

DISCRETIONARY LEAVE

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Introduction

Humanitarian Protection and Discretionary Leave were introduced on 1 April 2003 to replace exceptional leave.

Where an asylum applicant does not qualify for refugee status, the caseworker should always consider whether they qualify for leave on the basis of Humanitarian Protection and if not, then consider whether they qualify for Discretionary Leave (see the Asylum Instruction on [Considering the Asylum Claim](#)). A stand alone human rights claim may also result in a grant of Discretionary Leave if the qualifying criteria are met.

This instruction explains the limited circumstances in which it would be appropriate to grant Discretionary Leave. For guidance on Humanitarian Protection please refer to the Asylum Instruction on [Humanitarian Protection](#).

For details on family reunion and on dependants accompanying an applicant who is granted Discretionary Leave, please **refer to Complex Advice Team via a senior caseworker**

Non-asylum cases may qualify for Discretionary Leave only in the limited circumstances outlined in this instruction (see '[Criteria for granting DL](#)' below, for the relevant categories).

Where a non-asylum case does not meet the criteria for a grant of Discretionary Leave (or Humanitarian Protection leave) but the caseworker is still considering granting leave outside the Rules, they should refer to [Chapter 1 section 14 of the IDIs on Leave Outside the Rules](#).

Separate instructions may be issued in relation to the handling of applications for Discretionary Leave. The instructions will be in the form of APU Notices, Country Bulletins or Operational Guidance Notes (OGNs). Where such instructions are in force, they will take precedence over the contents of this instruction, to the extent that they make different provisions.

Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

Key points

- Discretionary Leave is to be granted only if a case falls within the limited categories set out below in the section below '[Criteria for granting DL](#)'. It is intended to be used sparingly.
- Discretionary leave is to be granted only where the Secretary of State is satisfied that neither an enforced nor voluntary return is possible without material prejudice to the rights protected under this instruction. References to 'return' are to be read accordingly.
- Discretionary Leave is granted outside the Immigration Rules.
- Discretionary Leave should not be granted where a person qualifies for asylum or Humanitarian Protection, or where there is another category within the Immigration Rules under which they qualify.
- Discretionary Leave should not be granted to EEA nationals (and their third-country national family members) who are exercising treaty rights.
- Discretionary Leave should not be granted where another EU Member State or Norway / Iceland has accepted responsibility for an asylum claim under the Dublin arrangements or where an individual is otherwise removable on third country grounds.
- Discretionary Leave is not to be granted on the basis that, for the time being, practical obstacles prevent a person from leaving the UK or being removed, e.g. an absence of route or travel document.
- The period of leave granted will vary depending on the basis on which the grant of Discretionary Leave was made. An initial grant of leave will be no longer than three years and will sometimes be less - see section below on '[Duration of grants of DL](#)'.
- Where an extension of leave is sought after a period of Discretionary Leave the request will be subject to an active review. A person will not become eligible for settlement until they have completed six years' Discretionary Leave. This period will be longer, at least ten years and potentially never, for those in the excluded category (see sections below on Exclusion from HP/DL). For further guidance see the Asylum Instruction on [Active Review](#).
- For details on family reunion and dependants accompanying an applicant who is granted Discretionary Leave **refer to Asylum Complex Advice Team via a senior caseworker**.
- Those granted Discretionary Leave have access to public funds and are entitled to work.

Criteria for Granting Discretionary Leave

Cases where return would breach Article 8 of the ECHR

Where the return of an individual would involve a breach of Article 8 of the ECHR (right to respect for private and family life) on the basis of family life established in the UK, they should be granted Discretionary Leave. Leave should not be granted on this basis without a full consideration of the Article 8 issues. Please refer to the Asylum Instruction on the [Considering Human Rights](#).

This category applies to both asylum and non-asylum cases. In non-asylum cases it is most likely to arise in the context of a marriage or civil partnership application where, although the requirements of the Rules are not met (e.g. because the correct entry clearance is not held), there are genuine Article 8 reasons which would make return inappropriate. Discretionary Leave should not be granted under Article 8 in non-asylum cases without reference to a senior caseworker.

Policy on the consideration of cases of those who are persons liable to be removed as illegal entrants or deported and who have married a person settled in the UK involves special considerations. Immigration control issues weigh particularly heavily in such cases. The policy is contained in DP3/96 within [Processing Hybrid Applications](#). Similar considerations apply where the parties have contracted a civil partnership.

Cases Where Return Would Breach Article 3 of the ECHR but Where Humanitarian Protection is not Applicable

Where a person's return would be contrary to Article 3 of the ECHR (see the Asylum Instruction on [Considering Human Rights](#) for further details) based on a protection need arising from a real risk that the person would suffer serious harm on return, they will normally qualify for Humanitarian Protection unless they fall to be excluded from those provisions – see the Asylum Instruction on [Humanitarian Protection](#). However, there are some cases where the Article 3 breach does not arise from a need for protection as such, e.g. where a person's medical condition or severe humanitarian conditions in the country of return would make return contrary to Article 3. Persons falling into this category should be granted Discretionary Leave rather than Humanitarian Protection.

Medical Cases

This category applies to both asylum and non-asylum cases.

It can in exceptional cases be a breach of Article 3 to remove someone from the UK if to do so would amount to inhuman or degrading treatment owing to the acute suffering which would be caused because of that person's medical condition. The threshold for inhuman and degrading treatment in such cases is extremely high and will only be reached in truly exceptional cases involving extreme circumstances. The fact that the applicant is suffering from a distressing medical condition (e.g. a condition which involves a limited life expectancy or affecting their mental health), may not, in itself, be sufficient to meet this threshold. Discretionary Leave should not be granted if the claimant could avoid the risk of acute suffering by leaving the UK voluntarily. For further guidance please refer to the Asylum Instruction on [Considering Human Rights](#) and [Chapter 1 Section 8 of the IDIs \(Medical\)](#).

Where it is proposed to grant leave under this category the case should be referred to a senior caseworker.

Severe Humanitarian Conditions

There may be some extreme cases (although such cases are likely to be rare) where a person would face such poor conditions if returned - e.g. absence of water, food or basic shelter - that removal could be a breach of the UK's Article 3 obligations. Discretionary Leave should not be granted if the claimant could avoid the risk of suffering by leaving the UK voluntarily. Where it is proposed to grant leave under this category the case should be referred to a senior caseworker.

Other Cases Where Return Would Breach the ECHR

This category applies to asylum and non-asylum cases where the breach would not give rise to a grant of Humanitarian Protection and is not covered above. For example, where return would result in a flagrant denial of the right in question in the person's country of origin. For guidance on the consideration of other ECHR claims, please refer to the Asylum Instruction on [Considering Human Rights](#).

It will be rare for return to breach another Article of the ECHR without also breaching Article 3 and/or Article 8. Cases falling under this category should be referred to a senior caseworker for approval before a grant of Discretionary Leave is made.

Unaccompanied Asylum Seeking Children (UASCs)

Where an unaccompanied child applies for asylum, caseworkers should, as with any other applicant, first consider whether they qualify for asylum and if they do not, whether they qualify for Humanitarian Protection. If they do, leave should be granted accordingly. If they do not, they will qualify for Discretionary Leave if there are inadequate reception arrangements available in their own country. See the [Processing Asylum Applications from Children](#) Asylum Instruction for further guidance.

Where an unaccompanied child qualifies for Discretionary Leave on more than one ground (i.e. on the ground of inadequate reception arrangements and also on another ground) they should be granted leave on the basis of the ground that provides the longer period of stay. However, all grounds which might have led to a grant of leave should be recorded in the file minute.

Other Cases

This category applies only to asylum cases. Caseworkers should refer to [Chapter 1 section 14 of the IDIs on Leave Outside the Rules](#) for guidance on granting leave in non-asylum cases where there are particularly compelling circumstances.

The categories under which it would normally be appropriate to grant Discretionary Leave are set out above. There are likely to be very few other cases in which it would be appropriate to grant Discretionary Leave to an unsuccessful asylum seeker. However, it is not possible to anticipate every eventuality that may arise, so there remains scope to grant Discretionary Leave

where individual circumstances, although not meeting the criteria of any of the other categories listed above, are so compelling that it is considered appropriate to grant some form of leave.

Discretionary Leave should not be granted on this basis without discussion with a senior caseworker. Detailed file minutes will be required to keep accurate records of what has been decided and for what reasons.

From time to time separate instructions may be issued describing a category of case for which Discretionary Leave might be granted under this heading. Such instructions would set out any other relevant information for handling such cases.

See also the section on [Short Periods of Stay or Deferred Decision/Removal](#).

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Applicants Excluded From Refugee Status, Humanitarian Protection or Discretionary Leave

Exclusion from refugee status

Where an applicant would have established that they were a refugee under the 1951 Convention or eligible for a grant of Humanitarian Protection but for the fact that they were excluded from that protection, they should normally be granted Discretionary Leave for 6 months. Cases in which article 33(2) of the 1951 Convention applies should be treated in the same way. The criteria for exclusion from refugee status and the operation of article 33(2) are explained in the Asylum Instruction on [Exclusion](#).

Exclusion from Humanitarian Protection

Individuals excluded from Humanitarian Protection will usually be granted Discretionary Leave for 6 months. See the [Humanitarian Protection](#) Asylum Instruction for the grounds of exclusion from Humanitarian Protection. The Asylum Instruction on [Exclusion](#) may also be helpful.

Exclusion from Discretionary Leave

The grounds for exclusion from Humanitarian Protection will apply to Discretionary Leave. See the Asylum Instruction on [Humanitarian Protection](#) for the relevant grounds. A person who is excluded from Discretionary Leave will be expected to leave the UK. Where neither enforced nor voluntary return is possible without material prejudice to the rights protected under this instruction, Discretionary Leave will usually be granted for six months.

Any decision that a UASC is excluded from Discretionary Leave should be referred to the Asylum Complex Advice Team.

NB: Where an individual has been excluded under this instruction, Ministers must be advised of any proposal to grant Discretionary Leave.

Granting or Refusing Discretionary Leave in Asylum Cases

Granting Discretionary Leave

Asylum applicants who are granted Discretionary Leave should be issued with a Reasons For Refusal Letter (RFRL) which explains why the asylum application has been refused and why Humanitarian Protection has not been granted. The reasons for granting Discretionary Leave should also be set out. These reasons do not need to be detailed, but it should be clear under which of the categories listed above that the person qualifies.

If someone qualifies under two headings they should benefit from the one that provides the longer period of stay. The letter should only refer to the basis on which leave was granted but the file minutes will need to be clear that both were considered applicable.

If the grant of Discretionary Leave has been made on the basis of a fear of ill treatment by the authorities in the country of nationality, then the RFRL should make reference to this. Unless a fear of the authorities in the country of nationality is accepted, individuals with Discretionary Leave should apply for a national passport rather than a Home Office travel document if they wish to travel abroad.

Refusing Discretionary Leave

Applicants who are refused outright should be issued with a Reasons For Refusal Letter which explains why the asylum claim has been refused, why Humanitarian Protection has not been granted. If not already fully covered by the reasons for refusing asylum and Humanitarian Protection, the letter should explain why removal would not breach the United Kingdom's obligations under the ECHR, or why it is considered that the applicant can reasonably be expected to return voluntarily.

Any matters raised by an applicant which relate to or rely on the contents of this policy instruction should be addressed in the refusal letter.

See the Asylum Instruction on [Considering Human Rights](#) for further details about addressing ECHR issues. Further guidance is also provided in the Asylum Instruction on [Article 8](#) of the ECHR.

Request for Discretionary Leave After the Initial Decision and Appeal Stages

Occasions may arise when, following the refusal of asylum and exhaustion of all appeal rights, a request is nonetheless made for Discretionary Leave, usually in the form of a human rights claim.

By the time all rights of appeal have been exhausted, there will be very few cases that would merit a grant of Discretionary Leave because the relevant factors are likely to have been considered at an earlier stage. However, caseworkers should give full and careful consideration to the reasons provided for requesting such leave, and decide whether such a grant would be appropriate.

Further Representations/Fresh Claims

If refused, a request for DL in such a case should either be treated as further representations or, if treated as a fresh claim, be considered for certification under section 96 of the Nationality, Immigration and Asylum Act 2002 (as amended).

For more information see the Asylum Instruction on [Further Representations and Fresh Claims](#). See also the [IDI on Appeals - certification under section 96](#).

Asylum and Immigration Tribunal (AIT) Determinations

In some cases, the Asylum and Immigration Tribunal (AIT) may dismiss an asylum appeal but suggest that Discretionary Leave is granted in an individual case. In such instances the case is to be considered in accordance with guidance in the [IDI on Appeals](#).

Duration of Grants of Discretionary Leave

Standard Period for Different Categories of Discretionary Leave

It will normally be appropriate to grant the following periods of Discretionary Leave to those qualifying under the categories set out above. All categories will need to complete at least six years in total, or at least ten years in excluded cases, before being eligible to apply for ILR.

Article 8 cases – three years.

Article 3 cases – three years.

Other ECHR Articles – three years.

UASCs

Where leave is granted to a UASC on the basis of inadequate reception arrangements in their home country, the UASC should be granted DL. For decisions made **before 1st April 2007** this grant of DL will be for three years or leave until age 18, whichever is the shorter; or the shorter of 12 months or leave until age 18 in certain specified countries (see the Asylum Instruction on [Processing Asylum Applications from Children](#)). For all decisions made **on or after 1st April 2007** (where asylum/HP is being refused) DL must only be granted to **17.5 years or 3 years**, (or 12 months for certain countries) whichever is the shorter period of time.

Other cases – three years (but this category is probably more likely than others to qualify for a non-standard grant period – see the section below).

Excluded from Humanitarian Protection or Discretionary Leave – six months. This period applies to the first grant and any subsequent grants following an active review.

See Duration of grants and Recording the consideration on the Minute in the Considering Human Rights claim instructions.

Non-Standard Grant Periods

There may be some cases – for example, some of those qualifying under Article 8 or the section on other cases - where it is **clear** from the individual circumstances of the case that the factors leading to Discretionary Leave being granted are going to be short lived.

For example:

- an Article 8 case where a person is permitted to stay because of the presence of a family member in the United Kingdom and where it is known that the family member will be able to leave the United Kingdom within, say, 12 months;
- or a case where a grant of leave is appropriate to enable a person to stay in the UK to participate in a court case.

In these cases it will be appropriate to grant shorter periods of leave.

Non-standard grants should be used only where the information relating to the specific case clearly points to a shorter period being applicable. Reasons for granting a shorter period should be included in the letter to the applicant.

Shorter periods of leave should only be granted after reference to a senior caseworker.

Short Periods of Stay or Deferred Decision/Removal

There will be some cases where the factors meriting a grant of Discretionary Leave are expected to be sufficiently short lived that the question arises whether to grant a short period of leave or to refuse the application outright whilst giving an undertaking not to remove the individual or expect them to return until the circumstances preventing their return have changed. Such cases could arise at the initial decision-making stage or following an appeal.

Where it is considered that return would be possible within six months of the date of decision it will normally be appropriate to refuse the claim outright, not to grant a period of Discretionary Leave, and to defer any removal until such time as it is possible.

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Curtailing Discretionary Leave

A grant of Discretionary Leave will not normally be actively reviewed during its currency. This paragraph sets out the circumstances when consideration should be given to curtailing such leave. Further guidance on curtailment of Discretionary Leave can be found in [chapter 9, section 5, paragraph 3 of the IDIs](#).

Voluntary Actions Leading to Curtailment

It will not usually be appropriate to curtail a person's leave simply because they have returned to their own country or have travelled on their own national passport (people granted Discretionary Leave will normally be expected to keep their own national passport valid). This is because we will usually not have accepted that a person has a fear of return to their own country or a fear of their own authorities and will have granted Discretionary Leave for reasons other than protection.

However, there may be some occasions where leave should be curtailed because an individual has demonstrated by their own actions that the reasons on which they were granted Discretionary Leave no longer persist: for example, where a person with Discretionary Leave based on fear in the country of nationality obtains a national passport and uses it to return, or where someone was granted Discretionary Leave under Article 8 based on their marriage or civil partnership and that marriage or partnership has broken down.

Curtailment As A Result Of A Change In Country Conditions

A grant of Discretionary Leave should not be reviewed on these grounds before it ends, unless there is a specific instruction to do so in relation to a particular country or to a category of cases in respect of a particular country. Any such instruction will provide details of the review process to be undertaken. These instructions may be separate from any instructions on reviewing limited leave as a refugee or Humanitarian Protection granted on or after 30 August 2005 based on a significant and non-temporary change in country conditions. Any consideration of whether to curtail Discretionary Leave would need to take into account the effect of the change in country circumstances on the individual.

It may be less likely for a change in country circumstances to have an effect on those with Discretionary Leave than those with refugee status or Humanitarian Protection. But there could be situations where such a change is relevant to those with Discretionary Leave under certain categories – for example any claims based on severe humanitarian conditions.

Curtailment/Variation of Leave on the Grounds of Character or Conduct (Including Deception)

Discretionary Leave should normally be curtailed if a person becomes subject to any of the grounds of exclusion criteria set out in the Asylum Instruction on [Humanitarian Protection](#). This will usually apply where a person's actions after the grant of Discretionary Leave bring them within the scope of those grounds. There may also be some situations where we become aware that a person is subject to one of the grounds of exclusion only after the grant of Discretionary Leave. Again, it would normally be appropriate to curtail leave in such cases.

If the individual is liable to deportation and a deportation order is made, it will have the effect of invalidating any extant leave. Action to curtail or vary leave will only be necessary, therefore, where a person is liable to deportation but it is not possible to make a deportation order (e.g. for Article 3 ECHR reasons).

A person who obtains leave to enter by deception under the Discretionary Leave policy is an illegal entrant. If it is decided to take illegal entry action against that person (under Schedule 2 to the Immigration Act 1971) their leave is no longer valid. Where a person has obtained leave to remain by deception under this policy, that person is liable to removal under section 10 of the Immigration and Asylum Act 1999. A decision to remove under this section will invalidate the leave that has been given previously.

Separate action to vary Discretionary Leave will be required only where a decision to remove cannot be made or removal directions set (e.g. for Article 3 ECHR reasons).

If a person who falls into an exclusion category cannot return without material prejudice to the rights protected under this instruction, their leave should usually be varied and replaced with a maximum period of six months' Discretionary Leave in accordance with the guidelines set out in the sub-section of this instruction on '[Applicants excluded from Refugee Status, Humanitarian Protection or Discretionary Leave](#)'.

If return is likely to be possible in the near future a shorter period of Discretionary Leave, or no leave, should be granted.

Other Situations Where the Basis for the Grant of Leave has Ceased to Exist

There may be other occasions where due to a change in circumstances it would be appropriate to curtail Discretionary Leave. For example, it would be appropriate where a child who was granted leave under the UASC policy is subsequently contacted by an adult family member who can care for them in their own country or where someone was granted leave on Article 8 grounds because of their relationship with a person settled here and that person subsequently leaves the United Kingdom or the relationship otherwise ends.

A senior caseworker should always be consulted before any action is undertaken to consider revocation of Discretionary Leave under this category.

Applications for Further Leave

A person will not become eligible for consideration for settlement until they have completed six years of Discretionary Leave or, in the case of persons subject to the exclusion criteria, until they have completed at least ten years of Discretionary Leave. Anyone granted Discretionary Leave will therefore have to have at least one active review before they become eligible for consideration for settlement.

An individual should apply for an extension of Discretionary Leave shortly before it expires. The application will be considered in the light of circumstances prevailing at that time.

Where the request for leave amounts to a request for an upgrade from Discretionary Leave to Humanitarian Protection status, see the Asylum Instruction on [Humanitarian Protection](#).

Consideration of The Extension Request

Extension requests will normally be the subject of an active review, to decide whether the person still qualifies for Discretionary Leave (or any other form of leave that is requested). This review will take account of the information on the extension request form, present country information and any other information of which we are aware and which is relevant to the claim, including any relevant information provided at the time of the original grant of Discretionary Leave.

In many cases an active review will be conducted on the papers without the need for interview. However an interview may be necessary where further information is required in order to make a decision on the application.

The nature of the active review will depend on the reasons why Discretionary Leave was granted. It may, for example, involve consideration of the current family situation of the applicant, the conditions in the country of origin, whether reception arrangements for a child are still unavailable or whether there is still a barrier to the return of an excluded person. For further guidance see the Asylum Instruction on [Active Review](#).

Granting An Extension

Where an individual still qualifies for Discretionary Leave (and does not qualify for leave on another basis – i.e. under the Immigration Rules) they should normally be given an extension of stay for a period in accordance with the '[Duration of grants...](#)' section below.

The exception is that a shorter period should be granted if such an extension would take the person beyond the time when they would become eligible for consideration for settlement (i.e. six or ten years). The shorter period should be such as to bring the person's aggregate stay on Discretionary Leave up to six or ten years, as appropriate.

Refusing An Extension

Where, following review, it is decided that an individual no longer qualifies for Discretionary Leave and that they do not qualify for any other form of leave their extension request should be refused.

Applications for Settlement

A person will normally become eligible for consideration for settlement after completing six continuous years of Discretionary Leave. However, where a person is covered by one of the exclusion categories they will not become eligible for consideration for settlement until they have completed ten continuous years of Discretionary Leave. Any time spent in prison in connection with a criminal conviction would not count towards the six or ten years.

An individual may apply for ILR/settlement at the six or ten year stage shortly before Discretionary Leave expires. The application will be considered in the light of circumstances prevailing at that time.

Consideration of Application

As with an extension request, the application should be subject to an active review to consider whether or not they still qualify for Discretionary Leave (or some other form of leave).

Granting Settlement

Where a person has held Discretionary Leave for an appropriate period and continues to qualify for Discretionary Leave, they should be granted ILR/settlement.

Further Grants of Discretionary Leave

There may be some cases where it is clear that the basis for the (continuing) grant of Discretionary Leave is temporary. If there is a **clear** basis for considering that within twelve months the factors giving rise to the grant of Discretionary Leave will have ceased to apply then settlement should not be granted – for example, an Article 8 case in which it is considered that a person who has been granted Discretionary Leave may not be removed for six months because of the family life they have established with someone in the United Kingdom who will be leaving the United Kingdom in six months' time. Instead a shorter further period of Discretionary Leave should be granted.

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

Personal Decision by Ministers

Where a person who is subject to the grounds of exclusion has completed ten years of Discretionary Leave they may be denied settlement where Ministers decide in the light of all the circumstances of the case, that the person's presence in the United Kingdom is not conducive to the public good (this may be decided in the individual circumstances of a case, or for a category of cases). Reasons for this decision should be given. A further period of Discretionary Leave should be granted where it is not possible to remove the person. In such a case, for so long as the individual remains in the United Kingdom, a fresh decision will need to be taken at least every three years on whether settlement should continue to be denied.

Refusal of Settlement and Further Leave

Where a person no longer qualifies for Discretionary Leave or any other form of leave, their application for settlement should be refused.

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Appeal Rights

See the [Rights of Appeal in Asylum Cases](#).

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Issuing of Travel Documents

A person granted Discretionary Leave will normally be expected to keep their own national passport valid. This is because we will usually not have accepted that a person has a fear of return to their own country or a fear of their own authorities and will have granted Discretionary Leave for reasons other than protection.

However, a person who has leave on grounds of Discretionary Leave may apply for a Home Office Certificate of Identity on the appropriate application form. Applicants must normally show that they have been formally and unreasonably refused a national passport, unless IND has accepted that they have a well-founded fear of their national authorities. It is not usually necessary for those applying for a Certificate of Identity to provide a compelling reason for travelling. Where the applicant has ILR, the document will be valid for 5 years. Otherwise it will expire when the holder's current leave to enter or remain expires.

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Transitional Arrangements

Up until 2007 there will be individuals granted exceptional leave under the old system whose leave will be ending and who will be seeking to extend their stay.

Those applicants who were granted a four-year period of exceptional leave in one block and who then apply for ILR at the end of that period should be considered for settlement with background character and conduct checks and war crimes screening, but without a full active review. In other words, those who pass such checks and screening will not need to show that they would necessarily qualify for Humanitarian Protection or Discretionary Leave at the time of the ILR decision.

Where a person seeks an extension of stay having spent fewer than four years on exceptional leave (or where they have spent four years on exceptional leave granted in more than one block), their application should be examined to determine whether a grant of Humanitarian Protection, Discretionary Leave or leave on another basis is appropriate. If they do not qualify for Humanitarian Protection or Discretionary Leave or for leave on any other basis (such as under the Immigration Rules), their claim for an extension of stay should be refused. (Further guidance is contained in the Asylum Instruction on [Active Review](#).)

If they do qualify for Discretionary Leave (but not Humanitarian Protection) they should be granted leave in accordance with this instruction. Periods spent on exceptional leave will count towards the six or ten years qualifying period for settlement applicable to those with Discretionary Leave.

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