



Home Office

Section 67 of the Immigration Act 2016 leave

Version 1.0

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About this guidance

This guidance tells Home Office staff about how to process and assess asylum claims from those transferred to the UK under section 67 of the Immigration Act 2016.

Contacts

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

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

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

- version **1.0**
- published for Home Office staff on **06 July 2018**

Changes from last version of this guidance

New guidance.

Related content

[Contents](#)

Introduction

Purpose of instruction

This guidance is for Home Office staff and decision makers who deal with claims from those transferred to the UK under section 67 of the Immigration Act 2016.

Although intended for Home Office staff it is a public document and parts of it may be useful to others working with unaccompanied asylum-seeking children (UASC) - for instance, staff in children's services departments of local authorities, and NGO staff dealing with unaccompanied children.

An asylum claim can be made by or on behalf of a child in their own right, and must only be processed by a decision maker who has received appropriate training for that role.

This guidance must be read in conjunction with the guidance on [Children's asylum claims](#), and the specific guidance on particular sections. For instance:

- [section 55](#)
- assessing credibility and refugee status
- humanitarian protection
- discretionary leave
- curtailment
- families
- family tracing
- assessing age
- [working together to safeguard children](#)
- victims of modern slavery
- identifying people at risk (enforcement)
- [UASC National Transfer Protocol](#)

Child welfare issues are covered in [Interviewing children](#), [Advice, support and welfare for asylum seeking children](#) and [Modern slavery](#).

Training for Home Office staff dealing with children

The Home Office takes its responsibility towards children very seriously. All staff dealing with asylum claims from children must have completed the following training:

- foundation training programme (FTP)
- tier 1 Keeping Children Safe – e-learning
- tier 3 Keeping Children Safe – classroom based safeguarding and asylum specific

Staff must be aware that other agencies are involved in the welfare of the child. Whilst the Secretary of State for the Home Department remains the decision maker

with regard to the asylum claim and with regard to immigration status, Home Office staff are expected to liaise with other agencies and organisations both from the public and private sectors to ensure that the welfare of the child is safeguarded at all stages of the immigration process. The role of other agencies may include providing factual information that will assist in safeguarding the child. Agencies with whom it is permissible to disclose personal information on the child and to what extent are specified within this asylum instruction.

Policy intention

Section 67 of the Immigration Act 2016 states:

Unaccompanied refugee children: relocation and support

1. The Secretary of State must, as soon as possible after the passing of this Act, make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from other countries in Europe.
2. The number of children to be resettled under subsection (1) shall be determined by the Government in consultation with local authorities.
3. The relocation of children under subsection (1) shall be in addition to the resettlement of children under the Vulnerable Persons Relocation Scheme.

The policy is intended to allow the Government to deliver on its statutory obligation to 'relocate' and 'support' all those transferred under section 67 of the Immigration Act 2016. In accordance with paragraph 352ZG of the Immigration Rules, a total period of 5 years' continuous leave with recourse to public funds will be granted under the policy unless the exclusion criteria apply, for children transferred to the UK under section 67 who, following an assessment of their asylum claim, have not been granted refugee status or humanitarian protection.

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Related content

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Relevant legislation and legal framework

The legal framework for processing asylum claims from unaccompanied children consists of the UK's international obligations and the safeguarding and welfare provisions that are found in legislation and the Immigration Rules.

Immigration Rules

When considering an asylum claim under the Immigration Rules [part 11: asylum](#) please see paragraphs 326A to 352H.

The provisions relating to the consideration of asylum claims from those transferred under section 67 of the Immigration Act 2016 who do not qualify for refugee or humanitarian protection status is set out under paragraph 352ZH to 352ZS of the Immigration Rules.

Please also refer to the Immigration Rules [part 9: grounds for refusal](#), for the refusal of entry clearance, leave to enter or variation of leave to enter or remain in the United Kingdom (paragraphs A320 to 324).

The Refugee Convention

The [1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol \(the 'Refugee Convention'\)](#) are the primary sources of the framework for international refugee protection.

The 1989 Convention on the Rights of the Child

The [United Nations Convention on the Rights of the Child](#) (UNHCR) is an international treaty which sets out the rights of the children. The UK signed the convention on 19 April 1990 and it came into force on 15 January 1992.

The European Convention on Human Rights (ECHR) and Human Rights Act 1998

Under section 6(1) of the [Human Rights Act 1998](#) a public authority is bound to act in a way which is compatible with the [European Convention on Human Rights](#) (ECHR).

European legislation

Qualification Directive (2004/83/EC)

The [Qualification Directive](#) requires consideration of the personal circumstances of an asylum applicant when determining the availability of internal protection under Article 8 (2):

“In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant...”

Article 20.3 on the content of international protection:

“When implementing this Chapter [on the content of international protection], Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors,”

Asylum Seekers (Reception Conditions) Regulations 2005

To protect the best interests of the child, the Home Office has a duty under regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 (the 2005 regulations) to endeavour to trace the families of unaccompanied asylum seeking children as soon as possible after a claim for asylum is made.

Regulation 6 transposed into UK law article 19(3) of the Reception Conditions Directive (2003/9/EC).

Staff must also ensure they are familiar with the obligation to trace family.

Child specific provisions in domestic legislation

Section 67 of the Immigration Act 2016

[Section 67 of the Immigration Act 2016](#) requires the Secretary of State to make arrangements to relocate to the United Kingdom and support a specified number of unaccompanied refugee children from other countries in Europe. Following consultation with local authorities, the Government set the specified number of children to be transferred under section 67 at 480.

Section 55 of the Borders, Citizenship and Immigration Act 2009

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#) requires the Secretary of State to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK. It came into force on 2 November 2009 and is how the UK gives effect to the United Nations Convention on the Rights of the Child (UNCRC) in immigration matters that affect children.

The main ways in which the Home Office gives effect to this are:

- staff must be alert to potential indicators of abuse or neglect, be alert to risks which abusers may pose to children, and be ready and able to share relevant information with other public bodies with a responsibility towards children in order to safeguard a child
- staff who have face to face contact with children must be able to conduct their work in a child sensitive manner, and staff with roles involving regular contact with children, such as interviewing children, must receive appropriate training for their role

Children Act 1989

Local authorities in England have a duty under sections 17 and 20 of the [Children Act 1989](#). Similar duties are placed on local authorities in Scotland under sections 22 and 25 of the [Children \(Scotland\) Act 1995](#). The equivalent duties of Welsh local authorities are set out in parts 3, 4 and 6 of the [Social Services and Well-being \(Wales\) Act 2014](#). In Northern Ireland the duties of Health and Social Care Trusts in Northern Ireland are set out in articles 18 and 21 of the [Children \(Northern Ireland\) Order 1995](#).

Related external links

[Asylum Seekers \(Reception Conditions\) Regulations 2005](#)

[Receptions Conditions Directive \(2003/9/EC\)](#)

[Children Act 1989](#)

[Social Services and Well-being \(Wales\) Act 2014](#)

[Children \(Scotland\) Act 1995](#)

[Children \(Northern Ireland\) Order 1995](#)

How to assess asylum claims from those transferred under section 67

This section provides guidance on how you assess an asylum claim from a person transferred to the UK under section 67 of the Immigration Act 2016.

Children transferred under section 67 of the Immigration Act 2016 must be granted the status and leave that they are entitled to in accordance with the relevant Immigration Rules.

Decision making principles

1). Processing the asylum claim when the applicant is still under 18

This section must be read in conjunction with the relevant sections of [Children's asylum claims](#). In addition, the following must be taken into account:

- children's claims must be considered within the framework set out at [paragraphs 349 to 352FI of the Immigration Rules](#) and any other policy commitments made on children
- where a child meets the requirements for refugee status or humanitarian protection, the appropriate leave must be granted - the provisions relating to the consideration of asylum claims are set out in Part 11 of the Immigration Rules
- the underlying factors that would affect a child's account in terms of detail, consistency, evidence, would be dependent on factors such as age, education, maturity, gender, the standing of the child's family in the community, their general life experience, trauma experienced and the cultural expectations and attributes of children in their country of origin
- the credibility of the claim taking into account any additional relevant child specific factors
- where relevant, be proactive in pursuit and consideration of objective factors and information relating to the child's claim
- Country of Origin Information (COI) must be obtained and referred to including child specific sections where available
- where there are clear discrepancies in an account given by a child, consider the ability of a child to be able to clarify these discrepancies and how far these should be pursued
- complex cases must be discussed with an appropriately qualified senior caseworker or Technical Specialist
- full consideration of the child's asylum claim must take place before consideration is given to any other forms of leave

2). Processing the asylum claim when the applicant is now 18 or over

If the child's 18th birthday passes before a substantive asylum interview has been conducted, they are legally an adult. However, staff must follow best practice for children's cases. The child should be interviewed by a decision maker who has completed the appropriate training for handling children's asylum claims and be given an opportunity to discuss the statement of evidence form (SEF) as it may refer to issues that are child specific. The decision maker should also be trained in handling children's cases. However, the asylum decision will be made in line with adult claims.

Where the applicant has since admitted to being an adult, or evidence confirms the applicant as an adult, at the point of claiming asylum, the application should be assessed as an adult claim.

Best interests consideration

Please refer to: [Processing children's asylum claims](#).

Refugee status

Children must be granted the status and leave that they are entitled to in accordance with the relevant Immigration Rules. A child who fulfils the Refugee Convention criteria is a refugee and should be granted refugee status under [paragraph 334 of the Immigration Rules](#) unless the exclusion criteria apply. See Exclusion under Article 1F and Article 33(2) guidance.

For children, any decision about immigration status that follows non-recognition of a protection claim based on the Refugee Convention and Qualification Directive must include consideration of the need to safeguard and promote the welfare of the child.

A child who fulfils the Refugee Convention criteria is a refugee and should be granted refugee status under [paragraph 334 of the Immigration Rules](#) unless the exclusion criteria apply. See Exclusion under Article 1F and Article 33(2) guidance.

In cases where the child is found to be a refugee it will usually be clear that their best interests are served by remaining in the UK. You must ensure that local authorities are aware of the outcome, so that social workers can ensure that the child's pathway plan reflects the likelihood of long term residency. There may be some cases where because the child has siblings or other family who are settled in a third country and would like to be reunited with these relatives, it is in the child's best interests to join them. You must discuss with social workers the possibility for the child to be relocated. For further information, including the length of leave to grant, see drafting, implementing and serving asylum decisions.

Staff may also want to be aware of the UNHCR publication [Guidelines on international protection](#) which contains the UNHCR's guidance on interpreting some of the terms used in the Refugee Convention and related international instruments.

Humanitarian protection

When a child does not qualify for refugee status, you must next consider whether they qualify for a grant of humanitarian protection (HP). As with a grant of asylum, a decision to grant HP will normally be in keeping with a duty to take account of the need to safeguard and promote the welfare of the child. As part of granting HP you must liaise with the child's local authority social worker. See the asylum instruction on humanitarian protection.

Section 67 of the Immigration Act 2016 leave

In this instance, when a child does not qualify for refugee status or humanitarian protection, decision makers must next consider whether the child qualifies for a grant of section 67 of the Immigration Act 2016 leave.

A child should be granted section 67 of the Immigration Act 2016 leave (section 67 leave) under paragraph 352ZH of the Immigration Rules unless the exclusion criteria apply. See Exclusions under paragraph 352ZP of the [Immigration Rules](#).

Dependants

A dependant child of a person granted section 67 leave under paragraph 352ZO will be granted leave to enter or remain for the same duration as that person ('leave in line') provided that the requirements of paragraph 352ZH (except for (ii)); and 352ZM (iv) are met. A child means a child who is under 18 years of age and for whom the person has parental responsibility.

Appeal rights and administrative review

Applicants for asylum and humanitarian protection continue to carry the right of appeal under [the Nationality, Immigration and Asylum Act 2002](#). However, refusal to grant limited or indefinite leave under s.67 leave is not an appealable decision and cannot be considered for an administrative review. Those who wish to challenge such a decision will need to apply for Judicial Review. The guidance on Asylum appeals provides guidance on rights of appeal arising from decisions made on asylum cases.

Conditions for section 67 of the Immigration Act 2016 leave

A total period of 5 years' continuous leave will be granted with recourse to public funds and permission to work and study in the UK provided that they meet the residency requirements. The Immigration Health Surcharge is not applicable to cases considered under this policy.

Applicants also need to satisfy the three years' residency test for student finance.

Family reunion

A person granted limited leave under this policy is not eligible to sponsor a person to enter the UK because this is not a protection based leave.

Travel documents

Eligibility for a Travel Document will depend on the status granted to the applicant. Please see: [Apply for a Home Office travel document](#).

Serving the decision

Please refer to [Children's asylum claims](#) for serving the decision.

Implementing a decision to grant leave

When a decision is made to grant the child some form of leave, you must liaise closely with the child's social worker, where they have one, to ensure that they are able to take this into account in their pathway plan for the child.

For a child who is granted refugee leave, humanitarian protection or section 67 of the Immigration Act 2016 leave for a period of 5 years, the pathway plan will most likely reflect the provisions of the [Children Act 1989](#) as amended by the [Children \(Leaving Care\) Act 2000](#). The Act places a responsibility on local authorities to support care leavers until they reach the age of 21 or beyond if they remain in an approved programme of education or training.

The agreed pathway plan will include the assessed or identified needs, identified timescales, action plan to meet these needs and the responsible person which assist the child to make the transition from care to the responsibilities of adulthood. It must be flexible and regularly updated. These matters will all be handled by the local authority.

You must close the case if refugee status, humanitarian protection (HP) or section 67 of the Immigration Act 2016 status is granted, and must review it either when an application for further leave is made or after 5 years to see whether an application for indefinite leave to remain or further leave to remain has been made.

The decision letter

You should clearly explain within the reasons for refusal letter how this decision has taken in to account the section 55 duty. For further guidance on drafting reasons for refusal letters, refer to the Assessing credibility and refugee status asylum instruction.

The manner in which the letter will be served on the child will be determined by whether they have any outstanding in-country appeal rights:

- if in-country appeal rights have not been exhausted, the case owning team should serve the letter on the child by post or in person at a decision service event - for further guidance on serving decision letters in this circumstance, refer to drafting, implementing and serving asylum decisions
- if in-country appeal rights have been exhausted or were not granted, the case owning team should serve the letter during [the return discussion](#)

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