

Curtailment of Limited Leave in cases where an Asylum or Human Rights application is refused

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1 Introduction

This Asylum Instruction sets out when leave should be curtailed following the refusal of an asylum and/or Human Rights (HR) application. Please note that this AI is **not** about the curtailment of leave granted for protection reasons i.e. Humanitarian Protection (HP), Discretionary Leave (DL) or leave granted to refugees. This instruction is concerned with leave granted for non-protection reasons, e.g. to visitors, students, work permit-holders etc. For the purposes of this instruction “Curtailment” means a variation of limited leave to enter or remain as a result of which the person has no leave, and as such is an immigration decision which attracts a right of appeal.

The principal 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.

Curtailing leave when refusing a person’s asylum application ensures the person has the immediate right to appeal against the refusal. A person who following the refusal of asylum has twelve months or less outstanding leave will not have an immediate right of appeal. There is a right of appeal under section 83 of the 2002 Act for claimants refused asylum who, following the decision to refuse asylum, have outstanding leave for a period which exceeds one year in total. A person whose leave is curtailed has an appeal against the decision to curtail leave (which is an immigration decision under section 82(2)(e) of the 2002 Act) rather than against the refusal of the asylum or HR claim.

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.

This instruction includes consideration of the setting of removal directions. Consideration must be made of the Code Of Practices statement that there must always be a presumption in favour of not detaining a family and each family’s case must be considered on its individual merits.

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/keepingchildrensafe/>

2 Powers which enable the Curtailment of Leave

Limited leave can be curtailed under the powers of Section 3(3)(a) of the Immigration Act 1971. The grounds for curtailment are set out in paragraph 323 of the Immigration Rules. Section 3(3)(a) of the Immigration Act 1971 allows for a person's limited leave to enter or remain to be varied by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions. This is the statutory power underlying curtailment. Paragraph 323 of the Immigration Rules sets out the grounds on which this power can be used. The relevant grounds for curtailing leave in cases where an asylum or HR claim has been made are normally:

“(ii) if he ceases to meet the requirements of the Rules under which his leave to enter or remain was granted; ...”

Examples of the forms of words to be used when curtailing leave can be found at, [Wording for curtailment in RFRL](#).

3 Pre-Curtailment Considerations

In cases where a person with existing limited leave has made an unsuccessful asylum or HR application caseworkers should address whether the circumstances of the case taken as a whole justify setting removal directions under s.10 of the Immigration and Asylum Act 1999. The setting of removal directions will invalidate any existing leave and is an immigration decision under section 82(2) (g) which will generate a right of appeal under s.82(1). In such cases it will therefore be unnecessary to consider curtailment. Where caseworkers are considering this course of action they should consult Chapter 10 of the Operation Enforcement Manual.

4 Criteria for Curtailment

Curtailment action should be considered in cases where a person with existing limited leave (of any duration) makes an asylum or HR application that is refused. Guidance on dealing with illegal entry issues can be found in the Asylum Instruction [Illegal Entry](#).

4.1 Criteria for Curtailment

Curtailment action should normally be taken if the applicant meets all of the following conditions:

- the leave was granted for non-protection reasons (e.g. as a visitor/student etc.);
- is refused asylum/HR;
- was warned of their liability to curtailment before the decision to refuse their asylum/HR application was made;
- ceases to meet the requirements of the Immigration Rules under which the leave was originally granted (usually this would be that they should intend to depart from the UK at the end of their visit or stay). If in doubt whether a certain category of leave has intention to leave as a requirement please contact MMSR. There may be circumstances in which an HR application does not indicate an intention to remain in the UK permanently (e.g. an Article 8 claim requesting a short period of leave);
- does not qualify for leave under any other provision of the Rules or under the published policy on Humanitarian Protection or Discretionary Leave. And;
- does not fall into one of the categories set out in sub-paragraph 3.2 below.

4.2 Cases where leave should not be curtailed

Caseworkers should not curtail the leave of applicants who meet any of the following conditions:

- are married to, or are the civil partner, of a British citizen;
- are married to, or are the civil partner, of an EU national who is exercising EEA Treaty Rights;
- are holders of leave in a category of stay leading to settlement, (for instance holders of work permits for a period exceeding twelve months or businessmen), or any other category for which intention to leave is not a requirement. There are circumstances in which it may be appropriate to curtail the leave of a person in a category leading to settlement, but the making of an asylum/HR claim does not in itself justify curtailment where intention to leave is not a condition of the leave; or
- are terminally ill with a life expectancy of less than six months.

4.3 Dependants

When curtailment action is considered appropriate for the principal asylum/HR applicant, the existing leave of dependants who had obtained leave in line with the applicant should normally be curtailed to the same extent as that of the principal applicant.

Action should normally be taken against the dependants if they:

- have leave which was granted for non-protection reasons;
- are dependants to an unsuccessful asylum/HR application;
- the principal asylum/HR applicant of their liability to curtailment;
- cease to meet the requirements of the Immigration Rules under which such leave was granted (i.e. the requirement that they should intend to depart from the UK at the end of their visit or stay);
- do not qualify for leave under any other provision of the Rules or under the published policies on HP or DL.
- do not fall under one of the categories set out in sub-paragraph 4.2 above.
- It is possible to curtail the leave of the dependants after the curtailment of the principal applicant's leave.

4.4 Family Unity

Curtailment of the leave of a dependant to an unsuccessful asylum/HR claim will only very rarely be appropriate if the principal applicant's leave is not curtailed. If it is not considered appropriate to curtail a dependant's leave, caseworkers should consider whether it would be appropriate to continue with the curtailment of the leave of the principal applicant.

4.5 Certification in Curtailment cases

Where it is decided that it is appropriate to curtail leave, the asylum/HR claim should normally be certified under section 94 of the NIAA 2002 where it is clearly unfounded. This is because the effect of the amendments to section 94 by section 27 of the 2004 Act is that the curtailment of leave does not give rise to an in country appeal when the relevant asylum/HR claim is certified as clearly unfounded. For further information on certification see the API on Certification under section 94 of the NIA Act 2002.

5 Interviewing potential Curtailment cases

5.1 The Invitation Letter

The invitation letter to attend an asylum/HR interview contains a standard paragraph informing the applicant and any dependants of their liability to curtailment and removal, should the asylum application be refused. This uses the same wording as the curtailment warning, see [Curtailment Warning](#).

The letter also advises the principal applicant that they will be given an opportunity at the asylum/HR interview to put forward any reasons why they and any dependants should not be removed from the United Kingdom in the event that the asylum/HR application is unsuccessful.

5.2 The Curtailment Warning

The curtailment warning (see [Wording for curtailment in RFRL](#)) advises the principal applicant of their own and their dependants' liability to curtailment and removal, should the principal applicant's asylum/HR application be refused.

Issuing the curtailment warning is no longer a legal necessity. However as a matter of policy we will continue to issue the warning.

This warning is given during the asylum/HR interview (normally at the beginning) to the principal applicant. In exceptional circumstances the curtailment warning may be issued in writing, e.g. where:

- no curtailment warning was given during the asylum interview; or
- in fresh or renewed application cases where a warning was not given at the original interview and there is no new information justifying a second interview.

The applicant can always submit further written representations on the curtailment/removal issues.

Guidance on dealing with further representations can be found in the Asylum Instruction - [Further Submissions](#).

Dependants do not require a separate curtailment warning provided that the warning given to the principal applicant makes clear that the liability for curtailment also applies to any dependants included in their application.

5.3 Further Enquiries

Enquiries should be sent via a Senior Caseworker to the Asylum Complex Advice Team.

For further advice: see also the Asylum Instructions on:

- [Dependants](#)
- [Interviewing](#)

6 The Curtailment Warning

Should your asylum/human rights application be refused and should you not qualify for leave to remain on any other basis, your existing leave (and that of your dependants) may be curtailed and you (and your dependants) may be liable for removal. This is a routine warning that does not affect the determination of your asylum or human rights claim. If there are any reasons, in addition to the reasons why you are making an asylum/human rights claim, why you or your dependants should not be removed from the UK if your asylum/human rights claim is refused, you should mention them during the course of the interview.

7 Wording for Curtailment in the RFRL

You were granted leave to enter/remain as a [visitor/student/au pair] [until XXXX]. In order to qualify for leave as a [visitor/student/au pair], a person must intend to leave the UK at the end of his [visit/studies/stay]. In the light of your making an asylum/human rights claim, the Secretary of State is not satisfied that you intend to leave the United Kingdom and he has decided, therefore, that you no longer continue to qualify for the leave granted to you on XXXX. Your leave has accordingly been curtailed as shown in the notice of decision dated XXXX.

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