

Workshop: Understanding Legal Criteria for Protection and Associated Rights:

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Introduction:

1. This paper provides a short introduction and overview of the materials and issues for discussion in this Workshop.
2. The aim of the workshop is to promote a fuller understanding of:
 - a. the criteria that a person must meet in order to be granted some status of protection in the UK; and
 - b. those rights and entitlements that come with any particular status

What statuses are available and what protection do they provide?

3. There are a variety of relevant statuses relevant to this Workshop:
 - a. Refugee Leave
 - b. Humanitarian Protection
 - c. Discretionary Leave
 - d. Indefinite Leave to Remain
 - e. Exceptional Leave to Remain
 - f. Temporary Protection
 - g. Temporary Admission

Refugee Leave

4. As it sounds, refugee leave is that status given to refugees. It is given *only* to those who are recognised as refugees under the terms of the 1951 Convention on the Status of Refugees – generally known as the Refugee Convention.
5. Refugee leave is granted for 5 years. At the end of that period, the individual may apply for indefinite leave to remain or ILR for short (also referred to as settlement). Applying for ILR should not lead to a full review of the individual's entitlement to refugee status. However, there

are circumstances in which a person's entitlement to refugee status may be reviewed – (i) where the actions of the individual indicate that he or she is no longer desirable, or no longer entitled to refugee status; (ii) where a significant change in the country of his or her origin causes Ministers to order a review of the grants of refugee leave to persons from that country; and (iii) where a person fails to apply for ILR before his or her refugee leave expired, there will be a review of whether the individual still requires protection.

6. Dependants (generally, children and spouses) will be granted leave in line with the main applicant. The spouse or minor children of someone granted refugee leave may apply for family reunion – i.e. to come to the UK to join the refugee. Those granted refugee leave are entitled to work, and may access mainstream welfare and housing support.

Humanitarian Protection

7. This status is similar to that granted to refugees. However, it is granted *only* to those who: (i) are not refugees; but (ii) are recognised to be at risk of torture or inhuman or degrading treatment in their home country. This status is granted to give effect to the absolute protection from torture or inhuman or degrading treatment provided by Article 3 of the European Convention on Human Rights.
8. Humanitarian protection is granted for 5 years. At the end of that period, a person may apply for ILR. The way in which applications for ILR will be dealt with are essentially the same as for those applying with refugee leave; as are the circumstances in which a grant of humanitarian protection may be reviewed (see above).
9. Dependants (generally, children and spouses) will be granted leave in line with the main applicant. The spouse or minor children of someone granted humanitarian protection on or after 30 August 2005 may apply for family reunion – i.e. to come to the UK to join the protected person. Those

granted refugee leave are entitled to work, and may access mainstream welfare and housing support.

Discretionary Leave

10. This status may be given to a persons falling within a variety of categories, if they do not qualify for either refugee leave or humanitarian protection. Unaccompanied asylum-seeking children may be granted discretionary leave. Those whose removal may be or lead to degrading treatment because of physical or mental health needs may also be granted this status. Similarly, persons who have committed serious criminal offences or are considered to be a danger to community for other reasons, may be granted this status if they have been refused refugee leave or humanitarian protection because they are considered to be dangerous. Also, person's whose removal would constitute a disproportionate interference with their private and family life contrary to Article 8 of the European Convention on Human Rights may be granted discretionary leave (this will most likely apply in marriage or children's cases).
11. Discretionary leave may be granted for varying periods of time depending upon the particular reason for the grant. Unaccompanied children are currently granted leave until they are 17½ years old. Those granted leave for medical reasons are usually granted leave for three years. Similarly those granted leave because of Article 8 will receive three years discretionary leave. A person granted discretionary leave may apply to extend that leave at the end of the period for which it is granted – usually for another three years. At the end of a total period of six years discretionary leave, a person may apply for ILR. Unlike those with refugee leave or humanitarian protection, a person who has discretionary leave and seeks to extend it or applies for ILR will find that their case is subject to a full review to assess whether they continue to be entitled to this status.
12. Another group that may be granted discretionary leave are those who would qualify for humanitarian protection, but are excluded because of

serious criminal offences or because they are found to be a danger to the UK. Currently, these individuals, if they cannot be removed because of Article 3, will be granted six months discretionary leave. At the end they may apply for a further six months. Such a person will not be eligible to apply for anything further, until at least 10 years have passed when they may apply for ILR. All applications to extend leave will be subject to an active review of the individual's circumstances.

13. A person granted discretionary leave will usually be entitled to work and to access mainstream welfare and housing support.

Indefinite Leave to Remain

14. This status means what it says. It entitles a person to remain in the UK for an unlimited time. In the past, refugees were granted indefinite leave to remain or ILR for short. It is no longer granted to any individual simply because of protection needs, but in circumstances described above may be applied for when someone has been granted some form of protection in the UK after they have been here for a specified period of time. From 2 April 2007, all applications for ILR will require the individual to demonstrate proficiency in English and knowledge of life in the UK.

Exceptional Leave to Remain

15. This status is no longer granted. Before the time when refugees were granted ILR, it used to be the case that they would be granted exceptional leave to remain or ELR for short. Also, many of those individuals who would now qualify for humanitarian protection or exceptional leave to remain, would in the past have been granted ELR. There may still be some individuals who have ELR. If a grant of ELR was made for four years, at the end of the period the person may apply for ILR.

Temporary Protection

16. This status was introduced by the EU law – the Temporary Protection Directive (Council Directive 2001/55/EC). It relates to mass displacement of individuals from a particular country or area, whether displacement is

spontaneous or by evacuation, and provides a means whereby Member States will share the responsibility of providing protection. In these unusual circumstances, the UK will grant temporary protection for a period of 12 months. At the end of that period, protection may be extended for a further period of 6 months; and continued extensions of 6 months may be applied for. On each application, there will be an active review of the circumstances of the case.

17. A person granted temporary protection will be entitled to work, and must also be granted necessary welfare, housing and medical assistance.

Temporary Admission

18. This must be distinguished from temporary protection. Any person who seeks lawful entry to the UK may be granted temporary admission, while his or her application is considered. Asylum-seekers, unless they are detained, are usually in the UK on temporary admission. It is a peculiar legal device, which merely recognises that they are in the UK without granting the individual a formal status of leave to enter or remain.
19. Those granted temporary admission are usually prohibited from work. However, permission to work may be granted; and if a person has made an asylum claim, which remains undecided by the Home Office, for a period of 12 months, permission to work ought to be granted. Asylum-seekers are generally now supported by NASS (or under the same provisions through the New Asylum Model or NAM process). A person, who is refused asylum and loses his or her appeal, will (unless detained) remain on temporary admission (unless he or she absconds). However, he or she may lose any entitlement to welfare or housing support through NASS (or NAM).

A person's status when they are awaiting a decision on an extension application

20. Difficulties often arise when a person has been granted leave to enter or remain, and has applied for an extension of that leave at the end of the period for which it was granted. For example, a person granted refugee

leave, may apply for ILR at the end of his or her five years. However, a decision on that new application may take time. The period of five years may pass, and what is the status of the individual while he or she is waiting for a decision on the ILR application?

21. The answer is that a person retains their status while the new application is pending; and indeed while any appeal against a refusal of the new application is pending. However, it is vital that the application is itself made before the expiry of the original leave to enter or remain – otherwise, the period of lawful leave will expire and the person will simply be an overstayer. Similarly, any appeal must be brought within the relevant time period. Provided application and appeal are made in time, the person retains their leave while these remain pending; and, importantly, retains the same benefits (entitlement to work, access support), which they had under that leave.
22. That said, there are often problems for the individual in seeking to establish that this is the case – because the Home Office do not send acknowledgement letters and the original status document has, on its face, expired.

Comment on clause 16 of UK Borders Bill

23. Currently, a person granted limited leave to enter or remain (that includes anyone in the above categories excluding ILR and temporary admission) may have their leave subject to certain conditions. Prohibition on working or having recourse to public funds are generally imposed on others who apply under the Immigration Rules, where not taking employment or not relying on welfare or housing support is a condition of the application they have made (e.g. to visit the UK). Currently, those with limited leave to remain may also be required to register with the police.
24. Clause 16, if it becomes law in its current form, will allow the Home Office to require those with limited leave to report to the Home Office or immigration service and allow them to impose residency restrictions.

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