

# **EXCEPTIONAL LEAVE TO REMAIN: CIRCUMSTANCES IN WHICH IT WILL NOT BE APPROPRIATE TO GRANT SETTLEMENT**

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# 1 Introduction

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This Asylum Instruction sets out the circumstances where Indefinite Leave to Remain (ILR) should not be granted following the completion of a block period of four years' Exceptional Leave to Enter or Remain (ELE / R). It should be read in conjunction with the Asylum Instructions on [Exceptional Leave to Remain: suspected war criminals and perpetrators of crimes against humanity and genocide](#).

Those granted ELE / R for a block period of four years will, upon application, normally be granted settlement (ILR) at the end of that four year period. In some cases ILR should be refused, for example where there are serious reasons for considering the applicant has committed or been involved in war crimes, crimes against humanity or genocide (hereafter referred to as "war crimes"); or where they have been convicted of a criminal offence and received a sentence which passes the threshold currently applied by the Criminal Casework Directorate (CCD) for considering deportation or where there are other reasons why it is undesirable for them to be permitted to remain in the United Kingdom.

Caseworkers in Economic and Family Migration Directorate usually process applications for ILR from those who previously had ELE / R for a block period of four years. This notice sets out the circumstances in which the application should no longer be processed in Economic and Family Migration Directorate and should instead be referred to another Directorate.

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

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

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

Our statutory duty to children includes the need to demonstrate:

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

## 2 Sangatte

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This Policy Notice does not apply to applications for ILR made by persons for whom the UK assumed responsibility after the closure of the Red Cross Centre at Sangatte in December 2002 who were subsequently granted ELE for four years. An instruction on the procedures for handling Sangatte cases will be issued in due course.

### 3 Circumstances in Which it May Not be Appropriate to Grant ILR

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Following a grant of ELE / R for a block period of four years, applicants should not be granted ILR in the following circumstances:

- Where they are found to meet the criminality threshold currently applied by the Criminal Casework Directorate (CCD) for considering deportation
- Where there are serious reasons for considering that they have committed or been involved in war crimes
- Where there are serious reasons for considering that they have been guilty of acts contrary to the purposes and principles of the United Nations (e.g. terrorism)
- Where it is undesirable to permit the person concerned to remain in the UK in the light of their character, conduct or associations or the fact that they represent a threat to national security
- Where it has come to light that the original grant of leave was obtained by deception, provided that the Immigration & Nationality Directorate was unaware of the deception at the time of the original grant of ELE / R.

If these circumstances are or are thought to apply, it will be necessary for specially trained caseworkers to consider the case, and make a decision on the ILR application based on all the facts. Caseworkers in Economic and Family Migration Directorate should not continue to deal with these applications. Guidance on which areas of UK Border Agency should consider each of these different types of cases is set out below.

**Where Economic and Family Migration Directorate caseworkers are uncertain whether a particular case falls to be refused, then they should seek advice from a senior caseworker.**

## 4 Deportation Criteria Applied by CCD

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Applicants should not be granted ILR where the individual:

- Has received a custodial sentence of 12 months or more;
- Has received two or three custodial sentences which cumulatively amount to 12 or more months over a period of 5 years (the 5 years count backwards from the date of the last conviction and the convictions must normally be current. i.e. not spent); or
- The court has recommended that an individual should be deported on completion of their sentence.

(See also the section below on non-conductive cases where the criminality falls outside these criteria.)

It is the length of the custodial sentence or sentences imposed that determine whether an individual case falls within the deportation criteria, not the length of time that individual has spent in prison. This means, for example, that where a custodial sentence of 18 months is imposed, but the individual is released from prison after 9 months, then they would still fall within the criteria.

Caseworkers should note that spent convictions should not normally be taken into account under the deportation criteria. For further information, [see IDI, chapter 32, section 2 'Instructions on the Rehabilitation of Offenders Act 1974](#) and [Chapters 11 to 15 of the Enforcement Instructions and Guidance on Criminal Casework Directorate Policy and Processes](#).

If the applicant is in prison, or there is current CCD action, the case should be referred to CCD. This applies even if there are outstanding asylum or human rights issues.

There will be circumstances where, after full consideration of the case, it may not be appropriate for CCD to pursue deportation action, for example because of human rights barriers. Further guidance on deportation action can be found in [Chapters 11 to 15 of the Enforcement Instructions and Guidance on Criminal Casework Directorate Policy and Processes](#).

Where there are asylum or human rights barriers to deportation, then CCD caseworkers should refuse ILR in accordance with this policy instruction. Consideration should then be given to the asylum and human rights claim in the normal way.

If the applicant has been released from prison and there is no ongoing CCD action, then the case should be referred by Economic and Family Migration Directorate to the Case Resolution Directorate for consideration, regardless of whether there are outstanding asylum or human rights issues.

## 5 War Criminals

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Cases should not be granted ILR where there are serious grounds for considering that the applicant has committed or been involved in war crimes.

If it is suspected that the applicant has committed or been involved in war crimes, applications should be referred to the War Crimes Unit. Caseworkers should refer to the Asylum Instruction on [Exceptional Leave to Remain: suspected war criminals and perpetrators of crimes against humanity and genocide](#).

## 6 Acts Contrary to the Purposes and Principles of The United Nations

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ILR should not be granted where there are serious reasons for considering that the applicant has been guilty of acts contrary to the purposes and principles of the United Nations, which includes terrorism offences. Guidance on these types of cases is contained in the Asylum Instruction on [Article 1F and Article 33 \(2\) of the Refugee Convention](#).

Caseworkers may become suspicious that the individual has been involved in activities fitting into either of the two categories above from, for example, evidence on the file or the Casework Information Database (CID).

## 7 Non-Conducive to the Public Good

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An applicant should not be granted ILR where it is undesirable to permit the person concerned to remain in the UK in the light of their character, conduct or associations or the fact that they represent a threat to national security. For instance, an application may fall to be refused on these grounds under Paragraph 322 (5) of the Immigration Rules if an individual has engaged in one or more of a list of unacceptable behaviours. For further guidance see **section 6** of the Asylum Instruction on [Article 1F and Article 33 \(2\) of the Refugee Convention](#).

There may be circumstances where a person has been convicted of a criminal offence but has received a sentence falling below the threshold set out in the paragraph above on [Deportation Criteria Applied by CCD](#). The nature or circumstances of the offence may suggest that the person's presence in the UK is not conducive to the public good, for example if it is an offence involving violence, a sexual offence, an offence against children or a serious drug offence.

Where the case falls into this category it should be referred initially to a senior caseworker in Economic and Family Migration Directorate. The senior caseworker will then decide whether to refer the case to CCD if the individual is in prison or there is current CCD action or to the Case Resolution Directorate if the individual has been released from prison and there is no current CCD action and minute the file accordingly.

## 8 Leave Obtained by Deception

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Cases should not be granted ILR where it is established that the original grant of ELE / R was obtained by deception, provided that IND was not aware of the deception at the time of the original grant of ELE / R.

[Paragraph 322 \(2\) of the Immigration Rules](#), which covers the grounds for refusal when dealing with applications for variations of leave to enter / remain, lists as a ground for refusal “the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave”.

Where Economic and Family Migration Directorate caseworkers suspect that the original grant of leave was obtained by deception, then the case should be referred to the Case Resolution Directorate for consideration. Relevant guidance on handling deception cases is set out in the [Asylum Instruction on Cessation, Cancellation and Revocation of Refugee Status](#).

## 9 Dependants

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It may be the case that the main applicant applies for ILR and qualifies, but that the criteria for refusal apply to a dependant on that application.

If the dependant, but not the main applicant, fits any of the circumstances in the section above on [Deportation Criteria Applied by CCD](#) then the dependant alone should be referred to the relevant case working Directorate for further consideration. The cases of the main applicant and any other dependants should be considered by Economic and Family Migration Directorate in the normal way and ILR granted if they are found to qualify.

## 10 Criminal Prosecution

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Where a principal applicant is subject to criminal prosecution and successful prosecution could potentially bring them within one or more of the refusal criteria set out in the section above on [Deportation Criteria Applied by CCD](#), then their application for ILR, together with those of any dependants, should be kept on hold within Economic and Family Migration Directorate pending the outcome of that prosecution. Where a dependant is subject to criminal prosecution and successful prosecution could potentially bring them within one or more of the refusal criteria set out in the section above on Deportation criteria applied by CCD, then their application for ILR should be kept on hold within Economic and Family Migration Directorate pending the outcome of that prosecution, but the cases of the principal applicant and any other dependants should be considered by Economic and Family Migration Directorate in the normal way and ILR should be granted if they are found to qualify. They should be informed that their application will not be decided until the criminal proceedings are resolved.

## 11 EEA Nationals

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Caseworkers may come across applications for ILR from persons previously granted ELE / R who have since become EEA nationals. Where these applicants fall outside the circumstances leading to refusal set out in this Notice then ILR should normally be granted. Applications from EEA nationals which may fall to be refused will be subject to different handling procedures and further advice on the handling of EEA cases can be sought from **Group G, Asylum Policy Unit** in writing, via a senior caseworker.

## 12 Appeal Rights

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For guidance, see [IDI, Chapter 12, section 1, Appeals- Rights of Appeal.](#)

**Enquiries:** Further enquiries should normally be made in writing via a Senior Caseworker to Group G, APU.

# Document Control

## Change Record

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1.0	CC	08/03/07	
2.0	CC	26/10/09	Children's Duty reference added