Further Submissions.

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