Home Office

Exclusion (Article 1F) and Article 33(2) of the Refugee Convention

Version 7.0

Contents

About this guidance

This guidance tells you how to consider whether an individual should be excluded from the protection of the Refugee Convention under Article 1(F) or whether the bar on refoulement may be disapplied under Article 33(2) of the Refugee Convention. This guidance also tells you how Article 1(F) and Article 33(2) of the Refugee Convention should be applied when considering claims under Part 11 of the Immigration Rules, for example when considering whether to grant or revoke refugee status.

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 **7.0**
- published for Home Office staff on **28 June 2022**

Changes from last version of this guidance

- Updated in line with the Nationality and Borders Act 2022 (the '2022 Act'). Section 38 of the 2022 Act amends Section 72 of the Nationality, Immigration and Asylum Act 2002 (the '2002 Act') so that an individual will be considered to have committed a 'particularly serious crime' if they have received a sentence of 12 months or more imprisonment
- Relevant legislation section updated and references removed to EU legislation which the UK is no longer bound by. Section 36 of the 2022 Act, reflects Article 1(F) of the Refugee Convention and sets out in primary legislation the UK's definition for exclusion from the Convention in case of serious crime
- Exclusion and dependants section updated to include Family Asylum Claims

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Introduction

The guidance provides instructions to asylum decision makers on how to consider the following elements of the Refugee Convention, in relation to an asylum claim:

- the exclusion provisions under Article 1(F) which sets out persons to whom the Refugee Convention shall not apply
- the expulsion provision under Article 33(2) which provides that the bar on refoulement can be disapplied in certain circumstances (meaning a person who is a Convention refugee could be removed where such a removal would not be in breach of other legal and international obligations (predominantly those under Articles 2 and 3 of the European Convention on Human Rights (ECHR))

The guidance explains how each of these provisions should be applied in relation to claims being considered under Part 11 of the Immigration Rules in relation to a decision to either grant or revoke refugee status. Different definitions and Immigration Rules will apply depending on the date of the asylum claim / conviction. The definitions in the 2022 Act and current Immigration Rules will apply to asylum claims made on or after 28 June 2022. The amendments made to section 72 of the 2002 Act by section 38 of the 2022 Act (particularly serious crime) apply only in relation to a person convicted on or after 28 June 2022.

It must be read in conjunction with asylum policy guidance, in particular:

- Asylum Interviews
- Assessing credibility and refugee status (the guidance relevant to the date of the asylum claim must be followed based on whether the asylum claim was made before 28 June 2022 or on or after the 28 June 2022 when the 2022 Act came into force. This guidance explains the transitional arrangements.)
- Humanitarian Protection
- Discretionary leave
- Disclosure and confidentiality of information in asylum claims
- Revocation of refugee status

and where relevant:

- Criminality guidance in ECHR Article 8 cases
- Restricted Leave
- Further submissions
- Settlement Protection

You must also refer to the relevant country policy and information notes which include country specific guidance. For family and private life applications see family instructions.

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Background

The UK has a proud tradition of providing protection to those at risk of persecution, in accordance with our international obligations as signatories of the Refugee Convention. There are however some exceptions to the obligation to provide protection based on the conduct of the claimant.

The past conduct of an individual is considered in Article 1F of the Refugee Convention. Where an individual has committed war crimes, crimes against humanity, terrorist acts or other serious criminal offences, the provisions of the Refugee Convention do not apply to them. They are not a Convention refugee as a result of Article 1F of the Refugee Convention, even where they would otherwise meet the definition of a refugee in Article 1A(2). The exclusion provisions are applied in domestic law via paragraph 334of the Immigration Rules and defined in Section 36 of the 2022 Act.

Article 33(2) of the Refugee Convention has a different purpose. In effect, it negates the principle of non-refoulement set out in Article 33(1) of the Refugee Convention in certain specific circumstances. It relates to individuals who are Convention refugees but who are considered to be serious criminals or a threat to public security. It provides that such refugees may be returned to a country of persecution where there are reasonable grounds for regarding them as a danger to the security of the host country; or if, having been convicted by a final judgment of a particularly serious crime, they are considered to pose a danger to that community. Section 72 of the 2002 Act (as amended by Section 38 of the 2022 Act) sets out what is considered a ‘particularly serious crime’ for the purpose of applying Article 33(2). However, in such cases the UK remains bound by the ECHR and will not remove an individual to a country where there is an ECHR barrier to removal (normally under Article 3).

Immigration Rule 334 subparagraphs (iii) and (iv) require decision makers to consider whether Article 33(2) of the Refugee Convention applies to a claimant when considering whether to grant them refugee status in the UK. You must refuse to grant refugee status in the UK if these provisions apply as Immigration Rule paragraph 336 provides that an asylum claim which does not meet the criteria set out in paragraph 334 will be refused.

Policy intention

The policy intention in carefully considering and applying Article 1F or Article 33(2) of the Refugee Convention to an asylum claim, is to deny the benefits of refugee status to those who, through their own actions, do not deserve either the protection of the

Refugee Convention or the full benefits of refugee status in the UK and to protect the public from those who represent a danger to national security or the community by:

- denying protection to those who have committed crimes against peace, war crimes, crimes against humanity, other serious crimes abroad or acts contrary to the purposes and principles of the United Nations by excluding them from the Refugee Convention
- excluding or refusing protection or denying the benefit of the principle of non-refoulement to those who commit serious crimes in the UK, including the promotion of extremist views where they represent a danger to national security or the community
- ensuring those who are excluded or refused are removed from the UK or, where they cannot be removed for legal reasons, they are denied refugee status in the UK and as such, amongst other things, are granted short periods of leave with their cases being reviewed regularly to assess the possibility of removal at the earliest opportunity
- ensuring that they are not eligible for settlement and are made fully aware of our intention to enforce removal as soon as possible so that we are very clear that the UK is not a safe haven for such individuals

Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out, among others, its immigration and asylum functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. You must not apply the actions set out in this guidance to children or to those with children without having due regard to Section 55. The instruction, Every Child Matters - Change for Children sets out the key principles to take into account in all activities.

The statutory duty to children includes the need to demonstrate that both asylum claims and consideration of exclusion issues are dealt with in a timely and sensitive way where children are involved. In accordance with Section 55 and our obligations under the UN Convention on the Rights of the Child, the best interests of the child must be considered as a primary consideration (although not necessarily the only consideration) when making decisions affecting children. In the context of exclusion this is most likely to apply in cases where they are dependent on the main claimant (see section exclusion and dependants).

The application of exclusion clauses to asylum claims from children will be rare and must always be exercised with great caution, given the particular circumstances and vulnerabilities of children. Exclusion on grounds of crimes or acts committed by children must always involve an assessment of their ability to understand acts that they may have been ordered to undertake and how far they can be held criminally responsible for them. If there are serious reasons for believing that a claimant (whether a child or an adult at the time of the claim) committed acts or crimes contrary to Article 1F whilst they were a child, for example, while being compelled to serve with armed forces or an armed group, the individual is more likely to have

been a victim of offences against international law than a perpetrator, see section on issues of complicity and culpability.

Specially trained staff deal with asylum claims from children and will also deal with those cases where exclusion is being considered in respect of a child claimant. Further guidance is given in processing asylum applications from children.

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Relevant legislation

International Conventions

The Refugee Convention

The Refugee Convention provides the framework for international refugee protection but contains specific provisions to exclude certain individuals from those benefits. Article 1F states that the provisions of the Refugee Convention do not apply where there are serious reasons to consider that an individual:

a) has 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
b) has committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee
c) has been guilty of acts contrary to the purposes and principles of the United Nations

A refugee committing a serious crime in the country of refuge is subject to the due process of law in that country. However, where appropriate (see paragraph 154 of the UNHCR Handbook), Article 33(2) removes the prohibition of non-refoulement and allows signatories to remove refugees where there are reasonable grounds for regarding them as a danger to the security of the country of refuge or where, having been convicted by a final judgement of a particularly serious crime, they constitute a danger to the community of that country.

International Criminal Court (Rome) Statute

The International Criminal Court (Rome) Statute ('Rome Statute') established the International Criminal Court ('the ICC') in The Hague, Netherlands as a permanent institution with the power to exercise its jurisdiction over persons for the most serious crimes of international concern. Article 1F(a) can be invoked irrespective of the location where the alleged crime was committed.

UK legislation

Section 72 of the Nationality, Immigration and Asylum Act 2002, as amended by section 38 of the 2022 Act, sets out how the serious criminality provision in Article 33(2) is to be interpreted. In particular, section 72(2)(a)-(b) states:

A person convicted by a final judgment of a particularly serious crime is considered to constitute a danger to the community of the United Kingdom if he is:

(a) convicted in the United Kingdom of an offence**,** and
(b) sentenced to a period of imprisonment of at least 12 months.

Section 36 of the 2022 Act sets out how the courts are to construe Article 1F of the Refugee Convention and sets out in primary legislation how they are to construe exclusion from the Convention in case of serious crime.

The 2022 Act created 2 main changes which impact on the determination of asylum claims. First, it instructs decision makers to use the definitions which are set out in the 2022 Act when considering whether an individual meets the definition of refugee in accordance with Article 1(A)(2) of the Refugee Convention. Broadly, these define the terms which were previously defined in the Refugee or Persons in Need of International Protection (Qualification) Regulations 2006 (which are also revoked by the 2022 Act): such as persecution, reasons for persecution, protection from persecution and internal relocation.

Second, the 2022 Act defines what it means for a claimant to have a well-founded fear of persecution. It creates a new statutory framework for decision makers to follow when assessing whether a claimant has a well-founded fear of persecution in accordance with Article 1(A)(2) of the Refugee Convention.

Section 82 of the 2002 Act (as amended by the Immigration Act 2014) sets out the rights of appeal available against decisions taken under the Immigration Rules. An appeal can only be brought against a decision to refuse a protection or human rights claim, or revoke protection status.

Section 55 of the Immigration, Asylum and Nationality Act 2006 provides that where Article 1F applies, or Article 33(2) applies on the grounds of national security, a claimant is not entitled to the protection of the principle of non-refoulement under Article 33(1), the Secretary of State can issue a certificate to that effect. To ensure that any exclusion issues are fully considered at appeal, the effect of the certificate is that the Tribunal or the Special Immigration Appeals Commission (SIAC) must begin the appeal by considering the certificate.

Section 34 of the Anti-Terrorism, Crime and Security Act 2001 (ATCS Act) explicitly provides that when considering Articles 1F and 33(2) of the Refugee Convention there is no weighing up of the extent of persecution feared against the gravity of the Article 1F crime or act or Article 33(2) crime.

The International Criminal Court (ICC) Act 2001 incorporated Articles 6, 7 and 8 of the International Criminal Court (Rome) Statute into UK law.

The UK is no longer bound by the EU Qualification Directive but it provides useful comparison for how other European countries approach exclusion and refoulement.

Immigration Rules

Immigration Rules: Introduction defines ‘refugee status’ and ‘permission to stay as a refugee’ for the purposes of the Immigration Rules as follows:

‘refugee status’ is the recognition by the UK, following consideration of a claim for asylum, that a person meets the criteria in paragraph 334 of the Immigration Rules.

‘permission to stay as a refugee’ means permission to stay (previously referred to as ‘leave to remain’) granted under paragraph 339QA of the Immigration Rules to an individual with refugee status in the UK. This includes both permission to stay as a refugee and temporary permission to stay as a refugee.

Part 11 of the Immigration Rules sets out the provisions for considering asylum claims and reflects our obligations under the Refugee Convention and domestic law.

To qualify for refugee status, a person must satisfy the criteria in paragraph 334 of the Immigration Rules. This requires the person to fall within the definition of ‘refugee’ in Article 1 of the Refugee Convention. A person is not a refugee if they fall within Article 1F.

A claimant will not satisfy subparagraphs 334(iii) and (iv) of the Immigration Rules and will therefore not qualify for a grant of refugee status, in the UK, if there are reasonable grounds for regarding them as a danger to the security of the UK, or having been convicted of a particularly serious crime, as a danger to the community.

Immigration Rule paragraph 336 provides that an asylum claim which does not meet the criteria set out in paragraph 334 will be refused.

Paragraphs 339QA-QE of the rules set out rules governing permission to stay on a protection route.

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Applying Article 1F

General principles in applying Article 1F

Article 1F is intended to exclude individuals from the protection of the Refugee Convention where there are serious reasons to consider that they have committed certain serious crimes and they are avoiding being brought to international or national justice to be held to account for their actions. It is designed to protect the host state and the integrity of the asylum process from abuse but is not a punitive measure and it must be applied responsibly, bearing in mind the humanitarian character of the Refugee Convention and the consequences of exclusion for the individual. Those excluded from refugee status under Article 1F will also normally be excluded from Humanitarian Protection. See Humanitarian Protection guidance.

The question of whether or not a claimant can be excluded from the protection of the Refugee Convention is part of the refugee status determination. If, after considering the facts of the case in accordance with this guidance, there are serious reasons for considering that the claimant has committed a crime or act contrary to Article 1F, asylum must be refused. Reasons for exclusion must relate to the most relevant clause 1F(a), (b), or (c), but it is possible for more than one clause to apply, for example, those who engage in certain acts of terrorism should be considered for exclusion under Article 1F(b) as well as 1F(c).

You may also need to consider and set out arguments to enable a refugee to be refouled, under Article 33(2), in cases where an Immigration Judge may potentially disagree that Article 1F applies and instead find that they are a Convention refugee. See Article 33(2) of the Refugee Convention and Immigration Rule 334 (iii) and (iv).

Article 1F cases can raise sensitive issues in respect of domestic and foreign policy. They may also generate public and media interest. Advice must be submitted to the appropriate Director before a person to whom Article 1F or Article 33(2) of the Refugee Convention could apply, is granted any form of leave in the UK.

Evidence gathering at interview

The individual circumstances of the case must be fully explored during the asylum interview, including any factors that may lead to exclusion. The claimant must be given an opportunity to explain their level of involvement in the crime or act and the motivation or reasoning behind their alleged actions.

Before undertaking an interview in a case where exclusion issues may arise, you must refer to the detailed guidance in the following sections of this instruction and the guidance on asylum interviews:

- complicity and culpability
- individual responsibility
- defences

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Persecution or prosecution

There may be situations where a claimant is wanted for questioning or faces prosecution in accordance with the law in the country of origin but nevertheless has a well-founded fear of persecution, whether in the context of the prosecution or for unrelated reasons. This may be because the prosecution, though lawful in itself, is being selectively used for political purposes as a means of persecution. In such cases, the claimant may qualify for asylum, provided there is a sufficient link between the prosecution and one of the Refugee Convention grounds for persecution and that the alleged offences are not serious enough to justify exclusion under Article 1F.

It is Home Office policy that where exclusion from the Refugee Convention is relevant to a case it must be applied. The fact that a claimant is associated with conduct within the scope of Article 1F, is under criminal investigation, or has been convicted, either in their country of origin or in a host country, does not mean that the exclusion clauses will automatically apply. The facts must be considered against the stringent tests set out in Article 1F.

In cases where exclusion from the Refugee Convention is not appropriate it may still be appropriate to exclude from a grant of Humanitarian Protection. See Humanitarian Protection for guidance on excluding individuals from Humanitarian Protection.

Burden and standard of proof

The evidential burden of proof rests with the Secretary of State to show that Article 1F applies, not for the claimant to show that it does not. Article 1F applies if there are ‘serious reasons’ for considering that the person concerned has committed certain crimes or acts. This is lower than the high standard of proof needed for a criminal conviction (‘beyond reasonable doubt’). In JS (Sri Lanka) v SSHD [2010] UKSC 15, the UK Supreme Court confirmed that the phrase 'there are serious reasons for considering' in the Refugee Convention, set a standard above mere suspicion and had to be treated as meaning what it says. The Court said that ‘considering’ is nearer to ‘believing’ rather than ‘suspecting’. This means that to engage the exclusion provisions, the evidence should not be tenuous, inherently weak or vague, and should support a case built around more than just suspicion. You must be satisfied that the person has instigated or otherwise participated in the commission of excludable acts.

Defining 'serious reasons'

In Al-Sirri v SSHD and DD (Afghanistan) v SSHD [2012] UKSC 54, the UK Supreme Court further defined the meaning of ‘serious reasons’. It said that ‘serious reasons’ has an autonomous meaning and is not the same as the criminal standard of proof 'beyond reasonable doubt', or any domestic standard. ‘Serious reasons’ was stronger than ‘reasonable grounds’ and therefore strong or clear and credible evidence has to be present and the considered judgement of the decision maker is required. In practice, the standard of proof will not be reached unless you are satisfied that it is more likely than not that the claimant was responsible for the crimes or acts. The task, therefore, is to apply the wording of Article 1F in each particular case.

Prosecutions and convictions

Whichever clauses of Article 1F apply, the person does not have to have been prosecuted or convicted of any offence in any country. Equally, evidence of the acquittal of a person accused of a crime or a pardon following conviction, does not necessarily mean that exclusion cannot or should not be applied. Each case must be considered on its individual merits. Evidence of a conviction will usually provide serious reasons for considering that they have committed the crime and you will not normally need to examine at length the evidential basis for the conviction.

You must keep in mind the possibility that an asylum claimant who was a known opponent of their country’s authorities may be the victim of false charges and that a criminal prosecution or conviction in their country of origin may in fact constitute evidence of persecution, especially in countries where standards of judicial fairness fall well short of internationally accepted standards.

Issues of complicity and culpability

All 3 clauses of Article 1F will raise issues about the nature of a person’s participation in a possible crime or act. The issue of complicity is of vital importance in assessing the extent to which an individual has knowingly engaged in activities which may bring them within the scope of Article 1F. It is well established that those who should be held accountable for acts contrary to Article 1F are not just those who directly commit the offences. However, membership of or employment in an organisation which uses violence or threats of violence as a means to achieve political or criminal objectives is not enough on its own to make a person guilty of an international crime and is not sufficient to justify exclusion from refugee status.

Under the International Criminal Court (Rome) Statute definitions (Articles 25 and 30), a person will have criminal responsibility if they aid, abet or otherwise assist in the commission or attempted commission of a war crime, crime against humanity or genocide with the intention of facilitating the commission of such a crime. Furthermore, the intention to cause a particular consequence is proved where they engage in a particular form of conduct, mean to engage in that conduct and are aware that the consequence will occur in the ordinary course of events.

Those providing medical treatment have a special position under international humanitarian law. This position does not automatically take them outside of the scope of exclusion in Article 1F(c) but the courts have found that it may weigh against a finding of complicity. MH (Syria) v Secretary of State for the Home Department [2009] EWCA Civ 226 stated:

> [31] It is not in dispute that nurses and other medical personnel enjoy a special status and protection under international humanitarian law. In my view that does not take them automatically outside the scope of the exclusion in Article 1F(c): for example, a medically qualified member of a terrorist organisation who treated an injured suicide bomber with the intention that he or she should carry out a further bombing mission would have grave difficulty in resisting the application of the exclusion. The point is plainly relevant, however, to an assessment of whether the exclusion applies. In the ordinary course I would not expect the provision of medical or nursing services to bring a person within Article 1F(c) on the basis that they form part of the infrastructure of support for a terrorist organisation; but in each case the point will have to be taken into account with other relevant factors in reaching an overall assessment as to the application of Article 1F(c).
>
> [39] My view is reinforced if regard is had to the special position of nursing under international humanitarian law. MH's role as an assistant nurse in the refugee camp is in one sense the most significant of her activities, since it included the care of injured guerrillas; but it seems to me that the humanitarian nature of the work she was doing, and the context in which she was doing it, weigh against rather than in favour of a finding of complicity in the terrorist acts of the PKK.

Level of contribution issues

An individual member of a political group, for example, which may not necessarily have control over acts of violence committed by militant wings, cannot be held automatically to account for those actions. In addition, the nature of some groups' violent conduct may have evolved, so membership must be examined in the context of the organisation's behaviour at the time the individual was part of the group. Defences such as duress or force, must also be considered. See section on defences.

Depending on the circumstances, a person may incur individual responsibility for crimes that come within the scope of Article 1F in the following circumstances:

- by personally perpetrating excludable crimes
- for crimes committed by others, either by provoking others to commit such crimes, for example, through planning, inciting, ordering, soliciting or inducing commission of the crime
- by aiding or abetting the planning, preparation or execution of the crime, or participating in a joint criminal enterprise
- by making a significant or substantial contribution to the commission of a group's crimes (sometimes referred to as joint criminal enterprise or common design or plan)

This last point was clarified by the UK Supreme Court in JS (Sri Lanka) v SSHD [2010] UKSC 15. It said that the exclusion clauses of the Refugee Convention will apply if there are serious reasons for considering that the individual had voluntarily contributed in a significant way to the organisation's ability to pursue its purpose of committing war crimes, aware that their assistance will in fact further that purpose. If the person was aware that in the ordinary course of events a particular consequence would follow from their actions, they would be taken to have acted with both knowledge and intent.

Although the judgment relates to Article 1F(a) cases, the test extends to Article 1F (b) and (c). The UK Supreme Court said that it was preferable to focus from the outset on what ultimately had to be the determining factors in any case, principally (in no particular order):

- the nature and (potentially of some importance) the size of the organisation, particularly the part of it with which the individual was most directly concerned
- whether and, if so, by whom the organisation was proscribed
- how the individual came to be recruited
- the length of time they remained in the organisation and what, if any, opportunities they had to leave it
- their position, rank, standing and influence in the organisation
- their knowledge of the organisation's war crimes activities
- their own personal involvement and role in the organisation including any contribution they made towards the commission of war crimes

These factors must not be treated as a checklist for exclusion. The Upper Tribunal (UT) has made clear that in establishing accomplice liability, it is necessary to consider all the circumstances of an individual's involvement in an organisation that commits international crimes. In analysing the '7 factors' the UT concluded that the UK Supreme Court gave no indication that these are intended to be exhaustive or that they are necessarily relevant in every instance. The court also found that the factors were not necessarily complete, (see AA (Article 1F(a)) Iran [2011] UKUT 00339). The High Court has also held that the relevant assessment is not to be made by a mechanical or arithmetic application of the 7 factors. See Ali Polat [2011] EWHC 3445 (Admin).

Individual responsibility: intent and knowledge

Where there are serious reasons for considering that an individual committed the relevant act or crime or significantly contributed to it, and is potentially excludable under one or more of the exclusion clauses of Article 1F, it must also be established that they had the requisite understanding and intention at the time they participated. The asylum interview must investigate both parts of this test and the relevant issues thoroughly.

To fulfil this second aspect of the individual responsibility requirement (the 'mens rea' element: literally meaning 'guilty mind', one of the necessary elements of a crime in criminal law), the individual must have acted with both intent and knowledge. The person must have intended to engage in the conduct at issue or to bring about a

particular consequence (intent) **and** was aware that certain circumstances existed or knew that certain consequences would follow in the ordinary course of events (knowledge). In other words, the person knew what they were doing and had a fair understanding of its purpose.

Where the person concerned is regarded (on the available evidence) as not having possessed the required understanding and intent, due to, for example, immaturity (see section application in respect of children), insanity, mental illness, involuntary intoxication, a fundamental aspect of the excludable act is missing and no individual responsibility arises for the act in question. In such cases the individual would not fall within the scope of Article 1F and must not be excluded. If you consider that an individual is responsible for an excludable act, you must go on to consider whether one of the defences is applicable before deciding whether the individual should be excluded.

Defences

An exclusion analysis also requires you to assess any other circumstances which may give rise to a valid defence which exonerates a person from individual responsibility for their acts. Defences which may be valid, depending on the circumstances, include superior orders, force or duress, self-defence or defence of others. A key issue will be the extent to which the individual could reasonably exercise freedom of choice not to take part or assist the criminal act. For example, a child conscript in an army is more likely to have been coerced into service and forced to commit war crimes than an adult. Gender or cultural issues may also be relevant.

Superior orders

A potential defence is that of superior orders or coercion by higher authorities. This defence will only apply if the individual in question was under a legal obligation to obey the order in question, was unaware that the order was unlawful, and the order itself was not manifestly unlawful. Orders to commit genocide or crimes against humanity are always manifestly unlawful. As expressed in CM (Article 1F(a) - superior orders) Zimbabwe [2012] UKUT 00236 (IAC) regarding the Statute of the International Criminal Court ('the Rome Statute'), paragraph 24:

> Put simply, under the Rome Statute, in relation to criminal responsibility for commission of crimes against humanity, the defence of obedience to superior orders in unavailable by operation of law.

Use of duress or force

The defence of duress only applies if the incriminating act committed by the individual resulted from a threat of imminent death or serious bodily harm against that individual or someone else, and the individual acted necessarily and reasonably to avoid this threat, provided that they did not knowingly intend to cause a greater harm than the one to be avoided.

The full requirements of defence of duress were set out in AB (Article 1F(a) - defence - duress) Iran [2016] UKUT 376 (IAC), paragraph 63:

> There are five requirements of the defence of duress as specified in article 31 of the ICC Statute. They are these:
>
> i. There must be a threat of imminent death or of continuing or imminent serious bodily harm;
> ii. Such threat requires to be made by other persons or constituted by other circumstances beyond the control of the person claiming the defence;
> iii. The threat must be directed against the person claiming the defence or some other person;
> iv. The person claiming the defence must act necessarily and reasonably to avoid this threat;
> v. In so acting the person claiming the defence does not intend to cause a greater harm than the one sought to be avoided.
>
> The requirements are cumulative, all require to be satisfied.

AB Iran informs also on 2 key points:

> 1. In response to an allegation that a person should be excluded under Article 1F(a) of the Refugee Convention because there are serious reasons for considering that the person has committed a crime against peace, a war crime or a crime against humanity as defined in the Rome Statute, there is an initial evidential burden on an appellant to raise a ground for excluding criminal responsibility such as duress.
>
> 2. The overall burden remains on the respondent to establish that there are serious reasons for considering that the appellant did not act under duress.

There are stringent conditions to be met for the defence of duress to arise. Where duress is pleaded by an individual, consideration must be given as to whether they could have reasonably chosen to leave the organisation, and why they did not do so earlier if it was clear the situation in question would arise. Each case must be considered on its own facts and the onus is on the claimant to prove that duress applies. The consequences of desertion plus being able to foresee being put under pressure to commit certain acts are relevant factors to take into account.

Self-defence, defence of other persons or property

The use of reasonable and necessary force to defend oneself may be a valid defence. Similarly, reasonable and proportionate action to defend another person or property which is essential for their survival, against an imminent and unlawful use of force may also provide a defence to criminal responsibility in certain circumstances.

Punished or pardoned for the crime or act

The Refugee Convention does not stop an individual from being excluded from protection because they have already been punished for their crime or act. Such cases are more likely to arise in relation to Article 1F(b) – serious non-political crimes. Exclusion from the Refugee Convention must still be considered whether or not they have already been punished. Equally, the fact that someone has been pardoned or has benefitted from an amnesty does not mean that they cannot be considered for exclusion. The circumstances of the conviction and punishment must be taken into account to establish, for example, whether the conviction was politically motivated or for other Refugee Convention reasons.

Expiation

There is nothing in the Refugee Convention, which suggests that the issue of expiation or the passage of time since the crime was committed should play any part in determining the seriousness of the original crime or in reducing the offender's liability to exclusion. On the contrary, the notion that a person who has served their sentence no longer falls within Article1F(b) of the Refugee Convention is inconsistent with the wording and the aims underlying this exclusion clause which gives signatory states the power to refuse refugee status to those who have committed serious crimes before their admission to a receiving country.

Extradition

Extradition requests from other states are sent to the National Crime Agency (NCA: if they are from most European states) or to the United Kingdom Central Authority in the Home Office (UKCA: from all other states). An extradition request will contain information or evidence that the requested person has committed a serious offence abroad. This information or evidence may affect the consideration of any ongoing immigration process.

Under UK law, a person cannot be extradited to the country from which they have asylum, and an asylum seeker cannot be extradited until their claim has been finally determined. When the UK receives an extradition request, there are procedures in place to establish whether the subject of the request has been granted refugee status or has an outstanding asylum application. An individual's refugee status, or any outstanding asylum claim, should be reviewed taking into consideration the extradition request. The evidence submitted in support of that request may be enough to show that there are serious reasons for considering a crime has been committed which would fall under Article 1F.

Extradition process in the UK

The Refugee Convention does not shield refugees or asylum-seekers who have engaged in criminal conduct from prosecution, nor does international refugee law preclude extradition in all circumstances. However, where an asylum claim has been made on the basis of a well-founded fear of persecution in the state requesting extradition, under UK extradition law the claim must be carefully considered and finally determined before extradition can take place.

For an extradition request to be made to the UK and acted upon there will usually, but not always, be a pre-existing extradition arrangement in place with the requesting state. That is to say a bilateral treaty or multilateral agreement to which both states are party. The existence of extradition proceedings is relevant to the consideration of exclusion because any evidence submitted in support of the extradition request may provide a basis for exclusion. The fact that a claimant is associated with conduct within the scope of Article 1F may raise exclusion considerations, but it does not automatically lead to exclusion. All evidence submitted must be carefully considered.

Standard of evidence in extradition cases

Under UK law, some of our non-EU Member State extradition partners are required to submit evidence which satisfies the 'prima facie' evidential standard. That is, evidence which if unchallenged would establish a case on which the person could be convicted in the UK. Other countries have to provide 'information' as defined in extradition law or, in the case of EU Member States a warrant which complies with the provisions of the Trade and Cooperation Agreement and Part 1 of the Extradition Act 2003. In all cases, consideration must be given to the specific facts of the particular case by the court.

A full list of those countries required to submit 'prima facie' evidence can be found at Extradition: processes and review.

The extradition process is not about testing the guilt or innocence of an individual who stands accused abroad. That is a matter for the ordinary criminal courts of the requesting state if extradition takes place. The task of the UK courts is to determine whether any of the statutory bars to surrender set out in the Extradition Act 2003 operate to prevent the person being extradited. Whether the courts decide that any of these statutory bars apply is not determinative of whether or not exclusion is justified. For example, the fact that the Judge might discharge the person on 'non-evidential grounds', for example on the basis of a human rights bar, may imply nothing at all about the evidence or information in the extradition request as to the person's conduct. Therefore, care must be taken in each case to determine whether Article 1F applies.

Extradition requests involving refugees or asylum seekers

Extradition requests involving asylum seekers or refugees are not likely to arise frequently, but when they do, NCA (for all EU Member State Extradition under Part 1 of the Extradition Act 2003) or the UKCA (for non-EU Member State extradition under Part 2 of the Extradition Act 2003) must be kept informed of progress of any immigration issues that may prevent an extradition to take place in UK law. This is because to surrender a requested person to another country who has an extant asylum claim is unlawful (where the asylum claim is made against the country which has requested the extradition). This is not to ensure that the NCA or the UKCA agrees with the decision but to check that the extradition process and evidence has been understood by the decision maker. Given the importance of maintaining the integrity of the extradition process, in cases where there is public interest or finely

balanced evidence, a senior manager of no less than SCS level, must also be consulted where a person's status would prevent extradition. This includes:

- where the individual otherwise qualifies for refugee status or humanitarian protection and the evidence provided by the extradition request is not sufficient to justify exclusion under Article 1F
- before a person who is the subject of an extradition request or claims to be a fugitive from justice, is granted refugee status or other form of leave such as Humanitarian Protection, Discretionary Leave or Restricted Leave

The UKCA are the competent authority for extradition requests made under Part 2 of the 2003 Act (such as non-EU countries with whom the UK has extradition arrangements). Where the subject of an extradition request which is considered by the UKCA:

- has refugee status or is to be granted such status or
- has been granted leave to enter or remain in the UK on the ground that it would be a breach of Article 2 or 3 of the Human Rights Convention to remove them to the territory to which extradition is requested

UKCA will recommend to ministers that the extradition request should not be certified. Where a person has an asylum claim which has been or is to be refused, UKCA may certify the request and it will go forward to be considered by the courts. It is possible that people who are in extradition transit may apply for asylum.

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No balancing test

Article 1F provides that a person shall be excluded from the Refugee Convention where the conditions set out in that Article are met. In considering whether it applies in the case of a person who appears to have a well-founded fear of persecution, there is no weighing up (balancing or consideration of proportionality) of the extent of persecution feared against the gravity of the Article 1F crime or act. Section 34 of the Anti-Terrorism, Crime and Security Act 2001 (ATCS Act) explicitly provides that there is to be no such balancing test.

In B and Others C-57/09 and C-101/09 the Court of Justice of the European Union (CJEU) found, inter alia, that exclusion from refugee status under Article 12(2)(b) or (c) of the Qualification Directive was not conditional on a fresh assessment of proportionality in relation to the particular case providing the decision maker had already assessed the seriousness of the acts committed by the individual and taken into account all the circumstances.

Where an individual is excluded under the Refugee Convention, they must not be granted refugee status. However, the risk of any mistreatment they may face if returned to their country of origin or elsewhere must still be considered in the context of whether removal would breach UK obligations under the ECHR, see cases where Article 1F applies but removal is not currently possible.

Cases where Article 1F applies but removal is not currently possible

In limited circumstances, it is possible that removal may breach one of the Articles of the ECHR. These must be carefully considered before any removal action takes place. Every effort should be made, consistent with our international obligations, to secure the removal of persons to whom Article 1F applies, but where this is not possible a grant of Restricted Leave (RL) or Discretionary Leave may be appropriate.

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Article 3

Article 3 of the ECHR prevents removal where there are substantial grounds for believing that their removal would expose an individual to a real risk of torture, inhuman or degrading treatment or punishment. This applies irrespective of the crimes or acts that a person has committed or the danger they pose to the UK.

Article 8

Where an application for further leave on the basis of Article 8 family or private life is received from a foreign criminal who has:

- previously been considered for deportation
- deportation was not effected (because it was decided it would breach Article 8, or an appeal against the deportation was allowed)

they were granted leave to remain on the basis of Article 8

the application must be considered under Part 13 of the Immigration Rules and also consideration given to whether a grant of RL would be an appropriate option. This is because deportation remains conducive to the public good and in the public interest. See Criminality guidance in article 8 ECHR cases.

Where an application for further leave on the basis of Article 8 is received from a person who has been excluded but is not a foreign criminal, the application must be considered under Appendix FM to, or paragraphs 276ADE(1) to 276CE of, the Immigration Rules and also consideration given to whether a grant of RL would be an appropriate option. Where an individual has been excluded on the basis of war crimes, they will not meet the suitability requirements on grounds that their presence is not conducive to the public good because there are serious reasons for considering they are a war criminal. See:

- Family and private life guidance
- Criminality guidance in article 8 ECHR cases

Other ECHR articles

Other ECHR articles may apply. For example, Article 6 may apply where a claimant alleges they will not receive a fair trial in their country of origin or Article 4 if they claim they are at risk of forced labour or modern slavery. You must refer to the guidance on considering human rights claims for further details.

Exclusion and dependants

Where family members are seeking to remain in the UK as dependants of a claimant whose asylum claim is refused partly or wholly in reliance on Article 1F, the claims from the dependants must be refused in line with the main claimant. Dependants may claim asylum in their own right and such claims must be considered on their individual merits.

If a dependant's separate asylum claim meets the requirements of the Refugee Convention and they are not excluded from protection in their own right, they should be granted refugee status. Where a dependant has previously been excluded as a result of their own actions, they must not be given leave in line with a main claimant who qualifies for refugee status. Situations might also arise where a person seeking to remain as a dependant of an asylum seeker or refugee appears to have committed a crime or act which, had they claimed asylum in their own right, would make them a potential candidate for exclusion under Article 1F. In such cases, consideration must be given to whether the conditions of Article 1F are met. If they are, the claim for leave to enter or remain as a dependant must be refused.

It is possible for adult dependants to claim asylum in their own right and as a dependant. You must be aware of potential parallel claims, particularly involving a claimant who has been excluded who then becomes a dependant on an outstanding asylum claim. The individual excluded will not gain any advantage in becoming a

dependant. Where it is proposed to remove the main claimant who has been excluded but allow a dependant to stay, or where it is proposed to remove a dependant covered by the exclusion clauses but not to remove the main claimant who is not excluded, consideration must be given to whether removal of the excluded person would breach Article 8 ECHR (right to respect for family life).

Where children form part of the family unit, the best interests of the child will be a primary consideration (although not necessarily the only consideration) when making the decision. See section on application in respect of children.

Family Asylum claims

Where the main claimant's claim is being considered as part of a Family Asylum Claim and is to be refused partly or wholly in reliance on Article 1F, you should no longer proceed with the determination of the claims under the Family Asylum Claim process. You should instead consider the claims of the remaining family members, party to the Family Asylum Claim, on an individual basis and not as a Family Asylum Claim. Follow the guidance in 'Claims where the child has additional or different protection needs' of the Family Asylum Claims policy.

Appeal rights

Where an asylum claim is refused partly or wholly on the ground that Article 1F applies, an appeal against the refusal of the protection claim can be brought under section 82(1)(a) of the 2002 Act (as amended by the Immigration Act 2014). See the instruction, Drafting, implementing and serving asylum decisions and Rights of Appeal guidance.

Section 55 certificates

Where Article 1F applies, a claimant must not be granted refugee status and the claim must be refused. To ensure that any exclusion issues are fully considered at appeal, section 55 of the Immigration, Asylum and Nationality Act 2006 provides that the Secretary of State can issue a certificate to the effect that the claimant is not entitled to the protection of the principle of non-refoulement. The Tribunal or the Special Immigration Appeals Commission (SIAC) must then begin substantive deliberations on any asylum appeal by considering the certificate. If the Tribunal or SIAC agree with the statements in the certificate, they must dismiss the entire appeal. You must issue a section 55 certificate in all cases excluded under Article 1F, including cases where refugee status is revoked on that basis.

Revocation of refugee status under Article 1F

There may be occasions where a claimant has been recognised as a refugee and information later comes to light which provides serious reasons for considering that they should have been excluded from protection under Article 1F. The additional evidence will need to be carefully considered and an assessment of the claim carried

out taking into account evidence provided when the claim was made in light of the new material available. The Revocation of refugee status guidance must be followed.

Immigration Rule 339AA and 339AB provide that you shall revoke or refuse to renew refugee status if, after an individual has been granted refugee status, it is established that the claimant either:

- should have been or is excluded from being a refugee
- misrepresented or omitted facts, including the use of false documents, which were decisive for the granting of refugee status

In cases where Article 1F applies but it is not possible to remove the individual due to ECHR reasons, refugee status must be revoked under paragraph 339AA or 399AB and any permission to stay as a refugee (limited or indefinite) replaced with a shorter period of leave with more restrictive conditions imposed as appropriate. See Restricted Leave instruction for further details.

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Applying Article 1F(a)

Article 1F(a) applies where there are serious reasons for considering that a person has committed a crime against peace, a war crime, or a crime against humanity. See section on Defining 'serious reasons'.

Definitions

There is no one single set of definitions of what constitutes a war crime, crime against humanity or genocide for the purposes of the Refugee Convention, but detailed definitions of war crimes and crimes against humanity are contained in Articles 6, 7 and 8 of the International Criminal Court (Rome) Statute, incorporated into UK law by the International Criminal Court (ICC) Act 2001. These definitions are the starting point. In JS (Sri Lanka) v SSHD [2010] UKSC 15 Lord Brown stated, at paragraph 8, that the Rome Statute of the International Criminal Court "should now be the starting point for considering whether an applicant is disqualified from asylum by virtue of article 1F(a)". See section on issues of complicity and culpability.

Crimes against peace

A crime against peace has been defined as including planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances (see Annex V of the UNHCR Handbook). The crime of aggression has (by UN resolution of 11 June 2010) been defined in Article 8 (bis) of the Rome Statute as, 'the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations'.

War crimes

A war crime involves the violation of international humanitarian law or the laws of armed conflict. They constitute violations of the laws and customs of war which entail individual criminal responsibility under international law, whether on the basis of a treaty or under customary international law. Likewise, only those acts which are connected to an armed conflict may constitute war crimes. Such violations may include murder or ill-treatment of civilian populations or prisoners of war, the killing of hostages, wanton destruction of cities, towns or villages, or a deliberate policy of devastation that is not justified by any military necessity.

Crimes against humanity

Crimes against humanity differ from war crimes (which occur only during times of armed conflict) in that they can be committed at any time. In times of armed conflict, a single act could constitute both a war crime and a crime against humanity. To amount to a crime against humanity, the particular crimes (such as murder or rape) must have been committed as part of a widespread or systematic attack directed

against a civilian population, with knowledge of the attack. Inhumane treatment of this kind may often be grounded in political, racial, religious or other prejudice and includes murder, enslavement, torture, deportation or forcible transfer of a population and enforced disappearance of persons.

A policy of committing acts against a civilian population does not have to have been formally written down or recorded, but there should be evidence of a deliberate campaign against, or general attack on, a civilian population, rather than simply a series of random violent acts. A single act might qualify as a crime against humanity, provided it was linked to a general policy to attack a civilian population. Even if not constituting a crime against humanity, it should also be considered as a serious non-political crime for the purposes of Article 1F(b).

Genocide

Genocide is a sub-section of crimes against humanity. It is expressly included within the jurisdiction of the International Criminal Court (ICC). The term ‘genocide’ includes crimes such as murder, causing serious bodily or mental harm, or imposing measures intended to prevent births within a group, if they are committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

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Applying Article 1F(b)

Article 1F(b) applies in cases where there are serious reasons for considering that the individual has committed a serious non-political crime outside the country of refuge prior to their admission to that country as a refugee.

Criteria for Article 1F(b) to apply

The 4 criteria that must be satisfied are:

- there must be serious reasons for considering that the individual has committed a criminal offence in another country
- the offence has to be serious
- the offence has to be non-political
- the offence has to have been committed outside the country of refuge prior to admission to that country as a refugee (see section definition of outside the country of refuge)

The crime must be of a degree of severity which means that the claimant cannot legitimately claim protection under the Refugee Convention.

Definition of 'serious' crime

The Refugee Convention does not list offences which are regarded as serious crimes. Section 36 of the 2022 Act, sets out how Article 1(F) of the Refugee Convention is to be interpreted and applied. Where an individual has committed a serious non-political crime outside the country of refuge prior to their admission as a refugee; which means the time of issuing a biometric immigration document (as defined in Section 36(4) of the 2022 Act) based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, will be classified as serious non-political crimes.

Length of sentence

The length of prison sentence alone is not determinative of whether the claimant should be excluded under Article 1F(b). In AH (Algeria) v Secretary of State for the Home Department [2012] EWCA Civ 395, Lord Justice Ward noted, at paragraph 54, that:

> Sentence is, of course, a material factor but it is not a benchmark. In deciding whether the crime is serious enough to justify his loss of protection, the Tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed.

More important than the sentence is the nature and context of the crime, the harm inflicted, the part played by the claimant and whether most jurisdictions would

consider it a serious crime. Examples include murder, rape, arson, and armed robbery. Other offences which may be regarded as serious include those which are accompanied by the use of deadly weapons, involve serious injury to persons, or if there is evidence of serious habitual criminal conduct. Other crimes though not accompanied by violence, such as large-scale fraud, may also be regarded as serious for the purposes of Article 1F(b).

Definition of 'non-political'

You must consider the nature and purpose (if any) of the crime, whether it was committed for gain or other personal reasons, for example, robbery with violence. Whether it was politically motivated, for example, the assassination of a political figure. Some serious crimes, for example, a campaign of violence and intimidation against a prominent individual, may be claimed to be politically motivated but there is no clear link between the crimes and the alleged motivation. The motive, context, methods, and proportionality of a crime to its objectives are therefore relevant factors in assessing its nature. Acts that are out of all proportion to any claimed political agenda are not political and 1F(b) will therefore apply.

A 'particularly cruel action' will be held to be a 'serious non-political crime' for the purpose of Article 1F(b), even if it is committed with an allegedly political objective. Section 36(2) of the 2022 Act provides an interpretation for 'serious non-political crime', which includes a particularly cruel action, even if it is committed with an allegedly political objective, for example murder, rape, arson and armed robbery.

In T v Secretary of State for the Home Department (SSHD) (1996), the House of Lords held that Article 1F(b) applied to a refugee who had been involved in terrorist acts which killed innocent people, and rejected the argument that the acts were political. Those who engage in certain acts of terrorism may therefore be excluded under Article 1F(b) as most terrorist acts are wholly disproportionate to any political motive. As such, acts of terror may not necessarily be excludable under Article 1F(c) ('acts contrary to the purposes and principles of the United Nations') and 1F(b) will often be more appropriate. In T v SSHD, the Court defined a crime as a political crime for the purposes of Article 1F(c) if and only if **both** the following elements are met: it is committed for a political purpose, that is to say with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy, and there is a sufficiently close and direct link between the crime and the alleged political purpose.

In determining whether such a link exists, the court will bear in mind the means used to achieve the political end and will have particular regard to whether the crime was aimed at a military or governmental target or a civilian target, and in either event whether it was likely to involve indiscriminate killing or injuring of members of the public. Consistent with the reasoning in T v SSHD, the commission of crimes such as murder, rape and serious assault, or other violent acts which result in indiscriminate harm or death to the public, will usually fail to establish a sufficient link to the achievement to a political objective and should be regarded as 'non-political' crimes for the purposes of Article 1F(b).

Definition of ‘outside the country of 'refuge’

‘Outside the country of refuge prior to his or her admission as a refugee’ means at the time of issuing a biometric immigration document following a grant of refugee status. As such, crimes committed in the UK before an individual is granted refugee status (and issued a biometric immigration document under paragraph 339Q of the Immigration Rules) fall within the scope of Article 1F(b). Section 36(3) of the 2022 Act clarifies that crimes committed outside the country of refuge, include crimes committed at any point up until and including the day the individual is granted permission to enter or remain in the UK as a refugee and section 36(4) provides a definition of ‘biometric immigration document’.

In addition, a crime such as conspiracy to import drugs may have both an international and domestic dimension – that is committed both overseas, before the asylum seeker came to the UK, and continued in the UK after arrival. Continuous crimes such as this can also be considered as being committed outside the country of refuge for the purpose of exclusion under Article 1F(b).

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Applying Article 1F(c)

Article 1F(c) applies in cases where there are serious reasons for considering that an individual has been guilty of acts contrary to the purposes and principles of the United Nations.

Purposes and principles of the United Nations

The purposes and principles of the United Nations (UN) are set out in the Preamble and Article 1 of the Charter of the United Nations. Article 1 lists 4 purposes, namely to:

- maintain international peace and security
- develop friendly and mutually respectful relations among nations
- achieve international cooperation in solving socio-economic and cultural problems
- in promoting respect for human rights serve as a centre for harmonising actions directed to these ends

Acts of terrorism

Acts of terrorism are widely considered contrary to the purposes and principles of the UN, as set out in the United Nations Security Council Resolutions relating to measures combating terrorism (United Nations Security Council Resolutions 1373 and 1377) which declare that the:

> acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations' and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations

In Security Council Resolution 1566 (October 2004), the Council condemned terrorism as one of the most serious threats to peace and security and called on countries to prosecute or extradite anyone supporting terrorist acts or participating in the planning of such schemes. The text called on countries to prevent and punish 'criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act' where such acts constitute offences as defined in international conventions and protocols relating to terrorism.

In addition, Security Council Resolution 1624 (September 2005) also called upon States to adopt measures, consistent with international obligations, to prohibit by law, incitement to commit a terrorist act or acts and to deny safe haven to those for whom credible evidence exists that they have been guilty of such conduct. The resolution also repudiated attempts at the justification or glorification of terrorist acts that may incite further terrorist acts.

In UK law, section 54 of the Immigration, Asylum and Nationality Act 2006 provides that acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular:

- acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence)
- acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence)

The section then defines terrorism for the purpose of interpreting Article 1F(c) in UK law as having the meaning given by section 1 of the Terrorism Act 2000 (as amended by the Terrorism Act 2006).

Applying Article 1F(c) to acts of terrorism

In Al-Sirri v SSHD and DD (Afghanistan) v SSHD [2012] UKSC 54 the UK Supreme Court ruled that Article 1F(c) should be interpreted restrictively and applied with caution. There should be a high threshold defined by the gravity of the act in question, the manner in which the act is organised, its international objectives and its implications for international peace and security. There should be serious reasons for considering that the person concerned bore individual responsibility for acts of that character. The UK Supreme Court said that the phrase ‘acts contrary to the purposes and principles of the United Nations’ must have an autonomous meaning and member states were not free to adopt their own definitions. It noted that there was as yet no internationally agreed definition of terrorism.

The UK Supreme Court thought it correct, therefore, to adopt paragraph 17 of the UNHCR Guidelines. This sets out that Article 1F(c) is only triggered in extreme circumstances by activity which attacks the very basis of the international community’s co-existence. Such activity must have an international dimension. Crimes capable of affecting international peace, security and peaceful relations between States, as well as serious and sustained violations of human rights would fall under this category. Depending upon the circumstances of a case, it could be enough if one person plotted in one country to destabilise another. The test is whether the resulting acts had the requisite serious effect on international peace, security and international relations.

Article 1F(c) potentially applies to anyone who commits an act which is contrary to the purposes and principles of the United Nations. That person does not have to be acting on behalf of a State or as part of an organisation. Individuals acting in a non-State capacity should be excluded under 1F(c) where their actions merit it. Following the judgment in Al-Sirri relating to the restrictive application of Article 1F(c), those who engage in acts of terrorism may also be considered for exclusion under Article 1F(b) ('serious non-political, crimes'), particularly as terrorist acts will often be wholly disproportionate to any political motive. For an act of terrorism to fall within Article 1F(c), it would have to be determined that such an act was on an international scale.

See section on Issues of complicity and culpability concerning Article 1F(c) and those providing medical treatment.

Membership of terrorist organisations

Terrorist groups or other proscribed organisations are listed on the GOV.UK website and in Schedule 2 to the Terrorism Act 2000, (as amended).

Such claims may sometimes be false and intended to enhance an asylum claim but where a credible claim of membership is made, you must consider whether the claimant can be held individually responsible for committing terrorist acts or serious crimes. The fact that an individual may be on a list of terrorist suspects or be a member of a terrorist organisation does not mean that exclusion is automatically assumed to apply but may be evidence of such involvement. The question is: has the individual voluntarily contributed in a significant way to the organisations ability to pursue its aim of committing acts of terrorism or serious crimes, aware that the assistance will in fact further that purpose? See issues of complicity and culpability.

You must take these factors into account when making a decision on whether members of a proscribed organisation fall within Article 1F(b) or (c) and must consider exclusion particularly carefully where there is evidence that an individual has been convicted of an offence under section 11 of the Terrorism Act 2000 (belonging, or professing to belong, to a proscribed organisation).

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Article 33(2) of the Refugee Convention and Immigration Rule 334 (iii) and (iv)

Article 33(2) of the Refugee Convention

Article 33(2) of the Refugee Convention provides an exception to the prohibition on refoulement contained in Article 33(1) which requires that states will not return a refugee to a place where they fear persecution for a Refugee Convention reason. The exception to the prohibition on refoulement may apply if either:

- there are reasonable grounds for considering they are a danger to the national security of the host state, including those who exhibit extremist behaviours
- they pose a danger to the community having been convicted by a final judgement of a particularly serious crime

Even if an individual falls under the exception to the prohibition on refoulment in Article 33(2), they may still be a refugee within the meaning of Article 1 of the Refugee Convention ('Convention Refugee') but not qualify for refugee status in the UK under the Immigration Rules. See section on Immigration Rule 334 .

Section 72 of the 2002 Act as amended by section 38 of the 2022 Act defines what constitutes a particularly serious crime for the purposes of Article 33(2) of the Refugee Convention. Section 72(2) applies to offences committed in the UK and section 72(3) to offences committed outside the UK. See section on particularly serious crimes.

Immigration Rule 334(iii) and (iv)

Where a claimant does not meet the criteria in paragraph 334 of the Immigration Rules they will not be granted refugee status and their claim can be refused under paragraph 336. The criteria in Immigration Rule paragraph 334 are the same as Article 33(2) of the Refugee Convention and paragraph 336 allows the UK to refuse to grant refugee status in the UK (even where they may otherwise be recognised as a refugee under the Refugee Convention) - where there are reasonable grounds for regarding an individual as a danger to the security of the UK, or they have been convicted of a particularly serious crime such that they are deemed to be a danger to the community.

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Before you consider refusing to grant refugee status, you must assess whether there is sufficient evidence to apply the exclusion provisions under Article 1F. In cases where there is sufficient evidence that the claimant has demonstrated unacceptable behaviours or extremist views that represent a danger to the security of the UK and there is enough evidence to exclude them under Article 1F, you must make both arguments (such as argue 'in the alternative'). This means you must consider the application of both Article 1F and Article 33(2) where relevant.

Where Article 1F does not apply, but the claimant does not meet the criteria under 334(iii) and (iv) (because there is sufficient evidence that they are a danger to the security of the UK or having been convicted of a particularly serious crime they are a danger to the community of the UK) you must refuse a grant of refugee status under paragraph 336. In such cases, it may be appropriate to grant the claimant a shorter period of leave where removal would breach the ECHR. See Restricted Leave guidance for further details.

Particularly serious crimes

Article 33(2) provides that a refugee may be returned to a place where they have a well-founded fear of persecution if, having been convicted by a final judgement of a particularly serious crime, they are a danger to the community of the country of refuge. Section 72 of the 2002 Act, as amended by section 38 of the 2022 Act, defines what constitutes a particularly serious crime for the purposes of Article 33(2) of the Refugee Convention and creates a rebuttable presumption that anyone who has committed such a crime is a danger to the community. You must apply this presumption, that anyone convicted of a particularly serious crime (as defined) is a danger to the community, if you are considering whether to grant refugee status in the UK under the Immigration Rules, as well as where seeking to remove a refugee under Article 33(2) of the Refugee Convention. However, you may find this presumption rebutted if there is sufficient evidence to rebut it, for example, evidence that the crime was committed a long time ago and the person has rehabilitated and poses no significant risk of any further serious offending.

In EN (Serbia) v Secretary of State for the Home Department & Anor [2009] EWCA Civ 630 (paragraph 45) the Court considered that so far as 'danger to the community' is concerned, the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition or reoccurrence of a similar offence, they are likely to constitute a danger to the community.

Convictions following the 2022 Act

Section 72 (as amended by section 38 of the 2022 Act) states that:

> A person is convicted by a final judgment of a particularly serious crime if he is –
> (a) convicted in the United Kingdom of an offence, and
> (b) sentenced to a period of imprisonment of at least 12 months

This is an irrebuttable presumption.

A person is also convicted of a particularly serious crime if they are convicted overseas, are sentenced to a period of imprisonment of at least 12 months and could, if convicted in the UK for a similar offence, have been sentenced to at least 12 months. What counts for the purposes of the amended versions of section 72(2) (offences committed in the UK) and section 72 (3) (offences committed outside the UK) is not the maximum sentence that could have been imposed, or the time a person actually spends in prison or detention, but the period of imprisonment to which they were sentenced (this is a single sentence not cumulative sentences).

It is important to note that, unlike the presumption that someone has committed a particularly serious crime (see above), the presumption that an individual's 'particularly serious crime' means they are a danger to the community of the UK, as set out in section 72 (as amended by section 38), is rebuttable. This means that this presumption is taken to be true, unless you have evidence or evidence is provided by the individual that demonstrates they are not a danger to the community. The individual must therefore be given the opportunity to rebut this presumption and any evidence provided must be carefully considered in assessing whether they are a danger to the community. Factors such as the motivation for their crime, likelihood of reoffending and mental capacity should be considered as part of this assessment. You do not need to provide the opportunity to rebut this presumption where you already have sufficient evidence which demonstrates that they are not a danger to the community. For example, in some cases there will already be sufficient evidence from the prison. Another example could be where they received a conviction a number of years ago, which resulted in a 12-months sentence, and all the evidence indicates they are a reformed character who does not pose a danger to the community.

Article 33(2) will only apply if an individual has both committed a particularly serious crime (as defined) and, as a result, they constitute a danger to the community in the UK. You must only seek to refoul if Article 33(2) applies and it would not breach the individual's ECHR rights to refoul them.

Section 72 (as amended by section 38 of the 2022 Act) and the particular serious crime threshold of 12 months applies where the criminal conviction was on or after the date that the 2022 Act came into force on 28 June 2022.

Convictions prior to the 2022 Act

For asylum claims where the individual was convicted prior to the date that the 2022 Act came into force (28 June 2022), the particular serious crime threshold is 2 years and the version of section 72 in force before it was amended, by section 38 of the 2022 Act, continues to apply for those cases.

The old version of section 72 stated that:

> A person shall 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 United Kingdom if he is —
> (a)convicted in the United Kingdom of an offence, and
> (b)sentenced to a period of imprisonment of at least two years

This presumption also applies where a person has been convicted overseas, sentenced to a period of imprisonment of at least 2 years and could, if convicted in the UK for a similar offence, have been sentenced to at least 2 years. However, what counts for the purposes of section 72(2) (offences committed in the UK) and section 72 (3) (offences committed outside the UK) is not the maximum sentence that could have been imposed, or the time a person actually spends in prison or detention, but the period of imprisonment to which they were sentenced (this is a single sentence not cumulative sentences).

The presumptions that an individual (a) has committed a ‘particularly serious crime’ and (b) is a danger to the community of the UK, as set out in the old version of section 72, are rebuttable. This means that these presumptions are taken to be true, unless you have evidence or evidence is provided by the individual that demonstrates either (a) that their crime was not particularly serious or (b) they are not a danger to the community. The individual must therefore be given the opportunity to rebut this presumption and any evidence provided must be carefully considered in assessing whether they are a danger to the community. Factors such as the motivation for their crime, likelihood of reoffending and mental capacity should be considered as part of this assessment. You do not need to provide the opportunity to rebut this presumption where you already have sufficient evidence which demonstrates that they are not a danger to the community. For example, in some cases there will already be sufficient evidence from the prison. Another example could be where they received a conviction a number of years ago, which resulted in a 2-years sentence, and all the evidence indicates they are a reformed character who does not pose a danger to the community.

Article 33(2) will only apply if an individual has both committed a particularly serious crime (as defined) and, as a result, they constitute a danger to the community in the UK. You must only seek to refoul if Article 33(2) applies and it would not breach the individual’s ECHR rights to refoul them.

Extremism

Claimants who promote extremist views or engage in extremist activities that represent a danger to the security of the UK will not meet Immigration Rule subparagraph 334 (iii) and therefore they must be refused refugee status in the UK under Immigration Rule paragraph 336. You must explore during the asylum interview any issues that may point towards extremist behaviour or activities.

Official – sensitive: start of section

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

Claimants considered to represent a danger to the security of the UK on grounds of extremism may include those whose presence in the UK is deemed not conducive to the public good, for example:

- on national security grounds, because of their character, conduct or associations
- those who engage in unacceptable behaviours, in the UK or abroad, including undertaking, proposing to undertake or espousing extremist views which:
  - foment, justify or glorify terrorist violence to further particular beliefs or provoke others to commit terrorist acts
  - foment other serious criminal activity or seek to provoke others to such acts or foster hatred which may lead to inter-community violence
  - spread, incite, promote or seek to justify hatred on grounds of disability, gender, race, religion, sexual orientation, gender identity and/or for purposes of overthrowing democracy

This list is indicative, not exhaustive and includes the use of any medium to promote these forms of unacceptable behaviour, including writing, producing, publishing or distributing material; public speaking, including preaching; running a website or social media; or using a position of responsibility, for example. teacher, community or youth leader to express extremist views. See the Counter-Extremism Strategy for further details.

It is Home Office policy in cases involving national security threats or where there is a conviction for a particularly serious crime and the individual is considered to pose a threat to the community, to refuse refugee status and seek to remove the individual from the UK or grant shorter periods of leave - only where absolutely necessary where removal would breach our obligations under the ECHR.

Revocation of refugee status on the basis of Article 33(2)

Immigration Rule 339AC allows the revocation of refugee status on the basis of behaviour carried out by the claimant after they have been granted refugee status when:

- there are reasonable grounds for regarding an individual as a danger to the security of the United Kingdom
- having been convicted by final judgement of a particularly serious crime, an individual constitutes a danger to the community of the United Kingdom

Just because an individual is convicted and sentenced to a term of imprisonment of 12 months, does not automatically mean that revocation action should be taken. You must follow the process outlined in the Revocation of refugee status guidance; this includes serving a notice of intention to revoke refugee status. Thereafter you must undertake an assessment to ensure that the individual does constitute a danger to the community in the UK.

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