Home Office

Restricted leave

Version 3.0

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About this guidance

This guidance tells you who should be granted restricted leave, how to consider the duration of leave to be granted and what, if any, conditions should be imposed.

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 Migrant Criminality 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.

Publication

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

- version **3.0**
- published for Home Office staff on **25 May 2018**

Changes from last version of this guidance

- updated to now reference the Data Protection Act 2018

Related content
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Introduction

This page tells you about the background to the policy, who it applies to and its application in respect of children.

Background

The government's policy is that foreign nationals who are not welcome in the UK because of their conduct will be deported or administratively removed from the UK, unless there is an European Convention on Human Rights (ECHR) barrier. This includes those whose conduct brings them within Article 1F or Article 33(2) of the Refugee Convention, or paragraph 339D of the Immigration Rules which reflects Article 17 of the Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ('Qualification Directive').

The purpose of exclusion from asylum or humanitarian protection and associated provisions is to deny the benefits of protection status to those who do not deserve international protection because there are serious reasons for considering that they have committed war crimes, crimes against peace or humanity, serious non-political crimes or acts contrary to the purposes and principles of the United Nations (including terrorism-related activity). It is also intended to protect the integrity of the asylum process and to ensure that foreign nationals cannot avoid being returned to their country of origin or nationality to be held to account for their actions by claiming protection. The purpose of the Article 33(2) 'refoulement' provision is to deny the benefit of the principle of non-refoulement to those who are a danger to the community or security of the host country.

The policy objectives in denying the benefits of protection status and instead granting shorter periods of restricted leave with specific conditions, are for:

- public interest: the public interest in maintaining the integrity of immigration control justifies frequent review of these cases with the intention of removing at the earliest opportunity, therefore the Home Office wants to ensure close contact and give a clear signal that the person should not become established in the UK
- public protection: it is legitimate to impose conditions designed to ensure that the Home Office is able to monitor where a person lives and works and/or prevent access to positions of influence or trust
- upholding the rule of law internationally: the policy supports the principle that those whose conduct excludes them from refugee status, including war criminals, cannot establish a new life in the UK and supports our broader international obligations: it reinforces the message that our intention is to remove the person from the UK as soon as possible

The lawfulness of the restricted leave policy was upheld by the Upper Tribunal in its 22 September 2015 judgment in MS, R (on the application of) v SSHD (excluded persons: Restrictive Leave policy) (IJR) [2015] UKUT 539 (IAC).

The policy rationale for excluding those granted restricted leave from qualifying for indefinite leave to remain (ILR) is as follows:

Public interest
Granting ILR would send a message that there is no longer any public interest in deporting or removing the person from the UK and would signal that the person is both established and welcome in the UK, this would be wholly contrary to the restricted leave policy. It would also undermine public confidence that such individuals are being managed appropriately and are not being rewarded with ILR after a period of good behaviour. There is also considerable public interest in deterring others who have behaved in ways described in Article 1F or Article 33(2) of the Refugee Convention, or paragraph 339D of the Immigration Rules from coming to the UK by leading them to understand that they are not welcome here, that if they do come here, they will be a priority for deportation or removal, that if there is a human rights barrier they will only be given short periods of leave with conditions until their removal can be enforced, and that they are very unlikely to qualify for settlement.

Public protection
It is legitimate to impose conditions designed to ensure that the Home Office is able to monitor where a person lives and works and/or prevent access to positions of influence or trust where a person has behaved in ways described in Article 1F or Article 33(2) of the Refugee Convention, or paragraph 339D of the Immigration Rules but it is not possible to attach conditions to ILR. Therefore granting ILR could lead to a person living in areas or working in jobs (for example) which are unsuitable, given the reasons they fall within the restricted leave policy.

Upholding the rule of law internationally
Granting limited leave only in order to comply with human rights law until deportation or removal can be enforced supports the principle that those who have committed actions described in Article 1F or Article 33(2) of the Refugee Convention cannot establish a new life in the UK and supports our broader international obligations. It reinforces the message that our intention is to remove the person from the UK as soon as is possible. Granting ILR would damage the UK's international reputation, and undermines international law and the way the international community has decided to deal with those who have committed such serious crimes or acts.

Application of the restricted leave policy

Restricted leave is a form of leave outside the Immigration Rules granted to certain individuals who cannot be removed from the UK because to do so would be a breach of their human rights.

Restricted leave will normally be granted where a foreign national:

- is excluded from protection under Article 1F of the Refugee Convention or from a grant of humanitarian protection under paragraph 339D of the Immigration Rules
- would be excluded had they made a protection claim
- would be excluded from protection and a previous protection claim was refused without reference to Article 1F of the Refugee Convention or paragraph 339D of the Immigration Rules
- is subject to Article 33(2) of the Refugee Convention because they are a danger to the security of the UK
- is subject to Article 33(2) of the Refugee Convention having been convicted by final judgment of a particularly serious crime they pose a danger to the community of the UK

and where their removal would breach their human rights.

The period of restricted leave to be granted and the conditions which apply to a grant of leave must be considered on a case-by-case basis taking into account the policy aims and the guidance in this document. There is no limit on the number of occasions restricted leave can be granted; provided the individual continues to come within the scope of the restricted leave policy, including that there continues to be an ECHR barrier to removal, a further period of restricted leave can be granted.

Restricted leave cases must be reviewed regularly with a view to removal as soon as possible. If there is no longer an ECHR barrier to removal, the individual will not qualify for a further grant of restricted leave and enforcement action must be prioritised. An ECHR barrier to removal includes, but is not limited to:

- Article 2 – right to life
- Article 3 – prohibition of torture
- Article 6 – right to a fair trial
- Article 8 – right to respect for private and family life

It is in the public interest to seek the removal of an individual subject to the restricted leave policy. It is for this reason that cases are reviewed regularly and individuals excluded from qualifying for ILR under the Immigration Rules. It is only in exceptional circumstances that an individual granted restricted leave will be granted ILR. Where a decision has been taken to grant ILR on the basis of exceptional circumstances, which is likely to be rare, this would be granted outside of the Rules.

Application in respect of children

Where a child or children in the UK will be affected by a decision to grant restricted leave including a decision to impose conditions, you must have regard to the need to safeguard and promote the welfare of children in the UK, in accordance with the duty set out in section 55 of the Borders, Citizenship and Immigration Act 2009.

This means you must have regard to the best interests of the child or children in the UK when assessing whether an individual meets the requirements for a grant of restricted leave and when considering any conditions to be imposed. You must

carefully consider all of the information and evidence provided concerning the best interests of a child in the UK and consider the impact that a grant of restricted leave or the imposition of conditions may have on the child.

The decision letter must demonstrate that a consideration has taken place of all the information and evidence provided concerning the best interests of a child in the UK.

For more information on Section 55 see Section 55 children's duty guidance. Further guidance in the context of restricted leave can be found in considering duration of leave and conditions.

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Relevant law and Immigration Rules

This page tells you about the legislation and Immigration Rules relevant to the restricted leave policy.

Refugee Convention

Article 1F of the Refugee Convention excludes persons from protection where there are serious reasons for considering that they have either:

- committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee
- been guilty of acts contrary to the purposes and principles of the United Nations

Article 33(2) of the Refugee Convention provides that the refoulement (return) of a refugee is not prohibited where there are reasonable grounds for regarding them as a danger to the security of the UK or where they have been convicted by final judgment of a particularly serious crime and constitute a danger to the community.

Immigration Act 1971

Provision to impose conditions to a grant of leave to enter or leave to remain is set out in section 3(1)(c) of the Immigration Act 1971. A person who knowingly fails to observe a condition of leave commits an offence by virtue of section 24(1)(b)(ii) of the 1971 Act. Where appropriate, an individual will be prosecuted if they do not comply with the conditions of their restricted leave.

Nationality, Immigration and Asylum Act 2002

Section 72 (2) of the Nationality, Immigration and Asylum Act 2002 sets out that a person will 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 UK, for the purpose of Article 33(2) of the Refugee Convention, if they have been convicted in the UK of an offence and sentenced to a period of imprisonment of at least 2 years. This presumption is rebuttable.

Section 76 of the 2002 Act sets out the circumstances in which a person's indefinite leave to enter or remain may be revoked.

Section 82 of the 2002 Act sets out the rights of appeal given to protection and human rights claims. Sections 94, 94B and 96 of the 2002 Act set out the certification powers in respect of appeals.

UK Borders Act 2007

Section 32 of the UK Borders Act 2007 states that the deportation of a foreign criminal convicted in the UK of an offence and sentenced to a single period of imprisonment of at least 12 months is conducive to the public good.

Section 32(5) requires the Home Secretary to make a deportation order against a foreign criminal unless one of the exceptions in section 33 of the 2007 Act is met.

Section 33(7) provides that where an exception to 'automatic deportation' applies because removal would breach the Refugee Convention or the ECHR, the foreign criminal's deportation remains conducive to the public good despite the fact that they cannot presently be deported.

Immigration Rules

Part 9 of the Immigration Rules sets out the general grounds for refusing an application for limited or indefinite leave to enter or remain made by a foreign national. This includes:

- paragraph 322(1C), which sets out when an application for indefinite leave to enter or remain must be refused because of criminal convictions
- paragraph 322(1E) which sets out that an application for limited or indefinite leave to remain under any part of the Immigration Rules must be refused for individuals who fall within the restricted leave policy
- paragraph 322(5), which sets out that an application for leave to remain or variation of leave to enter or remain (including a variation from limited to indefinite leave) should normally be refused if it is undesirable to permit the person concerned to remain in the UK in the light of his conduct (including convictions which do not fall within paragraph 322(1C)), character or associations or the fact that he represents a threat to national security
- paragraph 322(5A), which sets out that an application for leave to remain or variation of leave to enter or remain (including a variation from limited to indefinite leave) should normally be refused if it is undesirable to permit the person concerned to enter or remain in the UK because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law

Part 11 of the Immigration Rules includes provisions for refusing asylum or humanitarian protection, excluding a person from the Refugee Convention or humanitarian protection, and revoking or refusing to renew asylum or humanitarian protection. This includes:

- paragraph 339AA, which sets out when a person may be excluded from the Refugee Convention
- paragraph 339AC, which sets out when Article 33(2) of the Refugee Convention applies
- paragraph 339D, which sets out when a person may be excluded from a grant of humanitarian protection

Paragraph 339D of the Immigration Rules reflects Article 17 of the Qualification Directive and allows for a person to be excluded from a grant of humanitarian protection if there are serious reasons for considering that:

i) he has 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;
ii) he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or encouraged or induced others to commit, prepare or instigate such acts;
iii) he constitutes a danger to the community or security of the United Kingdom; or
iv) prior to his admission to the United Kingdom the person committed a crime outside the scope of (i) and (ii) that would be punishable by imprisonment if it were committed in the United Kingdom and the person left his country of origin solely in order to avoid sanctions resulting from the crime.

Paragraph 353 of the Immigration Rules sets out how to establish whether further submissions that are refused amount to a fresh claim, such that the decision to refuse will give rise to a right of appeal.

Part 13 of the Immigration Rules contains the provisions relating to deportation including, at paragraph A362 and A398 to 399D, the framework for considering Article 8 ECHR claims from those liable to deportation because of criminal convictions.

Paragraph 8(c) of Appendix AF sets out that an application for limited or indefinite leave to remain by a person subject to the restricted leave policy must be refused.

Paragraph S-LTR.1.8 of Appendix FM sets out that an application for limited leave to remain by a person subject to the restricted leave policy must be refused.

Paragraph S-ILR.1.9 of Appendix FM sets out that an application for indefinite leave to remain by a person subject to the restricted leave policy must be refused.

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Decision to grant restricted leave

This page tells you how to grant restricted leave.

Who can grant restricted leave

Restricted leave can be granted by the Office for Security and Counter Terrorism.

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Grant paperwork

The decision letter and notices accompanying the decision must clearly explain why a grant of restricted leave is appropriate and why certain conditions have been imposed. This must include a full explanation of the conditions imposed, how to apply for a variation of the duration of leave or the conditions imposed and, a statement that a failure to comply with conditions without reasonable excuse is an offence which may result in prosecution.

Initial grants of restricted leave

All proposed initial grants of restricted leave, including a grant of restricted leave which follows a previous period of discretionary, leave must be approved at SCS PB1 level.

Dependants

Where a dependent partner or child was included as a dependant of the main applicant before the initial decision to grant restricted leave was made but has not made a protection or human rights claim in their own right, they should be granted leave outside the rules (LOTR). The length of leave granted should be in line with the main applicant. However it is generally not appropriate to impose similar restrictions to the main applicant.

Where a person is granted restricted leave and members of their family (such as a partner or children) apply for leave to enter or remain in their own right, consideration must be given to that application. If the partner or child qualifies for leave in their own right, they will not be given leave in line with the person granted restricted leave even if they are living together as a family.

It is not possible for a person with restricted leave to sponsor a family member to join them in the UK. A family member of a person granted restricted leave intending to come to the UK must qualify for entry clearance in their own right.

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Duration of restricted leave and conditions to be imposed

This page tells you about the length of leave and conditions to be imposed when granting restricted leave.

Duration of leave

The period of restricted leave to be granted is at the discretion of the Secretary of State. In most cases, restricted leave should be granted for a maximum of 6 months, however all cases must be assessed individually on their merits. A shorter period than 6 months should be granted where removal appears to be reasonably likely within the next 6 months or where, in exceptional cases, the risk posed by the individual warrants the case being kept under review more frequently. A longer period than 6 months can also be granted if justified by the particular circumstances of the case.

When considering the period of leave to be granted you must take account of any relevant factor including the following:

- the individual's circumstances
- the reason why the person qualifies for a grant of restricted leave including the seriousness of any offence or crime they are suspected of committing, or have been convicted of
- previous compliance with immigration laws or conditions

This is not an exhaustive list.

You must have regard to the best interests of the child as a primary consideration when considering the duration of restricted leave to be imposed. A grant of restricted leave for a period of 6 months is unlikely to impact on a parent's ability to adequately care for their child. It should also not impact on the child's ability to attend school or to access medical care when needed. Careful consideration must however be given to any claims that are made in respect of children and to any information or evidence that is already held about children who may be affected by the duration of leave.

Conditions to impose to a grant of leave

Section 3(1)(c) of the Immigration Act 1971 sets out what conditions may be imposed to limited leave to enter or remain in the UK. The conditions which may be imposed, if justified by the particular circumstances of the case, are:

- a condition restricting employment or occupation in the UK
- a condition restricting studies in the UK
- a condition requiring the person to maintain and accommodate himself, and any dependants, without recourse to public funds

- a condition requiring the person to report to an immigration officer or the Secretary of State
- a condition about residence

Guidance about each of these conditions in the context of restricted leave is given below including compliance with conditions and breach of conditions.

Breaching one or more condition imposed on a grant of restricted leave is very serious and can lead to criminal prosecution.

Employment condition

The presumption is that permission to work will normally be restricted rather than denied outright in all grants of restricted leave. Any employment restriction also applies to voluntary work, self-employment or engagement in any kind of business, paid or unpaid. The type of restriction imposed must be in proportion to the public protection risk posed by the person.

The options for restricting employment are:

Option 1 - Imposing a requirement to notify the Secretary of State of all employment and volunteering roles

This option should be used for lower-risk cases so that the Home Office can notify other agencies, where appropriate, about the person's employment. The normal requirement will be to notify the Home Office within 14 days of a change in their employment circumstances (for example, taking a new role or leaving a position).

Option 2 - Applying restrictions on working, including in certain occupations or professions

This condition will be expressed as a condition not to take any employment or engage in any business unless the Secretary of State has given prior consent in writing. When consent is sought for a particular job, the precise type of work to be restricted will depend entirely on the risk factors posed in individual cases. The condition should generally be used to prevent the person from working in roles with unsupervised contact with vulnerable people, or in roles which could be inappropriate according to the alleged crimes or acts that led to us considering restricted leave to be appropriate, for example working with migrant communities from the country of origin where war crimes were allegedly committed. If a person is already in employment then details of that employment must be obtained and an assessment undertaken as to its continuing suitability prior to a grant of restricted leave.

Option 3 - A total ban on employment in any capacity, whether paid or as a volunteer

This should be used exceptionally in cases posing a particularly high public protection risk. Such cases must also be referred to the local police force for handling under the Potentially Dangerous Person (PDP) regime.

Operation of the employment condition

At the initial grant of leave, and at subsequent renewals, the biometric immigration document will in most instances be completed with a remark indicating that employment is permitted only with the consent of the Secretary of State. This must be accompanied by a letter explaining that consent will normally only be given in relation to a specific job or business activity. Where the person seeks to change their employment, or to take up an additional role, they must re-apply for permission.

A person may apply for permission in writing to the designated decision-maker or at a reporting event (where under a condition to report to the Secretary of State). The person must provide the following details to enable a decision to be made:

- name, address, contact details of employer
- job title or position
- job advertisement or person specification
- details of role and responsibilities

All requests for permission to work should be dealt with as soon as possible (usually within 14 days) after the request is made. The decision must be sent to the person's home address and, where applicable, a copy should be sent to the individual's legal representatives. It is important that the response is sent to the notified home address as this is a way of checking that the person continues to live at the address given. The person must also be notified of the requirement to update their biometric immigration document, because employers are not allowed to accept a Home Office letter as proof of permission to work. The old biometric immigration document needs to be returned to the Home Office before a new one is issued.

When considering whether to give consent to proposed employment, you must review the circumstances of the case to assess whether the individual's previous behaviour indicates their suitability or not for the proposed role. You must pay particular attention to unsuitable behaviour that occurred when the person previously held:

- a position of authority over others, for example police, teacher, security guard, soldier
- a position of trust, for example doctor, nurse
- a role allowing unsupervised access to children or vulnerable people
- a professional role that involved working unsupervised to a significant degree or instructing or supervising others

The presumption is that a person who falls within the scope of this policy should not be permitted to work or volunteer in any of the roles that require a standard or enhanced Disclosure and Barring Service (DBS) or Security Industry Authority (SIA) licence check. These include (not an exhaustive list):

- healthcare, for example doctors, nurses, chiropractors, opticians
- roles involving the humane killing of animals
- public sector roles, for example police, court, prison and probation services
- roles requiring contact with children, for example teaching and training roles or foster carers
- roles in the legal profession, including immigration advisers
- other roles which require a SIA licence, for example locksmiths, taxi drivers, security guards

Disclosure and Barring Service (DBS) referral process

All cases granted restricted leave with any of the employment conditions (options 1-3 above) must be referred to the DBS as soon as leave is granted.

The referral to DBS must include information relevant to the case, including the reasons why restricted leave has been granted. This will normally be the asylum decision letter or the First-tier Tribunal appeal determination, together with details of the restrictions being imposed. It should not be the transcript of the asylum interview, except on request by the DBS.

The DBS will consider whether it is appropriate to bar the person under their discretionary barring procedure. If the DBS is minded to bar the person, they will invite the individual to make representations within 8 weeks which will be considered before a final decision is taken on barring. The DBS may contact the Home Office about any representations received and will inform the Home Office of the decision, so that this may be taken into account if the person seeks permission to take or engage in a particular form of employment.

Professional or regulatory bodies

Where the person seeks consent for employment in a role under the supervision of a professional body (other than the DBS) you must consider whether public protection is best served by disclosure of the details of the criminality or extremist behaviours to that professional body. This can be done even where the decision-maker is not proposing to refuse consent to employment in that role – informing a regulatory body can serve to ensure a person's behaviour at work is kept under supervision.

After making a referral, you must request disclosure from the professional or regulatory body about the action taken in respect of the person. Knowledge of how seriously the professional body regards the risk posed by the person may help to inform the precise nature of conditions that should be imposed by the Home Office, in particular the restrictions relating to employment.

Disclosure

Relevant information of alleged past criminality can be shared with the DBS or professional and statutory regulatory bodies, as long as disclosure is consistent with our data sharing obligations, including those under the Data Protection Act 2018.

Where in doubt about whether information can be disclosed, you should seek advice from a senior caseworker or chief caseworker in the first instance.

Employer Checking Service

The Employer Checking Service may contact the Home Office about an individual who has been granted restricted leave and who is subject to an employment condition. Where an enquiry is received about a person who has not applied for permission to work or for a variation of their employment conditions, the Employer Checking Service must be advised that the person does not have permission to work but that it is open to the person to apply for such permission.

Study condition

Grants of restricted leave should generally be subject to a condition which prevents the person from undertaking a course of study, whether by attending in person or remote learning.

Those with restricted leave are in the UK on a temporary form of leave, pending their deportation or removal from the UK when circumstances permit. The rationale for restricting study is that it reinforces the temporary nature of the leave. It also reduces pressure on public finances and ensures that migrants who are welcome in the UK are afforded the opportunities that come from education ahead of those on restricted leave.

No recourse to public funds condition

In all cases where restricted leave is granted, leave will be granted subject to a condition of no recourse to public funds unless the individual would otherwise be destitute. The burden of proof is on the person to show that they are, or would be, destitute, and in need of public funds. The assessment of destitution must be done in a way that is compatible with the section 55 of the Borders, Citizenship and Immigration Act 2009 duty.

All of the information or evidence provided about the individual's circumstances, including those of any dependent family members, must be taken into account by the decision maker in order to consider their financial position. Other factors to consider include:

- how the person has supported themselves in the UK to date
- whether the person has any savings in a UK bank or abroad, or other disposable assets
- whether the person has permission to work, is currently employed, or circumstances (such as age and state of health) are such that they could seek suitable employment and request consent from the Secretary of State
- whether the person has any family or others in the UK who can provide financial assistance or accommodation (for example, a partner who is a British Citizen or who has leave to enter or remain which permits employment)

- whether the person has any family or others in any other country who could provide financial assistance from abroad

Where a person granted a period of restricted leave subject to a condition of no recourse to public funds applies to have that condition lifted, consideration must be given to whether the individual meets the destitution test. An application must be made in writing by the individual or their representative and must include information and evidence about the individual's personal and financial circumstances.

Where the decision maker decides that an individual is destitute, the decision maker should lift the no recourse to public funds condition and apply condition code 1A allowing recourse to public funds. In such cases, a new biometric residence permit must be issued.

When a person granted restricted leave without the no recourse to public funds condition applies for further leave, the decision should be re-assessed. A further grant of leave without the no recourse to public funds condition should be granted only where the person continues to meet the terms of the policy.

For guidance on assessing destitution, and the evidence a person must provide to make out a claim of destitution, see assessing destitution.

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Where a person is not destitute, it is only in exceptional circumstances that the leave granted will include access to public funds. Any consideration of exceptional circumstances must take into account anything raised by the person subject to restricted leave, and must be done compatibly with the section 55 duty.

Reporting condition

The presumption is that all grants of restricted leave will be subject to a condition to report regularly to the Secretary of State. This condition is designed to maintain contact with the person and monitor compliance with other conditions. Contact management is a priority because these cases must remain under review for removal at the earliest possible stage. The precise frequency and location of the reporting event will depend upon the following factors:

- the imminence of removal
- the perceived risk of absconding
- the need to maintain contact with the person to monitor compliance with conditions
- the impact of the reporting requirement on the person taking into account:
  - the location of the reporting centre

- health and mobility
- domestic responsibilities, including the impact on any child who may be affected
- employment

The frequency with which a person will be required to report will depend on the individual circumstances of the case. As a guide, monthly reporting should be considered the normal standard for restricted leave cases, but the appropriate period should be determined depending on the circumstances of each case. This frequency can also be increased or decreased in the light of changing circumstances, taking into account the factors specified above. Where, in exceptional circumstances, it would be unreasonable to expect the person to attend the reporting event each time, other options should be considered, such as home visits.

Before setting up the reporting regime, you must liaise with the relevant reporting centre manager to ensure they are aware of the facts relating to the person, and in particular any risks they may pose when reporting. The reporting centre manager may wish to suggest an alternative reporting venue or specify a time when known victims, vulnerable people or people at risk will not be reporting.

A person may apply for the condition to be varied, to take account of domestic or other commitments. Such requests must be considered in line with the overall aims of the policy and this guidance and, if appropriate, the condition should be amended in writing.

Asylum seekers supported under the Immigration and Asylum Act 1999, including accommodation, will cease to be eligible for support when restricted leave is granted. In this scenario, the reporting condition should be set for the current address and then amended when the person finds an alternative address. During this period, it is important to maintain contact with the person so that proposed addresses can be considered before the person needs to move into the new accommodation.

Residence condition

Those granted restricted leave remain a priority for removal and contact must be maintained with the individual to ensure their removal is pursued as soon as possible.

All grants of restricted leave must be subject to a requirement to notify the Secretary of State of the home address and of any change of address to ensure that the person can be located when removal is possible.

Where accommodation is publicly provided or funded, it may also be reasonable to impose a requirement for a person to live in a specific area to reduce the cost of housing.

In addition, it may also be necessary to impose a residence condition requiring the individual to seek the prior consent of the Secretary of State before changing address. It is important that requests for consent to change address are dealt with

promptly as the person, and where applicable their family, may have to change address and should not be left homeless or in breach of conditions.

When deciding whether to give consent, you must have regard to known risk factors and seek advice from partners (for example, the police or local authorities) where appropriate. If specific risk factors are known, it may be appropriate to advise the person that they will not be given permission to live within a certain area.

In this section, 'residence' is given the meaning of habitual residence.

The residence condition will usually be expressed as requiring the person:

- not to spend more than 3 consecutive nights away from the address without the prior written consent of the Secretary of State
- not to spend more than 10 nights away from that address in any rolling 6 month period

There may be circumstances which justify a residence condition which is expressed in a different way, for example where there is credible evidence that the person requires regular hospital appointments involving overnight stays.

These conditions must be specified in the notice explaining the conditions attached to the leave.

Each case must be considered on the individual facts and risks. Particular risks may arise where:

- the person concerned may pose particular risks to others in the community on the basis of past behaviour – for example, the Home Office may want to prohibit residence close to a school or other facility
- there is a significant community from the person's country of origin in that locality - the risk may be:
  - to the person (for example, from members of the community seeking retribution)
  - a general public order risk, if it becomes known that the person is living in the community
  - that the person is suspected to seek to use his or her influence within the community to intimidate others or to exert undue influence

Where any of the above risks apply, the person should be informed that permission will not be granted permission to live at an address within a specified area.

A residence condition may also be imposed where it would facilitate the progression of the person's removal.

In cases that pose a particularly high risk of public order or crime, the local police force should be informed as part of the Potentially Dangerous Person (PDP) regime.

A residence condition may have an adverse impact on a child or children. Where a child lives in the household of a person granted restricted leave, care should be taken to consider the impact on the child's welfare in accordance with the section 55 duty. An example of this might be where a residence condition disrupts a child's education at a crucial stage, or where it takes the child away from an extended family. Removing a child from the influence of a wider community may not be in the best interests of the child. A view may be sought from the Office of the Children's Champion (OCC) about child welfare issues.

Official-sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

Official-sensitive: end of section

Section 55 duty

When considering the duration of restricted leave to be granted and conditions to impose to a grant of leave, the best interests of any child under the age of 18 - whom the available information suggests may be affected by the decision - must be a primary consideration. You must carefully consider all available information and evidence to determine whether or not it is in the child's best interests for the person to be given the duration of leave and conditions proposed.

If the duration of leave proposed or the imposition of one or more conditions would be contrary to a child's best interests, then you must go on to consider whether those interests are outweighed by the reasons in favour of granting a particular period of leave and of imposing the conditions proposed in the individual case. These reasons include the public interest in being able to progress the case to deportation or removal if and when there is a material change in circumstances, and in maintaining public confidence that those who fall within the scope of this policy are being managed appropriately. They also include the importance of maintaining the UK's international reputation as a country which will not provide a safe haven to those convicted of or involved in serious crimes, including (but not limited to) war crimes and terrorism-related offences.

You must carefully assess the quality of any evidence provided in relation to a child's best interests. Original documentary evidence from official or independent sources will generally be given more weight in the decision-making process than unsubstantiated assertions about a child's best interests or copies of documents.

In MS, R (on the application of) v SSHD (excluded persons: Restrictive Leave policy) (IJR) [2015] UKUT 539 (IAC) (22 September 2015), the Upper Tribunal held as follows (where "RLR" means "restricted leave to remain" and "ZH" refers to ZH (Tanzania) v SSHD [2011] UKSC 4 (1 February 2011)):

> "135. … We turn now to the contention that the existence of the RLR policy itself gives rise to a breach of the duty under s.55. That is a proposition which we are

unable to accept. Firstly, it is important to recall that the requirements of the duty are specifically referred to in the guidance with respect to the RLR policy itself together with a cross reference to other guidance in respect of the application of the s.55 duty. Secondly, we can see no reason why the RLR policy is in principle in conflict with the s.55 duty. There is no doubt, in the light of the principles which are to be derived from *ZH*, that the best interests of any children including in particular children who are British citizens must be a primary consideration when decision makers consider the imposition of a period of RLR and any associated conditions. As we have set out above, whilst the imposition of time limited leave may have an impact on the quality of family life, that is a matter which can, consistent with the s.55 duty, be properly taken into account at the time when decisions are reached. Similarly, the imposition of any conditions which might impinge upon the best interests of a child (such as a residence condition) will also require the best interests of the child to be a primary consideration.

”135…. given that family life may continue notwithstanding the imposition of the conditions, very strong evidence would be needed to prevail over the public interest and public protection considerations which are given effect in the three purposes of the RLR policy so as to make it unreasonable for the respondent not to grant RLR for more than six months or not to impose the usual conditions. This is only likely to occur very rarely indeed, save that, in our view, it may be easier, depending on the circumstances, to demonstrate unreasonableness in relation to the restriction on studies.

“136. For these reasons we are, therefore, not able to accede to the proposition that the RLR policy is unlawful as being in principle inconsistent with the s.55 duty. That is not to say, in a similar vein to our conclusions in relation to Article 8, that in each individual case a careful evaluation of the best interests of any children involved in the decision making process should not be a primary consideration in the Article 8 assessment of an individual case.”

Article 8 claims in respect of duration of leave and conditions

Those granted restricted leave may claim that the duration of leave granted, or the nature of any conditions imposed breaches their right to respect for private and family life as protected by Article 8 of the ECHR.

Where an Article 8 claim is made, you must consider whether the proposed duration of leave or condition:

- causes an interference with the exercise of the person’s right to respect for private or family life
- causes an interference with another person’s private or family life, for example that of a partner, child or other close family member:

If so, you must consider whether:

- the interference has consequences of such gravity as potentially engaging the operation of Article 8
- the interference is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, of the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others
- the interference is proportionate to the legitimate public end sought to be achieved

You must consider any particular circumstances raised and consider whether a grant of restricted leave for a period of 6 months subject to the proposed conditions is still appropriate in light of these. Any interference with a person's private or family life is in accordance with the law as long as the decision to grant restricted leave, the duration of leave and the consideration of conditions has been conducted carefully and in accordance with this policy.

In MS, R (on the application of) v SSHD (excluded persons: Restrictive Leave policy) (IJR) [2015] UKUT 539 (IAC) (22 September 2015), the Upper Tribunal held that while a short period of leave with conditions imposed may interfere with the quality of family life, given the potential insecurity successive short periods of leave may create, it "does not interfere with the development of family life in principle". In the generality of cases, the same will be true of private life, because while there may be conditions in relation to employment, for example, in most cases employment is not denied outright, but the Secretary of State will consider the suitability of any proposed employment before an offer of work can be accepted.

As to the legitimate aims, the Upper Tribunal held in MS, R (on the application of) v SSHD (excluded persons: Restrictive Leave policy) (IJR) [2015] UKUT 539 (IAC) (22 September 2015) as follows:

> "119. We are in no doubt for reasons which will already have become obvious that the interference which arises under the RLR policy, both as to time limited periods of leave and also as to the conditions which are imposed upon that leave, is necessary for public safety, the economic wellbeing of the country, the prevention of crime and disorder and, in some cases, national security. Leaving aside the fact sensitive assessment of proportionality, we see no objection in principle to the interference with Article 8 rights which may arise through the limitation of the time period for leave or the conditions placed upon it. The reasons why they are necessary are appropriately and adequately explained in the guidelines in the "Asylum Casework Instruction" dated 28 May 2012 (and also the recent "the "Asylum Policy Instruction: Restricted Leave" dated 23rd January 2015) providing the rationale for the RLR policy. Understood in this way and in accordance with the approach in *Razgar*, the interferences with Article 8 which occur are lawful and within the scope of Article 8. Although as a generality Article 8 may contain in its application some positive obligations, it is a qualified right. The issue in relation to any interference with Article 8, or any obstacle to the development or enhancement of Article 8 rights, is whether that interference is necessary in the various interests of a democratic society set out above. Once it has been concluded that it is necessary then the interference is justifiable and within the scope of the Article 8 right."

…
"121. We are therefore satisfied that the RLR policy is in pursuit of a legitimate aim for the reasons set out above."

On proportionality, the Upper Tribunal considered:

"130. … bearing in mind the objective of retaining the opportunity to remove someone excluded from the Refugee Convention by virtue of Article 1F at the earliest opportunity, the provision of such time limited leave is not in and of itself disproportionate in so far as it may interfere with the quality of the development of Article 8 rights and insofar as it is subject to the overall governing consideration that there may come a point in time when the failure to grant ILR will be unreasonable bearing in mind the particular circumstances of the case."

"131. Secondly, similar considerations apply to the restrictions which can be imposed by way of conditions on the time limited leave. In our view in principle they are a proportionate interference provided that they are carefully measured against the individual circumstances of the case (as required by the policy itself) and are no more than is necessary to achieve the objective of the policy set out above. This conclusion does not mean that in each and every case the imposition of time limited leave and all of the conditions contemplated by the policy would be proportionate. The policy must be applied in a fact sensitive manner on a case by case basis."

"132. Given that family life may continue notwithstanding a time limited grant of RLR, very strong evidence would be needed to prevail over the public interest and public protection considerations which are given effect in the three purposes of the RLR policy … so as to make it unreasonable for the respondent not to grant RLR for more than six months or not to impose the usual conditions. This is only likely to occur very rarely indeed, save that it may be easier, depending on the circumstances, for an individual to establish a case for departing from the usual condition prohibiting studies than the other three conditions mentioned".

Compliance with conditions

Any letter or notice setting out the basis of the leave granted must set out clearly the conditions imposed, how to notify the Home Office of an inability to comply due to reasons outside the person's control (for example, in relation to a reporting condition) and the consequences of non-compliance.

You must keep compliance with conditions under close review and liaise with reporting centres to use reporting events as a means of monitoring compliance with all the conditions imposed. This is essential because non-compliance without reasonable excuse should lead to a consideration of whether the conditions imposed remain appropriate (and, if appropriate, the tightening of conditions) and investigation for prosecution (see breach of conditions).

You must maintain contact with reporting centre staff and request they monitor carefully a person's compliance with the conditions imposed. Any indication that a

person is no longer complying with the conditions should be investigated. For example:

- employment – you must ensure that reporting centre staff regularly ask those subject to restricted leave whether they are currently, or have in the past, engaged in employment (paid or unpaid) - if they have, details must be emailed to you and you must record them on the case information database (CID) and on the paper file
- employment, study or residence – you must ensure reporting centre staff ask to see travel tickets if someone subject to restricted leave consistently arrives late for reporting events and the person does not live within walking distance and has not driven there - their explanation will not stand up to scrutiny if the travel tickets show they have travelled to the reporting event from a location other than the person's recorded address (photocopies of the travel tickets must be taken in this instance and sent to you)
- residence – you must ask reporting centres to request evidence of recent utility bills or other documentary evidence from official or other independent sources that corroborates the recorded address - any documentary evidence must be photocopied, with a note that the original has been seen, and sent to you: if there is any doubt as to the veracity of the documents, the originals must be retained where possible to be reviewed further

Decision-makers must also monitor compliance with conditions in other ways, as per the following examples:

Check employment by contacting Her Majesty's Revenue and Customs (HMRC) to see if there is any record of the person subject to restricted leave - or a close family member in the UK (for example, a partner) who does not have the right to work - paying tax or national insurance contributions.

Check no recourse to public funds condition by contacting the Department for Work and Pensions (DWP) to check whether there is any record of the person subject to restricted leave - or close family members who do not have recourse to public funds - receiving public funds.

Check employment, study and residence - where there are doubts about a person's compliance with conditions, you must contact the local immigration, compliance and engagement (ICE) team to commission an investigation, which may include a home visit. In some cases, it may be appropriate to make a referral to an intelligence team to establish if there is evidence of a person living elsewhere, in breach of the residence condition. In the case of high harm individuals you may need to make other arrangements on a case-by-case basis. You should also consider the use of random home visits even where there is no obvious evidence of a breach of this condition. This can be justified, given the high priority of these cases for removal, in order for the Home Office to have confidence that it is maintaining contact.

Breach of conditions

Breaching one or more restricted leave condition is very serious. Where there is evidence that a person subject to restricted leave has breached a condition, it must be followed up. Where you consider that one or more condition has been breached without satisfactory explanation, the case must be referred to the local prosecution team to consider whether prosecution would be appropriate. These cases are amongst the highest priority cases for compliance action.

Related content
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Related external links
Disclosure and Barring Service: Services and guidance

Active reviews

It is the responsibility of the person to apply in writing for further leave, prior to the expiry of restricted leave. There is no application form and no application fee.

You must proactively review the case, before any new grant of leave to re-assess the prospects of removal. This should be done in all restricted leave cases regardless of whether the person has applied to extend their leave. If there is no longer an ECHR barrier to removal, the case should be prioritised for removal.

In all cases, you must assess the conditions in the country of return against the most recent country information, such as the Home Office's country policy and information note. Information and evidence should also be requested from the person where appropriate and relevant to the consideration as to whether to grant further leave. Information and evidence may include for example up-to-date medical evidence or, where the barrier to removal is ECHR Article 8, information to establish whether there has been any change in family circumstances such as the end of a partner relationship or children who are no longer dependent on their parent or parents).

You must seek information either in writing or via a reporting event about the person's compliance with existing conditions (see compliance with conditions). If an application for further leave is not submitted, you must take the lack of compliance with immigration law into account when considering the length of leave to grant and the conditions to impose.

If an application for further leave is received, and further restricted leave is to be granted, you must review the conditions attached to the leave, including any evidence of compliance or non-compliance, and consider whether they remain appropriate.

Where the circumstances have changed to the extent that the person's removal would not breach the ECHR, further leave must be refused and the case progressed to removal (see removal).

Those who fall within scope of the restricted leave policy but were previously granted discretionary leave before the restricted leave policy was introduced on 2 September 2011 should remain on that existing leave until it falls for renewal. When the application for further leave is received, if removal is not possible, the case must be considered in line with this policy and granted restricted leave with appropriate conditions.

The decision letter and notices accompanying the decision must clearly explain the reason for imposing new conditions including why it is in the public interest to grant a period of restricted leave taking account of the risk the person presents and their compliance with conditions or requirements during previous periods of limited leave or unlawful stay.

All initial grants of restricted leave following a previous grant of discretionary leave should be approved at SCS PB1 level. Grants of further restricted leave (whether

granted following past discretionary leave or not) require approval at an appropriately senior level but do not need SCS PB1approval unless the case is particularly high profile or a significant change to the conditions or duration of leave is proposed.

Related content
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‘Upgrade’ applications for limited leave

This page tells you how to consider applications for a more generous form of limited leave to remain than restricted leave.

Appendix Family Members (FM) and paragraph 276ADE

The Immigration Rules set out requirements to be met by non-EEA nationals who wish to remain in the UK on the basis of family life or private life. Appendix FM to the Immigration Rules governs family life claims from those not liable to deportation and paragraph 276ADE of the Immigration Rules governs private life claims from those not liable to deportation.

An application made under Appendix FM or paragraph 276ADE for a more generous form of leave than restricted leave will only be considered if the correct application form is used and the prescribed fee is paid, unless it is made as part of a protection claim or while the person is detained.

An application made under Appendix FM or paragraph 276ADE must be refused with reference to S-LTR 1.8.

Paragraph EX.1. of Appendix FM is not available to those who do not meet all of the suitability requirements.

Where the requirements of Appendix FM or paragraph 276ADE are not met, consideration is given to whether there are exceptional circumstances which outweigh the public interest in removal. In restricted leave cases there will not be any exceptional circumstances, because the person will not be removable – it will already have been decided to grant restricted leave on ECHR grounds.

Appendix Armed Forces (AF)

An application submitted under Appendix AF for a more generous grant of leave will only be considered if it has been made on the correct form and the prescribed fee has been paid.

An application made under Appendix AF must be refused with reference to Part 2, paragraph 8(ca).

Discretionary leave

Those who fall within scope of the restricted leave policy may request discretionary leave instead of restricted leave. They may have previously been granted discretionary leave before the restricted leave policy was introduced in September 2011, or they may not have had discretionary leave before. An application for discretionary leave will only be considered if it has been made on the correct form and the prescribed fee has been paid.

Section 3.6 of the discretionary leave policy sets out that decision-makers must consider the impact of a person's criminal history before granting any leave. In particular, it explains that those who fall within scope of the restricted leave policy should not usually be granted discretionary leave.

Discretionary leave and restricted leave are both forms of leave outside the Immigration Rules governed by section 3(1) of the Immigration Act 1971. Discretionary leave is usually granted for up to 30 months with no conditions imposed. In restricted leave cases, the duration of leave and the imposition of any conditions must be considered on a case-by-case basis. It will not usually be appropriate to grant discretionary leave to a person who falls within scope of the restricted leave policy even if the decision-maker considers that leave should be granted for more than 6 months and with no conditions imposed. But where it is proposed to depart from the published policy in this way, it must be considered at grade 6 level to ensure a consistent approach across all cases.

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Criminality guidance for Article 8 ECHR cases
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Immigration Rules

Applications for indefinite leave to remain

This page tells you how to consider applications for indefinite leave to remain (ILR) from those subject to the restricted leave policy.

An application for ILR will only be considered if it has been submitted on the correct form and the prescribed fee has been paid.

Indefinite leave to remain under the Immigration Rules

An application made under any part of the Immigration Rules by a person who falls within the restricted leave policy must be refused with reference to the general grounds for refusal in part 9 of the Immigration Rules. An application made under the Immigration Rules which has its own suitability requirements (for example, Appendix FM or Appendix AF) should be refused with reference to those requirements.

However, it remains open to the Secretary of State to grant ILR outside of the Rules on a discretionary basis (see below).

Indefinite leave to remain outside the Immigration Rules

There is no limit on how many times a person can be granted restricted leave, as long as they continue to fall within the scope of the policy, because it is granted at the Home Secretary's discretion outside the Immigration Rules. This is the case even where it is not known when, or even if, a human rights barrier to deportation or removal will be resolved. In almost every case, it will not be known when or if the person's deportation or removal will be possible in the future. That is the nature of human rights and the fact that circumstances can change materially even if there has been a very long period in which no such change has occurred. Therefore, there is no period of time after which a person subject to restricted leave will automatically or generally qualify for ILR. All ILR applications must be considered on a case-by-case basis.

In accordance with MS, R (on the application of) v SSHD (excluded persons: Restrictive Leave policy) (IJR) [2015] UKUT 539 (IAC) (22 September 2015), consideration must be given to 'whether or not the point has been reached where the only reasonable course is to grant ILR'.

Where the original human rights barrier to deportation or removal has been resolved, and there is no new human rights barrier, the government's policy is that it will not be appropriate to grant ILR, as the case should be prioritised for enforcement action. This is the case even if the person has been in the UK for a very long time.

If there remains a human rights barrier to deportation or removal, then whatever the basis of the application, consideration must be given to whether there are any public interest reasons why the person should also not be granted ILR outside the rules.

Where a person falls within this policy because of behaviour described in Article 1F or Article 33(2) of the Refugee Convention or paragraph 339D of the Immigration Rules (whether or not the person has made a protection claim), there will almost always be public interest reasons not to grant ILR. This is because the government's view is that such persons are not welcome in the UK, even if the adverse behaviour was committed a long time ago and the person has not committed any crimes in the UK. In most cases, a decision to grant ILR would undermine the intention of the restricted leave policy (see Policy intention behind restricted leave).

The decision in the judicial review of George, R (on the application of) v SSHD [2014] UKSC 28 (14 March 2014) is authority that ILR should not be granted to a person who is not welcome in the UK. When considering whether to grant ILR to a person who falls within this policy, expiation, remorse and a long period of good behaviour will not be relevant factors capable of negating the factors which brought the person within the scope of this policy such that the scales are neutrally balanced; still less will they be capable of swinging the scales in favour of granting ILR. There is no set period of time after which a person who falls within the scope of this policy is considered to have put past actions behind them even if they have not committed any other offences since. Once a person has come within the restricted leave policy, it will not be appropriate to grant ILR solely because of a long period of good conduct, nor will it be appropriate to give weight to a low or non-existent risk of offending or reoffending in the UK. This is because compliance with criminal law is not a positive factor to be counted in a person's favour, but a minimum standard of behaviour expected of anyone present in the UK.

This guidance supersedes the judgment in N, R (on the application of) v Secretary of State for the Home Department [2009] EWHC 1581, which found that after 10 years of good conduct a person is able to put their offending behind them, would have made their life in the UK and should normally be allowed to settle. This judgment predates the restricted leave policy and is inconsistent with the general grounds for refusal in part 9 of the Immigration Rules.

It is relevant to consider public interest factors such as other criminal offending, a risk of reoffending and any adverse immigration history, including (for example), any unlawful stay in the UK; any breach of bail, temporary admission or temporary release conditions, or any breach of conditions attached to leave to enter or remain (either restricted leave or other forms), without satisfactory explanation; and any instances of deception, for example if it transpires that a previous grant of leave was obtained by means of deception or if the person used deception in an attempt to gain leave.

Where a person applies for ILR outside the Immigration Rules, consideration must be given to all relevant factors, including all representations that have been submitted, to determine whether the application should be granted or refused. It will only be in exceptional circumstances that those within scope of the restricted leave policy will ever be able to qualify for indefinite leave to remain outside the rules, and such exceptional circumstances are likely to be rare. Usually, given our international obligations to prevent the UK from becoming a safe haven for those who have committed very serious crimes, the conduct will mean that the application should be refused, but decisions must be taken on a case-by-case basis, applying the

principles set out above and the general grounds for refusal in part 9 of the Immigration Rules, alongside the section 55 duty. Where it is proposed to grant ILR outside the rules to a person within scope of the restricted leave policy, the decision must be agreed at least at SCS PB1 level to ensure a consistency of approach across all cases.

If ILR is to be refused but the person continues to fall within the scope of this policy, then the person must be granted restricted leave within the terms of the policy. If ILR is to be refused and there is no longer an ECHR barrier to removal, then the case must be prioritised for deportation or removal.

Indefinite leave to remain under the discretionary leave policy

Those subject to the restricted leave policy might apply for ILR on the basis of having completed a particular continuous period of discretionary leave.

The policy for granting ILR on this basis is set out in the discretionary leave guidance. There are transitional arrangements which apply to those who were initially granted discretionary leave before 9 July 2012 and who do not fall within the restricted leave policy. The current policy applies to those initially granted discretionary leave on or after 9 July 2012, and at the time of writing, a person will normally become eligible to apply for ILR after completing a continuous period of 120 months (10 years) discretionary leave.

As those within scope of the restricted leave policy no longer qualify for discretionary leave, accordingly they will not normally qualify for ILR on the basis of having completed any particular continuous period of discretionary leave.

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Long residence
Leave outside the rules
Rights of Appeal

Related external links
Kardi, R (on the Application of) v SSHD [2014] EWCA Civ 934 (10 July 2014)

Removal

Where a person would otherwise fall within the scope of this policy but there are no current ECHR or other legal barriers to deportation or removal, they must be prioritised for enforcement action.

Pending removal, the person should be detained, or put on immigration bail, temporary admission (TA) or temporary release (TR) as appropriate. The conditions imposed in these cases must replicate the conditions that would be imposed were the person to fall within this policy. You must also consider whether any additional conditions, such as electronic monitoring or curfew, are appropriate.

Where a person has immigration bail, TA or TR and has no leave to enter or remain, they will be prevented from working unless permission is or has been given specific to bail, TA or TR as opposed to in the context of previous restricted leave, studying and having recourse to public funds. You must also impose as a minimum the same restrictions that they would impose with a grant of restricted leave, including a residence restriction. The reporting requirement would ordinarily be weekly, but decisions must be taken on a case-by-case basis.

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