

EXCLUSION: ARTICLES 1F and 33(2) of the REFUGEE CONVENTION

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SECTION 1 – INTRODUCTION

1.1 Purpose of Instruction

This Asylum Instruction provides guidance on the application of the Article 1F exclusion clauses and on the Article 33(2) exception to the principle of non-refoulement (*i.e. no enforced removal of a refugee to a place where his life or liberty would be threatened*).

The instruction also provides guidance on section 72 of the NIA Act 2002 and its application.

Section 1 provides a background and overview on the use of the exclusion clauses; Section 2 provides the United Kingdom Border Agency's (UKBA) policy position on the application of Articles 1F and 33(2) of the Refugee Convention.

1.1.1 Use of Terms

Within this instruction, the term:–

“**Case Owner**” refers to case owners or caseworkers within the Regional Asylum Teams, Detained Fast-Track (DFT), Criminal Casework Directorate (CCD) and the Case Resolution Directorate (CRD).

“**Senior Caseworkers**” applies to SEO Senior Caseworkers within the regional teams or DFT and to Technical Specialists within CRD.

“**Presenting Officer**” refers to Regional Asylum Team or DFT case owners, Regional Presenting Officers or Specialist Appeal Team members who are responsible for presenting cases at appeal.

“**Applicant**”, “**individual**”, “**person**” and “**subject**” are all interchangeable terms referring to the asylum seeker.

“**1951 Convention**” and “**Refugee Convention**” are used interchangeably when referring to the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol to that Convention.

An explanation of terms and abbreviations specific to this instruction are explained in [the Glossary](#).

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1.2 Background to Exclusion Provisions

1.2.1 Article 1F

Article 1F applies to persons who are not considered to be deserving of international protection. It excludes some asylum seekers from the protection of the 1951 Convention.

It is a mandatory exclusion and therefore where it is applicable it must be cited and asylum must be refused.

The full text of Article 1F is as follows;

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he 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) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”*

1.2.2 Articles 1D and 1E

The 1951 Convention contains two other exclusion clauses, Article 1D and Article 1E.

Article 1D is concerned with persons already receiving UN protection. For information on this, refer to the Asylum Instruction on *Claims for Asylum from UNRWA Assisted Palestinians: Article 1D of the Refugee Convention*.

Article 1E is concerned with persons not in need of international protection. For information on this, refer to the AI on *Considering the Asylum Claim*.

1.2.3 Article 33(2)

Article 33(2) provides that in some circumstances persons can be removed to another country, even though they may have a well-founded fear of persecution there.

Article 33 states

“(1). No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2). The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”

This Instruction also covers Article 32, which sets out the general rules to be observed in connection with the expulsion of a refugee / asylum seeker lawfully present in the United Kingdom.

If Article 1F or 33(2) applies, a grant of asylum should be refused but this does not mean that removal will always be possible. ECHR and other humanitarian considerations should be addressed as in any other application.

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1.3 'No Safe Haven' Policy

In 2002, the government published the White paper “*Secure Borders, Safe Haven*” which made a commitment that the United Kingdom should not provide a safe haven for war criminals, those who commit crimes against humanity and other serious criminals.

The use of the exclusion clauses supports this policy by denying the privileges that the Refugee Convention offers to those who are considered undeserving of its protection.

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1.4 Key Points to Note in this Instruction

The paragraphs below are designed to provide a brief overview of the key points of this instruction. A fuller explanation of each can be found within section 2.

1.4.1 Application of Exclusion Clauses

Exclusion clauses are mandatory. The question of whether or not a person falls under the Exclusion Clauses is **not** an optional one but it is an integral part of the refugee determination assessment.

Therefore, so long as the Article 1F issues are “obvious” they must be considered if the evidence is sufficiently clear that there is an issue of serious criminality. If there are serious reasons for considering that the subject has committed a crime or act contrary to Article 1F, they **must** be excluded.

1.4.2 General Approach to Asylum Claim

Where Article 1F or 33(2) may apply, the normal procedure is to consider the asylum claim in its totality, i.e. the well founded fear issue (Article 1A(2)) as well as the subject’s position with regard to Article 1F or 33(2).

1.4.3 The ‘limbs’ / clauses of Article 1F

When applying Article 1F the case owner must specify whether they are relying on 1F(a), (b) or (c). It is not sufficient to state that a person is excluded under just “Article 1F”. However, in making a decision, it is possible to rely on more than one clause.

1.4.4 The “Safety Net” Approach

Where grounds exist for refusing a claim both under Article 1F/33(2) **and** under Article 1A(2), case owners should do so on **both** grounds, not one alone, in order to ensure the decision can be robustly defended at any subsequent appeal.

1.4.5 The “In the Alternative” Approach

Where the application is being refused on credibility but there would have been grounds for excluding the applicant if the account had been accepted as true, the issue should still be raised in the RFR but case owners should **not** refuse the application under Article 1F unless there is objective evidence independent of the applicant’s own account to support such a decision.

If the case owner does not believe the account is true, they cannot rely on it to justify a decision to exclude.

Case owners should instead focus on determining the application as normal but include a caveat that ensures that in the event that an alternative view is taken, (*i.e. an Immigration Judge concludes otherwise during a subsequent appeal*) the applicant would be excluded.

For further information, refer to [‘Credibility’ – section 2.1.5 of this instruction](#)

1.4.6 Dealing with Potential 1F or 33(2) Cases

When considering whether the exclusion clauses apply in an individual case, case owners should take account of all relevant information. Such claims should be assessed with the same fairness as claims not raising exclusion issues.

1.4.7 Dealing with Potential 1F(a) (War Crimes) Cases

When considering a potential 1F(a) case, advice should be sought from the War Crimes Team at the earliest possible opportunity.

Details of how to handle can be found in [‘Application of Article 1F\(a\)’ – section 2.2 of this instruction](#) and the Asylum Instruction on *Suspected War Criminals*.

1.4.8 Standard of Proof in Article 1F

In Article 1F the phrase “*serious reasons for considering*” should be given its natural meaning and not be further defined.

1.4.9 Person Already Punished for an Article 1F Crime

The fact that a person has been convicted and punished for an offence does not mean that Article 1F does not apply. **The 1951 Convention contains no requirement to regard the crime as expiated by the punishment.**

Equally, there is no requirement for the applicant to have been tried and convicted in order for Article 1F to apply.

1.4.10 Complicity & Culpability

In cases where there is evidence that the person had voluntary membership of an organisation that commits a crime (*or of an act, in Article 1F(c) cases*) or some involvement in the commission of a crime (*or act*), without personally committing it, Article 1F may still apply.

1.4.11 Possible Defences by an Applicant

Defences for a crime or act, which may be valid, depending on the circumstances, are duress, following superior orders or self-defence. If the individual is able to show that he had a strong defence, then it is possible that 1F would not apply.

The showing of remorse for the crime or act is not a defence.

It is of crucial importance that the individual circumstances of the case are explored when exclusion is a potential element to the case. The applicant must be given every opportunity to fully explain their level of involvement in the crime or act and the motivation or reasoning behind their actions.

For further information, refer to [‘Issues of Complicity, Culpability and Responsibility’ – section 2.1.8 of this instruction](#).

1.4.12 Extradition

Where an individual is subject to an extradition request from a country in which he/she stands accused or convicted of a criminal offence, 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.

Individual consideration should be given to each case and the Extradition Section of the Judicial Co-operation Unit (*formerly SC3*) should be notified of any such case via a senior caseworker.

1.4.13 No Balancing Test – Article 1F

In considering whether Article 1F applies in a case where the person appears to have a well-founded fear of persecution, there should be no weighing up (“balancing”) of the amount of persecution feared against the gravity of the Article 1F crime or act which it is considered has been committed.

1.4.14 No Balancing Test – Article 33(2)

As with 1F above, when considering whether Article 33(2) applies, there should be no weighing up of the gravity of the likely threat to a person’s life or freedom if they were removed against the danger they pose to national security or to the community.

1.4.15 Definition of a “Serious” Crime for the Purposes of 1F(b)

There is no list of serious crimes in the Convention, and no definition of a serious crime in UK law.

The s72 NIA definition of a “particularly serious crime” for the purposes of Article 33(2) – a crime for which a custodial sentence of at least two years has been imposed, or which is listed in the [Nationality, Immigration and Asylum Act 2002 \(Specification of Particularly Serious Crimes\) Order 2004](#) – should be taken as a general guide to what amounts to a serious crime for the purpose of Article 1F(b).

1.4.16 A Political Crime

The approach to be applied is that set out by the House of Lords in the case of T v Secretary of State for the Home Department (1996):

“A crime is a political crime for the purposes of Article 1F(b) of the 1951 Convention if and only if:

(1) 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

(2) 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, on the one hand, or a civilian target on the other, and in either event whether it was likely to involve the indiscriminate killing or injuring of members of the public.” [Emphasis added]

In the case of T, he claimed to have been responsible for planting a bomb at an airport as part of an attempt to overthrow the Algerian government. The courts ruled that there was not a sufficiently close link between a random bomb attack on civilians and overthrowing a government.

See also 1.4.17 “A Non-Political Crime” below.

1.4.17 A Non-Political Crime

Under Article 1F(b), a crime will be “non-political” if, broadly speaking, it was committed essentially for personal reasons or gain and no political motives were involved; or where the crime did appear to be politically motivated but the crime committed was not sufficiently closely related to the claimed political end.

1.4.18 The Rome Statute of the International Criminal Court (ICC)

The 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.

A link to the ICC website is contained [here](#).

1.4.19 Acts of Terrorism

Acts of terrorism are contrary to the purposes and principles of the United Nations, and therefore fall within Article 1F(c).

United Nations Security Council Resolutions (UNSCRs) 1373 and 1377 also clarify that terrorist acts are contrary to their purposes and principles:

“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 UN”.

Furthermore, section 54 of the Immigration, Asylum and Nationality Act 2006 also provides that acts contrary to the purposes and principles of the United Nations shall be taken as including acts of committing, preparing or instigating terrorism, or encouraging or inducing others to do so.

Such acts of terrorism are not generally political crimes and may therefore also fall within Article 1F(b).

It is also possible that certain types of acts or crimes that fall within Article 1F(a) could also fall within 1F(c). Equally, those that do not strictly meet the definition of a war crime could alternatively fall within 1F(c).

1.4.20 Cancellation, Cessation & Revocation of Refugee Status

Cancellation of refugee status may be appropriate if information comes to light which was not known about at the time of the original decision – about a crime or acts committed prior, or subsequent, to arrival in the UK, but previous to the grant of refugee status – which would have justified the application of Article 1F at the time the person’s asylum claim was first considered.

Revocation of refugee status should be considered where, subsequent to the grant of asylum, a person commits a crime or act which falls within the scope of Article 1F(a) or (c).

When consideration is given to applying Article 33(2) to a recognised refugee, and it is not possible to revoke or cancel the person’s refugee status, consideration should also be given to whether the person has ceased to be a refugee (**Cessation** of refugee status) due to a significant and non-temporary change of circumstances in their home country, or whether their own actions show that they are no longer in need of protection in the UK.

In such cases it is possible to take away refugee status by applying the Article 1C cessation clause.

For further information on when to look to withdraw a person’s refugee status, refer to the AI on *Cancellation, Cessation & Revocation of Refugee Status*.

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SECTION 2 – UKBA POLICY ON EXCLUSION

2.1 The Article 1F Exclusion Clauses – General

In order to be granted asylum, an asylum applicant must satisfy the criteria in paragraph 334 of the Immigration Rules. Sub-paragraph (ii) states that the applicant “...is a refugee as defined in regulation 2 of the Refugee or Person in need of International Protection (Qualification) Regulations 2006” (the QD Regulations).

Regulation 2 of the QD Regulations defines a “refugee” as a third country national (*i.e. not a national of a Member State*) or stateless person who falls within 1(A) of the Geneva Convention and to whom regulation 7 (*of the QD Regulations*) does not apply.

Regulation 7 sets out that a third country national or stateless person is not a refugee if he or she falls within the scope of Article 1F of the Geneva Convention.

Paragraph 339A(vii) of the Immigration Rules also provides that a person’s grant of asylum will be revoked or not renewed if the Secretary of State is satisfied that the individual in question should have been or is excluded from being a refugee in accordance with regulation 7 of the QD Regulations.

These provisions implement Articles 12 and 14 of the EC Qualification Directive which sets out the minimum standards for the qualification and status of persons as refugees.

2.1.1 Text of Article 1F

The full text of Article 1F is as follows:

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he 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) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”*

The provisions in Article 1F are mandatory and asylum must be refused to a person to whom it applies.

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2.1.2 Approach to Consideration of the Asylum Claim

Having considered all relevant issues with care, case owners should use Article 1F to refuse asylum by excluding applicants from the protection of the Convention in all instances where it is applicable.

Where Article 1F applies, the person concerned cannot be a refugee.

As with the other provisions of the Convention, the possible use of the exclusion clauses should be considered in the light of the individual’s particular circumstances; any claim for asylum must be assessed on its own merits. Prior to making their assessment, case owners must try to obtain as full a knowledge as possible of the facts, and of the context in which the alleged crime(s) or act(s) have been committed.

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2.1.3 Approach where Articles 1A and 1F May Both be Relevant

Case owners should consider both whether an applicant has a well-founded fear of persecution as defined in Article 1A of the Refugee Convention (inclusion) and whether that applicant falls to be excluded by virtue of Article 1F of the Convention (exclusion).

If the asylum claim falls for refusal on Article 1A grounds, but the exclusion provisions under Article 1F are relevant, the RFRL should first deal with the exclusion on Article 1F grounds and then go on to deal with inclusion under Article 1A, including any credibility issues.

This is referred to as the “*Safety Net*” approach.

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2.1.4 Section 55 Immigration, Asylum and Nationality Act 2006

Where Article 1F applies, s55 of the IAN Act 2006 provides that the Secretary of State can issue a certificate to that effect. The Asylum and Immigration Tribunal (AIT) or the Special Immigration Appeals Commission (SIAC) must then begin substantive deliberations on any asylum appeal by considering the certificate.

If the AIT or SIAC agree with the statements in the certificate, they must dismiss the asylum claim *i.e. they must consider exclusion first and if they agree that the person is excluded they need not consider whether Article 1A of the Convention applies.*

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2.1.5 Credibility

Cases will arise where an individual’s claims concerning the potential Article 1F crimes or acts are considered to lack credibility, but were those claims true, they would engage Article 1F.

In such cases it cannot be said that there are “*serious reasons for considering*” the individual has committed the crime or act which would bring him within Article 1F as it is not accepted that the event(s) occurred in the first place.

As such, these cases should **not** be certified under section 55 of the IAN Act 2006, but following consideration under Article 1A(2) and any credibility issues, the case owner should clearly state that if the claim *were* true, the individual would be excluded under Article 1F.

This is referred to as the “*In the Alternative*” approach.

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2.1.6 Standard of Proof

Article 1F applies if “there are serious reasons for considering” that the person concerned has committed certain crimes or acts.

The phrase “*serious reasons for considering*” should be given its natural meaning.

“*Serious reasons for considering*” does not suggest a level of proof equivalent to that needed for a criminal conviction (“*beyond reasonable doubt*”), or a finding in a civil case (“*balance of probabilities*”).

In the case of *T v Secretary of State for the Home Department*, the Court of Appeal, when considering Article 1F, took the view that there was no requirement to make a positive or conclusive finding about the commission of one or more particular crimes; it sufficed that “*the evidence pointed strongly to the appellant’s guilt.*” This means evidence that is not tenuous or inherently weak or vague, and which supports a case built around more than just suspicion.

Whichever limb of Article 1F applies, the person does not have to have been prosecuted or convicted of any offence in any country. However, evidence of a conviction will normally provide serious reasons for considering that the person has committed the crime. Where there is a conviction, case owners will not normally need to examine at length the evidential basis for the conviction, but should keep in mind the possibility that a criminal prosecution or conviction in the country of origin may itself constitute evidence of persecution. An asylum claimant who was a known opponent of his or her country’s government could, for example, be the victim of false charges.

It should also be noted that evidence of the acquittal of a person accused of a crime should not necessarily be taken to mean that exclusion is inappropriate. Each case should be considered on its own merits and advice sought from a SCW and / or AOPU where necessary.

In connection with the standard of proof, see also [‘Extradition’ – section 2.1.11 of this instruction](#) if information about a possible crime comes to light as a result of an extradition request.

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2.1.7 Burden of Proof

When applying Article 1F, the evidential burden of proof rests with the Secretary of State.

It is for the Secretary of State to show that it applies i.e. *to adduce evidence to this effect, not for the applicant to show that it does not.*

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2.1.8 Issues of Complicity, Culpability and Responsibility

All three limbs of Article 1F can raise issues about the nature of a person’s involvement in a possible crime or act.

The issue of complicity is of vital importance in assessing the extent to which the individual has engaged in activities which may bring them within the scope of Article 1F.

Following the findings of *Gurung*, it would be wrong to say that only people who had personally participated in acts that would come within the Exclusion Clauses would fall to be

excluded. They may also fall for exclusion if they have been a voluntary member of a brutal organisation and fully understands its aims, methods and activities, including any plans it has made to carry out acts contrary to Art 1F.

The more an organisation makes terrorist acts (*and/or breaches of international criminal/humanitarian law*) its *modus operandi*, the more difficult it will be for a claimant to show his voluntary membership of it does not amount to complicity.

The UNHCR has also acknowledged the concept of complicity for the purposes of 1F:

“Where a group is involved in indiscriminate killing, attacks on civilians or torture, voluntary membership raises a presumption that the individual contributed significantly to the commission of violent crimes, even if this is simply by substantially assisting the organisation to continue to function in furtherance of its aims.”

Case owners must assess the extent to which the individual was involved on a case-by-case basis. The level of complicity can be assessed against:

- The circumstances which prompted the individual to join a particular group or engage in acts (e.g. *those who joined voluntarily are far more likely to be complicit compared with those forcibly recruited*)
- The length of time spent in an organisation (e.g. *the longer a person has been active / a member, the less defensible their position becomes*)
- The purpose, aims and objectives of the organisation and how it undertook to achieve them, particularly at the time(s) that the individual was active / a member within it (e.g. *the more systemic / widespread the international crimes, the harder it will be for the subject to show they were not complicit.*)
- The individual’s knowledge of the aims and objectives of the organisation and whether their personal beliefs were shared by that organisation. Equally should they have, or can it be inferred they had knowledge of the crimes committed during their membership
- The personal involvement of the individual (e.g. *the more direct the level of personal involvement, the more complicit the individual would be*). Rank and seniority would also show increased personal involvement
- The ability of the individual to exercise moral choice or otherwise dissociate and how early they exercised that ability, including factors such as duress and self-defence against superior orders.

This is not an exhaustive list.

There are also some issues here which are specific to Article 1F(c). See [‘Application of Article 1F\(c\)’ – section 2.4 of this instruction](#).

Sometimes there will be “*serious reasons for considering*” not that a person has directly committed a crime or act which falls within Article 1F, but that they have been involved in the planning of that crime or act to a greater or lesser extent.

There will be circumstances in which planning of the act or crime itself will be enough to bring a person within one of the three limbs of Article 1F. Indeed, such involvement, depending on whether the act planned was capable, if it was carried out, of constituting a crime, may amount to the offence of “*conspiracy to commit*” a particular crime.

Such involvement may, depending on the circumstances, itself be a serious crime, and hence engage Article 1F(b). Similarly, Article 1F(a) may be engaged if the act/offence

planned would constitute a war crime, crime against peace, crime against humanity or genocide.

Case owners must assess the extent of the applicant's involvement in, and knowledge of the crime or act in question which they (*the applicant*) helped to plan or in which they were otherwise involved.

For example, individual responsibility would arise where a person was directly involved in the planning of an offence, or incited, assisted with, or otherwise took actions to encourage or support the commission of a crime or act.

On the other hand, where a person's actions were marginal to the offence (*for example, mere presence at the scene of a crime and no evidence of involvement in or, active support for, the planning of the crime*) it will be less likely that the person has committed a crime or act that engages one of the limbs of Article 1F. Although, where the individual who is 'merely present' is of superior rank to the person committing the crime, and does nothing to prevent it, then this may be enough to make them complicit.

It is important always to treat each case on its facts. The significance which should be attached to an individual's contribution to the crime may depend on factors such as the size of the criminal enterprise, the functions performed, the position of the individual in the organisation, and in particular the role of the individual in relation to the seriousness and scope of the crimes committed.

An individual's personal circumstances may be relevant when ascertaining the level of knowledge they had of what they were participating in. A child or mentally disabled individual, for example, may carry a lesser degree of responsibility for a crime or act compared to an adult who has full mental capacity.

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2.1.9 Defences

Sometimes there will be sufficient information to meet the "*serious reasons for considering*" test, but a question will arise as to whether a person has a "defence" for the crime or act they committed.

The showing of remorse for the crime or act is not a defence, nor is the argument that a person was following a superior's orders.

Defences which may be valid, depending on the particular circumstances, are coercion, duress or self-defence. A key issue will always be the extent to which the individual's freedom of choice **not** to engage, or be involved, in the criminal act was undermined. For example, where the person is a child (e.g. *a conscript in an army*) the possibility of having succumbed to coercion may be more likely than in the case of an adult. Each case should nevertheless be considered on its merits.

Further information about complicity and the defences put forward by an individual can be obtained from AOPU or WCT.

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2.1.10 Persons Already Punished for the Article 1F Crime or Act

There may be some cases where the serious reasons for considering that an applicant has committed an Article 1F crime or act are that prosecution took place and the person was convicted and sentenced for the offence. Such cases are probably most likely to arise in relation to Article 1F(b) – serious non-political crimes committed outside the country of refuge.

Subject to case owners being satisfied that all the necessary elements of Article 1F are met, the exclusion clause must be applied. There is **no** provision in the Convention not to exclude a person on the basis that they have been punished for their crime or act.

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2.1.11 Extradition

Extradition is the compulsory removal of a person (“the fugitive”) from one country in which he (*or she*) is found to another in which he stands accused or convicted of a criminal offence.

For an extradition request to be made, there generally needs to be a pre-existing extradition arrangement in place between the countries concerned – that is to say, a bilateral treaty or a multilateral instrument to which both countries are parties.

Not all criminal conduct is extraditable. Generally, an extraditable offence is one which attracts a sentence of at least 12 months’ imprisonment in both countries (“dual criminality”), or where a person has been convicted of an offence in respect of which a sentence of 4 months imprisonment has been imposed.

Where an individual is subject to an extradition request, evidence supporting that request may be sufficient to show that there are “*serious reasons for considering*” that a crime has been committed which would bring that individual within Article 1F of the Refugee Convention. In all cases individual consideration should be given to the specific facts of the case.

Some countries (*44 currently*) do not have to provide prima facie evidence of a person’s guilt in support of an extradition request. If a country does not have to provide evidence, the fact of an extradition request may be of little assistance in establishing a link between the crime and the person being extradited.

All of the UK’s other extradition partners do have to provide such evidence. In the case of these countries this evidence will be considered by a District Judge who, if satisfied on this issue, as well as some others, will send the case to the Secretary of State for her decision on extradition. This will mean that a link is established between the crime and the person being extradited.

By itself, the fact that the Judge has sent the case to the Secretary of State for a decision will not necessarily be enough to provide “*serious reasons for considering*” a crime has been committed although papers supporting the extradition request may provide sufficient evidence. A decision not to send the case to the Secretary of State may well suggest that there are not “*serious reasons for considering*” that a crime has been committed (*in which case Article 1F would not apply*). However, such a decision may be based on other factors so the reason for the decision should always be established.

Extradition requests involving asylum seekers or refugees are not likely to arise very frequently, but when they do it is essential that Extradition Section in the Judicial Co-

operation Unit (formerly SC3) and Asylum Operational Policy Unit are consulted by a Senior Caseworker so that they can provide advice and assistance as required.

Cases which involve extradition and 1F(a) issues should also be referred to the WCT as well as JCU.

It is most important that all parties in these cases liaise closely to ensure that the asylum process is completed as quickly as possible, consistent with fairness and thoroughness.

The Chief Executive must be consulted before a person who is the subject of extradition proceedings or claims to be a fugitive from justice is granted asylum or other form of leave such as Humanitarian Protection or Discretionary Leave.

See also [‘Cancellation or Revocation of Refugee Status on Account of Article 1F’ – section 2.7 of this instruction](#) where the person against whom the extradition request is made has been granted asylum and is a recognised refugee rather than being an asylum seeker.

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2.1.12 No Balancing Test

Article 1F of the Convention provides that a person shall be excluded from its provisions where the conditions set out in that Article are met. In considering whether or not Article 1F applies in the case of a person who appears to have a well-founded fear of persecution, there should be no weighing up (“balancing”) 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 \(ATCS Act\)](#) provides that there is to be no such balancing test.

The EC Qualification Directive also reiterates this point clearly stating that a person is excluded from being a refugee where the provisions of Article 1F apply.

This is not to say that the risk of mistreatment a person may face if returned to their country of origin or elsewhere are not to be addressed. It will need to be addressed in the context of whether that person’s removal would be a breach of the UK’s obligations under the European Convention on Human Rights.

For further guidance on this type of consideration, refer to the AIs on *Considering Human Rights Claims* and *Considering the Asylum Claim*.

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2.2 Application of Article 1F(a): Crimes Against Peace, War Crimes and Crimes Against Humanity

The Government’s policy is to ensure that the UK does not provide a safe haven for war criminals or those who commit crimes against humanity, and that action is taken to bring such individuals to justice wherever possible.

Securing criminal convictions in such cases can be difficult. Invoking Article 1F(a), followed by removal action if appropriate, is another way of ensuring that the hospitality of the UK is not abused by those who there are serious reasons for considering have been involved in the commission of atrocities.

The War Crimes Team (WCT) **must** be consulted about any decision to rely on Article 1F(a). This must be done at the earliest opportunity and certainly *before* a decision is taken

to rely on 1F(a). It is possible that a person who comes to notice on account of alleged Article 1F(a) crimes may be subject to a UN or EU travel ban. This would have implications for any existing leave that such a person might have at the time the asylum claim was made.

There is no one single set of definitions accepted for Refugee Convention purposes by UK and international courts, but detailed definitions of “war crimes” and “crimes against humanity” are contained in the International Criminal Court Statute, and have been incorporated into UK law by the International Criminal Court Act 2001.

For practical purposes, case owners should use the definitions set out in the [ICC Statute](#). It may also be necessary to seek advice from WCT on whether or not a particular set of circumstances might constitute a war crime or a crime against humanity.

For further detail on WCT contact details, refer to the Asylum Instruction on *Suspected War Criminals*.

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2.2.1 A “Crime 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 UN Handbook*).

2.2.2 A “War Crime”

A war crime involves the violation of international humanitarian law or the laws of armed conflict. Such violations may include murder or ill-treatment of civilian populations or of prisoners of war, the killing of hostages, or any wanton destruction of cities, towns or villages, or devastation that is not justified by military necessity.

2.2.3 “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.

However, in times of armed conflict a single act could constitute both a war crime and a crime against humanity.

In order 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 any civilian population, with knowledge of the attack*. Inhumane treatment of this kind may often be grounded in political, racial, religious or other prejudice. Such treatment would include murder, enslavement, torture, deportation or forcible transfer of population and enforced disappearance of persons.

2.2.4 “Genocide”

Genocide is a sub-section of Crimes against Humanity.

The term “genocide” would include 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.

A policy of committing acts against a civilian population does not have to have been formally written down or recorded, but it would be necessary to identify something that

clearly amounted to 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.

For further information on the legal definitions and applicable caselaw in war crimes related issues, refer to the AI on *Suspected War Criminals*, Section 3 of the *PO Manual* and the *War Crimes Appeals Bundle*.

2.2.5 Where the Crime was Committed

Article 1F(a) can be invoked irrespective of the location where the alleged crime was committed. Thus, if a person committed a relevant crime whilst they were in the UK, Article 1F(a) would still be applicable.

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2.3 Application of Article 1F(b): Serious Non-Political Crimes

For a person to be excluded from the protection of the 1951 Convention under Article 1F(b), it must be established that there are serious reasons for considering that he has committed a serious non-political crime outside the country of refuge **prior to** his admission to that country as a refugee.

The criminal offence must be both a criminal offence where it was committed and must be capable of constituting a crime under UK law.

The four criteria that must be satisfied are:

- (1) There must be serious reasons for considering that the appellant has committed a criminal offence in another country
- (2) The offence has to have been committed **before*** coming to the United Kingdom
- (3) The offence has to be **serious**
- (4) The offence has to be **non-political**

An offence to which s72 of the NIA Act 2002 applies will normally be regarded as “*serious*”. An offence for which a person could expect to be sentenced to 1-2 years’ imprisonment if it were committed in the UK **may** also qualify as “*serious*”.

Further advice can be sought from the Asylum Operational Policy Unit (via a SCW).

**This must be read in conjunction with [‘Outside the Country of Refuge’ – section 2.3.3 of this instruction](#).*

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2.3.1 Definition of “Serious crime” and Link to Approach Taken to Article 33(2)

The Convention does not list offences which are to be treated as “*serious*” crimes.

Section 72 of the NIA Act 2002 deals with the construction and application of Article 33(2). It provides that a “*particularly serious crime*” includes any offence for which a custodial sentence of at least two years is imposed.

In relation to offences committed overseas, under section 72(3), a crime will be a particularly serious crime if it is an offence for which a custodial sentence of at least two years was imposed and for which a sentence of at least two years could have been imposed had the person been convicted of a similar offence in the United Kingdom.

Section 72 (subsections (4) and (5)) also enables the Secretary of State to specify particular offences in an order, so that a person convicted of a specified offence, irrespective of the length of sentence, falls within the scope of Article 33(2) and is presumed to constitute a danger to the community.

It would normally be appropriate to regard any crime for which a custodial sentence of two years upon conviction might be expected (*if that crime was tried in the United Kingdom*) as a “serious crime”.

A crime committed outside the UK should also be regarded as “serious” where, regardless of the actual length of sentence, or the length of sentence which might be expected if the crime were tried in the United Kingdom, it is similar to an offence specified in the [Nationality, Immigration and Asylum Act 2002 \(Specification of Particularly Serious Crimes\) Order 2004](#).

In cases of doubt refer to AOPU, via a senior caseworker, for guidance on establishing whether an overseas crime is ‘similar’ to one listed in the order. (*Note that for the purposes of Article 1F(b) the issue of whether a person is a danger to the community does not need to be considered.*)

Since the term “serious crime” covers a wider set of cases than the term “particularly serious crime” it is possible that a crime falling outside the criteria of s.72 might still be within 1F(b) e.g. *where a sentence would be 1-2 years for a crime that is not on the list of offences in the s72 order, but which nevertheless appears serious.*

It should be stressed that this is general guidance and should not be applied in an overly rigid way. In any potential Article 1F(b) case, case owners are not asked to predict precisely the possible sentence that might be imposed were the person to be tried and convicted, as it is difficult to predict what sentence might be passed in relation to a particular offence.

In such cases, advice should be sought from a SCW and AOPU.

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2.3.2 “Non-Political Crime”

A “non-political crime” must be distinguished from a “political crime” when applying Article 1F(b).

Article 1F(b) can only be applied to the former. Case owners should consider in the first place the nature and purpose of the crime. If the crime was committed essentially for personal reasons or gain, and no political motives were involved, the crime will be *non-political*.

However, even if a crime has a political motive, it may still be regarded as non-political for the purposes of Article 1F(b) in some circumstances.

Regulation 7(2)(a) of the Qualification Directive Regulations provides interpretative guidance on Article 1F(b) of the Refugee Convention. It states that 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”.

In *T v Secretary of State for the Home Department (1996)*, the House of Lords held that Article 1F(b) applied to a refugee who been involved in terrorist acts which killed innocent people, and rejected the argument that the acts were not “non-political” for the purposes of Article 1F(b).

In *T* the following definition of a political crime was used:

“A crime is a political crime for the purposes of Article 1F(b) of the 1951 Convention if and only if:

(1) 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

(2) 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, on the one hand, or a civilian target on the other, and in either event whether it was likely to involve the indiscriminate killing or injuring of members of the public.”

Consistent with the reasoning in “*T*”, the commission of “common law” 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 considered to be “non-political” crimes for the purposes of Article 1F(b). A link may be established if such methods are used against specific targets that are political in nature (*e.g. government representatives etc*) and are committed for political motives.

Although they will fall outside the boundaries of Article 1F(b), it should be noted that individuals who have committed political crimes might in some cases be found to fall within the scope of Article 1F(c).

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2.3.3 “Outside the Country of Refuge”

Article 12 of the EC Qualification Directive provides that a third country national or stateless person is excluded from being a refugee where there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge **prior to** his or her admission as a refugee.

Regulation 7(2)(b) of the Qualification Directive Regulations sets out that in the construction and application of Article 1F(b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean up to and including the day on which a residence permit is issued. This implements Article 12(2)(b) in the Directive.

In the majority of cases this provision in the Regulation will apply to crimes committed abroad but in some instances it could apply to crimes committed whilst seeking asylum in the UK up to the date that a residence permit is issued.

Normally, an offence committed “*outside the country of refuge*” (*i.e. the UK, for the purpose of these instructions*) will have taken place in the country of nationality/habitual residence, but it could also have been committed in another country prior to the person’s admission to the UK as a refugee.

For the purposes of this instruction, “... *admission to the UK as a refugee*” refers to any point up to the point where a residence permit is actually formally issued to the subject.

However, in line with Regulation 7(2)(b), a person who commits a serious non-political crime whilst applying for asylum and before being granted a residence permit in the United Kingdom could also be excluded from the protection of the refugee convention under Article 1F(b) and not be granted asylum on the basis of that crime.

Where the requirements of Article 33 (2) of the Refugee Convention are met, a grant of asylum should also be refused on that basis.

As above, where a crime is committed in the UK *following* the issuing of a residence permit, article 1F(b) does not apply. However, the application of Article 33(2) might be appropriate.

In rare cases it could happen that a crime, such as conspiracy to import drugs, was committed both overseas – before the asylum seeker came to the UK – and also in the UK after arrival. “*Continuous crimes*” such as this can still be considered as “*being committed outside the country of refuge*” for the purposes of Article 1F(b).

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2.4 Application of Article 1F(c): Acts Contrary to the Purposes and Principles of the United Nations

This clause provides for exclusion where there are “*serious reasons for considering*” that the person “*has been guilty of acts contrary to the purposes and principles of the United Nations.*”

The purposes and principles of the United Nations are set out in [the Preamble and Articles 1 and 2 of the Charter of the United Nations](#) and are, amongst others, embodied in the United Nations Security Council Resolutions relating to measures combating terrorism (UNSCRs 1373 and 1377) which declare 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*”.

Article 1 of the United Nations’ Charter lists four purposes, namely to:

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

Member states are bound together by these purposes, through a series of principles set out in Article 2 of the Charter. These include:

- respect for sovereign equality;
- good faith fulfilment of obligations;
- peaceful settlement of disputes;
- refraining from the use of force against the territorial integrity or political independence of another state; and
- the promotion of the work of the United Nations.

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2.4.1 Actions by Non-State Persons

Article 1F(c) 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. Individuals acting in a non-State capacity should be excluded under 1F(c) where their actions merit it.

UNSCR 1377 reinforces this view by stating the UN Security Council's "*unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed*".

Furthermore, in the case of KK [**KK (Article 1F(c)) (Turkey) [2004] UKIAT 00101**], the Immigration Appeals Tribunal explicitly rejected the argument that only those in power or a state or state like entity should be covered by Article 1F(c).

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2.4.2 Terrorism

Terrorism is contrary to the purposes and principles of the United Nations. For example, the Security Council Resolution 1373 (2001) adopted by the Security Council on 28 September 2001, declares at Article 5 that:

"...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."

Security Council Resolution 1377 (2001) has determined that acts of international terrorism constitute a threat to international peace and security and are contrary to the purposes and principles of the UN.

In addition, Security Council Resolution 1624 (September 2005) also calls upon States to adopt measures, consistent with international obligations, to prohibit by law incitement to commit a terrorist acts 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 repudiates attempts at the justification or glorification of terrorist acts that may incite further terrorist acts.

[Section 54 of the Immigration, Asylum and Nationality Act 2006](#) also provides that acts contrary to the purposes and principles of the United Nations shall be taken as including:

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

Case owners should refer to this interpretation of the meaning of Article 1F(c) when considering whether to apply the exclusion clause.

A definition of what constitutes terrorism has been set out in UK law in the Terrorism Act 2000 (*as amended by the Terrorism Act 2006*).

See [Definition of Terrorism \(the Terrorism Act 2000\) – Annex 2A of this Instruction](#) for further details.

Case owners should keep in mind that persons who engage in acts of terrorism may also be excluded under Article 1F(b) as terrorist acts will often be “non-political” (see [‘A “Non-political” crime’ – Section 2.3.2 of this Instruction](#) for guidance).

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2.4.3 Membership of a Terrorist Organisation (Including Proscribed Organisations)

An asylum applicant may claim at interview or in correspondence that they are a member or an active supporter of a terrorist organisation or any other proscribed organisation.

[Section 54 of the Immigration, Asylum and Nationality Act 2006](#) states that ‘terrorism’ has the meaning given by [section 1 of the Terrorism Act 2000](#).

Proscribed organisations are those listed in any of the following:

- [The Terrorism Act 2000](#)
- [The Terrorism Act 2000 \(Proscribed Organisations\) \(Amendment\) Order 2001](#)
- [The Terrorism Act 2000 \(Proscribed Organisations\) \(Amendment\) Order 2002](#)
- [The Terrorism Act 2000 \(Proscribed Organisations\) \(Amendment\) Order 2005](#)
- [The Terrorism Act 2000 \(Proscribed Organisations\) \(Amendment\) Order 2006](#)
- [The Proscribed Organisations \(Name Changes\) Order 2006](#)
- [The Terrorism Act 2000 \(Proscribed Organisations\) \(Amendment\) Order 2007](#)

Claims of this kind may be false, made purely to enhance an applicant’s asylum claim. Where, however, the applicant makes a credible claim of membership but has not personally participated in acts contrary to the provisions of Article 1F, the applicant may still fall to be excluded.

The approach to be taken, consistent with the Immigration Appeal Tribunal’s view expressed in [Gurung](#) (October 2002), is that “mere membership” of a proscribed [terrorist] organisation at the time of the commission of acts or crimes proscribed by Article 1F is not enough to bring the person concerned within the 1F exclusion clauses.

On the *Gurung* test, however, where the organisation concerned is one whose aims, methods and activities are predominantly terrorist in character, it may be sufficient for little more than simple membership of and support for such organisations to be taken as acquiescence amounting to complicity in their terrorist acts.

The more active the terrorist group and the more active the participation, the more likely it is that Article 1F(c) will apply. Equally, this could apply to Article 1F(a) cases where membership of a group with a limited brutal purpose would make the subject complicit in its crimes.

In order to justify exclusion under Article 1F(c) on the basis of membership of a proscribed organisation, it will be essential, as the IAT put it,

“...to establish that the [individual] has been a voluntary member of such an [extremist] organisation who fully understands its aims, methods and activities, including any plans it has made to carry out any acts contrary to Article 1F.”

As an example, the IAT suggested that it would be wrong to regard the mere fact that a person had provided a safe house for LTTE combatants as sufficient evidence that an excludable offence had been committed. If, however, the person had transported explosives for LTTE combatants in circumstances “*where he must have known what they were to be used for, there may well be a serious 1F issue.*”

See also [‘Issues of Complicity, Culpability and Responsibility’ – section 2.1.8 of this Instruction.](#)

Under section 54 of the IAN Act 2006, acts of committing, preparing, or instigating terrorism, or encouraging others to do so, amounts to an act “*contrary to the purposes and principles of the United Nations*” and therefore falls within the scope of Article 1F(c).

Case owners should therefore take this into account when making a decision on whether members of a proscribed organisation can be considered to fall within 1F(c). Case owners should 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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2.4.4 Where the Act was Committed

As with Article 1F(a) (*but unlike Article 1F(b)*), an act contrary to the purposes and principles of the United Nations will fall within Article 1F(c) irrespective of where and when that act was committed.

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2.5 Links between Subsections of Article 1F

Articles 1F(a) and 1F(c) are concerned with crimes whenever and wherever they are committed. Indeed, the generally worded clause in Article 1F(c) may overlap with the clause in Article 1F(a). By contrast, Article 1F(b) is limited to crimes committed outside the country of refuge prior to admission to that country as a refugee.

There could, therefore, be instances whereby an individual could fall within two of the exclusion clauses or, having considered but dismissed the applicability of one subsection of Article 1F, the individual could still fall within another.

2.5.1 Articles 1F(a) and 1F(c)

This link between 1F(a) and 1F(c) might be applicable in circumstances such as a supporter of a group engaged in armed conflict (e.g. *the LTTE*) who, on the specific facts of the case, cannot be said to be complicit in war crimes (*using its widest definition*) but whose actions *could* be considered as “*...contrary to the purposes and principles of the United Nations*”.

Equally, during armed conflict, terrorist acts may constitute a war crime in some circumstances, such as where deliberate indiscriminate attacks are made on civilians, or for acts such as hostage taking.

2.5.2 Articles 1F(a) and 1F(b)

As with the link between 1F(a) and 1F(c) above, an individual may have engaged in acts that bring them within the scope of both Article 1F(a) and 1F(b). These circumstances will be rare, as a war crime (*by its widest definition*) will almost always be perpetrated with a

political aim in mind. However, there could be circumstances where both 1F(a) and 1F(b) are applicable.

In determining whether a crime is political, there must be a sufficiently close and direct link between the crime and the alleged political purpose. Therefore, the case owner needs to consider the means used to achieve the political end and, in particular, 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 the indiscriminate killing or injuring of members of the public.

An example of overlap between 1F(a) and 1F(b) could be an armed resistant group in a particular country who are seeking independence and overthrow of the ruling government. They use violence to achieve their aims. The individual seeking asylum who is a member of said group is involved in the shelling of a village during which several civilians were killed and houses destroyed. The reason for this particular attack was retaliation for the government killing some of its members during a previous battle. However, the link between the crime and the political object in these circumstances is too remote and therefore cannot be said to be political and Article 1F(b) is applicable. The offence in itself is still considered to be a war crime and therefore Article 1F(a) is also applicable.

2.5.3 Articles 1F(b) and 1F(c)

Similarly, an individual could commit a serious non-political crime that is *also* contrary to the purposes of the United Nations. Again, there must be a sufficiently close and direct link between the crime and the alleged political purpose. Terrorist activities that involve random bombings of civilians could be an example of overlap between 1F(b) and 1F(c).

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2.6 Unacceptable Behaviours

In August 2005, the then Home Secretary published a list of certain types of behaviours which would form the basis for excluding and deporting individuals from the UK. The list, finalised following a two week consultation period, makes clear that the Home Secretary will use their powers to deport and exclude from the UK those who engage in these types of behaviours.

The list of unacceptable behaviours includes using any means or medium including:

- writing, producing, publishing or distributing material
- public speaking including preaching
- running a website or
- using a position of responsibility such as teacher, community or youth leader

to express views which:

- foment, justify or glorify terrorist violence in furtherance of particular beliefs
- seek to provoke others to terrorist acts
- foment other serious criminal activity or seek to provoke others to serious criminal acts, or
- foster hatred which may lead to inter-community violence in the UK.

This list is indicative, not exhaustive.

Insofar as the unacceptable behaviours falls within the scope of Article 1F they will result in exclusion. However, the list of unacceptable behaviours also includes some behaviours

which may not fall within the scope of Article 1F and therefore should not lead to exclusion under that Article.

However, some unacceptable behaviours whilst falling short of inclusion within Article 1F may be captured by other provisions, such as section 72 of the NIA Act 2002.

See [‘Guidance about Section 72 of the NIA Act 2002’ – section 2.16 of this Instruction](#) for further guidance.

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2.7 Cancellation or Revocation of Refugee Status on Account of Article 1F

There may be occasions where a person has been recognised as a refugee and information subsequently comes to light which provides serious reasons for considering that the person should have been excluded from protection by virtue of Article 1F.

In this situation it is possible to **cancel** that person’s refugee status on the basis that Article 1F applies. Although there is nothing in the Convention itself which addresses this point (*Article 1C of the Convention is concerned with a different matter – cessation of refugee status*), paragraphs 117 and 141 of the Handbook acknowledge that refugee status might be cancelled in these circumstances.

There is a second situation in which it may be appropriate to take away a person’s refugee status. In this situation the term “**revocation**” is used rather than “**cancellation**”. That is where, subsequent to the grant of asylum, a person commits a crime or acts in a way which falls within the scope of Article 1F (a) or (c).

The possibility of revocation cannot arise in respect of Article 1F(b) since the crime would not have been committed prior to that person’s admission to the UK as a refugee.

Cases where a crime is committed after their admission to the UK as a refugee (*which would normally be a crime in the UK but could be a crime outside the UK*) should be assessed in accordance with Article 33(2) of the Refugee Convention. However, as there are no geographical or time limitations on Article 1F(a) or 1F(c) crimes/acts, it would be appropriate to consider revocation of refugee status in the event that a crime or act meeting the requirements of those clauses was committed after refugee status had been granted.

For further information on cancellation / revocation of refugee status, refer to the AI on *Cancellation, Cessation and Revocation of Refugee Status*.

Cancellation / revocation of refugee status does not of itself affect a person’s immigration status and does not therefore attract any statutory appeal right. In practice, however, cancellation / revocation will normally result in curtailment of any extant leave or is likely to result in an attempt to remove the person in question.

That action (e.g. the decision to curtail leave or to deport) may trigger appeal rights.

If removal is not possible (*e.g. because of the UK’s international obligations under Article 3 of the ECHR*), action to revoke a person’s indefinite leave to enter or remain in accordance with the provisions in section 76 of the NIA Act 2002 might be appropriate.

For further information on s76 NIA Act 2002, refer to the AI on *Revocation of Indefinite Leave*.

Where an individual has limited leave to remain as a refugee, curtailment of that leave may be appropriate. Such action would also trigger appeal rights.

For further information on curtailment, refer to Chapter 9, Section of the IDI *General Grounds for the Refusal of Entry Clearance, Leave to Enter or Variation of Leave to Enter or Remain*.

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2.8 Article 33(2): Expulsion of a Refugee

Article 1F excludes a person from the protection of the Convention and therefore excludes them from the rights set out in that Convention. A person to whom Article 1F applies is not a refugee, even if they meet the definition in Article 1A(2).

Article 33(2) is different.

When it applies, it does not exclude a person from being a refugee if they meet the definition in Article 1A(2). Rather, it takes away the key protection afforded to refugees by the principle of *non-refoulement*. This principle is stated in Article 33(1).

Non-refoulement is the prohibition of the enforced removal of a refugee to a country where that individual's life or freedom would be threatened. (*Note: where Article 33(2) applies to a person who has applied for asylum, the asylum claim would fail under the Immigration Rules, even if they were a refugee*).

Under Article 33(2), enforced removal is permitted only if the refugee either presents a danger to the security of the United Kingdom, or has been convicted of a particularly serious crime and is a danger to the community.

The full text of Article 33 ("Prohibition of expulsion or return ("refoulement")"), is as follows:

- "1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*
- 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."*

Paragraphs 334(iii) and (iv) of the Immigration Rules state that in order for a person to be granted asylum, the Secretary of State must be satisfied that there are no reasonable grounds for regarding him as a danger to the security of the UK or that if he has been convicted by a final judgement of a particularly serious crime he does not constitute a danger to the community of the UK.

Similarly, paragraphs 339A (ix) and (x) of the Immigration Rules state that a person's grant of asylum under 334 may be revoked or not renewed if the Secretary of State is satisfied that there are reasonable grounds for regarding him as a danger to the security of the United Kingdom; or having been convicted by a final judgement of a particularly serious crime he constitutes a danger to the community of the United Kingdom. This part of the rules implements Article 14 of the EU Qualification Directive which deals with circumstances when it is appropriate to revoke, end or refuse to renew refugee status.

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2.9 Application of Article 33(2)

Article 33(2) is concerned with the danger a person poses to the country of refuge: it may be danger to national security or danger to the community. There are two situations in which it may be possible to rely on Article 33(2); those individuals recognised as refugees and asylum seekers.

2.9.1 To Recognised Refugees

The first of these two situations is where the person concerned has already been granted refugee status and there are circumstances which lead us to consider whether the person should be removed from the United Kingdom.

For example, a refugee may have been convicted of an offence and/or, as part of the sentence of the court, deportation may have been recommended. Alternatively, the Home Secretary may have decided to make a deportation order on “non-conductive” grounds (*section 3(5)(a) of the Immigration Act 1971*) in light of events occurring or coming to light after his recognition as a refugee.

The possibility that the person may no longer be a refugee should be part of the initial consideration of whether removal is permitted by Article 33(2). For example, his refugee status could be called into question due to a significant and non-temporary change in circumstances in the home country. In that event it might be possible to apply the Article 1C(5) cessation clause (*i.e. that the circumstances that led to recognition as a refugee have ceased to exist*). That would be an alternative or additional basis on which to support removal action. This is because removal based on cessation relies on a view that the person is no longer a refugee; in contrast to using Article 33(2) where removal is permitted in spite of continuing refugee status. If it is considered that cessation and Article 33(2) are both applicable both should normally be relied upon in any decision letter relating to proposed removal action. Where cessation is considered to be applicable this reduces (*but does not necessarily eliminate*) the possibility that removal would breach the ECHR; hence the importance of relying on cessation even where Article 33(2) applies.

For further information on cancellation / revocation of refugee status, refer to the AI on *Cancellation, Cessation and Revocation of Refugee Status*.

Whilst section 76 of the NIA Act 2002 enables the Secretary of State to revoke the indefinite leave of a person who ceases to be a refugee for any of the reasons set out in Article 1C (1) – (4), there is no specific power to do so when Article 1C(5) applies.

However, the making of a deportation order, which might well follow at a later stage in a case of this kind, will invalidate any leave previously given.

Where cessation of refugee status applies to a refugee with limited leave to remain, as well as following the procedures set out in the AI on *Cancellation, Cessation and Revocation of Refugee Status*, case owners should also consider whether curtailment of leave may be appropriate.

For further information on curtailment, refer to Chapter 9, Section of the IDI *General Grounds for the Refusal of Entry Clearance, Leave to Enter or Variation of Leave to Enter or Remain*.

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2.9.2 To Asylum Seekers

The second situation in which Article 33(2) may be invoked is where the person is an asylum seeker.

For example, someone convicted of a very serious offence in the UK might apply for asylum whilst they are still in prison. In such a case, it would be possible to apply the Article 1F(b) exclusion clause as the offence was committed prior to their admission to the UK as a refugee, but Article 33(2) might also apply. In such a case, consideration should be given as to whether the criteria for Article 33(2) are met. It is possible to refuse to grant asylum on the dual basis that the individual:

- (i) is not, or can no longer be regarded as, a refugee (because Article 1F applies), **and**
- (ii) that, even if they were a refugee, they would not qualify for asylum / for protection against removal provided by Article 33(1) of the Refugee Convention (*because Article 33(2) applies*) by virtue of paragraph 334(iv) of the Immigration Rules

If the criteria for applying Article 33(2) are met, that person will not be granted leave under paragraph 334 of the Immigration Rules because the applicant must establish that refusal of his claim would require him to go to a country in contravention of the Refugee Convention. Where Article 33(2) applies, removal to a country will specifically be permissible under by the Refugee Convention even if a well-founded fear of persecution exists in relation to it, even if removal is not possible for other reasons.

Consequently, the relevant requirement of paragraph 334 (v) of the Rules is not satisfied.

Furthermore, 334(iii) and (iv) state that in order for a person to be granted asylum the Secretary of State must be satisfied that there are no reasonable grounds for regarding him as a danger to the security of the UK or that if he has been convicted by a final judgement of a particularly serious crime he does not constitute a danger to the community of the UK.

In either of the two situations above, even if a conclusion that Article 33(2) applies is reached, consideration would need to be given to whether removal would be consistent with the UK's obligations under the ECHR.

Where removal is not possible, case owners should refer to the AIs on *Humanitarian Protection* and *Discretionary Leave* to establish whether leave should be granted to the individual.

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2.10 Special Legislative Arrangements: Procedure for Consideration of Claim

Two pieces of legislation have an impact on the use of Article 33(2). Firstly, section 55 of the IAN Act 2006. Secondly, s72 of the NIA Act 2002

2.10.1 Section 55 IAN Act 2006

This is the same provision as mentioned in '[Section 55 IAN Act 2006](#)' – [section 2.1.4 of this Instruction](#) above in respect of Article 1F and the points made there apply equally here; if the Secretary of State decides that an individual is not entitled to the protection of Article 33(1) of the Convention and that Article 33(2) applies on the grounds of national security, then the AIT or SIAC must begin their substantive deliberations on the asylum appeal by first considering the exclusion.

Section 55 certification does **not** apply to cases where Article 33(2) is engaged for reasons other than those of national security.

As in Article 1F cases, the case owner should begin by considering the claim under Article 1F (exclusion) and then go on to deal with the inclusion aspect, including any credibility issues that arise.

2.10.2 Section 72 NIA Act 2002

s72 of the NIA Act 2002 (*also mentioned in respect of Article 1F*) also provides that the Secretary of State may certify, for the purposes of Article 33(2), that a person has committed a particularly serious crime and is a danger to the community.

If such a certificate is issued, the appellate body must first consider the content of the certificate and determine whether it was correctly issued, and, if they agree that it was, they will regard the certificate as conclusive of the fact that removal would not be contrary to the Refugee Convention before considering any other non-asylum issues raised by the appeal (*e.g. human rights*).

If s55 IAN Act 2006 or s72 NIA Act 2002 applies to an Article 33(2) case, case owners should, just as at other times, recognise the importance of considering each case on its individual merits and ensure that the RFRL provides a detailed consideration of the asylum issues and ECHR considerations.

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2.11 Interpretation of Key Terms / Concepts in Article 33(2)

2.11.1 “Danger to the Security of the Country”

Consideration of this ground for applying Article 33(2) is most likely to arise in connection with people suspected of being involved in terrorism. Some important principles on how to approach national security issues were set out by the House of Lords in the *Rehman* case (October 2001). This involved an appeal against the decision that deportation was conducive to the public good in the interests of national security.

These principles are:

- For a person to be a danger to the security of the United Kingdom, the actions (or anticipated actions) of that person need not create a **direct** threat to the UK’s system of government or its people. The interests of national security could be threatened **indirectly** by activities directed against other states. Thus the definition of “*a threat to national security*” is very wide: for example, depending on the specific facts of the case, if someone is believed or known to be a terrorist, then due to the nature of international terrorism, and regardless of the immediate threat of his or her particular terrorist group, it may be reasonable to regard the person as a threat to the UK’s national security.
- In *Rehman*, the House of Lords stated in effect that there was no specific standard of proof which must be met when deciding whether a person is a danger to national security: “*There must be material on which proportionately and reasonably [the Secretary of State] can conclude that there is a real possibility of activities harmful to national security but he does not have to be satisfied, nor on appeal show, that all the material before him is proved, and his conclusion is justified, to a “high civil degree of probability”.*”

Although Article 33(2) was not an issue in *Rehman*, these comments are relevant to the application of Article 33(2), with its reference to “... a refugee whom there are reasonable grounds for regarding as a danger to the security of the country...”.

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2.11.2 “Danger to the Security of the Country” and Link to Article 1F(c)

There may be occasions where a person is regarded as a danger to national security because of acts which are contrary to the principles and purposes of the United Nations – that is, acts which bring that person within the scope of Article 1F(c).

As noted above, there is no geographical limitation on the application of Article 1F(c), so this exclusion clause should also be applied in appropriate cases.

It is possible to refuse an asylum claim / seek to remove someone on the dual basis that

- (i) they are not, or can no longer be regarded as, a refugee (*because Article 1F(c) applies*), and
- (ii) even if they were still a refugee, they would not qualify for asylum / protection against removal provided by Article 33(1) of the Refugee Convention (*because Article 33(2) applies*) by virtue of paragraph 334(iii) of the Immigration Rules

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2.11.3 A “Particularly Serious Crime” and “Constitutes a Danger to the Community of that Country”

The approach to be taken to these two linked terms in Article 33(2) is set out in section 72 of the NIA Act 2002.

See [Guidance to Section 72 of the NIA ACT 2002: Particularly Serious Crimes](#).

Section 72(2) states:

“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.”

Section 72(4)(a) states:

“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 –

- (a) *he is convicted of an offence specified by order of the Secretary of State....”*

Section 72 applies a presumption that an individual is a danger to the community of the United Kingdom even in cases where the crime was committed overseas.

As regards the first part of the presumption, it will be noted that what counts is not the maximum sentence that could have been imposed, nor the time a person actually spends in prison or another place of detention (*such as a young offenders’ institution or a hospital*).

The period which determines whether a person falls within the scope of Article 33(2) is the period of imprisonment to which they were actually sentenced, whether in the UK or overseas. Any element of the sentence which is suspended does not count towards the two years.

Thus a person sentenced to one year's custodial sentence and two years suspended would not be subject to the presumption under subsection (2) or (3) [subsection (3) covers offences committed abroad (see [‘A “Particularly Serious Crime” Committed Abroad’ – section 2.11.5 of this Instruction](#))]; whereas a person sentenced to a three year custodial sentence one year of which is suspended would fall within subsection (2) or (3).

Subsection (4) enables the Home Secretary to specify, in an order, offences in respect of which, regardless of the length of sentence imposed, there is a presumption that the offender is a danger to the community.

An Order ([The Nationality, Immigration and Asylum Act 2002 \(Specification of Particularly Serious Crimes\) Order 2004](#)) was brought into force on 12 August 2004. The case owner should refer to the Order itself to check whether or not a particular offence is a particularly serious crime. In cases of doubt, the case owner should consult a SCW who may, in turn, seek advice from AOPU.

A person who is convicted of an offence and whose crime or sentence brings them under subsection 72(2), 72(3) or 72(4) is deemed to have committed a particularly serious crime and to be a danger to the community.

However, section 72(6) enables the applicant to rebut the presumption that he is a danger to the community (*but not the fact that the crime committed is a “particularly serious” one*). Where a person seeks to argue that they are not a danger to the community, the burden will be on them (*not on the Secretary of State*) to show it. A successful rebuttal of this presumption, no matter how serious the offence committed, means that Article 33(2) does not apply.

Where the person to whom section 72 and Article 33(2) may apply is an asylum seeker, the asylum interview may provide an opportunity to hear from the applicant about their offence and obtain information relevant to the “danger to the community” issue. The presumption should be put to them and they should be asked for any evidence they wish to put forward to rebut it. The aim should be to obtain sufficient information to enable a final decision to be taken.

Where the person subject to section 72 and Article 33(2) consideration is a recognised refugee, the UKBA officer will normally write to the individual explaining the position in the light of Article 33(2) and seeking any comments they may have before a final decision is taken. This may also be appropriate where the person is an asylum seeker and the asylum interview has already been conducted.

On receipt of representations, the case owner must consider whether there are any grounds for holding that the person is not a danger to the community. The assessment of the danger which the wrongdoer might pose to the community should be an assessment of the present or future danger, made on the basis of evidence of their past conduct and the likelihood of their repeating such conduct in the future. A decision not to apply Article 33(2), even though the presumption applies, should not be taken without reference to a senior caseworker. They may in turn contact AOPU if further advice is needed.

The nature of any representations may make it appropriate to seek further information before reaching a firm conclusion on whether or not Article 33(2) applies.

Such information might be a transcript of the judge's comments at the trial, and in particular Police and / or Parole Board / Prison / Probation Service reports which provide an assessment of the person's character near the end of the period to be spent in custody.

The value of up-to-date reports is that they should indicate to what extent, during the period of custody, the refugee has been able to address previous offending behaviour.

Such reports might cover, for example, the refugee's participation in any offending behaviour programmes, and other rehabilitative measures undertaken since the crime was committed. Reports of this latter type will only be relevant insofar as they relate to the refugee's potential to re-offend and whether the refugee can be considered a danger to the community of the UK.

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2.11.4 A "Particularly Serious Crime" and Article 1F

It is possible that the "particularly serious crime" in question will fall within the scope of Article 1F. If such a case arises, those exclusion clauses should be relied on.

The question whether Article 33(2) should also be relied upon in such cases should be addressed in the way described in ['Danger to the Security of the Country and Link to Article 1F\(c\)' – section 2.11.2 of this Instruction](#) above.

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2.11.5 A "Particularly Serious Crime" Committed Abroad

In accordance with section 72(3) and (4) of the NIA Act 2002, Article 33(2) will be of relevance when a (*particularly serious*) crime has been committed abroad by a refugee. For example, a person recognised as a refugee could leave the United Kingdom, commit the offence in question, and then return here.

In such a case, Article 1F(b) would not apply as the person would have committed an offence after gaining their (first) entry to their country of refuge. However, Article 33(2) could apply because there is no requirement that the particularly serious crime be committed in the country of refuge, although there is still the additional requirement that the person pose a danger to the community of this country.

Note that Article 33(2) / section 72 should not normally be relied on where a crime has been committed abroad before an individual arrives in the UK and seeks asylum and where that crime falls to be considered within the context of Article 1F(b).

Section 72(3) of the NIA Act 2002 caters for the possibility of crimes committed abroad in the following way. It states:

"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 -

- (a) *he is convicted outside the United Kingdom of an offence,*
- (b) *he is sentenced to imprisonment of at least two years, and*
- (c) *he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence."*

Where the conviction takes place abroad, there is a second situation in which the refugee will be deemed to have committed a particularly serious crime.

Section 72(4) states:

“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 –

- (a) *he is convicted of an offence specified by order of the Secretary of State, or*
- (b) *he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).”*

The order in question is [The Nationality, Immigration and Asylum Act 2002 \(Specification of Particularly Serious Crimes\) Order 2004](#).

The same guidance (see [‘A “Particularly Serious Crime” and “Constitutes a Danger to the Community of that Country”’ – section 2.11.3 of this Instruction](#)) on how to calculate the two years of imprisonment and on rebutting the presumption about being a danger to the community, applies.

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2.11.6 Detention in a Hospital

Any case where a person is convicted of any serious crime and is detained not in a prison or young offenders’ institution, but in a hospital, should be referred for advice to the AOPU, via a senior caseworker.

2.11.7 No “Balancing” Test

When considering whether Article 33(2) applies, case owners should **not** undertake any kind of balancing exercise, *i.e. there should be no assessment of the extent to which a person’s life or freedom would be threatened in the event of removal, followed by a weighing up of the gravity of the likely threat against the danger they pose to national security or to the community.*

This is not to say that the fears of mistreatment which a person may face if returned to their country are not to be addressed at all. They will need to be addressed in the context of whether the person’s removal would be a breach of the ECHR.

See also [‘Exclusion and Family Members/Dependants’ – section 2.13 of this Instruction](#).

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2.12 Article 32 of the Refugee Convention

Article 32(1) of the Refugee Convention provides as follows:

“1. The Contracting State shall not expel a refugee lawfully in their territory save on grounds of national security or public order.”

The effect of this provision is that a refugee who

- (i) is lawfully in the United Kingdom and
- (ii) is not a threat to national security or public order

cannot be removed from the United Kingdom under immigration powers to any country, whether or not their life or freedom would be threatened in that country.

This Article does not create an additional barrier to removal because if Article 33(2) applies then the exemption to the provisions of Article 32(1) – *i.e. national security or public order* – will also be applicable.

The exemption permitting the expulsion of a refugee on grounds of “public order” is also the provision which makes it possible to extradite a recognised refugee to a third country where his life and freedom would not be threatened for a (Refugee) Convention reason.

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2.13 Exclusion and Family Members/Dependants

If there are family members seeking to remain in the UK as dependants of an applicant whose claim for asylum is refused partly or wholly in reliance on Article 1F or Article 33(2), the applications from those family members fall to be refused.

However, some dependants may also apply for asylum in their own right and such claims should be considered on their merits. They cannot be excluded from the protection of the Refugee Convention simply because of the actions of the principal applicant.

If the dependant’s own asylum claim meets the requirements for inclusion under Article 1A and they are not excluded from protection, they should be granted asylum. However, where a dependant has previously been excluded from the protection of the Refugee Convention as a result of their own actions, they should not be given leave in line with a principal applicant.

Situations might also arise where a person seeking to remain as the dependant of an asylum seeker or refugee appears to have committed a crime or act which, had they been seeking asylum in their own right, would make them a potential candidate for exclusion under Article 1F. In such a case, consideration should be given to whether the conditions of Article 1F or Article 33(2) are met. If they are met, the application to enter or remain as a dependant should be refused.

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

Under Article 8(2) of the ECHR, interference in an existing family life is permissible where it is “in accordance with the law”, pursues a legitimate aim (*e.g. immigration control*) and is proportionate. Where a crime has been committed it is likely that interference with family life will be proportionate. However, each case will be different, and must be treated on its merits.

For further information on the consideration of Article 8 claims, refer to the AIs on *Article 8 of the ECHR* and *Considering Human Rights Claims*.

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2.14 Cases Where Article 1F or 33(2) Applies but Removal is not Possible

When applying Article 1F or 33(2) cases may arise where, despite a person's being subject to Article 1F or 33(2), it is not possible to remove them at the time. This situation is most likely to arise due to human rights considerations.

These considerations must be addressed in a case involving an excluded person, just as in any other case. Article 3 of the ECHR is particularly important, in that it prevents removal of anyone if there are substantial grounds for believing that their removal would expose them to a real risk of torture or 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. In limited circumstances, it is possible that removal may breach Articles of the ECHR other than Article 3. These also need to be considered.

Every effort should be made, consistent with our international obligations, to find a way of removing a person to whom Article 1F or 33(2) applies, but where this is not possible, Discretionary Leave may be appropriate.

For more information on the application of the ECHR, refer to the AIs on *Considering Human Rights Claims*, *Humanitarian Protection* and *Discretionary Leave*.

In such cases, the Chief Executive must be consulted by way of submission before granting leave.

Where a person to whom Article 33(2) applies, but who cannot be removed for some reason, has indefinite leave, consideration should be given to revoking their leave under section 76(1) of the NIA Act 2002 and, subject to any appeal, granting 6 months' Discretionary Leave.

Where a person to whom Article 33(2) applies, but who cannot be removed has limited leave, consideration should be given as to whether the leave should be varied under section 3(3)(a) of the 1971 Act to reduce it to 6 months.

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2.15 Appeal Rights

Where an asylum claim is refused partly or wholly on the ground that Article 1F or Article 33(2) applies, the same appeal rights apply as in a case where the claim has been refused without any reliance on these exclusion grounds and an immigration decision has been taken under section 82 NIA or section 83 NIA applies.

See the AI on *Rights of Appeal in Asylum Claims*.

However, where it is certified that either section 72 of the NIA Act 2002 or section 55 of the IAN Act 2006 applies, the appellate authority will commence its deliberations by considering the Secretary of State's certificate (*to the effect that the person has committed a particularly serious crime and constitutes a danger to the community or to the effect that the individual is excluded from the 1951 Convention by virtue of Article 1F*).

If the certificate is upheld, the appeal must be dismissed to the extent that it relies on asylum grounds, though any ECHR considerations raised in the appeal will still have to be taken into account.

National security cases and certain other types of cases may be certified under section 97 of the NIA. In those circumstances, the appeal lies to the Special Immigration Appeals Commission and not to the AIT.

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2.16 Guidance about Section 72 of the NIA Act 2002: Particularly Serious Crimes

2.16.1 Purpose of Section 72

Section 72 of the NIA Act 2002 provides an interpretation of what constitutes a “particularly serious crime” for the purposes of Article 33(2) of the 1951 Convention.

The relevant part of Article 33(2) states 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, [he] constitutes a danger to the community of that country*” [i.e. the country in which he is].

Section 72 defines when the serious criminality provision in Article 33(2) can be applied. Section 72(2) states 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*

Section 72 also applies where a person was convicted overseas, is sentenced to a period of imprisonment of at least two years and could, if convicted in the UK for a similar offence, have been sentenced to at least two years.

It is likely to be very rare for section 72 to apply to this situation: it is designed to cover situations in which a person recognised as a refugee in the UK subsequently goes abroad, commits a crime and eventually returns to the UK; it is not intended to cover situations where a person commits a crime abroad before seeking asylum in the UK. In those cases, Article 1F(b) of the Refugee Convention may be appropriate.

What counts for the purposes of section 72(2) and (3) is not the maximum sentence that could have been imposed, nor the time a person actually spends in prison or detention, but the period of imprisonment to which they were sentenced.

Subsection (4) of section 72 enables the Secretary of State to specify in an order offences in respect of which, regardless of the length of sentence imposed, there is a presumption that the offender is a danger to the community.

Section 72(4) states:

“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 –

- (a) he is convicted of an offence specified by order of the Secretary of State, or*
- (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).”*

An order has been made under subsection (4), and came into force on 12 August 2004.

A copy of the order can be found at [The Nationality, Immigration and Asylum Act 2002 \(Specification of Particularly Serious Crimes\) Order 2004](#).

The Order applies not only to offences committed on or after 12 August 2004, but also to cases decided or appealed on or after that date even where the offence occurred beforehand. Where it appears from the facts of the case that section 72(4)(b) applies, advice should be sought from AOPU via a senior caseworker.

As mentioned below, the presumption that a person convicted for two or more years (*or convicted of any offence covered by an order made under section 72*) is a danger to the community is rebuttable.

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2.16.2 Application of Section 72

The criteria in section 72 can be applied both to persons who are already refugees and to asylum seekers.

Where a refugee commits a crime that falls within the ambit of section 72 and there is not a successful rebuttal of the presumption that they pose a danger to the community their removal from the United Kingdom would not be contrary to the Refugee Convention.

Similarly, where an asylum seeker commits a crime that brings them within the scope of section 72, and where they do not rebut the presumption that they are a danger to the community their removal from the United Kingdom is not contrary to the Refugee Convention.

Case owners should then consider both whether an applicant falls within the scope of s72 and then whether he has a well-founded fear of persecution as defined in Article 1A of the Refugee Convention.

Where both circumstances apply, the claim should be refused on both grounds; stating that the claim is certified under s72, and consequently the applicant is not eligible for a grant of asylum, and then whether the applicant would have qualified under 1A had s72 not applied.

In all cases, it will be necessary to give the individual concerned an opportunity to rebut the presumption that they pose a danger to the community. Where a person seeks to argue that they are not a danger to the community, the burden will be on them (*not on the Secretary of State*) to show it. A successful rebuttal of this presumption, no matter how serious the offence committed, means that section 72 does not apply.

Cases where it is considered that a successful rebuttal has been made should always be referred to a Senior Caseworker.

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2.16.3 How to Deal with a Case where Section 72 Applies

Where it appears from the facts of the case that the criteria in section 72 have been met, case owners must write to the individual seeking any comments they may have before a final decision is taken.

On receipt of representations, the case owner must consider whether there are any grounds for holding that the person is not a danger to the community. The assessment of the danger which the wrongdoer might pose to the community should be an assessment of the present or future danger, made on the basis of evidence of their past conduct and the likelihood of their repeating such conduct in the future. There is a presumption that a person convicted of an offence which brings them within the scope of section 72 is a danger to the community – the length of sentence imposed and/or the type of offence committed indicating such a danger. However, while there is such a presumption it can be rebutted if persuasive evidence exists that an individual is no longer a danger to the community notwithstanding the offence(s) they have committed.

It may be appropriate to seek further information before reaching a final decision on whether or not Article 33(2) applies. Such information might be the transcript of the judge's comments at the trial, Police and/or Parole Board/Prison/Probation Service reports, which provide an assessment of the person's character near the end of the period to be spent in custody. The value of up-to-date reports is that they should indicate to what extent, during the period of custody, the individual has been able to address previous offending behaviour.

Where the individual is an asylum seeker the normal procedures of information gathering should be followed i.e. SEF (*if appropriate*) and Interview.

The refusal of the asylum claim in a case where section 72 applies can be made purely on section 72 grounds where the individual would otherwise be a refugee, but where the asylum claim also falls to be refused under Article 1A of the Convention, the Reasons for Refusal Letter (RFRL) should state both grounds for refusal.

If the application of section 72 is appropriate, the individual should be provided with an RFRL stating that the Secretary of State has relied on these provisions in refusing the claim. Where it is intended to pursue removal, reasons why we do not consider this removal to be a breach of the ECHR will also need to be fully argued in the RFRL.

The appeal hearing will start with consideration of the section 72 certificate. If the certificate is agreed, the appeal cannot be allowed on asylum grounds. If the certificate is not agreed the merits of the asylum claim will be examined in the usual way.

In the event that the certificate is not agreed and substantive consideration of the asylum claim is required, the Presenting Officer will use the arguments set out in the RFRL in respect of the claim to present the case.

For details of the appeal rights, refer to the AI on *Rights of Appeal in Asylum Claims*.

In dealing with refugees who fall within the scope of section 72, there will normally be no necessity to deal with any fear of persecution aspect because they have already been recognised as a refugee, although in some cases it may be appropriate to consider whether the cessation clause of the Refugee Convention applies and, if so, whether any potential ECHR breach that might occur if removal were to be enforced.

Where the subject has ILR and removal is not possible, consideration should also be given to revoking the ILR under section 76 of the NIA.

For further detail on the Cessation clauses, refer to the AI on *Cancellation, Cessation and Revocation of Refugee Status*.

For further detail on the s76 and revoking ILR, refer to the AI on *Revocation of Indefinite Leave*.

The immigration decision when using s72 / Article 33(2) should be a decision to make deportation order and the right of appeal will be under 82(2)(j).

Some cases may arise where it is not possible to remove someone who is subject to the criteria of section 72, for instance where removal would be a breach of our obligations under the ECHR. Where this is the case, consideration should be given to granting six months discretionary leave in accordance with the AI on *Discretionary Leave*.

Where a person to whom section 72 applies has indefinite leave, but cannot be removed for some reason, consideration should be given to revoking their leave under section 76 of the NIA Act 2002.

For further information on revoking ILR, refer to the AI on *Revocation of Indefinite Leave*.

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Annex 2A – Definition of ‘Terrorism’ (the Terrorism Act 2000)

1. - (1) In this Act “terrorism” means the use or threat of action where-
 - (a) the action falls within subsection (2),
 - (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
 - (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.
 - (2) Action falls within this subsection if it-
 - (a) involves serious violence against a person,
 - (b) involves serious damage to property,
 - (c) endangers a person’s life, other than that of the person committing the action,
 - (d) creates a serious risk to the health or safety of the public or a section of the public, or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
 - (3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.
 - (4) In this section-
 - (a) “action” includes action outside the United Kingdom,
 - (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
 - (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
 - (d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.
 - (5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.
2. - (1) The following shall cease to have effect-
 - (a) the Prevention of Terrorism (Temporary Provisions) Act 1989, and
 - (b) the Northern Ireland (Emergency Provisions) Act 1996.
 - (2) Schedule 1 (which preserves certain provisions of the 1996 Act, in some cases with amendment, for a transitional period) shall have effect.

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Glossary

Term	Meaning
ASL.0015	'Standard' RFRL Template
ASL.3212	Exclusion RFRL Template
IAN Act 2006	Immigration, Asylum and Nationality Act 2006
'In the Alternative' Approach	Not applying the exclusion clauses because of credibility, but including a caveat that, should an alternative view be reached, the person <i>would</i> be excluded
'Limb' of Article 1F	The sub-section of Article 1F under which exclusion is being considered; namely 1F(a), 1F(b) and 1F(c)
NIA Act 2002	Nationality, Immigration and Asylum Act 2002
RFRL	Letter setting out the reasons for refusing asylum (<u>R</u> easons <u>F</u> or <u>R</u> efusal <u>L</u> etter)
s55	Section 55 of the NIA Act 2006
s72	Section 72 of the NIA Act 2002
'Safety Net' Approach	Refusal of asylum via exclusion whilst also considering the application of Article 1A(2) (inclusion)

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Document Control

Change Record

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