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CONTENTS

PEOPLE WHO ARE EXEMPT FROM IMMIGRATION CONTROL

1. INTRODUCTION..... 2

2. THE LEGAL BACKGROUND..... 2

3. ASYLUM CLAIMS FROM PERSONS WHO ARE EXEMPT/PARTIALLY EXEMPT..... 2

 3.1. Handling 2

 3.2. Granting leave 3

4. ASYLUM AND HUMAN RIGHTS CLAIMS FROM PERSONS WHO CEASE TO BE EXEMPT/PARTIALLY EXEMPT..... 3

5. CONFIDENTIALITY..... 3

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PEOPLE WHO ARE EXEMPT FROM IMMIGRATION CONTROL

1. INTRODUCTION

This API is concerned with *asylum or human rights claims* made by people who are exempt or partially exempt from immigration control.

Certain categories of people are exempt from immigration control due to the nature of their employment. These include diplomatic staff in embassies and consulates of foreign governments, representatives of international organisations, and members of foreign armed forces posted to the UK. For further information on which people are exempt or partially exempt from immigration control, and what documents usually show that a person is exempt, please refer to *the Immigration Directorates Instructions (IDI) Chapter 14*.

2. THE LEGAL BACKGROUND

Sections 8(2), 8(3) and 8(4) of the Immigration Act 1971 (as amended), together with the Immigration (Exemption from Control) Order 1972 (as amended) provide that certain people who do not have the right of abode in the United Kingdom are exempt or partially exempt from immigration control.

3. ASYLUM CLAIMS FROM PERSONS WHO ARE EXEMPT/PARTIALLY EXEMPT

A person who is exempt from immigration control may make an asylum or human rights claim. We must consider any asylum claim (unless there are Third Country issues (see 3.1 below)). If the decision is to refuse asylum we must also consider any Human Rights issues. We must notify the decision on the asylum claim and on any human rights issues. However we cannot grant or refuse leave to enter or remain (including HP or DL) while the claimant continues to be exempt.

3.1. Handling

The handling of asylum claims involving those who are exempt from control is unlikely to be straightforward. There may be third country issues which need to be considered in which case the Third Country Unit (TCU) should be involved. If there are no such issues then the case should be passed immediately to a senior caseworker for consideration on the best way to proceed in the particular circumstances. It is also essential that asylum claims are considered promptly even where the applicant is exempt. Foreign and Commonwealth Office input may be required, and advice from the Legal Adviser's Branch should be sought on any specific legal issues.

Once a decision has been reached on the asylum claim the claimant should be informed of the decision. If the decision is that they are a refugee then they should be told that although it is accepted that they are a refugee and they will not be removed from the UK leave to remain cannot be granted while they continue to be exempt from control. If they are still employed by the authorities they claim to fear, they should be advised to leave their exempt employment as quickly as possible and inform IND as soon as they are no longer exempt from control. They should also be told that at that time the case will be reviewed to confirm whether the grant of refugee status is still appropriate and that if circumstances have changed or there has been a significant delay in losing exempt status (which may, depending on the basis of their exempt status, raise issues under the cessation clauses), refugee status may be cancelled or revoked. Guidance on cessation and cancellation is contained in the API on *Cessation, cancellation and revocation of refugee status* and the action to take when the claimant ceases to be exempt if the claimant is refused refugee status and HP and DL is contained in *Chapter 14 of the IDIs*.

3.2. Granting leave

Any period of leave prior to becoming exempt from control and any time exempt from control should be ignored when granting limited leave as a refugee to someone once they cease to be exempt. The caseworker should grant refugee leave from the date on which the claimant ceased to be exempt.

4. ASYLUM AND HUMAN RIGHTS CLAIMS FROM PERSONS WHO CEASE TO BE EXEMPT/PARTIALLY EXEMPT

An asylum or human rights claim from a person who was, but is no longer, exempt from immigration control should be considered on its individual merits and handled in the same way as any other such claim.

5. CONFIDENTIALITY

As with all claims for asylum the fact that someone has claimed asylum must not be disclosed to a third party. If the former employer (such as the Embassy) of an asylum claimant who was formerly exempt asks for return of the claimant's diplomatic or service passport or other documentation to themselves then we should not acknowledge that the person concerned has made a claim or that we have their passport or other documentation. This is a matter between the claimant and their own national government. *Further guidance on disclosure is available in the API on Disclosure and Confidentiality of Information in Asylum Claims.*

Further Enquiries: on policy issues should be sent via a Senior Caseworker to Group D, APU and on the practical issues to MMD, General Group, Croydon. Guidance on Exemption from Control is available in ***Chapter 14 of the IDIs*** and guidance on Appeal rights is in ***Chapter 12 of the IDIs and the Appeals section of the APIs***

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