



Home Office

Calais Leave

Version 3.0

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About this guidance

This guidance tells Home Office staff how to process and assess asylum claims from those people who were transferred to the UK between 17 October 2016 and 13 July 2017, in connection with the clearance of the Calais camp, for the purpose of being reunited with family.

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 **3.0**
- published for Home Office staff on **31 December 2020**

Changes from last version of this guidance

Amendments made to guidance to take in to account legislative and procedural changes arising from the end of the Transition Period at 11:00pm on the 31 December 2020 following the UK's exit from the European Union on 31 January 2020.

Related content

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Introduction

Purpose of instruction

This guidance is for Home Office staff and decision makers who deal with claims from those people who were transferred to the UK as unaccompanied minors between 17 October 2016 and 13 July 2017, in connection with the clearance of the Calais camp, for the purpose of being reunited with family.

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 working with UASC.

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 (SSHD) 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 about the child and to what extent are specified within this guidance.

Policy intention

Calais leave:

As part of the clearance of the Calais camp in October 2016, the Government transferred 769 unaccompanied children to the UK. Of those, 549 were transferred to reunite with family here. All of those children claimed asylum on arrival in the UK. After careful consideration, it was considered that a number of those cases would likely fall to be refused under existing asylum and immigration rules.

Paragraphs 352I to 352X have been inserted into [Part 11 of the Immigration Rules](#) to specifically enable those transferred to the UK between 17 October 2016 and 13 July 2017 as part of the Calais camp clearance in order to reunite with family, and who do not qualify for international protection (such as refugee status or humanitarian protection), to remain in the UK long term. This is subject to exclusions based on, for example, the grounds of security and criminality or on deception or omission of information relevant to acceptance under Calais leave.

This new form of leave is only available to a specified cohort, namely: those individuals who were identified for transfer to the UK as unaccompanied children in connection with the clearance of the Calais camp, to reunite with qualifying family. These transfers had to have occurred between 17 October 2016 and 13 July 2017.

The policy is intended to allow those who qualify for Calais leave to remain in the UK long term. Those granted Calais leave, and their dependants who receive leave in line, will receive a residence permit with a validity of 5 years. At the end of the 5 year period, if the person's Calais leave has been renewed, they will be issued with another residence permit, valid for a further period of 5 years. A person may apply for Indefinite Leave to Remain ("ILR") after a period of 10 years' continuous leave in the UK.

Calais leave is a separate form of leave to section 67 of the Immigration Act 2016 leave, granted under paragraphs 352ZG-352ZS of the Immigration Rules. Although not all of those who qualify for section 67 leave will have transferred to the UK as a result of the Calais camp clearance, clearly, both forms of leave involve individuals transferred to the UK in connection with the clearance of the Calais camp. Therefore, care must be taken not to confuse the two.

Official – sensitive: start of section

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Official – sensitive: end of section

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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

Please refer to the relevant rules for considering an asylum claim under the [Immigration Rules part 11: asylum](#), (paragraphs 326A to 352X).

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).

Child specific provisions in domestic legislation

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 content

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Related external links

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

[Children Act 1989](#)

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

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

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

Best interests consideration

Please refer to the [children's asylum claim guidance](#).

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 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 should also 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.

Calais leave

In this instance, when a person does not qualify for refugee status or humanitarian protection, you must next consider whether the child qualifies for a grant of Calais leave.

A person described in paragraph 352I should be granted Calais leave under paragraph 352J of the Immigration Rules unless the exclusion criteria apply. See Exclusions under paragraph 352U of the Immigration Rules. Please refer to the [Immigration Rules](#) for further details.

Dependants

A dependant child of a person granted Calais leave under paragraph 352J or 352S will be granted leave to enter or remain for the same duration as that person ('leave in line') provided that the requirements of paragraph 352J (except for (ii)); and 352R (iv) are met. A dependant 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](#). A child who challenges the refusal of asylum and humanitarian protection may retain their Calais leave status if the refusal decision is upheld. However, refusal to grant limited or indefinite leave under Calais 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 Calais 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.

Family reunion

A person granted limited leave to remain 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 guidance at [GOV.UK](#).

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Serving the decision

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

Implementing a decision to grant leave

Individuals who qualify for Calais leave will predominantly be placed with family. However, 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 if a pathway plan is required for the child.

For a child who is granted refugee leave, humanitarian protection or Calais leave, 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 Calais leave status is granted, and must review it either when an application for further leave is made after 5 years or after 10 years to see whether an application for indefinite 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](#).

Although the [s.55] duty is engaged whenever an immigration or asylum function is carried out, a decision to grant permission to remain in the UK can be understood to be one that has taken into account the need to safeguard and promote that child's welfare. Of course, any factors that are obviously in play and that suggest that the grant of leave to remain is contrary to the section 55 duty have to be considered, as do any additional factors relevant to the section 55 consideration that are specifically raised by the applicant. These need to be addressed if raised and especially if they are being relied upon to affect a decision. This would include cases where the claimant was potentially eligible for a more generous form or length of leave to remain and there was discretion in the assessment of eligibility or length. For example:

- where the child requested a longer period of leave granted outside of the rules (discretionary leave) than the length of leave you intend to grant
- they are excluded from protection under Article 1F of the Refugee Convention

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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