

# IMPLEMENTING SUBSTANTIVE DECISIONS

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# 1 Introduction

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This instruction sets out the processes to be followed when implementing substantive decisions (also known as initial decisions). The process for implementing initial decisions is divided into two phases - the 'decision making' stage and the 'service of decision' stage. It also provides guidance on unserved decisions.

For the Case Resolution Directorate (CRD) and the Regional Asylum Teams, the implementation of the decision is completed by caseworkers in Case Resolution teams and Case Owners in Asylum Teams.

The general methods and principles of implementing substantive decisions are covered in the various categories below and apply to all Case Owners and caseworkers.

## 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 The Decision Maker

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The decision maker in CRD will be a caseworker at EO level. However, non compliance (non substantive) decisions can be taken at AO level.

The decision maker in the Regional Asylum Teams is a Case Owner at HEO level.

All decision-makers are expected to read and refer to asylum instructions relating to the handling and considering of asylum claims. Including, [Refugee Leave Considering Asylum Claim](#), [Considering Human Rights Claims](#), [Humanitarian Protection](#), [Discretionary Leave](#) and [Article 8](#).

### 2.1 Determining Immigration Status

Applicants can apply for asylum when they arrive in the UK or at any time after entry. It is essential to identify a person's immigration status as this will effect what decision is made following the consideration of the asylum and human rights claim. Also, in the event of a grant of leave, it will also determine whether **leave to enter** or **leave to remain** is granted. The following definitions are intended as a brief guide only. Further information can be found in the [Operational Enforcement Manual](#). Decision makers should look out for cases where there are dependants - it is possible for a dependant to have a differing immigration status to the main applicant. For further guidance on what immigration papers are served to people of the various immigration statuses see '[Secretary of State Powers](#)' (when available).

#### 2.1.1 On entry cases (port cases)

People who enter the United Kingdom and claim asylum '**on entry**' i.e. as they arrive at the desk at the port (airport or sea port) are applying for 'leave to enter' the UK, and are usually granted Temporary admission (TA) by immigration officers whilst their application are considered. Applicants who have been granted temporary admission have not been "landed" or given any leave to enter. A grant of leave following a successful claim will be **leave to enter**.

#### 2.1.2 In time after entry

People who already have leave to enter or remain in the United Kingdom may apply for asylum. Provided that the claim is made before the leave expires, these applicants will be treated as '**in time/in country**'. Any subsequent grant of leave will be **leave to remain**. (Even if they have been granted leave to enter previously).

#### 2.1.3 Illegal entrants

People who enter the United Kingdom illegally, and who claim asylum may be treated as **illegal entrants**. Any subsequent grant of leave will be **leave to remain**. Illegal entrants are further divided into 'De Facto Illegal Entrants' and 'Notified Illegal Entrants'. Further guidance on illegal entrants is contained in [Illegal Entry](#).

#### 2.1.4 De facto illegal entrants

**De facto illegal entrants** are those people who admit to having entered the UK illegally but who were not apprehended following their entry to the UK. Further guidance on illegal entrants is contained in [Illegal Entry](#).

#### 2.1.5 Notified illegal entrants

**Notified illegal entrants** are those people who have entered the UK illegally but who were either apprehended following their entry to the UK, or who have come to the attention of the

Immigration Service by other methods. These people will have been served with IS forms 'notifying' them that they are illegal entrants and are subject to removal. These papers will normally remain on the case file, and this is how decision makers can identify these types of applications. Further guidance on illegal entrants is contained in [Illegal Entry](#).

#### 2.1.6 Overstayers

People who already have leave to enter or remain in the United Kingdom may apply for asylum. However if the claim is made after the leave expires, these applicants will be treated as '**out of time/in country**'. Any subsequent grant of leave will be **leave to remain**. (Even if they have been granted leave to enter previously). Decision makers should be careful as the applicant may have already been served with illegal entry papers/IS forms (in which case they should be treated as 'De facto' illegal entrants).

#### 2.1.7 Immigration status uncertain or unknown

See separate guidance [Immigration Status Uncertain or Unknown](#)

#### 2.1.8 UK born children

Decision Makers will usually see UK born children as dependants on the main applicant. See [Dependants](#)

## 3 Possible Outcomes and Determining What the Immigration Decision Should Be

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### 3.1 Grant of Asylum

The UK Government recognises an asylum seeker as a refugee when he or she meets the terms set out under the 1951 UN Convention on the Status of Refugees. The Convention says that a refugee must have a well founded fear of persecution because of his or her race, religion, nationality, membership of a social group or political opinion. Refugees must be outside the country of their nationality and unable or unwilling to return to it.

### 3.2 Grant of Humanitarian Protection (HP)

If the applicant fails to satisfy the asylum criteria their claim is examined against the criteria relating to Humanitarian Protection. If the treatment feared amounts to persecution but is not for one of the five Convention reasons or the treatment or punishment generally speaking would breach Article 2, 3 or Protocol 13 (formerly Protocol 6) Article 1 of the ECHR then Humanitarian Protection is usually appropriate. Where the applicant has applied for asylum, which has been refused, but HP has been granted, this will attract a [right of appeal under section 83](#).

### 3.3 Grant of Discretionary Leave (DL)

If the claim fails to satisfy the criteria for asylum and Humanitarian Protection or due to the nature of their activities are excluded from these categories (i.e. war criminal) but their removal would breach their rights under the ECHR then Discretionary Leave may be appropriate. Typically, Discretionary Leave will be applied where the removal of an individual would involve a breach of Article 8 of the ECHR (right to respect for private and family life) on the basis of family life established in the UK. Also if certain criteria under Article 3 or 8 of the ECHR in relation to Medical conditions. For further guidance please refer to the AI on [considering Human Rights](#) and [Chapter 1 Section 8 of the IDIs \(Medical Examination\)](#). Where the applicant has applied for asylum, which has been refused but a grant of discretionary leave is made this **may** attract a [right of appeal under section 83](#). For further guidance please refer to the instructions on [Discretionary Leave](#) and [Article 8](#).

### 3.4 Managing Files on Which Action is Complete

Once it is certain that a case requires no further action, the case owner should action the file as directed in the Asylum Instruction on [File Management](#).

### 3.5 Outright Refusal

For asylum and human rights applicants whose claim has been refused, when an “immigration decision” is made within the meaning of section 82 of the Nationality and Immigration and Asylum Act 2002, there will always be a right of appeal.

The immigration decisions are:

- (a) refusal of leave to enter the United Kingdom,
- (b) refusal of entry clearance,
- (c) refusal of a certificate of entitlement under section 10 of this Act,
- (d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
- (e) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,

- (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,
- (g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom),
- (h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
- (i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),
- (j) a decision to make a deportation order under section 5(1) of that Act, and
- (k) refusal to revoke a deportation order under section 5(2) of that Act.

Decision makers refusing asylum and leave outright will need to determine the immigration status of an applicant as this will affect which immigration decision they will need to make.

## 4 Reference Table for Immigration Status and Immigration Decisions Under S82

Immigration status	Immigration decision [82(2)....
<b>Port</b>	(a) refusal of leave to enter the United Kingdom
<b>In time in country**</b>	(d) refusal to vary a person's leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain
	Or: Curtailement (e) variation of a person's leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain
<b>Out of time - in country (s10 Overstayer)</b>	(g) a decision that a person is to be removed from the UK by way of direction under section 10(1)(a), (b) or (c) of the Imm&Asy Act 1999(c.33) (removal of person unlawfully in the UK)
<b>Illegal entrant - notified</b>	(h) a decision that an illegal entrant is to be removed from the UK by way of direction under para 8 to 10 of Schedule 2 to the Imm Act 1971 (c.77) (control of entry:removal)
<b>Illegal entrant - de facto</b>	(h) a decision that an illegal entrant is to be removed from the UK by way of directions under para 8 to 10 of Schedule 2 to the Imm Act 1971 (c.77) (control of entry:removal)

\*\*It is possible for in time after entry cases where there is leave outstanding which should not be curtailed. In these cases where there is outstanding leave at the time of the decision it will not attract an appealable immigration decision.

Decision makers should be cautious when dealing with in time after entry cases, where leave has been granted for 12 months or more - where asylum is refused it would attract a right of appeal under [section 83](#) of the NIA Act 2002 and not s82.

Decision makers may see cases where the immigration status is uncertain or unknown (or 'No Evidence of Lawful Entry') see [Immigration Status Uncertain or Unknown](#). Decision makers may also see cases which do not fit into these categories, if so they should discuss the case with a senior officer to determine how to handle the case.

### 4.1 Section 83

- a) his claim has been rejected by the Secretary of State, but
- b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate). For further guidance [see section 83](#)

## 5 Curtailment of Leave

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For the purposes of this instruction, 'Curtailed' means a variation of limited leave to enter or remain as a result of which the person has no leave. The principle reason for curtailing a person's leave after their asylum/HR application has been refused is that an asylum/HR application may suggest that a person has no intention of leaving the UK and, where the person currently has leave in a category for which intention to leave is a requirement (e.g. a visitor), the making of an asylum/HR claim will mean they no longer meet the requirements of the Immigration Rules under which their original leave was given.

Previously, it was the policy only to curtail leave under the 1971 Act where the applicant had more than six months leave remaining. However, Ministers agreed to a change in policy that would allow extant leave of six months or less to be curtailed in cases where an asylum/human rights claim is refused.

However, staff should be aware that there are certain cases that should **not** be curtailed. Details of these cases can be found in the Asylum Instruction on [Curtailed](#). A senior caseworker should be consulted before a decision is taken not to curtail leave.

### 5.1 Cases Actioned Under the old 'Six Months or Less' Policy

Staff should seek guidance from the Asylum Processes and Procedures Unit when dealing with cases where an asylum decision was made but extant leave was not curtailed as a result of the old 'six months or less' policy.

### 5.2 Right of Appeal When Asylum Refused but Leave not Curtailed

Where leave totalling a year or more has been granted and this is not curtailed at the time of decision, there will be a right of appeal under section 83 of the Nationality, Immigration and Asylum Act 2002, but not under section 82. Where leave totalling less than a year has been granted and is not curtailed, there will be no right of appeal under section 82 or section 83. It is essential in these cases that the correct *No right of appeal* option is used in the ASL.1069 Determination of Asylum Claim covering letter and that no decision notices or appeals papers are dispatched.

## 6 Refusing Asylum on Grounds of Non Compliance

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When refusing leave on the grounds of non compliance, the Non Compliance checklist (ASL.2900) should be completed, to ensure that the non compliance decision is appropriate. For guidance on what constitutes non compliance see [Non Compliance](#) Instructions.

Decisions to refuse asylum on the grounds of non compliance should be implemented in the normal way, however there may be a change in the standard RFRL drafted.

Reasons for Refusal letters prepared in non compliance cases will have a different reference number to the standard RFRL template used\*.

- **ACD.1000** – Where there is a failure to attend screening interview (& insufficient evidence on file to make substantive consideration).
- **ACD.1005** – Where there is a failure to return SEF (& insufficient evidence on file to make substantive consideration).
- **ACD.0015** – Where there is sufficient evidence on file to make a substantive consideration (i.e. SEF received, but non-attendance at substantive interview).

\*It should be noted, however that where there is evidence on the case file, this must be considered and a substantive RFRL drafted.

## 7 File Checks

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### 7.1 Basic File Checks

Whilst implementing the decision at the decision making stage, the decision making officer should ensure that basic file checks are carried out:

- Name, nationality and date of birth are correct and correspond to file contents and A-CID records, e.g. *there are no erroneous documents (i.e. belongs to another file) on file, the HO file reference when entered onto A-CID calls up the same personal details.*
- All relevant documentation has been attached to file in the correct order, and any time provided for the submission of further evidence has elapsed, e.g. *all documents to be placed on file in a chronological order, five working days has elapsed since a no show at interview.*
- All original personal and travel documents should be copied to file and flagged so that officers can recall documents before they are returned to the applicant. Officers should follow their own regional guidance for the safe storage of valuable documents either on file or in Valuable Document Banks.

*e.g. all personal documents are photocopied with the photocopies held on file in the order they arrived to file.*

### 7.2 Photograph Requirements

When granting leave, the file should be checked for four passport-sized photographs of the main applicant and for each dependent. The photographs should then be verified against the Immigration Fingerprint Bureau (IFB) scanned images. If photographs are not available, officers should obtain passport photographs from the applicant.

### 7.3 NINo requirements

Decision makers should check whether a NINo application has been prepared on the case file. If there is no NINo application, the decision maker should be satisfied that the reason why is valid (see [NINo](#) guidance)

## 8 Drafting and Proofreading of decision documents

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### 8.1 What is proofreading

Proof-reading is intended to catch any obvious careless drafting errors such as incorrect details for the applicant and references to the wrong country or nationality. Such errors can give the impression that full care and individual consideration has not been given to the case and significantly damages the credibility of the Home Office and may adversely influence our case before an Immigration Judge at appeal. Such errors will also lead to paperwork having to be redrafted, wasting time and material resources. It can be more difficult to spot errors in one's own work so decision documents should be proof-read by another person.

### 8.2 Who Can Proofread

Decision documents should be proof-read by another person (AO or above). It is preferable that a document is proof read by a colleague of the same grade.

### 8.3 What Documents Need Proofreading

Generally, the following letters/documentation should be proofread

- Reasons for refusal letters
- Decision notices
- Covering letters
- Notification letters to other business units (either within IND or outside)

However, all letters listed in the proofreading section of the minute sheets should be proofread and amended where required to ensure that they are to the required departmental standard and that all personal details are correct. The letters should read well, make sense and be grammatically correct.

## 9 Preparing Documents

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This is not an exhaustive list of documents to be produced. For a full list, all decision makers should refer to the minute sheets.

### 9.1 Reasons for Refusal Letters

An asylum seeker seeks leave/or variation of leave to enter the United Kingdom on the grounds that any refusal would be contrary to the United Kingdom's obligations under the United Nations Convention and Protocol relating to the Status of Refugees. Therefore an immigration decision has to be made on an asylum claim, known as the Decision Notice (ACD.1047). All immigration decisions which attract a right of appeal (suspensive or not) will not be valid unless the notice is accompanied by a reasons for refusal letter. A grant of Discretionary Leave (where the total of leave granted is less than 12 months) does not generate a Decision Notice, however as a matter of policy a RFRL of why the asylum element and Humanitarian Protection element have been refused is issued. Hence the necessary explanation as to why leave is being refused, the reasons for refusal letter (RFRL) is issued in all cases where asylum is refused.

### 9.2 Which RFRL to use

See [The Reasons for Refusal](#)

### 9.3 How Many Copies of RFRLs to Print

- Grant of Asylum (1 for file) 6
- Grant of Humanitarian Protection (1 for file) 6
- Grant of Discretionary Leave (more than 12 months -1 copy for file) 6
- Grant of Discretionary Leave (where total of leave granted <12 months) 5  
(1 copy for file)

### 9.4 Drafting RFRLs

For a comprehensive explanation of the principals and requirements of a RFRL see [The Reasons for Refusal letter](#) and in the Instructions [Humanitarian Protection](#) and [Discretionary Leave](#).

**All copies of the RFRL must be dated and signed by the same person.**

### 9.5 Drafting Dependant's Decision letters (ASL.1006)

See [Dependants](#)

Decision makers should use the Dependant's Decision letter (ASL.1006) where the dependant has been granted Discretionary Leave or Humanitarian Protection, where the dependant is UK born and has never had leave to enter or remain in the UK and where the asylum claim was made in time after entry, is being refused outright, and the dependant has leave in the UK which is not being curtailed.

## **9.6 Consideration Minute**

Consideration minutes must be prepared in cases where leave is being granted. Decision makers should prepare 2 copies of the Consideration Minute [ACD.2376] explaining reasons for granting leave and the period of leave that is to be granted. Human Rights issues, if raised, must also be discussed in this minute. The minute must be signed and dated. Attach 1 copy to left hand side of file, remaining copy to file aside.

## 10 Decision Notices

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The Decision notice is only prepared for grants of Humanitarian Protection and Discretionary Leave when the total of leave granted is more than 12 months.

The decision notice must set out the applications made and the paragraph of the Rules under which the application is being refused. It is not necessary to list all of the reasons for refusing the application under the Rules as the decision letter will set out all the reasons. Asylum officers should insert the wording to the decision notice as directed. Officers at the decision making stage are expected to prepare the Decision Notices, however officers at the 'Service of Decision' stage should complete the fields on the notices for deadlines for appeals see completing service of decision and determining deadlines for appeal.

## 11 Pro Forma's (PF1)

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A PF1 should be completed in all cases where an asylum claim, and/or human rights claim or an application for further leave (Active Review), is refused, and the consequent immigration decision triggers a right of appeal under either section 82 or 83 of the Nationality, Immigration and Asylum Act 2002

For further guidance on completing Pro Forma's see Guidance for [Preparing PF1 Appeals pro forma and annexing documents](#)

### 11.0.1 Main applicants

ACD.1989 for outright refusals for main applicants who are 'on entry' applicants, 'illegal entrants' and 'overstayers' and in time after entry cases (either continuing 3C leave or curtailment cases)

ACD.1990 for in time after entry where more than one year remaining and is not being curtailed, or where leave is being granted for more than one year.

### 11.0.1 Dependants

ACD.1991 for dependants who are 'on entry' applicants, 'illegal entrants' and 'overstayers'

## 12 Vignette Implementation Proformas (VIPs)

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### 12.1 What is a VIP?

The ICD.2100 Vignette Implementation Pro forma contains all the relevant information needed to produce the UKRP (i.e. the applicant's personal details, the leave they have been granted and the expiry date) and it also holds a photographic image of the applicant. A VIP is required for the main applicant **and** each dependant included on an asylum claim. The pro forma is scanned into the vignette machine by the staff in the Vignette Unit and the UKRP is then produced. It is essential that A-CID is accurately updated otherwise the VIP will be rejected by the Vignette system process and any errors will be returned for amendment.

The applicant and each dependant should have their own VIP (ICD.2100), all relevant details on VIPs must be correct and complete.

Where possible verify from HO file that the photograph/s are true likeness to those held on file.

Attach photograph of claimant to the ICD.2100 with sticky pads. Where necessary, cut photograph to size of box on the pro-forma using photo-cutters. For each dependant repeat process using the individuals' pro-forma.

### 12.3 Obtaining Passport Photographs

From the 9<sup>th</sup> October 2006 it is no longer possible to issue UKRPs which do not contain an image of the applicant. For guidance on what to do where no photographs are available see [Guidance for issuing status Documentation for Grants of Leave Including Further Guidance for cases where no photographs have been provided.](#)

## 13 Immigration Status Documents

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An Immigration Status Document is a stock letter which is given to an applicant following the grant of leave where no passport is held, or where it would not be appropriate to endorse a national passport. The ISD provides details of the applicant, and also indicates what status (Refugee, HP or DL) the applicant has. There is also a 'blank' ISD available which does not determine any category under which the leave has been granted, this is usually issued to dependants of refugees who do not wish to be recognised as a refugee.

In principal the UK Residency Permit (UKRP) is to be held in a Immigration Status Documents (ISD) where refugee status is granted, for grants of Humanitarian Protection or Discretionary Leave the UKRP should be held where applicable in the applicant's passport otherwise in a ISD. Additionally, Accompanying Letters and Information sheet covering letters support the UKRP.

**13.0.1 Refugee Status:** UKRP to be held in **ISD only**

**13.0.2 Humanitarian Protection:** UKRP to be held in **ISD** if grant is due to applicant being unable or, owing to such fear, is unwilling to avail himself of the protection of their country of nationality, otherwise in passport if available.

**13.0.3 Discretionary Leave:** UKRP to be held in **passport if available** otherwise ISD

**13.0.4 Non asylum grants:** Where the person is unable to make use of a national passport the UKRP is to held on an ISD (e.g. dependants granted leave in line with refugee main applicant but who do not want Refugee Status)

The stock letters that are needed in order to facilitate the production of a UKRP are as follows:  
ISDs

- ASL.2151, issued to asylum seekers and their dependants granted Refugee Status;
- ASL.2152, issued to asylum seekers and their dependants granted Humanitarian Protection but only where a valid national passport is not available;
- ASL.2373, issued to asylum seekers and their dependants granted Discretionary Leave but only where a valid national passport is not available; and
- ASL.2150, issued to those persons unable to make use of a national passport who are granted leave for reasons other than asylum (e.g. dependants granted indefinite leave in line but who do not want Refugee Status).
- When preparing ISDs, staff should ensure that:
  - All CID details are updated before the ISD is prepared.
  - Only the red entry text is typed over, not the black header text.
  - All text is entered in upper case (this should happen automatically).
  - All details are completed as they appear on CID. This includes spelling and dates of birth.
  - The applicant's surname is entered first, and divided from the forename(s) with a comma.
- The nationality is completed as on CID; e.g. Turkey, not Turkish. In doubtful nationality cases, the phrase 'claims to be' should be entered after the claimed nationality on the ISD. However, no amendment should be made to CID in such cases.
- The place of birth is entered as the town, not the country; e.g. Aksaray, not Turkey. If there is no place of birth on CID, this section should be left blank.

- The CID case ID is entered in the CID Case ID field, not the Home office reference. The CID case ID can be found on the top right hand corner of the screen on CID. If the CID case ID begins with two zeros, these should be removed when entering the number on the ISD.

Officers will need to prepare again any ISDs that have been sent with incorrectly entered details.

## 14 United Kingdom Residence Permit (UKRP)

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### 14.1 Background to UKRPs

The UK Residence Permit (UKRP) in the form of a secure vignette replaced the Code 1A ink stamps in passports and personal date stamps on status letters, which previously indicated that an individual had been given permission to stay in the UK. The UKRP vignette was introduced for a person granted leave to enter or remain in the UK as a result of an asylum claim on and after the 15 March 2004. A UKRP is held either in the applicant's passport if appropriate and available or held in an Immigration Status Document (ISD). It is based on a common EU format allowing easy identification across the whole of the EU. The vignette contains security features that make it much harder to forge or change than ink stamps.

All decisions to grant leave made before 15 March 2004, but not served, should also be served with UK Residence Permit (UKRP). If a Personalised Date Stamp (PDS) authenticated status letter has already been prepared, this should be cancelled on file and new paperwork prepared. For guidance on unserved grants of leave see [Unserved Decisions](#).

### 14.2 Obtaining UKRPs

Case Owners are responsible for securing the UKRP from the Vignette Unit, and a National Insurance number (NINo) for the applicant from the Department for work and Pensions. Case Owners will have to consider the decision service date/reporting regime to ensure that the vignette is ready for service in person. The Resolution Casework Service Unit is responsible for securing the UKRP for CRD, and where appropriate a NINo, which they will dispatch by post.

The production of the Vignette may delay serving elements together. Officers will therefore need to be mindful that cases are subject to their business target. Please see [Guidance for issuing status documentation for grants of leave including further guidance for cases where no photographs have been provided](#).

### 14.3 Obtaining UKRPs for Oakington cases

For guidance on obtaining vignettes where the applicant is detained at Oakington see guidance ([Service of Grants of leave in Oakington Reception Centre Cases](#)).

### 14.4 Obtaining UKRPs for Harmondsworth and Yarls Wood cases

For guidance on obtaining vignettes where the applicant is detained at Harmondsworth or Yarls Wood see separate guidance.

### 14.5 Implementing Decisions without UKRPs (Where No Photographs are Available)

For guidance on Implementing Decisions without UKRPs (Where no photographs are available) see [Guidance for issuing status documentation for grants of leave including further guidance for cases where no photographs have been provided](#)

## 15 Accompanying Letters and Information Sheet Covering Letters

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From 9<sup>th</sup> October 2006 only the accompanying letters listed below should be produced.

Accompanying letters should no longer be produced for those granted refugee status or HP:

- ACD.2155, issued to asylum seekers and their dependants granted Discretionary Leave;
- ASL.2812, issued to dependants of refugees granted (limited) leave in line but who do not want Refugee Status.
- ACD.2374, issued to those persons unable to make use of a national passport who are granted indefinite leave for reasons other than asylum.

If an applicant is granted asylum or HP, they should be issued an Information Sheet (see Information sheets), with an information sheet covering letter (ASL.3224) attached.

**When preparing accompanying letters and information sheet covering letters in [Doubtful Nationality](#) cases, officers should ensure that the phrase ‘claims to be’ is entered after the claimed nationality on the document.**

### 15.1 Information Sheets

'Your Asylum Decision Information Sheets' are owned by IND and provide information to asylum applicants following a decision on the application. The information sheets contain information about what to do when they have been granted leave or have been refused outright.

**Council Directive 2004/83/EC of 29<sup>th</sup> April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive), came into effect on 9<sup>th</sup> October 2006.** Article 22 of the Qualification Directive provides that member states shall provide persons recognised as being in need of international protection with information in a language likely to be understood by them, on the rights and obligations relating to that status. From 9<sup>th</sup> October 2006, applicants granted asylum or HP, must no longer be issued with a separate Information Sheet and Accompanying Letter but should instead be issued with one Information sheet, “in a language they are likely to understand” and in English. This may or may not be the individual’s first language, e.g. an individual may be able to understand a second language and it would therefore be reasonable to expect then to be issued an Information sheet in that language. The revised asylum and HP Information Sheets are an amalgamation of previous Information Sheets and Accompanying Letters. They contain important information relating to the immigration status of the individual and also include information about employment, welfare and support, active review and travel abroad. The codes of the new Information sheets are as follows and the English versions are available on the Document Generator:

- ASL.3225, issued to asylum seekers granted Refugee Status;
- ASL.3226 issued to asylum seekers granted Humanitarian Protection;

The following Information sheets should be issued to applicants granted DL or refused outright. These information sheets should only be issued in English and the appropriate accompanying letter should also be issued.

- ASL.2171 issued to asylum seekers granted Discretionary Leave;
- ASL.2172, issued to UASCs granted Discretionary Leave;
- ASL.2174 issued to asylum seekers who have been refused outright
- ASL.2175 issued to UASCs who have been refused outright

English versions of all Information Sheets are available on the Document Generator, however, the translated versions can only be accessed via the transfer drive

When producing an ASL.3225 or ASL.3226, officers will also need to produce an ASL.3224 (Information Sheet Covering Letter) from the document generator, which should be attached to the Information sheet. It is essential that this covering letter is attached to the Information Sheet as this letter includes the individual's personal details. If issuing a translated version of the Information Sheet, officers should also ensure that they update CID case notes with details of the language of the document issued.

Below is a summary of the Information Sheets and the availability of languages.

Translated Information Sheet Languages	Information Sheet Grant of Asylum (ASL.3225)	Information Sheet Grant of HP (ASL.3226)	Information Sheet Grant of Asylum & ILR (ASL.3227) <b>For AIU use only</b>
Tigrinya	X	X	X
Somali	X	X	X
Amharic	X	X	X
Arabic	X	X	X
Urdu	X	X	X
Swahili	X	X	X
Tigre	X	X	X
Dari	X	X	X
Farsi	X	X	X
Kurdish Sorani	X	X	X
French	X	X	X

## 15.2 Covering Letters

The following is a guide to which covering letter should be produced

- ASL.2167, issued for asylum seekers granted Refugee Status;
- ASL.2169, issued to asylum seekers granted Humanitarian Protection;
- ASL.2168, issued to asylum seekers granted Discretionary Leave; and
- ASL.1069, issued to asylum seekers granted Discretionary Leave.

## 15.3 Notification Letters

### 15.3.1 Social Service Notifications (UASC cases only)

When an Unaccompanied Asylum Seeking Child's claim has been determined, the decision maker should notify the applicant and the representative as well as the social services department who is responsible for the care of the child using ASL.1950 "Social Services Notification letter".

Two copies should be produced, **signed and dated**, one should be attached to the file, and one placed on the file aside ready to be issued by the unit serving the decision.

### 15.3.2 Refugee Council Notification Letters (UASC non compliance refusals only)

When an Unaccompanied Asylum Seeking Child's claim has been refused on the grounds of non compliance, the Refugee Council should be notified using ASL.2206 "Refugee Council Notification letter".

Two copies should be produced, **signed and dated**, one should be attached to the file. The other copy should be placed in the envelope, with recorded delivery details on the file aside ready to be issued by the unit serving the decision. Delivery details including the address and the other part of the Recorded Delivery label should be placed on the minute sheet where indicated. This action can usually be completed by a team support officer.

### 15.4 Immigration Fingerprint Bureau Notification Letter

Where asylum is granted and has been classified as a port case (or dependant/s are port cases) the Immigration Fingerprint Bureau will need to be notified so that they can block the record on their Eurodac database.

Eurodac is a database of European asylum seekers. This is used in Third Country cases to determine whether an applicant has made a claim for asylum in other member states.

Officers should email the 'IFB Mailbox' on Poise with the details of the applicant, and any dependants using the standard outlook template attached.

## 16 Notifying LEOs of Grants of Leave and Disposing of Illegal Entry Papers

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If case is either a De-Facto or Notified illegal entrants the following instructions should be followed:

### 16.1 If Illegal Entry Papers have been Served

If the applicant has been served illegal entry papers then the LEO that the case was dispersed to have to be notified of the outcome so they can note their records and cancel any reporting restrictions where necessary.

Prepare 2 copies of ACD.1225 (Memo to LEO). The LEO to whom the case was dispersed can be found on file, for example on an ISE 334. Include dependants as necessary. **Sign and date.** Attach 1 copy to file and send 1 via internal mail.

**Note:** the EDD are not a LEO and cannot process the memo. Their function is to draft illegal entry papers and disperse cases to the LEOs.

### 16.2 If illegal Entry Papers have been Drafted on File but Not Served

Prepare 2 copies of ACD.1225 and action as above. Additionally, cross through file copies with the appropriate wording, 'DL, HP, ILR granted: Not Served', with the exception of IS126 (P) and IS355. Dispose of duplicate copies through the classified waste disposal system.

### 16.3 Carriers' Liaison Notification Letter

The Immigration (Carriers' Liability) Act 1987 provides for a charge to be levied on the owners or agents of a ship or aircraft where a person requiring leave to enter (i.e. **not** a British Citizen or other national of the European Economic Area) arrives in the UK:

- without a valid passport or other acceptable travel document; or
- without a valid visa if he belongs to one of the visa nationalities listed in the Immigration Rules; or
- without a DAT (Direct Airside Transit) visa if he is a national of one of the countries listed in the Immigration (Transit Visa) Orders 1993 & 1995 and is transiting the UK;
- The Channel Tunnel (Carrier's Liability) Order 1998 extends the ICLA to passengers arriving through the Channel Tunnel on certain international trains.

However, where a charge has been incurred by a carrier in respect of a passenger (and any dependants) who is recognised as a refugee under the 1951 United Nations Convention and the 1967 Protocol relating to the status of refugees, it is the Government's policy to refund the charge, if it has been paid, or to waive it, if it has not yet been paid.

This **does not** extend to grants of Humanitarian Protection or Discretionary Leave. For background information see IDI chapter 33 section 1 - [The Immigration \(Carriers' Liability\) Act 1987](#). Therefore, if asylum is granted and has been classified as a port case (or dependant/s are port cases) the Carriers' Liaison Section will need to be notified.

For on entry ('port') applications that are granted asylum, officers should produce one copy of the CLA Checklist [ASL.0704] Part A only. This is so that staff based in the CLS can complete the document and their actions Information Sheets

## 17 Handling Valuable Documents at the Decision Stage

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Section 17 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 confers on the Secretary of State the power to retain passports and other documents. The Act reads:

### 17.0.1 Section 17 retention of documents

Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the Secretary of State or an immigration officer may retain the document while he suspects that:-

- a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
- retention of the document may facilitate the removal.

Section 17 came into effect on 1 December 2004.

For guidance on how to handle and store valuable documents see [Document Retention](#).

## 17.1 Handling NINo Applications at the Decision Making Stage

### Officer Actions at the Decision Stage

Where the applicant has applied for a NINo during the substantive interview, provided the correct NINo actions were completed following the interview there is no further action to take with the NINo application. The NINo application should remain on the case file in the sealed A4 envelope. Officers should have completed the NINo checklist which forms part of the interview record.

Decision making officers should complete the NINo prompts where indicated on the 'Decision Making' minute sheets.

For further guidance on handling NINo applications see [Procedures for issuing National Insurance Numbers \(NINo\) to asylum claimants granted leave in the United Kingdom](#)

## 17.2 Preparing Supplementary Information Documents and Leaflets for the Service of Decision

Following discussions with various other departments, all asylum units are required to issue additional information leaflets when they prepare an asylum decision for dispatch. The leaflets are:

**AVR leaflet** - this leaflet informs applicant's with outstanding asylum claims how they can return home.

**17.2.1 Job Centre Plus Leaflet** - this is a new leaflet prepared by Job Centre Plus which explains to applicants granted leave how they can access benefits and find work. (It would not be appropriate to issue these to UASCs under the age of 16.)

**17.2.2 Integration Loan Scheme application form** - Integration loans are available to those over the age of 18 granted refugee or humanitarian protection status and their respective dependants. The Scheme is designed to aid integration into UK society by providing interest-free loans to enable the purchase of items and services that facilitate integration.

### 17.2.3 Grant Asylum

- JCP leaflet (excluding under 16 year old UASCs)
- Integration Loan Scheme application form (excluding those under 18)

### 17.2.4 Refuse asylum, grant HP

- JCP leaflet (excluding under 16 year old UASCs)
- AVR leaflet
- Integration Loan Scheme application form (excluding those under 18)

### 17.2.5 Refuse asylum and HP, grant DL

- JCP leaflet (excluding under 16 year old UASCs)
- AVR leaflet

### 17.2.6 Refuse outright

- AVR leaflet

The leaflets are all available in a variety of different languages but not all the leaflets are available in the same languages. If the leaflet is not available in the preferred language, an English version should be produced instead.

It should be noted that the AVR leaflet in the *revised* format is only available in English. Translated versions in the revised format are currently being produced, but in the meantime, the old translated versions can **still** be issued. These can be obtained through the AVR team.

Below is a summary of the leaflets and the availability of languages.

Language	Leaflet			
	AVR (old) (Outright refusals of asylum, and grants of HP & DL)	AVR (new) (Outright refusals of asylum, and grants of HP & DL)	JCP (Grants of asylum, HP and DL)	Integration Loan application form (Grants of asylum and HP)
Albanian	X		X	
Amharic			X	
Arabic	X		X	
Chinese	X			
Dari			X	
English	N/A - use new version	X	X	X
Farsi	X		X	
French	X		X	
Kinyarwanda			X	
Kurdish (Kurmanji)			X	
Lingala			X	
Ndebele			X	
Pashto	X		X	
Portuguese	X		X	
Punjabi			X	
Romanian	X			

Russian	X		X	
Shona			X	
Somali			X	
Kurdish (Sorani)	X		X	
Spanish	X			
Swahili			X	
Tamil	X		X	
Turkish	X		X	
Urdu	X		X	
Vietnamese	X			

Where the leaflets are stored electronically, local operational managers can decide whether to prepare stocks of leaflets or for officers to print them off when required. Asylum teams will be responsible for maintaining stocks of leaflets.

## 18 Updating IND Records

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### 18.4 Sign Off Actions Prior to the Service of Decision

The decision maker should record the decision in their personal records, and Team support should note any daily outcome records where applicable.

### 18.5 Sending the Case File for Service of Decision

All the required documents, including passports where appropriate (consult caseworker), should be placed in a clear plastic sleeve attached uppermost on file. The uppermost document in the sleeve should be ACD.2561 which should be completed as far as possible ensuring that the date the decision is to be served by is clearly visible. If the date has passed, the form should be marked accordingly

# 19 Minute Sheets and Checklists

## 19.1 What are minute sheets?

Minute sheets are instructional guides for asylum officers advising which decision documents and paperwork to produce. It is important for officers to follow minute sheets accurately in order to ensure that the correct decision paperwork is issued to applicants.

## 19.2 Instructions for Preparation and Completion of the Decision Making Minute Sheets

For standard 2+4 cases (ie excludes NSA, Active Review, KosEx, detained cases)

- When ready to implement a decision, select the HO reference on CID, select the correct case, and then select the Document Generator by clicking on the Doc Gen icon on the top left hand side of the screen.
- Select the appropriate minute -  
 ACD.2898 Asylum Claim - Grant Leave to Enter or Remain **OR**  
 ACD.2899 Asylum Claim - Refuse Outright)
- Once selected, the auto merge function will be initiated and it the relevant CID data will be merged into the minute sheet.
- Check the details which have been auto merged. If correct, continue to prepare the minute sheet on screen by selecting the relevant Drop-Down Lists values and entering text in the Entry Fields (which appears in red text). This includes the immigration status of the application, the immigration decision type and document reference numbers of stock letters being issued. There are prompts to aid decision makers determine which stock letter to prepare. (See below). For outright refusals it is essential that the correct immigration status is identified as this aids the unit serving the decision. If the merge items are incorrect the CID data should be amended and new papers produced. There is an additional table to aid caseworkers who are unsure about whether there is a right of appeal against a decision or which section of a right of appeal is triggered.

Grant of Leave to **Enter/Remain In**

Grant of **type of leave** ↓

Right of **Appeal**

Port/

type of leave
Asylum
Humanitarian Protection
Discretionary Leave for 1 Year or Less
Discretionary Leave for More Than 1 Year

DVE/179.

Illegal Entry papers (IS151A) were served on (if appli

Main Statement

- If grant of asylum or valid passport not available
- Immigration Status Document (ISD) [document id]
- Accompanying Letter [document id] 2 copies
- Information Sheet [document id] copies.
- Reasons for Refusal [document id], if applicable & date.
- Decision Notice [document id], if applicable

- If there are dependants add the relationship (number should be merged) and immigration status details where prompted
- Complete the preparation of the minute sheet, ensure that there are no further entry fields to complete or drop down lists to insert.
- Once all fields have been completed, print minute sheet (Decision maker will have to enter details by hand – see 13 below).
- Follow printed minute sheet to complete all actions necessary for making decision - where actions or documents are optional (indicated by text “[Y][n/a]”) cross through option to

show which option was not required - or circle option that is required.

- Write initials in box to right-hand side of action/document to show that it has been completed and who completed it - this includes indicating whether an action is deemed 'not applicable'. (Whoever decides an action is n/a must initial the box)
- If Non-compliance refusal: prepare and print ASL.2900 Non-Compliance Refusal Checklist. This identifies why the case is non compliant and directs the decision maker to the appropriate RFRL. This should be prepared on screen and completed in addition to the standard minute sheet.
- When prompted, arrange for draft documents to be proofread and ensure proofreading officer signs minute sheet.
- When decision making officer has completed all required actions they should complete the SIGNATURE, NAME/INITIALS, DATE, Asylum Team/LCTand Telephone No. details at the end of the form
- The decision making officer should pass the case file and minute sheet to a support officer to complete outstanding actions necessary for making a decision.
- Support officers should complete the remainder of the documents which do not have any initials in them. Where actions or documents are optional (indicated by [Y][n/a]) cross through option which is not required - or circle option that is required. This will help samplers and auditors to determine if actions have been overlooked or if they were not applicable. Actions which do not have the [Y][n/a] options are mandatory requirements and must be completed and initialled in all cases.
- When support officer has completed all outstanding actions they should complete the NAME/INITIALS details at the end of the form.
- Team support (or decision maker) should make one final check on the minute sheets to ensure that all initial boxes have been completed. This will indicate that all of the relevant actions have been carried out. Any blank boxes should be double-checked to ensure that an action has not been overlooked.
- Officers should then proceed to decision service.

## 20 Instructions for Preparation and Completion of the Service of Decision Minute Sheets

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For standard 2+4 cases (ie excludes NSA, Active Review, Kosex, detained cases)

- When ready to serve a decision, select the HO reference on CID, select the correct case, and then select the Document Generator by clicking on the Doc Gen icon on the top left hand side of the screen.
- Select the appropriate minute sheet -
  - ACD.2917 Refuse Asylum Grant Discretionary Leave for One Year Or Less
  - ACD.2918 Refuse Asylum Grant Discretionary Leave for More Than One Year
  - ACD.2919 Refuse Asylum Grant Humanitarian Protection
  - ACD.2920 Grant Asylum
  - ACD.2921 On Entry (Port) Refuse Asylum
  - ACD.2922 De Facto Illegal Entrant or Overstayer Refuse Asylum
  - ACD.2923 Notified Illegal Entrant Refuse Asylum
  - ACD.2924 In Time After Entry Refuse Asylum
- Once selected, the auto merge function will be initiated and it the relevant CID data will be merged into the minute sheet.
- The separate tick boxes for each document has been replaced with an instruction to confirm that all documents are contained on file. (if any documents are missing, they are instructed to contact the unit to tell them what is missing). However the use of tick boxes is still required to identify the particulars of the case. This will then direct the officer to what documents should have been included on file.
- Check the details which have been auto merged. Once all fields have been completed, print minute sheet
- Follow printed minute sheet to complete all actions necessary for serving the decision. Decision service minute sheets also contain [Y][n/a] optional actions.
- Write initials in box to right-hand side of action/document to show that it has been completed and who completed it.
- The actioning officer should make one final check on the minute sheets to ensure that all initial boxes have been completed. This will indicate that all of the relevant actions have been carried out. Any blank boxes should be double-checked to ensure that an action has not been overlooked.
- When serving officer has completed all required actions they should complete their details (NAME/INITIALS, DATE, UNIT) where indicated at the end of form.
- Where supporting officers have aided completion of all outstanding actions they should complete the NAME/INITIALS details at the end of the form. (This will mainly be used by New Asylum Model asylum teams, rather than ACD ADSUs)

### 20.0.1 Additional notes

- minute sheets have never been grade orientated. However in cases where an action must be carried out by a certain grade (eg warranted officers authorising a grant of leave to enter to port dependants, this must be done). The decision making officer should pass the case file and minute sheet to a support officer to complete outstanding actions necessary for making a decision.
- It is recommended that the NINo Update letter should be prepared by the NINO co-ordinator/ or officer within the CRD. This could either be the AA or the AO

## **21 Guide to Checklists**

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Checklists are basic aide memoirs to ensure officers have followed procedures accurately.

### **21.1 Non compliance**

Please refer to ASL.2900 (Non compliance checklist)

### **21.2 Service on file**

Please refer to ACD.2686 (for Outright refusals) and ACD.2834 (for Grant of Leave)

### **21.3 NINo Checklist**

Please refer to the last page of the SEF Interview record ASL.1123 (NINo Checklist)

## 22 Audit Actions

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Team support should check all the documents before proceeding to serve decisions. The officer should select the relevant 'Service of Decision' minute sheet and check that all of the listed documents listed in the 'audit' section are present, including the NINo application. Where errors are identified, the file should be sent back for the appropriate amendments to be made.

## 23 Serving Decisions

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### 23.1 Delay Decision Service to Applicants in Initial Accommodation (IA)

Where an applicant, currently placed in Initial Accommodation (IA) is granted leave (refugee status, HP or DL), case owners must delay service of the vignette (whether in an Immigration Status Document (ISD) or passport) until the subject has been moved from IA to S95 accommodation. Case owners must regularly check CID/ASYS, and once the move to S95 has taken place the vignette can be served.

### 23.2 Serving Decisions in Person (Case Owners)

When the decision package is ready to be served in person Case Owners should arrange for a 'Decision Service Event' to be booked. Officers are required to Prepare 2 copies of ASL.2941 (Decision Service Event Record) and should prepare the documents so that they can be presented and explained to the applicant. Both copies of the record should be taken to the event. After the decision has been served in person, officers should ask the applicant to sign 2 **copies** of ASL.2941 (Decision Service Event Record), giving 1 copy to the applicant, and placing the remaining copy on file. Officers should record their initials where indicated on the minute sheet.

The Decision Service Event checklist assists and provides guidance to Case Owners during the decision service event. For further information (See Decision Service Event - Granted Leave/ Outright Refusal)

### 23.3 Serving Decisions by Post (Case Resolution Directorate)

When the decision package is ready to be served, officers should place the decision documents bundle in an A4 envelope and write the last known address of representative, or applicant if not represented, on front of the envelope. A 1<sup>st</sup> class delivery label should be attached to the envelope which should then be sealed and dispatched by 1<sup>st</sup> class recorded delivery. The delivery address and officers initials should be recorded where indicated on the service of decision minute sheet. There is also a space to attach the recorded delivery label on to the minute sheet.

## 24 Serving Notice of Decisions on File

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### 24.1 Background to Serving Decisions on File

Prior to 1 April 2003 decision paperwork should have been produced, but not issued, in cases where the applicant was not represented, had provided no correspondence address, and we did not know where they were living. This was because the time for appealing against a decision under the Immigration and Asylum Appeals (Procedure) Rules 2000 did not start until the applicant actually received the notice of decision: and if the notice was not received, then appeal rights were never exhausted. The service of the immigration decision was therefore recorded as 'pending', although the decision on the asylum claim itself was effective from the date it was recorded.

However, under the 2003 (Procedure) Rules, effective from 1 April 2003, the appeal period starts when the notice of decision is 'served'. Consequently the [Immigration \(Notices\) Regulations 2003](#) (Statutory Instrument 2003 Number 658) were drafted to provide that, where an applicant's whereabouts or place of abode is unknown in circumstances where the decision could not, prior to 1 April 2003, be served at all, it could now be served 'on file'.

The service on file provision does NOT apply to applicant's if a representative appears to be acting for them unless it is impossible to serve the documents on the representative (for example if the representative is prohibited from acting as such by section 84 of the 1999 Act). In such an instance, if an address has not been supplied for the applicant, if possible the representative should be contacted and asked for the applicant's address.

Regulation 4 of the Immigration (Notices) Regulations 2003 provides that the decision maker must give written notice to a person in respect of any appealable immigration or EEA decision. A notice given to a representative is taken to have been given to the person. Note that if a representative replies that (s)he is no longer acting for the applicant, service is still valid so long as the representative did not so advise IND beforehand. The papers may then be sent direct to the applicant if that is possible, advising the date they were served on the representative. Effort put into advising the applicant of the decision at this point can help to reduce the chance of an out-of-time appeal being made and allowed to proceed at a late stage in the removal process.

A number of different methods of serving notice are provided; which method is appropriate will depend on the circumstances. In the vast majority of cases, service by post will be valid, even if the documents are returned. Service on file is a last resort when the claimant cannot be traced.

**Regulation 7** reads as follows:

**7.** - (1) A notice required to be given under regulation 4 may be -

- (a) given by hand;
- (b) sent by fax;
- (c) sent by postal service in which delivery or receipt is recorded to:-
  - (i) an address provided for correspondence by the person or his representative; or
  - (ii) where no address for correspondence has been provided by the person, the last-known or usual place of abode or place of business of the person or his representative.

(2) Where -

- (a) a person's whereabouts are not known; and
- (b) (i) no address has been provided for correspondence and the decision-maker does not know the last-known or usual place of abode or place of business of the person; or
- (ii) the address provided to the decision-maker is defective, false or no longer in use by the person; and

(c) no representative appears to be acting for the person,

The notice shall be deemed to have been given when the decision-maker enters a record of the above circumstances and places the signed notice on the relevant file.

#### **24.2 Where There is only a Record of Fax Number**

Where a fax number alone has been provided by the applicant all validated dispatch paperwork should be transmitted to the fax number provided. The fax transmission report should be kept and attached to file. Refusals of asylum served by fax are always valid as long as the fax report on the file records that the fax transmission to the number provided was successful.

In addition to the usual paperwork, a letter requesting that the applicant provide the UK Border Agency with a current address (either for correspondence or of the place of abode) should also be transmitted.

#### **24.3 Preparation of Papers for Service on File**

Decision makers should use stock checklist sheet ACD.2686 (for outright refusals) showing that all the conditions necessary for service on file set out in Regulation 7, paragraphs (1) and (2) have been met, before proceeding further, and attach it to the left hand side of the file.

Decision makers should use stock checklist sheet ACD.2834 (for grants of leave), showing that all the conditions necessary for service on file have been met, before proceeding further, and attach it to the left hand side of the file.

Although the decision paperwork may not be dispatched, all appropriate copies of documents should nevertheless be prepared. Once produced, the applicant's copies should be placed in a clearly labeled clear plastic document wallet attached to the right-hand side of the file as the uppermost item rather than being left loose on top of the attached papers. A minute stating "Decision served on file: do not issue papers to applicants without referring to instructions", should also be placed in the wallet as the uppermost item, and on the left-hand side of the file. The papers placed on file will remain there until such time as the applicant re-establishes contact. The file copies of documents should be attached to the file in the usual way.

Where files need to be referred to CRD to prepare paperwork, on completion of the relevant documentation by CRD the applicant's copies should be placed in the document wallet on the right-hand side of the file, leaving the minute as the uppermost items.

#### **24.4 Applicants Re-establishing Contact after a Decision is Served 'On File'**

If an applicant re-establishes contact either directly or through his representative after the decision has been served on file, how the case will be handled depends on where and how contact is re-established.

However, in all cases the applicant should be given a copy of the notice and the details of when and how it was given (i.e., by a notice placed on file) as soon as practicable. In the case

of an outright refusal, this is in accordance with [Regulation 7 \(3\) of the Immigration \(Notices\) Regulations 2003](#), which states:

(3) Where a notice has been given in accordance with paragraph (2) and then subsequently the person is located, he shall be given a copy of the notice and details of when and how it was given as soon as is practicable.

**This must be done regardless of whether further submissions are made at the time the applicant makes contact.**

It will be the responsibility of the unit which comes into contact with the applicant or their representative to ensure that the decision documentation is issued to them as soon as practicable.

Where leave has been granted to the applicant, they or their representative should be informed that a consequence of the service on file is that their leave commenced from the date the decision was served on file and that their right to NASS support expired twenty-eight days after service.

Caseworkers should note that more than one dispatch event can be recorded on CID. Accordingly, when the decision paperwork is dispatched to an applicant or their legal representative, this should be recorded separately on CID.

#### **24.5 Decisions 'Served on File' Between 26 July 1993 and 31 March 2003**

[Immigration Notices Regulations](#) prior to the introduction of asylum appeals and procedure rules on 26 July 1993 allowed for service on file when an applicant's whereabouts were unknown, and this service triggered the period for appealing. These regulations continued to apply to non-asylum appeals. However, the Lord Chancellor's Asylum Appeals (Procedure) Rules 1993 provided that the start of the period for appealing on asylum grounds was when the notice of decision was "received" so service on file was not provided for. Therefore, **service of decision technically remains outstanding on any asylum decision 'served on file' between 26 July 1993 and 31 March 2003 unless the claimant has since been traced and given formal service.**

#### **24.6 Determining Whether Valid Service on File Took Place**

Officers should note that if it is discovered at a later point that at the time of the decision the Home Office had the address of the applicant, or of the representative of the applicant, and that representative was not prevented from acting by section 84 of the 1999 Act, then the decision to serve on file is invalid.

#### **24.7 Handling Cases Previously Served on File or Where Service was Invalid**

If an applicant re-establishes contact and the file shows that the decision made on his or her claim was 'served on file' on or after 26 July 1993, but before 1 April 2003, or it is discovered that invalid service took place, the decision should not be served. The decision will need to be reviewed as [decisions which remain unserved](#). Caseworkers should note that the decision will date from the current date. Where the original decision was to grant asylum, this decision should be reviewed in light of the current situation and the appropriate decision for the current circumstances should be made, taking into account policy considerations and country information. If the case no longer merits the granting of asylum, but another form of leave or

the refusal of the claim, that decision should be implemented. If the case still merits the granting of asylum, it should also be implemented. Whatever the decision to be served is, all decision documentation on file should be replaced with current decision documentation, and the previous documentation disposed of. A record and explanation of these actions, including what the original decision was and when it was made, should be placed in a minute on the file and in the case notes on CID. Caseworkers should also [update CID](#). However, attention will also need to be made to potential human rights claims resulting from the length of time the applicant has spent in the country and any ties they may have established.

## 25 Unserved Decisions

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### 25.1 What is a Served Decision ?

Officers can establish if a decision on file has been served by, for example:

- Checking the implementation minute sheet on the left-hand side of the case file. If a decision has been dispatched the address and/or Recorded Delivery number should have been recorded (officers should note that the format of minute sheets has changed since their introduction, and that up to the late 1990s, file minutes were often hand-written).
- Checking subsequent correspondence on file. If it makes reference to the asylum decision having been received, officers can be satisfied that the decision has been served.
- Checking Case Information Database (CID). Details of dispatched decisions are contained in the 'Key Document Tracking' screens (refer to the relevant Business User Reference Guide (BURG) for further guidance).

It is essential to look at the case file as well as CID when establishing whether a decision has been served.

If the officer is satisfied that the asylum decision has not been served, officers should first determine whether the decision is still appropriate, review and renew the decision as appropriate and arrange for the service of decision, checking whether a reliable address exists. This also applies to dependants refused asylum in line with the main applicant.

If a reliable current address is not available, officers should determine whether it would be appropriate to [serve the decision on file](#).

### 25.2 What is an Unserved Decision?

Usually, once an asylum decision is made, the decision paperwork is dispatched by the officers within the Case Resolution Directorate or Case Owners in Regional Asylum Teams. The decision is deemed as having been served when the applicant has been notified. There may, however, be circumstances where a decision has been made but has not been served.

### 25.3 Circumstances Which May Lead to the Decision not Being Served

The following is a non-exhaustive list:

- The decision was dispatched but has been returned undelivered without valid service having taken place (**caseworkers should note that the return of undelivered documents does not mean valid service has not taken place**). For full guidance on what constitutes valid service please refer to the [Immigration \(Notices\) Regulations 2003](#), more specifically regulation 7 'Service of Notice'
- The Home Office case file has gone astray *en route* from the decision-maker to the member of staff responsible for implementing the decision.
- The case file was sent to port to serve the decision in on-entry applications (pre-ADSU), service did not take place, and the Home Office file remained in ACD to await service of the decision by the IS, or certain Fast Track cases where the IS did not serve the decision and returned the file to ACD to serve.
- The case file has been forwarded to an erroneous location (e.g. layby) before service of the decision.
- The case file was temporarily 'lost' after the decision was made but before service.
- Service Pending cases.

- Recorded Delivery packages, which have not been delivered.

For previous grants of Exceptional Leave - the ACD case file had been returned by the Asylum Decision Service Unit (ADSU) to the Case Management Unit (CMU) for amendments to be made to paperwork, and as a result of which it was not served before 1 April 2003.

### 25.4 Unserved Outright Refusals

Officers should first check the tables below to determine whether an outright refusal is still appropriate according to the age of the decision and merits of the case.

For [unserved non compliance decisions see separate table.](#)

#### Table for Unserved Refusals

Age of decision	Action
Under 4 weeks	Arrange service of the decision in accordance with current implementation procedures
4 weeks – 1 year	<p>Review Reasons For Refusal Letter (RFRL) and all decision documentation to ensure it is still in line with current country policy/templates.</p> <ul style="list-style-type: none"> <li>If the decision is still in line with current country policy/templates, and does not require amendment, arrange service of the decision in accordance with current implementation procedures. Ensure covering letter ACD.1069 includes the following apology/explanation of delay wording which should be inserted where appropriate:  <b>Your/Your client's</b> claim has been recorded as determined on <b>date</b>. However, because <b>of an administrative error/because we did not have a reliable address/free text</b> we were unable to serve the decision at that time. <b>Your/Your client's</b> claim has been reviewed prior to service of the decision but no changes have been deemed necessary. I apologise for this delay and any inconvenience it may have caused.</li> </ul> <p>Minute file and CID Person Notes to confirm that:  The decision of <b>date</b> has been reviewed – no amendment necessary.</p> <ul style="list-style-type: none"> <li>If the decision is not in line with current country policy/templates, or requires amendment for some other reason, but is still <b>an outright refusal</b> where possible obtain electronic copy of RFRL for amendment, if necessary forwarding RFRL to typing bureau using blue form (available from your team support). Redraft RFRL, using Document Generator where available, incorporating current paragraphs, amend both date at head of letter, and date of decision at foot to current date, and change date of outcome on CID. Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Arrange service of the decision in accordance with current implementation procedures, replacing documents using current document templates and date. Dispose of original decision documents.</li> <li>If the decision is not in line with current country policy/templates, or requires amendment for some other reason, but is still <b>an outright refusal</b> where possible obtain electronic copy of RFRL for amendment, if necessary forwarding RFRL to typing bureau using blue form (available from your team support). Redraft RFRL, using</li> </ul>

	<p>Document Generator where available, incorporating current paragraphs, amend both date at head of letter, and date of decision at foot to current date, and change date of outcome on CID. Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Arrange service of the decision in accordance with current implementation procedures, replacing documents using current document templates and date. Dispose of original decision documents.</p> <ul style="list-style-type: none"> <li>• If the decision is not in line with current country policy/templates, or requires amendment for some other reason, and now merits a grant of <b>Refugee Status/Humanitarian Protection (HP)/Discretionary Leave (DL)</b>, then grant in accordance current implementation procedures, using current document templates, on Document Generator where available, and current date. For NSA cases the recommendation to grant leave needs to be authorised by an accredited SCW. Dispose of original decision documents. Arrange for outcome to be deleted from CID. Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Once this is implemented, update CID with new outcome and arrange for dispatch.</li> </ul>
<p><b>1 year +</b></p>	<p>Arrange for outcome to be deleted from CID. Where original decision documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Once this is implemented, review RFRL and all decision documentation to ensure it is still in line with current country policy/templates (none of the templates in use before 1 April 2003 should now be served).</p> <ul style="list-style-type: none"> <li>• If the decision is still <b>an outright refusal</b> where possible obtain electronic copy of RFRL for amendment, if necessary forwarding RFRL to typing bureau. Redraft RFRL, on Document Generator where available, incorporating current paragraphs, amend both date at head of the letter, and date of decision at foot to current date, and record date of outcome on CID. Arrange service of the decision in accordance with current implementation procedures, replacing documents using current document templates and date. Dispose of original decision documents.</li> <li>• If the decision now merits a grant of <b>Refugee Status/HP/DL</b>, then grant in accordance with current implementation procedures, using current document templates, on Document Generator where available, and current date. For NSA cases the recommendation to grant leave needs to be authorised by an accredited SCW. Dispose of original decision documents. Update CID with new outcome and arrange for dispatch.</li> </ul>

## 25.5 Unserved Non-Compliance Refusals

Non-compliance refusals fall into two categories. Substantive non-compliance refusals have sufficient evidence on the file, in the form of a completed SEF or statement, to merit consideration during refusal in an ACD.0015 RFRL. Non-substantive non-compliance refusals

have no evidence on file submitted by the applicant to be considered, so an ACD.1000/ACD.1005 RFRL is used. However, on reviewing the file, a SEF or statement may come to light, in which case the case should be reconsidered using the evidence, which had previously not been taken into account. When re-serving a non-compliance decision caseworkers should always check that the decision is still appropriate to the country situation and other factors important to the claim, even if the decision was made within the last three months. Any consequent amendments necessary prior to the specified 3 and 6 month guidelines are at the decision maker's discretion.

## 25.6 Table for Unserved Non-Compliance Refusals

Age of decision	Action
Under 4 weeks	Arrange service of the decision in accordance with current implementation procedures.
4 weeks – 1 year	<p>Review RFRL and all decision documentation to ensure it is still in line with current country policy/templates. How we deal with unserved non-compliance decisions of this age depends on the circumstances of delayed service.</p> <ul style="list-style-type: none"> <li>If the delay in service of the decision principally lies with the claimant themselves (e.g. they have absconded, or refused to submit to interview) and the decision is less than 6 months old, it is generally appropriate to serve the decision to the claimant or their legal representatives, if it is still in line with current country policy/templates, in accordance with current implementation procedures. Ensure covering letter ACD.1069 includes the following apology/explanation of delay wording which should be inserted where appropriate:</li> </ul> <p><b>Your/Your client's</b> claim has been recorded as determined on date. However, because <b>of an administrative error/because we did not have a reliable address/free text</b> we were unable to serve the decision at that time. <b>Your/Your client's</b> claim has been reviewed prior to service of the decision but no changes have been deemed necessary. I apologise for this delay and any inconvenience it may have caused.</p> <p>Minute file and CID Person Notes to confirm that: The decision of <b>date</b> has been reviewed – no amendment necessary.</p> <ul style="list-style-type: none"> <li>If the decision is over 6 months old, consideration should be given as to whether the claimant should be invited to attend interview. This will depend on the individual merits of the case and the scale and circumstances of previous non-compliance (in instances where this is unclear Senior Caseworkers should be consulted to discern whether invitation to interview is appropriate). If it has been decided that the claimant should be invited to interview, arrange for outcome to be deleted from CID and arrange for an interview to take place (in ACD this means forwarding the file to Asylum Co-ordination Unit 1 Team A (ACU1 Team A) (Croydon) or Asylum Co-ordination Unit 11 (ACU11) (Liverpool)). Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Dispose of original decision documents. If it is considered that</li> </ul>

	<p>the original decision should be served, officers should where possible obtain electronic copy of RFRL for amendment, if necessary forwarding RFRL to typing bureau. The RFRL should be redrafted, on Document Generator where available, to incorporate current paragraphs. Amend both date at head of the letter, and date of decision at foot, to current date. Arrange for outcome to be deleted from CID, and when implemented update CID with new outcome. Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Arrange service of the decision in accordance with current implementation procedures, replacing documents using current document templates and date. Dispose of original decision documents.</p> <ul style="list-style-type: none"> <li>• If the delay in service of the decision principally lies with ACD (e.g. the case file has been lost or misplaced), the same principles as above should be followed. Under 3 months, the non-compliance decision should generally be served, following the procedure outlined above. Beyond that, the claimant should be invited to interview. In such cases arrange for outcome to be deleted from CID and for an interview to be booked. (In ACD this means forwarding file to ACU1 Team A (Croydon) or ACU11 (Liverpool)). Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Dispose of original decision documents.</li> </ul>
<p><b>1 year +</b></p>	<ul style="list-style-type: none"> <li>• Non-compliance refusals that are over a year old should <b>never</b> be served. Arrange for the outcome to be deleted from CID and for an interview to be booked. (In ACD this means forwarding file to ACU1 Team A (Croydon) or ACU11 (Liverpool)). Where original documents were produced on Document Generator, ensure that their dispatch status is listed as stopped, and reference is made to these instructions in the reasons box. Dispose of original decision documents.</li> </ul>

### 25.7 Unserved Grants of Leave

On 31 March 2003 the policy to grant exceptional leave to enter or remain in the United Kingdom ceased.

However, there may be some circumstances where although a decision to grant exceptional leave before 1 April 2003 has been recorded as determined, the decision has not been served and the applicant has therefore not been formally notified of this decision.

In the past, it has been practice in such situations to retrospectively grant exceptional leave to enter or remain. **However, officers should no longer, under any circumstances, grant ANY leave retrospectively.**

### 25.8 The Anufrijeva Judgement

In the House of Lords judgement on *Anufrijeva*, it was found that a decision does not have legal consequences for the applicant until the applicant has been notified, which under the [Immigration \(Notices\) Regulations 2003](#) is two working days after the service of the decision,

or until reasonable steps to notify the applicant have been taken. Until this happens no decision has been notified and as a result there are no legal consequences.

The judgement of *Anufrijeva* has prompted a review of the procedure to follow, where a decision has been made on a claim and it has been recorded as determined, but the Home Office has failed to serve the decision and therefore the applicant has not been notified of it.

Note: Where a decision to grant leave was never served, this 'leave' in essence does not exist, as no leave has in fact been granted. If the decision was not communicated in any way to the applicant, we are free to review the decision/case before notification as we feel is appropriate.

It should further be noted that the case is still recorded as determined upon the completion of the Notices of Decision. The recording of the outcome on CID is for the maintenance of internal government records only, and does not imply that the applicant has been notified or that the determination has taken effect.

The main question that must be considered before taking action is whether the applicant has a legitimate expectation that they will be granted limited leave.

### **25.9 What is a Legitimate Expectation**

A legitimate expectation arises when an individual has been given either an explicit or implicit assurance either orally or in writing or by way of an endorsement in their passport about their immigration status when the material facts were known to the officer giving the assurance.

Thus, in cases where the determination was recorded, but the decision was not served, there will be no legitimate expectation unless the Home Office (or another government department or body) has notified the claimant of that decision. If the claimant was notified of the decision this may have raised a legitimate expectation that they would be granted exceptional leave and therefore should be fully investigated.

### **25.10 Identifying 'Legitimate Expectation' Claims**

Identification of a legitimate expectation, whereby an applicant has been given reason to believe that they would be granted leave, is usually ascertained through their own or their representatives' communication with the Home Office. This should be evident from correspondence on the file, generally either stating that the applicant has been informed that they have been granted exceptional leave, and querying the situation, or stating that the applicant has been informed that they have been granted exceptional leave and requesting the forwarding of their status documents.

Where records show that a decision to grant exceptional leave was made but never served, but there is no indication on file that the applicant or their representatives is aware of this, officers investigating whether or not a legitimate expectation has been raised should be cautious when corresponding with the applicant or their representatives so as not to inadvertently raise a legitimate expectation. Where there is no indication that the applicant or representatives are aware of the intention to grant leave, the case should be reviewed on its own merits.

These circumstances will need to be addressed on a case-by-case basis. Where an applicant or their representative alleges that they have been informed that the applicant has been granted exceptional leave, officers should investigate these claims. In particular, they should

establish the terms of the leave that the claimant alleges they have been granted. Questions that should be asked of the claimant or representative include:

- When does the applicant allege that the decision was made?
- When does the applicant allege that the decision was communicated?
- What are the terms of the alleged leave?
- In what way does the applicant allege that the decision was communicated (e.g. by letter, telephone call), and in what circumstances? (e.g. letter relating to support, answer to specific query, passing remark)
- Who does the applicant allege communicated the decision?
- What documentary evidence has the applicant received?

The applicant should be asked to forward any relevant evidence. However, officers must make it clear that they will need to consider the assertion, check the file, and are neither accepting nor denying that such leave has or will be given but will respond when the position has been checked and fully clarified. Officers must ensure they do not create any legitimate expectation in the mind of the applicant or their representative that leave will be given. **In all instances caseworkers must consult with their Senior Caseworker (SCW) when handling a potential legitimate expectation case.**

## 25.11 Considering Whether a Legitimate Expectation has been Raised

The following is a non-exhaustive list of factors that need to be taken into account in considering whether to accept that a legitimate expectation has been created.

### 25.11.1 Origin of information supplied to applicant

Information relating to immigration status can only come from officials with actual or apparent authority for notifying that immigration decision. Therefore, we may not be bound to information supplied by a Department without this responsibility. It is not possible to say whether a Department has apparent authority because it depends on the context and consequently cases need to be assessed individually. For instance, the National Asylum Support Service (NASS) is part of the Home Office and so will reasonably be regarded by the applicant as representing IND and therefore we are likely to be bound by the information they supply. Other Departments or bodies will not generally have apparent authority but if the Department purports to have received the information from IND and that is plausible e.g. Benefits Agency, NASS provider or Local Authority then it may be regarded as having authority. In deciding whether or not to accept whether another Department has apparent authority, the officer should always balance and take consideration of any other evidence of how a legitimate expectation may have arisen.

### 25.11.2 Documents and wording

Consideration should be given as to how the information was supplied to the applicant. Before 1 April 2003, status letters were the only documents which conferred a grant of limited leave. Other letters such as cover letters cannot, in themselves, grant leave. In addition to this, the wording of the letter should be noted. Does it actually state that leave has been granted, or does it just suggest that leave will be granted at some future date?

### 25.11.4 Timeliness of our response

Undue delay in responding to applicants to clarify any queries they have about information they have received or their immigration status could make a claim for legitimate expectation

harder to refute than if we had responded within a reasonable period of time. In the absence of any clarification from IND, the applicant may have come to rely on the incorrect information.

#### 25.11.5 Timing of contradictory information

If the applicant received contradictory information from the Home Office indicating a grant of leave and an outright refusal, the time that passed between these two events may be significant. For example, if the applicant was informed that they had leave and they were able to rely successfully on this information for a period of several years before being informed that their claim had in fact been refused then a legitimate expectation may have been created.

#### 25.11.6 Nature of the claim

It should be considered whether it is possible or reasonable that in the particular context the applicant received information which may give rise to a legitimate expectation. For example, it is not possible that somebody could legitimately expect that they would be granted asylum when they had not actually made a claim for asylum, and where there is such a clear error no legitimate expectation will arise.

It is important to note that the circumstances set out above are not exhaustive and are intended purely as an indication of the types of factors which need to be taken into consideration when determining whether a legitimate expectation has arisen. In cases which do not meet these criteria, the Asylum Policy Unit (APU) may be contacted if it is believed that a legitimate expectation may arise. Alternatively if an operational query about a legitimate expectation, the Asylum Processes and Procedures Unit (APPU) can be contacted.

### 25.12 Where it is Not Accepted That a Legitimate Expectation Exists

Where the evidence does not establish that a legitimate expectation has arisen officers should reconsider the case in line with current information and country policy, and implemented accordingly. The file should also be minuted clearly explaining the history of the case and the subsequent review.

A suggested paragraph to insert into the covering letter is as follows:

We note that **you/your representatives/your client** informed the Home Office on **date** that **you/your representatives/your client believe/believes** that **you/your client have/has** a legitimate expectation of a grant of limited leave. After considering all the information available to us, it has been concluded that no legitimate expectation has been created and that **you/your client have/has** no entitlement to leave on this basis. A decision has been made on **your/your client's** claim in accordance with current country information and policy guidance.

However, it must be noted that CID will still record the outcome of the case as if the initial decision had been served. This must immediately be addressed to prevent the Home Office or other government departments or agencies with access to CID from communicating the outcome recorded on CID to the applicant, and thereby potentially creating a legitimate expectation. The CID record must be deleted.

### 25.13 Where it is Accepted That a Legitimate Expectation has Arisen

The cases where a legitimate expectation has been created will fall within the following two categories:

### Where the Intended Period of Leave has Since Expired

The case now falls to be reviewed and reconsidered upon its current merits in line with current country policy.

- Officers should follow the appropriate implementation instructions.
- Officers should first update CID for the main applicant and any dependants treated in line
- Officers should prepare a covering letter using the following wording, selecting the options appropriate to the facts:

We note that **you/your representatives/your client were/was informed/notified/it was indicated on date that you/your client would be granted/were/was entitled to number of months/years** of Exceptional Leave to **Enter/Remain**. However, no such leave was granted and any such entitlement has now expired. We have therefore considered whether **you/your client have/has** any current entitlement to leave and a decision, which accompanies this letter, has been made on **your/your client's** claim in accordance with current country information and policy guidance.

### Where the intended leave still has a period remaining

The applicant and their dependants should be granted Humanitarian Protection (HP) or Discretionary Leave (DL), as appropriate to the merits of the claim (see Instructions on [Humanitarian Protection](#) and [Discretionary Leave](#)).

- If the case does not fall naturally under one of the HP or DL provisions, it should be treated as DL (other reason) in accordance with the published Home Office Instructions on [Discretionary Leave](#).
- The caseworker must reissue the RFRL and all decision documentation, ensuring that it is in line with current country policy and templates, and in accordance with current instructions. Noting that:
  - None of the templates in use before 1 April 2003 should now be used or served.
  - The officer must therefore type up the RFRL afresh, using current paragraphs and standard wording, and any consideration paragraphs from the original RFRL which are still appropriate.
  - Both the date at the top of the RFRL and the 'recorded as determined date' must be the current date.
  - All decision documentation must bear the current date.
  - This limited leave should be dated to expire on the same date as in the original determination. For example, if the provisional period of ELTR was to expire on the 01/01/06, HP/DL which has been granted to honour the legitimate expectation should also be granted until this date.
  - Officers should [update CID](#)
  - Officers should prepare a covering letter using the suggested following wording:

We note that **you/your representatives** have been told by an official that you would be granted leave to **enter/remain** until **date** because of the particular circumstances of your case. The decision that accompanies this letter honours that undertaking.

**Note:** There is no obligation to grant the applicant leave sufficient to ensure that they have an immediate right of appeal where the applicant has a period of a year or less of leave remaining to be honoured.

In some cases it may not be clear exactly what leave should be granted, and for how long. In such instances officers should discuss with senior officers.

## 26 Appeals

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Under [Section 83 of the Nationality, Immigration and Asylum Act 2002](#), a person who has been refused asylum but granted leave to enter or remain can appeal against the asylum refusal, but only if the leave granted **exceeds** 12 months. This includes leave which has previously been granted. A person refused asylum but granted leave for a period in excess of a year could appeal immediately; it would not matter that the applicant had not completed 12 months' leave.

An appeal under section 83 arises in two main cases:

- When a decision to grant leave to someone who has been (or is being) refused asylum will take the total period of leave granted to over a year, and
- When a decision is made to refuse asylum to a person who has already been granted leave for over a year.

"Leave" for the purposes of section 83 means any kind of leave that has been granted. It is not limited to leave granted outside the rules.

For instance, a UASC who had previously been granted 9 months leave to enter as a student, and then granted 5 months Discretionary Leave after being refused asylum would be entitled to a right of appeal under section 83 of the Act. This is because the leave granted totals over one year.

For further details on appeal rights see [Appeals](#), and Instruction [Rights of appeal](#) Non suspensive rights of appeals (certification under s94)

For guidance on Non Suspensive Appeals see [Non Suspensive Appeals](#).

### 26.1 Determining Whether an Immigration Decision Attracts a Right of Appeal (Dependants)

Refer to separate instructions for guidance on [Dependants](#).

### 26.2 Determining Whether a Case Should have Assured Representation at Appeal

As a general rule, any CRD case that may be considered complex or where it is considered necessary for the case to be represented should be referred for Assured Representation. There are twelve criteria, which require Assured Representation at appeal.

As cases determined within the Regional Asylum Teams are presented by a Case Owner dealing with the case, there is no need for Regional Asylum Team decision makers to decide if the case should have assured representation.

### 26.3 Completing Notice of Appeal Deadlines for Appealing

As part of the changes for the Unified Appeals System ("Single Tier") that commenced on the 4 April 2005, two boxes have been included on most decision notices and Notice of Appeal forms.

If the applicant has been granted any leave that exceeds 12 months ([Rights of Appeal in Asylum Claims](#)) a Decision Notice and Notice of Appeal form should be completed.

On the Decision Notice, the first box indicates the date of service, and must be endorsed with the date by which the notice is deemed to have been served.

The second box, where present, indicates the "deadline for appeal" – the date by which an appeal must be returned to the Asylum & Immigration Tribunal - and must be endorsed with this date.

This tells the Asylum & Immigration Tribunal whether the appeal is in time or not when it comes to them, as the appellant is required to send them the notice of decision. It also informs the appellant when they should submit the appeal by, to ensure that they submit it in a timely manner, and this prevents any confusion about when the deadline is.

In all cases, the date of service must be entered into the date of service box. In some case types, for example Non-Suspensive Appeals (NSA), it will not be appropriate to include a deadline for appeal box in the decision notice, nor to enter a deadline for appeal date on the decision notice or Notice of Appeal form.

Where there is no right of appeal, there is no requirement to produce or complete a Decision Notice from the ACD or IS series, or a Notice of Appeal form. An accompanying letter will still be produced for each decision, and where leave of a year or less, or Refugee Status is being granted this function is performed by the United Kingdom Residence Permit vignette.

#### 26.4 Determining 'Deemed Service' Dates and Deadlines for Appeal

Officers must use the Appeal Period chart to determine the date of service, and the deadline for appeal (where appropriate).

The Appeals chart is divided into pages for service in person, service by post (in UK and overseas for NSA cases).

#### 26.5 Where the Decision is Being Served by Post (Worksheet: Post – UK Appeal):

The first column on the chart corresponds to the actual day on which the packet goes into the post. The calculations take account of the fact that the day the packet goes into the post may be a Saturday, Sunday or bank holiday. The first day of the two day service period is the next working day. The computer program that does this has a list of excluded days. Having found the service day it calculates the latest appeal date the same way. Likewise if the address is flagged as in Scotland or Northern Ireland the appropriate sets of excluded days are the Scots or Irish ones.

- The first column of the chart corresponds to the next business day (i.e. not a Saturday, Sunday or bank holiday) on which the decision will enter the post. This will be the day on which the decision is placed in the out tray **provided it is placed in the out tray before 3pm, when the last postal pick up is**. If the decision is placed in the out tray **after 3pm**, then it will not enter the post until the next business day and it is that date that must be selected from the first column in order to calculate the date of service and deadline for appealing.
- Ensure that the appropriate column on the chart is chosen to reflect the correct case type and method of service.
- Endorse the decision notice by entering into the 'Date of service' box provided at the end of the decision notice the date on the chart in the "Date served (2 wd)" column that corresponds with the day that the decision will enter the post.
- Endorse the decision notice by entering into the 'Deadline for appeal' box provided (where appropriate) at the end of the decision notice the date on the chart in the "to appeal by (10 wd)" column that corresponds with the day that the decision will enter the post.
- Repeat for the Notice of Appeal form.

For example, based on the Appeal Chart:

A case decided on Monday 4 April 2005 might be placed in the out tray by the team dispatcher before 3pm on Tuesday 5 April 2005. It will enter the postal system on Tuesday 5 April 2005. Therefore the service date and the deadline for appeal should be calculated from Tuesday 5 April 2005. The service date for a suspensive, non-detained case served by 1<sup>st</sup> class Recorded Delivery post would be 7 April 2005, and the deadline for appealing would be 21 April 2005.

Where a decision is placed in the out tray on a Friday, for example 8 April 2005, it will not enter the postal system until Monday 11 April 2005. The service date and the deadline for appeal should therefore be calculated from Monday 11 April 2005, giving the dates of 13 April 2005 and 27 April 2005, respectively.

### **26.6 Where the Decision is Being Served by Hand (in person) or Fax (Worksheet: Hand or Fax, UK appeal):**

- The first column of the chart corresponds to the day on which the decision is being served on the applicant or their representative.
- Ensure that the appropriate column on the chart is chosen to reflect the correct case type (i.e. Detained or Non-Detained) and method of service (i.e. hand/fax).
- Endorse the decision notice by entering into the Date of Service box provided at the end of the decision notice the date on which the decision is being served.
- Endorse the decision notice by entering in the Deadline for Appeal box provided (where appropriate) at the end of the decision notice the date on the chart in the “Detained by hand/fax (5 wd)” or “Not detained by hand/fax (10 wd)” columns that correspond with the day that the decision will be served.
- Repeat for the Notice of Appeal form.

For example, based on the Appeal Chart:

A case served on the claimant or their representative by hand or fax on Monday 4 April 2005 will have the deadline for appeal date of 11 April 2005 if the applicant is detained.

### **26.7 Submitting Re-documentation Applications**

Once a decision to refuse leave has been made and served on an applicant, an application for documentation may be submitted to RGDU.

### **26.8 Wrong Immigration Decisions**

Guidance yet to be published.

### **26.9 Claims of Lost or Stolen Documents**

For claims of lost or stolen documents please see [Dealing with lost, stolen, unserved or incorrect Status Documents.](#)

### **26.10 Requests for Amendments to Status Documents**

For requests to amendments to status documents please refer to [Dealing with lost, stolen, Unserved or incorrect Status Document.](#)

### **26.11 Managing Files on Which Action is Complete**

Once it is certain that a case requires no further action, the case owner should action the file as directed in the Asylum Instruction on [File Management.](#)

## 27 Glossary

<b>Term</b>	<b>Meaning</b>
ACD: 1000	Refuse Non-Compliance Failure to Attend Screening
ACD: 1005	Refuse Non- Compliance Failure to Complete SEF
ACD.0015	Reasons for Refusal Letter
ACD.1047	Rejection of Asylum Claim
ASL.1006	Dependants Decision Letter
ACD.2376	Consideration Minute
ACD.1989	PF1-Section 82 Right of Appeal
ACD.1990	PF1- Section 83 Right of Appeal
ACD.1991	Dependant with Suspensive Section 82 R of A
ICD.2100	Vignette Implementation ProForma
ASL.2151	Immigration Status Document
ASL.2152	Immigration Status Document Humanitarian Protection
ASL.2373	Immigration Status Document Discretionary Leave
ASL.2150	Immigration Status Document
ASL.3224	Information Sheet Covering Letter
ACD.2155	Accompanying Letter – Discretionary Grant of Limited Leave to Enter or Remain
ASL.2812	Accompanying Letter – Grant of Leave to Enter or Remain
ACD.2374	Accompanying Letter – Grant of Indefinite Leave to Enter or Remain
ASL.3225	Decision Information Sheet - Asylum
ASL.3226	Decision Information Sheet – Humanitarian Protection
ASL.2171	Decision Information Sheet – Grant of Limited Leave
ASL.2172	Decision Information Sheet – Grant of Limited Leave - UASC
ASL.2174	Decision Information Sheet – Refusal of Asylum
ASL.2175	Decision Information Sheet – Refusal of Asylum
ASL.2176	Decision to Remove an Illegal Entrant or other Immigration Offender
ASL.2169	Determination of Asylum Claim – Humanitarian Protection
ASL.2168	Determination of Asylum Claim – Discretionary Leave
ASL.1069	Determination of Asylum Claim – Refusal of Asylum
ASL.1950	Notification of Outcome to Social Services
ASL.2206	Refugee Council Notification Proforma
ACD.1225	Memo to LEO of Asylum Case Outcome
IS126 (P)	IO's Report (for IE Notices Served by post)
ASL.2671	Notification of Eligibility for Integration Support
ACD.2561	UKRP Vignette Record Sheet
ACD.2917	Decision Service Minute Sheet – Refuse Asylum Grant Discretionary Leave for 1 Year or Less
ACD.2918	Decision Service Minute Sheet – Refuse Asylum Grant Discretionary Leave for More than 1 Year
ACD.2919	Decision Service Minute Sheet – Refuse Asylum Grant Humanitarian Protection
ACD.2920	Decision Service Minute Sheet – Grant Asylum and Leave to Enter or Remain
ACD.2921	Decision Service Minute Sheet – On Entry (port) – Refuse Asylum
ACD.2922	Decision Service Minute Sheet – De Facto Illegal Entrant or Overstayer – Refuse Asylum

ACD.2923	Decision Service Minute Sheet – Notified Illegal Entrant – Refuse Asylum
ACD.2924	Decision Service Minute Sheet – In Time After Entry (In Country – Refuse Asylum
ASL.2900	Non – Compliance Refusal Checklist
ACD.2686	Service on File Checklist – Outright Refusal
ACD.2834	Service on File Checklist – Grant of Asylum, HP or DL
ASL.1123	SEF (Interview) – SEF submitted
ASL.2941	Decision Service Record
ACD.2834	Service on File Checklist – Grant of Asylum, HP or DL

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0	DP	19/01/2007	New web style implemented
2.0	DP / RB	12/06/2007	New Integration Loan Scheme
3.0	DH	19/12/2007	Amendment to ISD Section
4.0	DH	19/03/2008	Managing files on which action is complete
5.0	DH	25/04/2008	Removal of references to SUNRISE
6.0	RB	07/11/2008	Update branding only
7.0	CC	26/10/09	Children's Duty reference added