



Home Office

# Asylum Policy Instruction Discretionary Leave

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# Section 1: Introduction

## 1.1 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 a person 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](#), [Gender issues in the asylum claim](#), [Humanitarian Protection](#), [Further Submissions](#), [Exclusion](#), [Restricted Leave](#), [Appeals Guidance](#), and the Immigration Directorate Instructions in [Chapter 8: Appendix FM: 1.0b Family and private life – 10 year route](#).

## 1.2 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 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.

### 1.3 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

### 1.4 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. Caseworkers must be vigilant that a child may be at risk of harm and be prepared to refer cases immediately to a relevant safeguarding agency where child protection issues arise.

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.

In cases where it is considered appropriate to grant DL, caseworkers 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. Caseworkers must demonstrate they 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 [section 4](#) below for further guidance.

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# Section 2: Relevant Legislation

## 2.1 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.

## 2.2 Immigration Rules

[Part 8 of the Immigration Rules](#) and [Appendix FM](#) cover applications relating to family members and [Part 7 of the Immigration Rules](#) 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 caseworkers 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 [section 10: 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 caseworkers 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.

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# Section 3: Reasons for granting DL

## 3.1 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.

DL should not be granted where another EU Member State (or Iceland, Norway, Switzerland or Liechtenstein) has accepted responsibility for an asylum claim under the Dublin arrangements or where an individual is otherwise removable on third country grounds. DL should not normally be granted to EEA nationals (or their family members) where they have free movement rights under EU law. See [EEA and EU asylum claims](#).

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:

## 3.2 Medical cases

This category applies to both asylum and non-asylum cases. Non-asylum medical cases must apply on the [FLR \(O\) application form](#), available on Gov.UK. Where there is an ongoing asylum claim, caseworkers must consider any relevant medical issues in conjunction with that claim or as part of any further submissions raised.

An applicant seeking leave to remain on the basis of a serious medical condition may seek to rely on ECHR Article 3 and/or Article 8. In most circumstances, a person cannot rely on Article 3 to avoid return on the basis that they require medical assistance in the UK. The improvement or stabilisation in a person's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion (ie deportation or removal from, or a requirement to leave, the UK) will not in themselves render expulsion inhuman treatment contrary to Article 3.

The threshold set by Article 3 is very high. To meet the threshold, a person will need to show that there are exceptional circumstances in their case which militate against return.

Taken together, the relevant case law of [D v United Kingdom \[1997\] 25 EHRR 423](#) and [N v SSHD \[2005\] UKHL31](#) suggests that exceptional circumstances will arise when a person is in the **final stages** of a terminal illness, without the prospect of medical care or the support of family or friends or palliative care (ie relief of the pain, symptoms and stress caused by a serious illness and the approach of death) on return. The House of Lords' decision in N was upheld by the European Court of Human Rights in [N v UK \(2008\) 47 EHRR 39](#), and recently affirmed by the Court of Appeal in [GS \(India\) & Ors v The Secretary of State for the Home Department \[2015\] EWCA Civ 40](#), in which Lord Justice Laws confirmed the very high



threshold, stating that the case-law suggested that the 'exceptional' class of case is 'confined to deathbed cases' (paragraph 66).

The test established by N and D requires that caseworkers must make an assessment of whether the person's illness has reached such a critical stage (ie is a terminal illness and the person is close to death) that it would amount to inhuman treatment to deprive them of the care which they are currently receiving and send them home unless there is care available there to enable them to live their final days with dignity. Of particular relevance to this assessment will be whether:

- the person is critically ill at the point of decision
- there is any treatment available in the country of return (including palliative care)
- the person will be able to access such treatment as is available (although the fact that they are unlikely to be able to do so is not determinative)
- the person will have the support of family or friends on return

Exceptional circumstances might in principle arise in other contexts, but the Courts have made clear that the threshold is very high. If the person's condition or situation does not meet the Article 3 threshold, removal will not breach Article 3.

ECHR Article 8 may also be raised where a person is suffering from a medical condition. Article 8 deals with respect for private life, which includes a person's moral and physical integrity. The consequences to a person's physical or mental health of removing them from the UK can, in principle, engage Article 8.

However, in most cases concerning adults, the individual will not be able to rely on Article 8 to remain in the UK on the basis of their medical needs, unless there are other factors which engage Article 8 (for example, long residence or family ties in the UK). However, the medical condition and any treatment being received are relevant to a holistic Article 8 assessment where other family or private life matters are raised (e.g. private life, long residence, family ties in the UK). This does not mean that leave should be granted in these circumstances, simply that the condition and treatment must form part of the Article 8 proportionality assessment. The relevant case-law is [MM \(Zimbabwe\) v SSHD \[2012\] EWCA Civ 279](#) and [GS \(India\) & Ors v the SSHD \[2015\] EWCA Civ 40](#).

In addition, if the person is a 'health tourist' (someone whose medical condition existed before they came to the UK and who came here with the deliberate intention of seeking treatment for it) is likely to be relevant to the Article 8 assessment. In these circumstances, removal is likely to be proportionate. For further guidance refer to the instruction [Human Rights on medical grounds](#).

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### 3.3 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 \(O\) application form](#). Where there is an ongoing asylum claim, caseworkers 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 person'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.

### 3.4 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. Caseworkers must carefully consider whether a grant of leave is appropriate under paragraph 353B with reference to the [Further Submissions](#) guidance and [Enforcement and Instructions Guidance \(EIG\) Chapter 53](#).

### 3.5 Modern Slavery cases (including trafficking)

Victims of slavery, servitude and forced and compulsory labour who are conclusively recognised as such by the National Referral Mechanism (NRM) may be eligible for DL based on the same criteria of personal circumstances, helping police with enquires and pursuing compensation as victims of human trafficking, and this provision applies across the UK.

A person will not normally qualify for DL solely because they have been identified as a victim of modern slavery or trafficking – there must be compelling reasons based on their individual circumstances to justify a grant of DL where they do not qualify for other leave such as asylum or humanitarian protection.

As part of the positive reasonable grounds decision letter issued by the Competent Authority of the NRM the potential victim of human trafficking in the UK, and modern slavery in England and Wales, will be asked if they would like to be considered for DL in the event of a positive conclusive grounds decision from the NRM. Where they indicate they would like to be considered for DL this will be considered under the criteria relating to personal circumstances, helping police with enquires and pursuing compensation detailed in the Competent Authority guidance once a positive conclusive grounds decision is issued. The person will not need to fill in an application form or pay a fee for an initial consideration of DL on this basis. A person who has claimed asylum will receive automatic consideration for DL on this basis if they are not granted asylum or humanitarian protection.

For further guidance on considering DL in modern slavery cases and for cases of modern slavery and human trafficking in Scotland and Northern Ireland see the [Competent Authority guidance](#).

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### 3.6 Exclusion and criminality

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

Where there are reasonable grounds for considering that the applicant should be excluded from asylum or humanitarian protection, caseworkers 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 where the case falls within the remit of Special Cases Unit (SCU). The restricted leave policy was updated in January 2015 to cover those refused under Article 33(2) of the Convention where the case falls within SCU's remit. 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 SCU. All cases involving exclusion or extremism must be referred to SCU. Cases involving criminality where there is no SCU interest must be referred to Criminal Casework.

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. Caseworkers 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 2 years' imprisonment), caseworkers 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. Caseworkers 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, eg 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 a person 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](#).

### 3.7 Other cases

This applies to asylum cases only. Caseworkers 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 a person does not qualify in a particular category will generally be a deliberate consequence of that policy and caseworkers 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, the caseworker 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.

### 3.8 Unaccompanied asylum seeking children

Where an unaccompanied child applies for asylum, decision makers 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) of the Immigration Rules (or LOTR for Article 8 reasons) 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. Caseworkers 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. Caseworkers 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 352ZF 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 352ZF 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, caseworkers 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. See [section 5.3 below](#) for further guidance.

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# Section 4: Granting or refusing leave

## 4.1 Granting 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 a person qualifies for DL under more than one heading listed in [Section 3](#), 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.

## 4.2 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](#).

## 4.3 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 of Business, Innovation and Skills 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](#).

## 4.4 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 Instruction](#).

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# Section 5: Duration of Discretionary Leave

Where 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 a person 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 (i.e. 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 section10 - Transitional Arrangements](#).

## 5.1 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 (ie 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 person 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 the caseworker considers 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.

## 5.2 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 the caseworker considers 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.

## 5.3 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, caseworkers 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 a decision maker considers 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.

## 5.4 Modern Slavery cases (including trafficking)

Where a person qualifies for DL under the criteria relating to personal circumstances, helping police with enquires or pursuing compensation the period of leave to be granted will depend on the individual facts of the case and should normally be sufficient to cover the amount of time it is anticipated they will need to remain in the UK. However, leave should normally be granted for a minimum of 12 months, and normally not more than 30 months (2.5 years). A further period of leave may be granted if required and appropriate. For further details of the duration of leave in modern slavery cases see the [Competent Authority guidance](#).

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# Section 6: Curtailing Discretionary Leave

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

## 6.1 Voluntary actions leading to curtailment

It will not usually be appropriate to curtail a person'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 person 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 a person has obtained a national passport following a grant of DL under paragraph 353B, 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.

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

DL should normally be curtailed if a person 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, eg through extremist behaviours. This will usually apply where a person'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 a person 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 a person becomes liable to deportation and 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 a person is liable to deportation but it is not possible to make a deportation order (eg for ECHR Article 3 reasons).

A person who fraudulently obtains leave to enter by deception is an illegal entrant. If it is decided to take illegal entry action against that person (under Schedule 2 to the Immigration Act 1971), any leave previously granted is no longer valid. Where a person has obtained leave to remain by deception under this policy, that person 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. See [chapter 50 Liability to administrative removal under section 10 \(non EEA\) Enforcement Instructions and Guidance \(EIG\)](#).

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

possible to remove a person 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.

### 6.3 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. Further guidance is given in the Asylum Instruction, ['Processing asylum applications from children'](#).

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# Section 7: Further leave applications

This section applies to those granted an initial period of DL on or after 9 July 2012. See [section 10 on Transitional Arrangements](#) for cases where DL was granted before 9 July 2012.

In most cases, a person 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, caseworkers must refer to the Further Submissions guidance. Protection claims or further submissions following the refusal of asylum must be made in person in Liverpool and cannot be lodged on a postal application form. Caseworkers 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, caseworkers must apply the guidance at [section 5.3](#) above.

A person 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.

## 7.1 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 the caseworker is not satisfied they have all the necessary information or evidence in order to make an informed decision on the application. However, caseworkers 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.

## 7.2 Unaccompanied children who have turned 18

Unaccompanied children granted DL 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 caseworkers 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.

## 7.3 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 above ([see section 5](#)), even if this means that they become eligible to apply for further leave or settlement before that period of leave expires.

## 7.4 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.

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# Section 8: Settlement applications

This section applies to those granted an initial period of limited leave under the DL policy on or after 9 July 2012 and who do not, at the date of decision, fall within the restricted leave policy. See [section 10 - Transitional Arrangements](#) for cases where an initial period of DL was granted before 9 July 2012.

A person 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. See [Section 3C and 3D leave](#) for further guidance.

## 8.1 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.

## 8.2 Granting settlement

Where a person 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](#).

## 8.3 Further grants of Discretionary Leave

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. A person may not be denied settlement under this section for more than 12 months beyond the normal qualifying period.

## 8.4 Refusal of Settlement and Further Leave

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

## Section 9: Travel Documents

A person granted DL will normally be expected to keep their own national passport valid or obtain a passport from their country of origin. This is because it has not been accepted that the person 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, a person 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 ILR, 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.

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# Section 10: Transitional Arrangements

All decisions made on Discretionary Leave 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. Caseworkers must apply the following guidance:

## 10.1 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 section 8 above)), unless at the date of decision they fall within the restricted leave policy.

Caseworkers 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. Caseworkers must consider whether there are any circumstances that may warrant departure from the standard period of leave. See [section 5.4](#).

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 criminality and exclusion 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, caseworkers must consider [Part 9 of the Immigration Rules](#) and, in particular, paragraph 322(1C).

## 10.2 Validity of further applications

Caseworkers 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 (and victims of modern slavery or trafficking) this applies only to further leave applications – the initial grant of leave following refusal of asylum 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\(O\)](#). See Gov.UK for the current forms and guidance.

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# Document Control

Version	Author(s)	Date	Change References
6.0	OPRU	June 2013	Update to comply with the judgment in SM and Others
7.0	IBPD	18 August 2015	Updated to reflect introduction of charging for failed asylum seekers granted DL. Re-branded in line with Home Office guidelines.

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