CONSIDERING ASYLUM CLAIMS AND ASSESSING CREDIBILITY

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1 Introduction and Key Points

1.1 Purpose of guidance

- Provide guidance to staff considering and determining asylum claims; taking into account the relevant primary legislation, the Immigration Rules, the provisions implementing the European Council Directive (2004/83/EC) of 29 April 2004 on the Minimum Standards for the Qualification of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted (The 'Qualification Directive'), Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (The "Procedures Directive"); UK caselaw and the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status which every decision maker should be familiar with.

- Reinforce the fact that this Instruction must be read in conjunction with the separate Asylum Instructions (AI), Gender Issues in the Asylum Claim, Sexual orientation issues in the asylum claim and Gender identity in the asylum claim; Internal Relocation, Victims of Trafficking and Exclusion Article 1F and 33(2) of the 1951 Refugee Convention.

- This instruction deals only with assessing asylum claims, though the guidance on credibility is relevant to all considerations. Separate guidance on assessing eligibility for a grant of humanitarian protection (Subsidiary Protection) and human rights claims can be found in the AIs on Humanitarian Protection and Discretionary Leave and Considering Human Rights Claims. For further guidance on considering Article 8 claim is provided in the AI.

1.2 Professional Standards

- Be familiar with the relevant standards applicable in the field of asylum and refugee law and do not attempt to decide an asylum application until they have read and understood these instructions.

- Ensure claims are assessed on an individual, objective and impartial basis.

1.3 Use of terms

Decision maker refers to case owners or caseworkers in Regional Asylum Teams and Local Immigration Teams (LITs), Detained Fast–Track (DFT), Criminal Casework Directorate (CCD),

Senior Caseworker (SCW) applies to Regional Asylum Teams, LITs, CCD or DFT.

Presenting Officer refers to staff who are responsible for presenting cases at appeal.

Applicant, Individual, Person and **Subject** are all interchangeable terms referring to the person applying for asylum

1951 Convention and **Refugee Convention** are used interchangeably when referring to the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol to that Convention.

1.4 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.

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2 Considering asylum applications

2.1 General Considerations

- Paragraph 327 of the Immigration Rules defines a refugee as a person who makes a request to be recognised under the Refugee Convention on the basis that it would be contrary to the UK's obligations to be removed from or required to leave the UK. Any application for international protection shall be presumed to be an asylum application.

- All asylum claims should be considered without prejudice on their individual merits in accordance with the UK's obligations under the Refugee Convention. A person who fulfils the criteria set out in the Convention is a refugee. The UK, in granting asylum is recognising the refugee's status and extending the protection required under its international obligations.

- The Qualification Directive lays down provisions and criteria for interpreting the Refugee Convention to be adopted across the European Union. It was transposed into UK law through The Refugee or Person in Need of International Protection (Qualification) Regulations, 2006 and the Immigration Rules.

- The Procedures Directive sets minimum standards for Member States for granting and withdrawing refugee status and has been transposed into the Asylum (Procedures) Regulations 2007 and the Immigration Rules. The Rules and Regulations can be viewed on the UK Border Agency website at: http://www.ukba.homeoffice.gov.uk/.

- Unless the applicant can be returned to a safe third country, including to an EU Member State, Iceland or Norway under the Dublin arrangements (see Third Country cases below) asylum should be granted when the requirements of Paragraph 334 of the Immigration Rules are met.

2.2 Points to consider on initial receipt of the file

- On receipt of a case but before consideration of the claim, decision-makers must check the file and data on CID to identify whether any of the following issues apply and must refer to the relevant Asylum Instruction. If there is any doubt as to whether the case meets the criteria for referral to another team, discuss the case with a Senior Case Worker.

Unaccompanied Asylum Seeking Children (UASC)

- See Processing Asylum Applications from children AI for definition and further guidance on UASC cases and Certification under Section 94 for the application of the NSA process to children (section 5.3).

Third Country Cases

- See TCU Asylum Instructions for further guidance and qualifying criteria for TCU Referring and Handling.

Certification: Section 96 and Section 94 of the NIA Act 2002 (Non Suspensive Appeal (NSA) Cases)

- Decision makers must consider whether it would be appropriate to certify under Section 96 before considering if the case should be certified under Section 94. Where an asylum or human rights claim is refused and is clearly unfounded, decision makers must consider whether Certification is appropriate either on the basis of an entitlement to reside in a country listed in section 94, or on a 'case-by-case' basis. For guidance see Certification under section 94 of the NIA Act 2002 AI. For guidance on certification under Section 96 see Further Submissions AI.

Multiple Applications

- Where there is evidence from information on file and/or CID that the applicant previously claimed asylum in another identity, see the AI on Multiple Applications.

European Economic Area (EEA) Nationals

- For guidance on handling applications from EEA Nationals see the AI on Claims from EU nationals.

Criminal charges, convictions and/or has a Deportation Order

- Cases where an applicant has been convicted of criminal charges and sentenced to over 12 months imprisonment and/or has a deportation order must be sent to the Criminal Casework Directorate (CCD) to be considered.

Potential victims of trafficking (PVoT)

- The Victims of Trafficking: Guidance for competent authorities AI assists decision makers to identify PVoTs and provides guidance on the trafficking referral process.

War criminality screening

- Check whether there is any information relating to involvement in war crimes or crimes against humanity or other serious crimes committed prior to arrival in the UK. For further guidance, refer to the instruction on Exclusion under Article 1F of the Convention.

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3 Evidence gathering and preparing for an interview

3.1 General Principles

- Before undertaking an asylum interview, staff must familiarise themselves with the Asylum Interview Instruction. Preparing for the interview is essential to effectively consider the asylum application because you must gather all the necessary evidence to make a timely, informed decision.

- Whilst a pre-interview examination of the evidence may occasionally lead to a view that the application is likely to merit a grant of asylum all, asylum and human rights applicants will normally be required to attend a substantive asylum interview, except in the situations where an interview may be omitted in accordance with paragraph 339NA of the Immigration Rules.

- If after conducting the interview and reviewing all the available evidence, there is still insufficient material to make a balanced and well-informed decision, it may be necessary to obtain further information through a written questionnaire or a further interview. Such action should only be taken in accordance with local operational requirements. Where a further interview is required, the minute should record the additional information required.

3.2 Evidence Submitted by Applicants

- Applicants often cannot substantiate their statements by independent documentary or other evidence (see Paragraph 196 of the UNHCR Handbook). What the applicant presents in writing and verbally at the asylum interview may be the only primary evidence in support of the claim.

- Nevertheless, the burden of substantiating a claim is on the applicant, who must prove to the required standard that they qualify for international protection. In practice the duty to ascertain and evaluate evidence to establish a claim is shared between the applicant and decision maker. It is for the Interviewer to test available evidence and, if appropriate, invite submission of further evidence material to the claim that may reasonably be expected to be provided (e.g. media reports, medical evidence etc). Timescales should be agreed and actively managed to ensure the case is concluded in a timely manner.

Paragraph 339I of the Immigration Rules states that material factors include:

(i) the person's statement on the reasons for making an asylum claim or on eligibility for a grant of humanitarian protection or for making a human rights claim;
(ii) all documentation at the person's disposal regarding the person's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes
(iii) identity and travel documents

- The applicant does not have to prove each material fact with documentary or other evidence. It is possible to substantiate a claim and satisfy the burden of proof when unable to provide independent, corroborative evidence about past and present events, where a coherent and plausible account, not contradicted by available objective information relevant to the claim is provided. For example, an applicant does not have to

provide medical or other evidence of past torture for a claim that torture took place to be accepted. Evidence may include - but is not limited to:

- Screening Interview records (SIR)
- Statement of Evidence Forms (SEF)
- Other evidence submitted by the applicant in support of a claim, e.g. written statements, newspaper or internet articles, letters from friends or family, police or medical reports
- Any other documents on file, e.g., political party membership cards,
- Files relating to previous applications by the applicant or his/her relatives
- Applications for leave to remain in the UK
- Passports should be checked for entry/exit stamps, visas, evidence of return to country of origin etc, both in order to confirm the applicant's immigration status and immigration history, and to compare this with his account of events
- Medical or expert reports

- It should be noted that if a written statement is provided, an interview should focus on gaps in evidence; areas lacking in clarity; issues of plausibility and other areas of doubt rather than simply repeating the contents of the statement verbatim. For further guidance on questioning techniques see Asylum Interviewing AI.

3.3 Objective Evidence

- In addition to any subjective evidence submitted, UK Border Agency Country of Origin Information Service (COIS) reports and other UK Border Agency compiled information relating to the country concerned together with Operational Guidance Notes (OGNs) (where available) must be consulted to inform your interview preparation. Where further country information specific to the case is required, a COI Request (COIR) to the Country of Origin Information Service (COIS) should be made. See section 5.3.3 below on researching, using and referencing COI.

3.4 Applicants with mental or physical conditions

- Where it is clear from information on file that the applicant is affected by a mental or physical condition and it may not be possible, or appropriate, to conduct an interview, a medical report should be requested from either the legal representatives or the applicant directly.

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4 Making the Decision

4.1 Identifying the facts of a claim (Material and non-material facts)

- A key element of the decision making process is to "assess the validity of any evidence and the credibility of the applicant's statements" (UNHCR Handbook paragraph 195). Assessing credibility is not about making negative credibility findings and focusing on refusal. It is an objective assessment of material facts that go to the core of the claim. In determining if an applicant is in need of protection, decision makers are required to consider which aspects of the account they accept and which they reject. By doing this, decision makers are assessing the credibility of an applicant's claim about past and present events. It should be a neutral assessment of the material facts that go to the core of the claim in which subjectivity should be kept to a minimum.

- Evaluating whether an applicant is in need of international protection often requires decision makers to decide whether they believe the applicant's evidence about these past and present events and how much weight to attach to that evidence bearing in mind the low standard of proof required [link – below]. Applicants do not have to convince the decision maker that they are telling the truth. It is possible to establish a credible claim even where the applicant is unable to provide any independent, corroborative evidence to support claims about past and present events and experiences as long as the account is coherent, consistent and plausible when considered in light of the applicants profile and any mitigating circumstances.

4.1.1 Objectivity

- The decision maker must first establish the facts of the claim before deciding whether an asylum claim (or a claim for Humanitarian Protection or a Human Rights claim) is well founded. Decision makers need to take into account the following points in particular, as set out in Paragraph 339J of the Immigration Rules:

  i) all relevant past and current material facts as they relate to the country of origin or country of return at the time of taking a decision; including laws and regulations of the country of origin or country of return and the manner in which they are applied;

  ii) relevant statements and documentation presented by the person including information on whether the person has been or may be subject to persecution or serious harm;

  iii) the individual position and personal circumstances of the person, including factors such as background, gender and age, so as to assess whether, on the basis of the person's personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm;

  iv) whether the person's activities since leaving the country of origin or country of return were engaged in for the sole or main purpose of creating the necessary conditions for making an asylum claim or establishing that he is a person eligible for humanitarian protection or a human rights claim, so as to assess whether these activities will expose the person to persecution or serious harm if he returned to that country; and

v) whether the person could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

4.1.2 What is a material fact?

- A material fact goes to the core of a claim and is **fundamental** as to why an individual fears persecution. It is central to the decision. Examples of material facts include an applicant's nationality, membership of a political party, religion or a particular social group, incidences of arrests and periods of detention, locations or episodes of violence at the hands of non-state agents. This list is not exhaustive and the material facts will depend on the nature of the claim for asylum. Decision makers should note that what is important to the applicant may not necessarily be **material** to the assessment of the claim. It is for the decision maker to first identify all the claimed facts and to distinguish which facts are material to the claim and which are not.

- It is important to note that nationality is always a material fact. Furthermore, considering past events is an important aspect of assessing the claim because if an applicant has already been subjected to persecution or serious harm, or to direct threats of persecution or serious harm, Paragraph 339K of the Immigration Rules makes it clear that decision makers should regard this as 'a serious indication of the person's well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons, to suggest that such ill-treatment will not be repeated'.

4.2 Making findings of fact

- When considering what to accept or reject, decision makers will have to consider facts supported by evidence which will inspire varying degrees of confidence. As originally noted in the case of Kaja this will mean considering:

  "…parts of the evidence which on any standard (i.e. up to and including the criminal court standard of proof: "beyond reasonable doubt") were to be believed or not to be believed. Of other parts, the best that might be said of them was that they were more likely than not (i.e. the civil court standard of proof of - "probably true"). Of other parts it might be said that there was a doubt (i.e. the fact cannot be rejected as beyond reasonable doubt false, but cannot be accepted as either beyond reasonable doubt true or probably true)."

- Whilst it is clear that facts which are "beyond reasonable doubt" true and "probably" true should be accepted, and facts which are "beyond reasonable doubt" false should be rejected, the handling of doubtful facts (also called "uncertain facts") can be problematic. The UNHCR Handbook notes:

  "The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself" (para 197). "It is hardly possible for a refugee to "prove" every part of his case and, indeed, if this were the requirement the majority of refugees would not have been recognised" (para 203)."

- The case of Karanakaran established that decision makers should not ignore facts which were in doubt (or uncertain) but rather consider that:

  "Everything capable of having a bearing has to be given the weight great or little, due to it" (Lord Justice Sedley,).

- From this judgment comes the practice of looking at the facts of the case in the round and attributing varying degrees of weight to the findings of fact. This process in practice has been usefully summarised by Deputy Judge Ockleton in SM Iran as follows:

> "It is the task of the fact-finder, whether official or judge, to look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence… Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and … although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole".

- When considering the weight to be attached to different aspects of a claim, Lord Justice Sedley noted in Karanakaran (para18) that:

> "…testing a claim ordinarily involves no choice between two conflicting accounts but an evaluation of the intrinsic and extrinsic credibility, and ultimately the significance, of the applicant's case."

- The terms "intrinsic" and "extrinsic" credibility are more commonly referred to as Internal Credibility and External Credibility.

4.3 Practical Assessment of Credibility

- Decision makers must consider the credibility of a claim in light of all available evidence relating to the claim. Credibility assessments should address the following:-

4.3.1 Internal Credibility – the applicant's own evidence

- Consideration of internal credibility requires an assessment of whether the applicant's claim is internally coherent and consistent with past written and verbal statements, as well as being consistent with claims made by witnesses and/or dependants and with documentary evidence submitted in support of the claim. It is for the decision maker to assess how well the evidence submitted fits together and whether or not it contradicts itself. Factors to take into account are:

Level of detail

- The level of detail with which an applicant sets out a claim about the past and present is a factor which may influence a decision maker when assessing internal credibility. It is reasonable to expect, subject to mitigating circumstances, that an applicant relating an experience that occurred to them will be more expressive and include sensory details such as what they saw, heard, felt or thought about an event, than someone who has not had this experience. Notwithstanding any mitigating circumstances, it is a reasonable expectation for an applicant to recount an event to the level of detail that can be reasonably expected of an individual who has experienced the claimed event.

Inconsistencies and Mitigating circumstances

- It is reasonable to expect that an applicant who has experienced an event will be able to recount the central elements in a broadly consistent manner. An applicant's inability to remain consistent throughout both written and oral accounts of past and current events may lead the decision maker not to believe the claim. It is important that wherever possible, any inconsistencies in the claim are put to the applicant during the interview so they have an opportunity to explain. Decision Makers must be aware of and take into account, the profile of the applicant. This is relevant both in assessing the level of knowledge they can reasonably be expected to have and the effect other factors such as age, gender, social background and underlying medical or psychological factors will have on the applicant's ability to recall certain facts. For example, the more active the applicant claimed to be in a political party the greater the expectation that they would be able to provide more detailed information. Any explanation given should then be acknowledged and considered in the overall assessment of internal credibility. There may be circumstances where it is not possible to put a discrepancy to an applicant. For example, a decision maker may only become aware that the applicant's account is not consistent with available objective country information when checking COI reports after the interview. In these circumstances it may be appropriate to reach a negative credibility finding if there is a contradiction, though care should be taken in using these inconsistencies, as these do not necessarily mean that the event could not have taken place.

- In assessing the internal credibility of a claim, decision makers should be aware of any mitigating reasons why an applicant is incoherent, inconsistent and unable to provide detail, or delays in providing details of material facts. These reasons should be taken into account when considering the credibility of a claim and must be included in the reasoning given in the subsequent decision. Factors may include the following (the list is not exhaustive): age; gender; mental health issues; mental or emotional trauma; fear and/or mistrust of authorities; feelings of shame; painful memories particularly those of a sexual nature and cultural implications. It is also important to consider whether a particular line of questioning was reasonable.

- In making a credibility assessment, decision makers must not be influenced by subjective factors, for example if the applicant appears nervous or fearful at the interview, or entirely calm and rational. However, they should be sensitive to the gender and cultural norms which may affect an applicant's demeanour. For guidance see the AIs on Gender Issues in the Asylum Claim**,** Gender identity issues in the asylum claim; and Conducting Asylum Interviews.

4.3.2 External credibility – are the material facts consistent with objective evidence

- Material facts should be consistent with generally known facts and country of origin information. The decision maker is required to conduct research into the applicants' country of origin to assess whether claims about past and present events are consistent with objective country information using, for example, information contained in Country of Origin Information Reports and COI Requests produced by the COIS.

- At this stage the research is not to assess the likelihood of future persecution but to consider whether the material facts are consistent with reality in the country of origin. Although the same evidence may be used at a later point to assess any future risk, consideration at this stage should be confined to the assessment of past and present events. The greater the correlation between the external evidence and aspects of the

applicant's account, the greater the weight decision makers should attribute to those aspects.

- Where there is objective country information to support the applicant's account of a past or present event, and the applicant's account is internally consistent, the material fact may be accepted by the decision maker. However where there is objective country information that clearly contradicts the material facts, this is likely to result in a negative credibility finding.

- There may be instances where a lack of objective country information results in the decision maker being unable to make a finding on whether a past or present event described by the applicant occurred as claimed. The absence of objective country information to support a material fact does not necessarily mean that an incident did not occur. Much will depend on the scale of the incident, the country situation and the ability of the media or other organisations to report the incident. If the past or present event is material to the claim, a decision will have to be made as to whether the applicant should be given the benefit of the doubt on this aspect of their claim in line with Lord Justice Sedley's comments that all factors capable of having a bearing have to be given their due weight.

4.3.3 Using researching and referencing Country of Origin Information

- Using country information effectively is vital in ensuring that decisions are supported by up-to-date, accurate information, relevant to the individual claim. It is important to consider all the available evidence, avoiding selective or inappropriate use of COI, to reach an informed and well reasoned decision. It is important to exhaust all Country of Origin Information Service (COIS) products before conducting any independent research. If existing COIS products do not provide the information required, decision makers should consult local colleagues and their SCW to see if information is held locally. If COI is not available locally, Decision Makers should send an information request to COIS (See instructions on making a COI Request). Using the COI request service ensures consistency and will be used by COIS to further develop existing products. Relevant sources may also be found via existing products or from the COIS Useful Sources list. Databases such as UNHCR's 'Refworld' and ACCORDs 'ecoi.net' that collate useful, relevant and usually reliable material can also be consulted.
- It is best practice and a far more efficient use of resources to use research already conducted by COIS and only, if absolutely necessary, should decision makers undertake independent research. Guidelines on ensuring any such research is effective are available via the COIS website: see EU Common Guidelines. Any COI gathered through independent research that is considered useful by decision makers, should be fed back to COIS so that it can be collated and shared by all.

- The key to using COI effectively is good preparation. As a minimum Decision Makers should be familiar with the OGN (where available) and relevant sections of the country report before the interview to ensure that should any inconsistencies become apparent, that the applicant is given the opportunity to explain. In decision letters and minutes, COI needs to be focused and case specific. It should not be used selectively and Decision Makers must not draw adverse inferences from it. Decision makers must ensure that the relevance of the COI used is clearly explained by looking at the information in the round. Due consideration must be given and appropriate weight applied to the evidence as it relates to the claim and the overall credibility of the claim and it is unnecessary to quote

large amounts of general COI to illustrate 'background', only use that COI which is relevant to the case being considered

4.3.4 Benefit of the doubt and general credibility

- Facts which are internally credible but lack any external evidence to confirm them are deemed to be 'unsubstantiated' or 'uncertain' or 'doubtful'. However, a decision must be made whether to give the applicant the benefit of the doubt on each uncertain or unsubstantiated fact – this means that the decision maker must come to a clear finding as to whether the fact can be accepted or rejected. It is not acceptable to come to a final conclusion that a claimed fact (about which you are uncertain) 'may have happened'. The benefit of the doubt needs to be considered and applied appropriately to these uncertain facts when considering all the evidence in the round at the end of the credibility assessment. This means that the benefit of the doubt can only be considered after a finding on the material facts that are to be accepted or rejected has been made.

This is set out in Paragraph 339L of the Immigration Rules which states:

- Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects will not need confirmation when **all** of the following conditions are met:
  - (i) the person has made a genuine effort to substantiate his asylum claim…;
  - (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of material has been given;
  - (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
  - (iv) the person has made an asylum claim… at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
  - (v) the general credibility of the person has been established

- However, it is important to understand paragraph 339L and its limitations. What it is saying is that if an applicant meets all 5 criteria, a decision maker should give the benefit of the doubt – there would, after all be no reason not to do so. However, the reverse is not automatically true. Because an applicant fails to meet one or more of the criteria, this in itself does not permit a decision maker to disregard all unsubstantiated areas of an applicant's claim because an unsubstantiated statement can be credible if it is generally internally consistent, compatible with known facts and plausible. It is, once again, a matter of determining the **weight** to be given to these issues in the light of the material facts of the case.

- When decision makers are considering giving an applicant the benefit of the doubt much may depend on the general credibility of the applicant's account. This includes:
  - The overall consistency and coherence of the applicant's account and consistency with generally known facts, such as the known situation in the country of origin, taking into account all mitigating circumstances.
  - Behaviours indicating that the applicant has ceased to fear returning to his home country - for example, any evidence that the applicant had previously attempted to withdraw his claim for international protection or apply for voluntary return. Again, the applicant should be given the opportunity to account for his actions.

- Immigration history - unless the claimant is a refugee sur place - particularly if the applicant has expressly stated that he came to the UK to seek protection. Actions that might not be credible include a delay in making an application for asylum following arrival in the UK if the applicant is unable to provide an explanation for his actions.
- For the purposes of paragraph 339L(v) a persons "general credibility" is considered to be potentially damaged by behaviour that falls within the scope of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (this is specified in Paragraph 339N of the Immigration Rules). Section 8 designates certain specified behaviours by the applicant that **must** be taken into account as potentially damaging by decision makers when assessing credibility if the applicant is unable to provide a reasonable explanation for his actions. It is necessary to take Section 8 into account when deciding whether or not to give the applicant the benefit of the doubt.

- The behaviours specified in Section 8 are not exhaustive or determinative. Credibility can be undermined in other ways and, depending on the circumstances, it may be appropriate to refuse on other credibility grounds entirely. On the other hand, the points in the applicant's favour may outweigh the points against, even though the points against include Section 8 points – Section 8 prescribes types of behaviour that potentially damage credibility but not the extent of the damage, which is for the decision maker to do based on the circumstances of each case.

- In the Court of Appeal case JT (Cameroon), it was stressed that the question of the amount of weight to be given to Section 8 findings was entirely a matter for the fact finder (decision maker). They went on to find that it may be appropriate in some cases to give no weight at all to Section 8 findings, stating that:

  'The Section 8 factors shall be taken into account in assessing credibility and are capable of damaging it (credibility), but the section does not dictate that relevant damage to credibility inevitably results' (Para 20).

- If a claim is refused and Section 8 factors have been taken into consideration, the Reasons for Refusal Letter (RFRL) must explain why the applicant's behaviour is considered as potentially damaging to their credibility. If a claim is accepted but Section 8 factors exist, the grant minute must show consideration of behaviours relevant under Section 8. Full details of specified behaviours and the framework for considering credibility issues under Section 8 are set out in **Annex A**.

- Decision makers must ensure that wherever possible, the applicant is given the opportunity to provide a reasonable explanation where and when required under the provisions of 339L. If the applicant has **met** all 5 of the criteria set out in Paragraph 339L of the Immigration Rules, the benefit of the doubt should be given to any unsubstantiated facts. If the applicant has not met all the criteria, decision makers nevertheless must consider whether giving the benefit of the doubt to any uncertain facts is justified.

- Decision makers must be aware of the requirement to take Section 8 into consideration when deciding whether to give the applicant the benefit of the doubt. Both SM (Iran) and JT (Cameroon) give additional guidance on applying benefit of the doubt and the appropriate use of Section 8 in the assessment of credibility. In SM it was held that **Section 8 is not the starting point for the consideration of credibility** (Para 9) and in

JT that the weight given to Section 8 is entirely a matter for the fact finder (decision maker) (para 21). Therefore, the decision maker must explain, with reference to the facts of the case, why the benefit of the doubt has either been given or not to a particular unsubstantiated fact.

- When considering the applicant's general credibility, this is only relevant to the extent that it may assist the Decision Maker in considering whether a particular unsupported statement is credible. General credibility findings should not be the starting point of the credibility assessment process. It is generally unnecessary, and sometimes counter-productive, for the decision maker to focus upon minor or peripheral facts that are not material to the claim. To avoid any suggestion that Section 8 has been the starting point for consideration of the claim Decision Makers should avoid making any references to Section 8 at the start of the letter / minute before substantively considering the claim.

4.3.5 Speculation

- Assessing the credibility of a claim inevitably involves an element of subjectivity on the decision maker's part. The danger is that a decision maker's subjective interpretation of a claim can lead to unfounded assumptions based not on objective information but on the individual decision makers own experiences and beliefs, undermining the balance and fairness of an assessment.

- Such subjective decision-making may be minimised by breaking down the assessment of each material claimed fact by considering internal credibility, external credibility and the benefit of the doubt. Findings should be based on the facts of the case and clear reasons provided for deciding which facts to accept or reject based on whether a fact is plausible, coherent and consistent with the available evidence.

- Decision makers should never use speculation to reject a material fact. In Y v Secretary of State [2006] EWCA Civ 1223, the court advises decision makers to avoid conclusions based on how they believe the applicant or a third party ought to have behaved. After all this is simply a matter of personal opinion. For example, decision makers should not rely on their own knowledge or reasoning to make adverse findings about medical evidence given by professionally qualified health practitioners or make judgements on matters relating to health issues for which they are not qualified. Decision makers should base their findings on the facts of the case and decide which facts to accept or reject based on the internal and external credibility of the claim. The subsequent decision should set out the decision makers reasoning behind the conclusions.

4.3.6 Plausibility

- The plausibility of a fact is assessed on the basis of its 'apparent likelihood or truthfulness in the context of the general country information relevant to the applicants country of origin and/or their own evidence (see MM (DRC – plausibility) Democratic Republic of Congo [2005] UKIAT 00019) and takes place when decision makers are giving consideration to applying the benefit of the doubt. In order for a particular material claimed fact to be rejected because it is not plausible, it is not enough to simply say that the event could not have happened.

- Any decision not to apply the benefit of the doubt to a material claimed fact that is otherwise internally credible must be based on reasonably drawn, objectively justifiable, inferences. Decision makers must never make adverse credibility findings by constructing their own theory of how a particular event may have unfolded, or how they think the

applicant, or a third party, ought to have behaved. In the case of Y v Secretary of State [2006] EWCA Civ 1223, the Court of Appeal noted that a decision maker is entitled to regard an account as incredible but must take care not to do so merely because it would not seem plausible if it had happened in the UK.

- So claims made by an applicant that appear implausible to a decision maker may nonetheless be true, and may be plausible when seen in the context of the attitudes and conditions of the applicant's country of origin. There will, however, be some assertions about past or present events which are so implausible that no reasonably well-informed person could be expected to give them any credence.

- Decision makers should bear in mind the caselaw of MM (DRC – plausibility) when looking at issues of plausibility. It is therefore important that where the decision maker finds any material fact implausible, that, whenever possible, the details are clarified at the interview. MM held that the more improbable a story, the more cogent the evidence necessary to support it.

4.3.7 Assessing documentary evidence

- When considering what weight it would be appropriate to attach to documents submitted in support of the claim, decision makers must bear in mind that in the case of **Tanveer Ahmed** [2002] UKIAT 000439], the Tribunal ruled that the burden of proof is upon the applicant to show that documentary evidence submitted can be relied upon. However it is for the decision maker to consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round. In practice, this means that documentation submitted as evidence should not be considered in isolation from other pieces of evidence that go towards establishing the particular material fact to which it is intended to support as well as other elements of the credibility assessment.

- **Therefore a Decision Maker should not consider documents in a separate paragraph to the material fact to which the document relates.** They should be assessed in the same way as any other piece of evidence, including taking into account the credibility of other material aspects of the account and the general credibility of the applicant. It is not appropriate or sustainable for a decision maker to attach no weight to a document submitted in support of a claim without giving clear reasons for reaching this finding based on the available evidence – i.e. either sourced objective country information regarding authenticity or findings made regarding the applicant's general credibility.

- If it is not possible to determine the authenticity of a document, the general credibility of the claim and any information in the relevant Country of Origin Information report about the standards of documentation in that country should be taken into account. COI Reports often contain guidance and advice about the prevalence and accessibility of forged documents. Care should be taken in placing reliance on documents such as birth certificates that may be forged or readily available from illegal sources.
- Where the authenticity of a document must be resolved, guidance should be sought from the relevant country officer in the Country of Origin Information Service, or an immigration officer who has received specialist training. Referrals to COIS or Country Specific Litigation Team should be made via a Senior Case Worker to avoid duplication.

4.3.8 Medical evidence submitted in support of the claim

- Reports by professionally qualified clinicians and submitted by an applicant or their representative, whether these are compiled by a GP or a specialist consultant (providing details of their qualifications, experience and relevant training have been provided), that support a claim to have been tortured or subjected to serious harm, should be given appropriate weight in the decision. **It is NOT the role of decision makers to make clinical judgements of their own about medical evidence or on medical matters generally.** For example, it would be inappropriate to dismiss a claim regarding a medical condition simply because the applicant was unable to recall the name of their medication at interview. For guidance on medical reports produced by the Helen Bamber Foundation or the Medical Foundation see the AI Medical Foundation. For reports produced by other organisations see the AI Medical Evidence (non Medical Foundation Cases). For cases being dealt with under the non-detained Pilot, see the AI Handling claims involving allegations of torture or serious harm: Interim Casework Instruction (Non Detained Pilot).

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5 Assessment of Future Fear

- Once the facts have been established consideration must be given to whether there is a real risk of future persecution based on those facts that have been accepted or where the benefit of the doubt has been applied and if the criteria for refugee status or humanitarian protection apply to the applicant.

5.1 Criteria for inclusion in the 1951 Refugee Convention

- Article 1A of the Geneva Convention provides that a person will [subject to the exclusion clauses (see The Exclusion Clauses)] qualify for refugee status if:

> "....owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence..., is unable, or owing to such fear, is unwilling to return to it."

- Therefore, unless an applicant is Stateless (see below), they will qualify for refugee status under the terms of the Geneva Convention if they meet all the following criteria:
  - They are outside their country of nationality ... and
  - They are unable or unwilling to avail themselves of the protection of that country owing to ...
  - a well-founded fear of ...
  - persecution for reasons of ...
  - race, religion, nationality, social group, or political opinion.

5.2 Country of Nationality

- Nationality is always a material fact, therefore person must be outside their country of nationality (or country of former habitual residence if they are stateless) and be unable or, owing to a fear of persecution, unwilling to return to it before they can qualify for international protection as a refugee (or be eligible for Humanitarian Protection). For further guidance on establishing nationality and correctly recording Bio Data details in the decision, refer to the AI Nationality; Doubtful, disputed and other cases.

5.3 Dual nationality

- A person who has more than one nationality and who has a well-founded fear of persecution in one of their countries of nationality will not be a refugee (or qualify for Humanitarian Protection) if they are able to seek protection of another one of their countries of nationality. In this case the application should be refused under Paragraph 336 of the Immigration Rules on the ground that they would not be required to return to a country in which they face a danger of persecution and do not, therefore, meet the criteria set out in Paragraph 334.

- If the applicant has a well-founded fear of persecution in **both** countries of which they are a national, then they may qualify for asylum (or Humanitarian Protection). For further details on how to address these claims see AI Nationality: Doubtful, disputed and other cases.

5.4 Stateless persons

- If an asylum seeker has no nationality they must be outside the country of former habitual residence before they can be recognised as a refugee and their fears must be in that country, not in the country of which they were once a national.
- Sometimes asylum seekers who are stateless might claim that they will not be re-admitted to their previous country of residence and therefore should be granted asylum in the UK. However, issues of statelessness and whether or not an individual is returnable should not affect the decision whether to grant asylum, as they are not relevant factors in the refugee determination process.

5.5 Well-Founded Fear

- To qualify as a refugee (or Humanitarian Protection) an applicant must demonstrate that they have a "well-founded fear" of persecution. In assessing whether an applicant's fear is well-founded, the decision maker must be satisfied both that:
  a) the applicant has manifested a subjective fear of persecution or an apprehension of some future harm, **and**
  b) objectively there are reasonable grounds for believing that the persecution feared may in fact occur in the applicant's country of origin.

5.6 Future Fear – the Legal Test

- It is rare to be able to say with certainty whether or not an applicant will be persecuted if returned to their country of origin. The appropriate test for a decision maker to apply is to consider whether, at the date when they are making their decision, there is a **reasonable degree of likelihood** of the applicant being persecuted in their country of origin. The courts have said that a 'reasonable degree of likelihood' has the same meaning as the term 'real risk', which is the test used when assessing whether an applicant will be subjected on return to treatment which violates Article 3 of the ECHR. For further details on Considering Human Rights claims, see the AI on Considering Human Rights Claims.

- Decision makers should bear in mind that however well-founded an applicant's original/historic reasons for fleeing their country of origin, they are only entitled to protection where at the date of decision they continue to have a well-founded fear of persecution for a Convention reason or a reason covered by Articles 2 or 3 of the ECHR.

- If an applicant has already been subjected to persecution or serious harm, or to direct threats of persecution or serious harm, Paragraph 339K of the Immigration Rules makes it clear that decision makers should regard this as 'a serious indication of the person's well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons, to suggest that such ill-treatment will not be repeated'. Such reasons might include, for example, a significant and enduring improvement in country conditions. Considering past events is therefore an important aspect of assessing any future fear claim.

5.7. Refugees sur place and applications made in apparently 'bad faith'

- As 'refugee sur place' is defined in Paragraph 339P of the Immigration Rules, which states that:

> "A person may have a well founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin or country of return and/or activities which have been engaged in by a person since he left the country of origin or country of return, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country origin or the country of return."

- This means, for instance, a person can fall within the Convention definition of a refugee if they are already outside their country of origin when a change of circumstances occurs in their home country which subsequently gives rise to a well-founded fear of persecution for a Convention reason. People may also become refugees "sur place" as a result of activities they have engaged in since leaving their country of origin, such as associating with people who have already been recognised as refugees or expressing their political views in their new country of residence.

- Decision makers should carefully examine the circumstances and decide whether their actions give rise to valid claims to refugee status, irrespective of whether they believe the individual's actions were genuine or were engineered to provide grounds to fear persecution. The Court of Appeal's judgment of 28 October 1999 in Danian v SSHD [1999] EWCA Civ 3000 (linked) established that there can be no exclusion from the assessment of a well-founded fear under the Convention of cases where there is suspicion, or even evidence, that the individual's actions since arrival in the UK were undertaken 'in bad faith' in order to generate or contribute to a claim to asylum.

- In reaching that judgment, the Court of Appeal added that:

  > "Any applicant will still have to establish that he has a well-founded fear of persecution. As has been frequently pointed out, someone who changes his position, or makes allegations inconsistent with the attitude that he adopted in his home country, may not find that burden easy to discharge. When the United Nations High Commission for Refugees acknowledged, in the letter written in connexion with this case that Brooke LJ has set out, that a more stringent evaluation of the applicant's claim was likely in such a case, it was not formulating any new theory, but simply acknowledging reality."

Such cases will therefore call for very careful enquiry and assessment, both as to whether the individual would wish to express his beliefs in the country of origin in a manner consistent with past or current behaviour, and as to whether the individual's actions in the UK are in themselves likely to occasion persecution irrespective of the motivation for them. In paragraph 4 of an Iran country guidance determination issued in February 2011 (BA (Demonstrators in Britain – risk on return) Iran CG [2011] UKUT 36 (IAC), the Upper Tribunal identified five factors to be considered when assessing risk on return having regard to sur place activities which may, in its general findings, be applied to other nationalities. The precise wording of the determination may be seen in the link, but they may be summarised as follows:

- The nature and extent of sur place activity, eg the individual's role in demonstrations, their purpose and the publicity attracted in the UK or abroad
- The risk or likelihood of identification by the regime, eg its capacity to identify the individual from publicity or its own monitoring of UK activity.
- Factors which could trigger inquiry/action on return:

- whether the person is known as a committed opponent or someone with a significant political profile; or does he fall within a group which the regime regards with suspicion or as especially objectionable?
- whether the person left the country (illegally; type of visa); where has the person been when abroad; is the timing and method of return more likely to lead to inquiry and/or being detained for more than a short period and ill-treated

- Consequences of identification, e.g. is there any known differentiation between demonstrators depending on the level of their political profile adverse to the regime?
- Identification risk on return, e.g. the matching of identification to that individual on return person, i.e. if a person is identified is that information systematically stored and used; are border posts known to be geared to the task?

5.8 Persecution

- The decision maker must always assess whether the harm an asylum seeker claims to fear would amount to persecution. Regulation 5(1) of the Qualification Regulations states:

  "In deciding whether a person is a refugee an act of persecution must be:

  a) sufficiently serious by its nature and repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the [European] Convention for the Protection of Human Rights and Fundamental Freedoms [the ECHR];

  b) or an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a)."

- As stated in 5(1)(a) above, the basic human rights from which derogation cannot be made under the ECHR include Article 3 (prohibition of torture, inhuman or degrading treatment or punishment), Article 4(1) (prohibition of slavery), and Article 7 (no punishment without law). Article 2 (right to life) also falls in this category, except that derogation is permitted in one limited area - deaths resulting from lawful acts of war. Nor is any derogation permitted from Protocol 13 (abolition of the death penalty). For guidance see AI on Considering Human Rights Claims.

- Not every claim advanced by the applicant will necessarily be persecutory in nature, even if it is accepted. An essential part of the decision making process is to consider whether a subjective fear amounts to treatment that falls within the definition of persecution.

- Regulation 5(2) of the Qualification Regulations states that an act of persecution may, for example, take the form of:

  a) an act of physical or mental violence, including an act of sexual violence;

  b) a legal, administrative, police, and/or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;

  c) prosecution or punishment, which is disproportionate or discriminatory;

  d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

  e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses. See the AI on Military Service and Conscientious Objection

- This is not an exhaustive list, other forms of mistreatment which on their own or in accumulation with lesser prejudicial actions, severely violate the basic human rights listed above will also constitute persecution.

- Decision makers should bear in mind that the official authorities of a country may need to take measures that restrict the exercise of certain freedoms (e.g. restrictions placed on citizens of a country during a time of war). Such restrictions may not in themselves constitute persecution. However, if they are applied in a discriminatory manner and have sufficiently serious consequences, they may amount to persecution. Measures may be directed against a certain section of the population that includes the applicant. Such measures can be relied upon by an applicant in support of their claim – they need not have personally suffered the persecution to have a well founded fear of it.

- If an applicant demonstrates there is a reasonable likelihood of persecution, this does not **necessarily** mean that they will qualify for a grant of asylum under the Convention. The applicant would still need to show persecution would be committed for one of the Convention reasons of race, religion, nationality, membership of a particular social group or political opinion (see Convention Reasons below), and that their own State authorities or the organisation controlling the State would be unable or unwilling to provide effective protection (see Sufficiency of Protection below). If no Convention reason can be identified but there is a reasonable likelihood of persecution, decision makers must consider granting Humanitarian Protection – see the Humanitarian Protection AI for further guidance.

5.9 Prosecution

- Persons fleeing from prosecution or punishment for a criminal offence are not normally refugees. “A refugee is a victim - or potential victim - of injustice, not a fugitive from justice” (UNHCR Handbook paragraph 56). Prosecution, however, can be considered persecution if it involves victimisation in its application by the authorities, e.g. if it is the vehicle for the persecution of an individual or if only certain ethnic groups are prosecuted for a particular offence, and the consequences are sufficiently severe. Punishment which is cruel, inhuman or degrading (including punishment which is out of all proportion to the offence committed) may also constitute persecution. (See also paragraphs 56-61 of the UNHCR Handbook).

5.10 Actors (previously known as ‘agents’) of Persecution

- Regulation 3 of the Qualification Regulations states that persecution or serious harm can be committed by:
    a) the State [or by rogue state officials abusing their position of authority - Although the Regulations do not refer to rogue state officials, as a matter of policy decision makers may regard them as potential actors of persecution]. See State Persecution and Rogue State Actors.
    b) any party or organisation controlling the State or a substantial part of the territory of the State. See Persecution by clans, parties or organisations controlling the state.
    c) any non-State actor, if it can be demonstrated that the State authorities, or the organisation (including international organisations) controlling the State, are unable or unwilling to provide protection against persecution or serious harm. See Non-State actors.

5.11 State persecution

- In this context, the word 'State' refers to the apparatus of governance or the means by which the government gives effect to its will. The State apparatus includes central government (the executive, legislature, and judiciary), but also the machinery of central government (e.g. the civil service, armed forces and security and police forces).

- State persecution can occur where the State legislates to discriminate or persecute a certain group (e.g. laws are passed which discriminate on the grounds of gender or sexual orientation) or where State actors (e.g. the police/army) act in accordance with a sanctioned persecutory scheme. For example, members of the armed forces or security forces which obey orders to persecute a certain group would be carrying out state persecution as 'actors of the state'.

5.12 Rogue State Actors

- There is a distinction between abuse which is authorised or tolerated by the State and abuse by rogue officials which has not. For example, a policeman who rapes a woman for his own sexual gratification may not be acting in accordance with government policy. Nevertheless, the State must take responsibility for the behaviour of its officials. A failure or reluctance to protect citizens from rogue officials or to punish misdemeanours may in itself amount to State persecution.

- In the case of **Svazas [2002]** the Court of Appeal found that "while the State cannot be asked to do more than its best to keep private individuals from persecuting others, it is responsible for what its own actors do unless it acts promptly and effectively to stop them."

- The Court found that the standard of sufficiency of protection will be higher where the actors of the state wear official uniforms. For example, the more senior the police officers who are involved in the persecution, the more it is necessary for the State to demonstrate that disciplinary procedures are adequate and enforced. The more serious the ill treatment in terms of duration, repetition and brutality the more incumbent it is on the state to demonstrate it can provide adequate protection. Therefore, it is particularly important that when gathering evidence, decision makers establish the level of authority and influence the persecutor is able to exercise.

5.13 Persecution by clans, parties or organisations controlling the State

- Not every country will have an effective central government and in some countries powerful clans, tribes or other organisations might control large parts of the country. These dominant groups can inflict persecution on minority groups or individuals living within the same area, often through the use of armed militia or private armies.

5.14 Non-State actors

- Persecution is often related to action by the authorities or dominant organisations running a country. However, it may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. An example of non-state persecution may be religious intolerance that amounts to persecution in a country that is otherwise secular, but where sizeable sections of the population do not respect the religious beliefs of their neighbours.

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6 Inclusion in the 1951 Convention – 'The Convention Reasons'

- Only a person with a well-founded fear of persecution on account of one of the five Convention reasons (i.e. race, religion, nationality, and membership of a particular social group or political opinion) should be recognised as a refugee. It is well established that the Refugee Convention is not concerned with all cases of danger or harm arising out of civil war, famine or other natural disaster. Nor is it concerned with all cases of human rights breaches or of a need for humanitarian protection. It affords protection in limited circumstances where a person faces a real risk of serious ill treatment on a discriminatory basis.

- Hence, a state of civil war where law and order has broken down does not of itself give rise to a well-founded fear of persecution for a Convention reason unless the applicant is at risk of adverse treatment over and above the risk to life and liberty which occurs during civil war.

- Merely belonging to a particular race, religion, nationality, or social group, or holding certain political opinions is not usually enough to substantiate a claim to refugee status, as the applicant must also show a well-founded fear of persecution on account of that Convention reason.

6.1 Imputed Convention grounds

- It is also important to recognise that an individual may face persecution because of a Convention ground which is imputed to them by actors of persecution. Regulation 6(2) of the Qualification Regulations states:

> "When assessing if an applicant has a well-founded fear of being persecuted it is immaterial whether he actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution."

- In a far-reaching judgment of 25 July 2012, the Supreme Court held, in RT Zimbabwe that the Convention affords no less protection to the right to express, or not to express, political opinion openly than it does to the right to live openly as a homosexual (for example). The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights (paragraph 25), including the right to hold an opinion or not to do so. The Court's findings potentially affect every Convention 'ground'.

- Decision makers should bear this in mind before deciding conclusively that the reasons given by the applicant do not fall within the Convention.

6.2 Race

- Decision makers should understand the term 'race' in its broadest sense to include all kinds of ethnic groups that are referred to as 'races'. Regulation 6(1)(a) of the Qualification Regulations states that:

> "The concept of race shall include, for example, considerations of colour, descent or membership of a particular ethnic group"

- Discrimination on racial grounds will amount to persecution if a person's human dignity is affected to such an extent as to be incompatible with the most elementary and inalienable human rights. The mere fact of belonging to a certain racial group will normally not be enough to substantiate a claim for protection. There may, however, be situations where due to particular circumstances affecting the group, such membership will in itself be sufficient ground to fear persecution.

6.3 Religion

- Regulation 6(1)(b) of the Qualification Regulations states that:

> "The concept of 'religion' shall include, for example, the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in public or private, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief."

- Persecution for reasons of religion may take various forms e.g. prohibition of membership of a religious community, prohibition of worship in private or public, prohibition of religious instruction, or serious measures of discrimination imposed on persons because they practise their religion or belong to a particular religious community.

- Mere membership of a particular religious community will normally not be enough to substantiate a claim to refugee status. Exceptions to this do occur and decision makers should consider the individual circumstances of each case in the context of the country information.

6.4 Religious conversion

- Some applicants base their claim on an alleged conversion to a different religion. While COIS Reports recognise that there are countries where conversion from one religion to another is viewed with disapproval, this will not lead to persecution of the convert in every case. Whether or not a convert will be persecuted is entirely dependent on the individual circumstances of the case and the attitude of society/authorities in the country concerned.

- If decision makers consider they need to test whether the conversion is genuine, they must ensure that any questions asked during the asylum interview are carefully prepared, tailored to the individual case and do not expect an unrealistic level of specialist knowledge. For instance, just because somebody claims to have recently converted to Christianity, does not mean they will be able to remember how many books there are in the Bible or to list the twelve disciples. If somebody claims to have attended a Pentecostal or Evangelical Church, this does not mean they will be familiar with Catholic traditions and ceremonies. Decision makers should also be aware that some Biblical terms (e.g. 'Trinity', 'Pentecost', 'disciple') which have been translated into English from Greek will not always have a direct translation in the languages of some Muslim countries. Decision makers should check with interpreters before the start of the interview that the interpreter has an understanding of the religious terminology and that questions prepared can be translated

accurately. The applicants personal reasons for converting are central to the claim and decision makers must explore these at the interview stage.

- If decision makers are in any doubt about the appropriateness of certain questions for testing the claim to have converted, they should consult a SCW. In addition, the AI on Conducting the Asylum Interview provides further guidance on good interviewing technique and COIS may be approached for assistance. In all cases, the objective evidence used as the basis for questioning must be from COIS approved sources.

6.5 Nationality

- Regulation 6(1)(c) of the Qualification Regulations states that:

  "The concept of nationality shall not be confined to citizenship but shall include, for example, membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins, or its relationship with the population of another state."

- As a result the term 'nationality' may occasionally overlap with the term 'race'.

- Persecution for reasons of nationality may consist of adverse actions and measures against a national (ethnic or linguistic) minority and in certain circumstances the fact of belonging to such a minority may in itself give rise to a well-founded fear of persecution.

- The co-existence within the boundaries of a State of two or more national (ethnic, linguistic) groups may create situations of conflict and also situations of persecution or danger of persecution. Decision makers might not always find it easy to distinguish between persecution for reasons of nationality and persecution for reasons of political opinion when a conflict between national groups is combined with political movements, particularly where a political movement is identified with a specific 'nationality'. However, in such a situation a grant of asylum might be appropriate on one or both Convention grounds.

- A persecuted nationality does not necessarily have to be a minority. There might be cases where a person belonging to a majority group fears persecution by a dominant minority.

6.6 Membership of a particular social group

- A claim for asylum based on membership of a particular social group (PSG) may overlap with a claim based on other grounds. The question of whether a particular social group exists and the extent to which members of the group are discriminated against depends on the factual situation in the country in question. What constitutes a particular social group in one country may not in another and therefore it is essential that decision makers refer to the relevant OGN and Country of Origin Reports published by the COIS. If there is any doubt as to whether the group in question constitutes a particular social group then a SCW should be consulted.

6.7 Definition of a particular social group

- Regulation 6(1)(d) of the Qualification Regulations states that:

  "A group shall be considered to form a particular social group where in particular:

a) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
b) that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society."

- The Regulations set out an approach to identifying the existence of a social group which is similar (but not identical) to the one taken by the UK courts, most significantly in the House of Lords' judgment in Shah and Islam [1999] UKHL 20. Since then it has commonly been accepted that members of a particular social group share an immutable (or innate) characteristic and that recognition of the group by the surrounding society might help to identify it as a distinct entity.

- Although the Qualification Regulations require decision makers to look for evidence of a common immutable characteristic and recognition of the group by surrounding society, in general this will not mean it is harder for an applicant to establish they are a member of a particular social group. Groups which have a common immutable characteristic which is externally obvious (e.g. being male/female) will often have a distinct identity within their home societies. Even if an immutable characteristic shared by a group is not externally obvious (e.g. being gay), the group will quickly become recognised as a distinct group within society if, for example, the State authorities take steps to ban homosexual activity. See also the example of left-handed men in the section Does the social group exist independently of the persecution?

- Decision makers should consider the following principles, which emerge from the House of Lords judgments in Shah and Islam [1999] UKHL 20 and in K and Fornah [2006] UKHL46, the Court of Appeal judgements in Ivanauskiene [2001] EWCA Civ 1271, Skenderaj [2002] EWCA Civ 567 and Montoya [2002] EWCA Civ 620 and the Qualification Regulations, 2006 when deciding whether a particular social group exists in a particular country:
  a) Members of the group must possess a common immutable/innate characteristic that cannot be changed or a characteristic that is so fundamental to human identity that they should not be required to change it;
  b) Cohesiveness is not a requirement for the existence of the group. Members of the group do not have to know each other, work or live together or have anything in common other than an immutable characteristic which distinguishes them from the rest of society. Social groups can therefore be fairly broad, e.g. women or gay men/lesbians in a particular country;
  c) It is not necessary to show that all members of the PSG are persecuted. That would be the same as saying, for instance, that every Christian in a particular country would have to be persecuted before asylum could be granted on grounds of religion - which of course is not the case;
  d) The group should have a distinct identity within the relevant country because it is perceived as being different by the surrounding society;
  e) The group must exist independently of the persecution it suffers – i.e. persecution cannot be the only factor which defines the group.

6.8 Innate/Immutable Characteristics

- In Shah and Islam the House of Lords approved the definition of an "immutable characteristic" as:

*"*A characteristic that is either beyond the power of the individual to change or is so fundamental to individual identity or conscience that it ought not be required to be changed*".*

- Characteristics which are beyond the power of an individual to change could include, for instance, gender, sexual orientation, family membership, linguistic background or association with a particular group in the past (e.g. membership of a previous government). However, decision makers should note that Regulation 6(1) (e) of the Qualification Regulations explicitly states that "sexual orientation cannot be understood to include acts which are considered to be criminal in accordance with national law of the UK" [e.g. paedophilia].
- Characteristics that are so fundamental to individual identity or conscience that they ought not to be required to be changed are less easy to define. Each case will need to be considered on its individual merits and will be dependent on the nature of the group and the context in which it is based. Membership of a religious order has been recognised as sufficient to constitute an immutable characteristic, but a person's employment or financial status is less likely to be considered immutable.

6.9 Societal Recognition

- In addition to a common immutable characteristic, the Qualification Regulations require a particular social group to have a distinct entity in the relevant country because it is perceived as being different by surrounding society.

- Whether or not a group is perceived as being different by the surrounding society will require judgement in every case and decision makers should refer to the relevant COI Report and OGN (where available). The case of Shah and Islam illuminated the extent to which women were discriminated against by male-dominated society. Women in that society were viewed as a very distinct and inferior group. These attitudes were so entrenched that even when husbands beat or threatened to kill their wives, the state authorities were unwilling to intervene.

- If decision makers are in doubt about whether a particular group has a distinct identity with a particular society, they should discuss the case with a SCW.

6.10 Does the social group exist independently of the persecution?

- A particular social group must exist independently of the persecution some of its members suffer. If the only thing that united a random collection of individuals was a shared experience of persecution, then everybody who was persecuted could qualify for asylum on grounds of their membership of a particular social group.

- Decision makers must consider whether a particular group of people would have a distinct identity within their home societies if the threat of persecution was taken out of the equation. In some cases they might, but the answer will depend on the individual circumstances of the case and the specific conditions in the country concerned.

- Although a particular social group cannot be defined solely by persecution, persecution may help to identify the group and may even result in the creation of a particular social group. An example cited by the House of Lords in Shah and Islam is as follows:

> "Left-handed men are not a social group. But, if they were persecuted because they were left-handed, they would no doubt quickly become recognisable in their society as a particular social group. Their persecution for being left-handed would create a public perception that they were a particular social group. But it would be the attribute of being left-handed and not the persecutory acts that would identify them as a particular social group."

6.11 Persecution 'for reasons of' an applicant's membership of a PSG

- Decision makers should accept that asylum seekers who fit the criteria outlined in Definition of a particular social group above are members of particular social groups. Often the more crucial question to consider is not whether a particular social group exists, but whether members of the group who are persecuted are truly targeted *for reasons of* their membership of that group (i.e. are persecuted on a discriminatory basis). If the State singles out a particular group for persecution, (for instance, banning homosexuality and rounding up and flogging anyone who is suspected of being gay) there can be little doubt that persecution is 'for reasons of' membership of a particular social group.

- Where non-State actors are concerned, persecution would still be 'for reasons of' membership of a particular social group if it could be shown that the actors of persecution were targeting a specific group of people because they were perceived as somehow being different from surrounding society and thus deserving of ill treatment. For instance, in a society where traditional, male attitudes are deeply entrenched, there might be social 'rules' governing the behaviour of women but not men (e.g. the clothes they wear, where they go, the jobs they do and who they associate with, etc.). If women in such a society were beaten up or killed every time they 'broke the rules', and State protection was unavailable, the underlying reason for the persecution would be the *gender* of the victims and a grant of asylum would be appropriate. See the AIs on Gender Issues in the Asylum Claim; Gender Identity Issues in the Asylum Claim and Sexual Orientation Issues in the Asylum Claim.

- Persecution by non-state actors will not always be discriminatory. A gang of yobs might attack anybody who lives in their neighbourhood, such as the attacks are indiscriminate. In these circumstances, the victims of such attacks would have difficulty in showing they were persecuted for reasons of their membership of a social group, unless they could demonstrate that the State authorities discriminated against them in the protection they afforded – i.e. they refused to protect certain groups within the neighbourhood from yobs, but were prepared to intervene to assist other more favoured groups.

- In Shah and Islam the House of Lords recognised that the appellants, both women from Pakistan who were at risk of ill-treatment at the hands of violent husbands, were refugees for reasons of their membership of a particular social group (i.e. They were persecuted because they were 'women in Pakistan'). The Lords held that women in Pakistan shared a common immutable characteristic of gender, they were discriminated against in matters of fundamental human rights (thus marking them out as a distinct group within society) and the State refused to protect them because they were perceived as not being entitled to the same human rights as men. The Lords pointed out that "the distinctive feature of this case is that women in Pakistan are unprotected by the State…"

6.12 Political opinion

- Regulation 6(1)(f) of the Qualification Regulations 2006 states that:

  "The concept of political opinion shall include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon [by the applicant]".

- In a far-reaching judgment of 25 July 2012, the Supreme Court held, in RT Zimbabwe that the Convention affords no less protection to the right to express, **or not to express**, political opinion openly than it does to the right to live openly as a homosexual (for example). The Convention reasons reflect characteristics or statuses which either the individual cannot change or cannot be expected to change because they are so closely linked to his identity or are an expression of fundamental rights (paragraph 25), including the right to hold an opinion or not to do so. The Supreme Court held that the *HJ (*Iran*)* principle applies to any person who has political beliefs and is obliged to conceal them in order to avoid persecution, **irrespective of the strength of those views or the absence of them.** There is no basis in principle for treating the right to hold and not to hold political beliefs differently from sexual orientation (or religious beliefs).

- A mere expression of a political opinion, or absence of one, which is contrary to that of the authorities will not usually be enough to engage the protection of the Convention. A person must be able to establish that they have a well-founded fear of persecution "for reasons of" their political opinion, or absence of one. This will often involve an openly expressed opinion which is directed against and is not tolerated by the authorities of the country in question. However, it is not necessary for a political opinion to be openly expressed. There may also be situations, envisaged in RT Zimbabwe, where the absence of an opinion can be interpreted as opposition to the ruling party and be cause for persecution on the 'those who are not for us are against us' principle.

- It is possible that a person could be considered to hold a political opinion which is imputed or attributed to them by the persecutor, perhaps because of their racial origin, social background or associations. Also a person's actions may imply that they hold a political opinion even if they do not openly express one.

6.13 Imputed Political Opinion

- An example of this would be in a totalitarian or one party state where any individual or group, which is perceived by the State as a threat, may be imputed a political agenda. For instance, Falun Gong in China is more a religious movement than a political group, but the authorities consider Falun Gong to be a threat and have imputed a political agenda to it. In 1999, the then President of China, Jiang Zemim announced that the campaign against the Falun Gong was one of the "three major political struggles" that year. (Decision makers should note that this does NOT mean that all Falun Gong members are at risk of persecution **today** due to an imputed political opinion – this is simply an example of how a political opinion can be imputed to someone who does not necessarily hold one.) Similarly, a refusal to undertake military service on grounds of conscience or religion (e.g. Jehovah's Witnesses) may be viewed by the state as political offenders.

- Persecution from non-state actors can also involve an imputed political opinion. An example would be a rebel group which opposes the government in a particular country and imputes a political opinion to individuals who work for the government. In some circumstances a person's neutrality might even lead to them having a political opinion

imputed to them. For example, the rebel group might perceive anyone who does not support them to be against them.

- A rebel group's motives for targeting certain individuals might be political, but there might be other non-political motives as well. For example, a rebel group might attack individuals who do not support them because they perceive them to be supporters of the Government, but if during the attack they extort money from their victim to buy weapons, then there is clearly also an economic motive. Just because motives are mixed, this does not mean the Convention cannot be engaged. As long as there is some evidence to suggest that the persecutors have imputed a political opinion to their victim and this is one of the reasons for attacking them, asylum should still be granted if the State authorities are unable or unwilling to offer effective protection.

- Decision makers must consider each case on its individual merits. Even if a rebel group has a broad political aim (e.g. overthrowing the Government), individual attacks on particular individuals might simply be retaliatory or criminal and not necessarily linked to an overriding political aim. In the case of Gomez v SSHD [2000] TH02257, the appellant, a law student from Colombia, provided legal advice to a local farmer who was the victim of extortion by a group of armed men (believed to be members of FARC). As a result of her actions, the appellant received threatening phone calls and was chased by armed men. The appellant claimed this was because the rebel group perceived her to be an opponent of its political aims.

- In dismissing the appeal, the Tribunal found that it was highly unlikely that the rebel group would impute a political opinion to the actions of the appellant because they knew she was only a law student who had become involved in the investigations into the extortion racket on an ad hoc basis. By the appellant's own admission those who threatened her never at any stage said anything to her to convey that they viewed her as a political threat. The IAT concluded that the attacks were motivated by a desire by the rebels to protect the control they exerted over local farmers and were nothing more than criminal or retaliatory.

6.14 Actions which imply a political opinion

- Even if a person does not openly voice a political opinion, their actions can sometimes suggest that they hold one. The person concerned might have strongly held political opinions and the action can be the manifestation of these beliefs. However, it can equally apply where a person has not formulated a specific political opinion in their own mind but their actions suggest that they hold one. In these cases the nature of the act and the impression it gives to the persecutor are often more important than the true motivation of the individual.
- Decision makers must consider the context in which the act was committed. If a person commits an act which implies a political opinion but which is illegal in the country in question and is then prosecuted in accordance with the law, then it is unlikely that they would be able to establish a well-founded fear of persecution unless the punishment is arbitrary or excessive or the law itself discriminates against the person due to a Convention reason.

- Furthermore, although a person who commits a violent terrorist act may claim to have done so for political reasons, he is unlikely to qualify for the protection extended by Article 1A of the Convention. This is because he might face exclusion from the Convention under Article 1F. For further guidance on the 'exclusion clauses', see The Exclusion

Clauses and the AI on Exclusion under Article 1Fof the Refugee Convention. For guidance on what leave and conditions may be appropriate, see the Restricted Leave AI.

6.15 Expression of political opinion in the UK

- An applicant who claims to fear persecution because of a political opinion does not need to show that the authorities of his country of origin knew of his opinions before he left the country. He might have concealed his political opinion in his home country because he was aware of the dangers of expressing it openly. If he fled to the safety of the UK, where he expressed previously concealed political opinions, the decision maker would have to assess the consequences the applicant would have to face if he were returned home. If the consequences of an applicant's actions in the UK give rise to a well-founded fear of persecution for a Convention reason, then asylum should be granted. For further guidance see the section on 'Refugees sur place'.

- Each case, however, must be assessed on its individual merits and consideration given to whether the actors of persecution in the country of origin are likely to find out or take an adverse interest in the applicant's political activities in the UK. A person who attends a demonstration in London, for example, which is attended by thousands of other protesters, may not necessarily come to the attention of the actors of persecution in the applicant's country of origin. Alternatively, the actors of persecution may be aware of the protests but may not be concerned about such low-level protests in a foreign country.

6.16 Future expression of opinion

- Where it can reasonably be assumed that due to the strength of his/her conviction a person's opinions will sooner or later find expression, or they may carry out political acts which are likely to bring them into conflict with the state and where there is a reasonable likelihood that this will result in persecution then the individual may be able to establish a claim to refugee status. For such a claim to succeed the applicant would need to display a high degree of credibility.

6.17 Gender

- Decision makers should consider whether issues arising from an applicant's gender may be relevant to the assessment of the claim. Decision makers should be aware at all times that the experiences of women in their countries of origin can often differ from those of men, and that protest, activism and resistance may manifest themselves in different ways. Certain types of persecution and ill-treatment will be specific to and more commonly affect women. Social and cultural norms may affect the ability of an applicant to obtain effective protection and could also result in a reluctance to disclose relevant information. This may be particularly relevant when considering applications from women. Even where gender does not appear to be a central issue, giving consideration to gender related aspects will ensure that all aspects of an asylum claim are fully and fairly considered. Decision makers should refer to the AIs on Conducting the Asylum Interview, Potential Victims of Trafficking and Gender Issues in the Asylum Claim for guidance.

6.18 Economic betterment

- An applicant may have economic motives for coming to the UK - and may well be economically better off if removed from persecution. This does not affect the claim for asylum, which should be considered solely on whether the applicant would be persecuted for a Convention reason if returned to their home country. If the decision maker is satisfied that the applicant does have a well-founded fear of persecution the fact that they

may also be better off economically by travelling to the UK is not relevant to the assessment of the claim.

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7 Sufficiency of Protection and Internal Relocation

7.1 Sufficiency of Protection

- To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country.

- Who can provide protection is set out in Regulation 4(1) of the Qualification Regulations which states that:

  "In deciding whether a person is a refugee, protection from persecution or serious harm can be provided by:

  a) the State; or

  b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State."

  [**Note**: for the purposes of 4(1) (b) "a substantial part" of the territory of the State means a region or a larger area within the territory of the State].

- The provision of protection is set out in Regulation 4(2) provides which states that:

  "Protection shall be regarded as generally provided when the actors mentioned [above] take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and [the applicant] has access to such protection."

- The standard of protection to be applied is not therefore one that eliminates all risk to its citizens because no Government or organisation controlling all or a substantial part of the State could guarantee to provide that level of protection. It is sufficient that a country has a system of criminal law which makes attacks by non-State actors punishable and that there is a reasonable willingness to enforce the law.

- A country which relies for its law and order functions on drug barons or armed militias may be less able to provide effective protection than one which can rely on those functions being performed by properly trained, properly resourced and accountable police or army personnel whose standards of human conduct are exemplary. But variations of this type simply go to the factual question, "Is protection afforded*?"*

- Decision makers should consider whether protection afforded by the authorities or organisations controlling all or a substantial part of the State is available to an individual regardless of their race, ethnicity, sexual orientation, disability, religion, class, age, gender, occupation or any other aspect of their identity. They should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so.

- In the case of non-state actors, decision makers must therefore assess the extent to which the State authorities can provide protection against their actions. It is generally accepted that no Government can offer a guarantee of absolute protection. No country

can offer 100% protection and certain levels of ill treatment may still occur even if Government takes steps to prevent it.

- However, where seriously discriminatory or other offensive acts are committed by the local populace they may constitute persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer effective protection.

- The concept of 'sufficiency of protection' does not apply where the state or an organisation controlling the state is the actor of persecution. In these circumstances, the applicant cannot be expected to go to the state authorities for protection.

7.2 Internal Relocation

- Where internal relocation is an option, decision makers should refer to the AI on 'Internal Relocation' , and in the case of a female applicant, the AI on Gender Issues in the Asylum Claim, for guidance on the circumstances in which internal relocation would be a 'reasonable' option.

- Paragraph 339O of the Immigration Rules provides that:

  "the Secretary of State will not make a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country… When making his decision [the Secretary of State] will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person… [This] applies notwithstanding technical obstacles to return to the country of origin…"

- Therefore, two main points must be considered when assessing the possibility of internal relocation:
  - Is there a part of the country in which the applicant would not have a well-founded fear of persecution?
  - Is it reasonable to expect the applicant to stay in that part of the country?

- Decision makers should note that internal relocation can be relevant in cases of State and non-State actors of persecution, but is most likely to be relevant in the context of acts of persecution by localised non-State actors.

7.3 Conclusion on future risk under the Refugee Convention

- Decision makers must make a conclusive assessment of the applicant's future risk of persecution upon return for a convention reason based on accepted facts; inclusion within the Refugee Convention; the availability of sufficient protection and the internal relocation option.

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8 The Exclusion Clauses

- In any cases where exclusion under Article 1D, 1E or 1F of the 1951 Refugee Convention may be applicable, decision makers must refer to the AI on Exclusion under Article 1F of the Refugee Convention**.** The guidance on claims from UNRWA Assisted Palestinians: Article 1d of the refugee convention is currently under review. Please refer to Senior Case Workers for guidance on dealing with these cases.

- Regulation 7(1) of the Qualification Regulations states that "a person is not a refugee, if he falls within the scope of Article 1D, 1E or 1F of the [1951] Geneva Convention":

- Article 1D: Those persons already receiving protection or assistance from United Nations bodies other than UNHCR.

- Article 1E: Those persons considered not to be in need of international protection because they have taken residence in a country in which the authorities recognise them as having the rights and obligations of nationals of that country

- Article 1F: Those persons considered not to be deserving of international protection because there are serious reasons for considering that they:
    a) have committed a crime against peace, a war crime or a crime against humanity;
    b) have committed a serious non-political crime outside the country of refuge prior to admission into that country;
    c) are guilty of acts contrary to the purposes and principles of the United Nations.

- Regulation 7(2) of the Qualification Regulations interprets the meaning of Article 1F(b) of the Geneva Convention. Regulation 7(2)(a) provides that:
    "The reference to 'serious non-political crime' includes a particularly cruel action, even if it is committed with an allegedly political objective"

- And 7(2)(b) provides that:
    "The reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall mean the time up to and including the day on which a residence permit is issued."

- Section 54 of the Immigration Asylum and Nationality Act 2006 interprets the meaning of Article 1F(c). It provides that acts of committing, preparing or instigating terrorism, or encouraging or inducing others to do so, are included within the meaning of what constitute "acts contrary to the purposes and principles of the United Nations."

- Where an individual is excluded from refugee status under Article 1F they are also likely to fall under the criteria which exclude them from Humanitarian Protection - see AI on Humanitarian Protection for further details.

- Any decision to refuse asylum on grounds of the exclusion clauses should only be taken after discussing the case with a SCW.

9 Considering Humanitarian Protection, Article 8 Family Rules and Discretionary Leave

9.1 Humanitarian (Subsidiary) Protection

- Decision makers should bear in mind that, even where the harm feared appears to amount to persecution, an individual cannot be recognised as a refugee unless they demonstrate a reasonable likelihood that the fear of harm is well-founded and relates to *a* Convention reason. If an applicant does not qualify for asylum, but there is a well-founded fear of persecution for a non-Convention reason, decision makers must consider granting Humanitarian Protection (Subsidiary Protection).

- A thorough assessment of Articles 2 and 3 of the ECHR must also be made. For guidance, see section on the AI on Humanitarian Protection and the AI on Considering Human Rights Claims.

- The basic human rights from which derogation cannot be made under the ECHR include Article 3 (prohibition of torture, inhuman or degrading treatment or punishment), Article 4(1) (prohibition of slavery), and Article 7 (no punishment without law). Article 2 (right to life) also falls within this category, except that derogation is permitted in one limited area - deaths resulting from lawful acts of war. Nor is any derogation permitted from Protocol 13 (abolition of the death penalty). See the AI on Considering Human Rights Claims for further guidance.

9.2 Article 8 Family Rules in Asylum cases

- Where a person has claimed asylum or Humanitarian Protection, paragraph 326B of the Immigration Rules provides that any Article 8 claim will be considered in line with Appendix FM (family life) and paragraphs 276ADE to 276DH (private life) of the Immigration Rules.

- Where an applicant does not qualify for asylum or Humanitarian Protection decision makers must consider any Article 8 claim to assess whether that claim is made out under the Rules in line with guidance set out in the Family Guidance IDI.

9.3 Discretionary Leave

- If an applicant does not qualify for asylum, Humanitarian Protection or on Article 8 grounds, the decision-maker must then consider whether they should be granted Discretionary Leave (DL). DL must only be granted where the case falls within the limited categories set out in the AI on Discretionary Leave. In cases of outright refusal, the Reasons for Refusal Letter must demonstrate consideration and reasoning for the subsequent rejection of any implied Article 2/3 claims. For guidance on Human Rights issues see the AI on Considering Human Rights Claims. For guidance on Article 8 see the Family Guidance IDI.

- When granting DL under the UASC policy, refer to the Processing Asylum Applications from Children

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10 Deciding the Claim

There are 6 possible outcomes that can result from an application for asylum (protection); one of the following decisions will always be taken on each application for asylum:

1. Grant of asylum: asylum will normally be granted for a period of five years in the first instance. See the AIs on Refugee Leave (including the application of Article 20 of the Qualification Directive) and Implementing Substantive Decisions for guidance, including how to implement the decision. Applicants are not formally notified of the reasons they were recognised as a refugee but the file consideration minute must set out briefly and clearly the decision makers' reasons for granting asylum.

2. Refusal of asylum, grant of Humanitarian Protection**:** leave will normally be granted for a period of five years in the first instance. See AIs on Humanitarian Protection (including the application of Article 20 of the Qualification Directive) and Implementing Substantive Decisions for guidance, including how to implement the decision and draft an RFRL, which must be provided to explain why asylum was not granted.

3. Refusal of asylum and Humanitarian Protection, grant of leave under the Family Rules: where an Article 8 (family or private life only) claim is made out leave under the Rules will normally be granted. See Family Guidance IDI and Implementing the Substantive Decision AI for details on the periods of leave. A Consideration Minute must be put on file stating specifically the criteria under which Leave has been granted.

4. Refusal of Asylum, Humanitarian Protection, Discretionary Leave, grant of Restricted Leave: With effect from 2 September 2011, all individuals excluded from the protection of the Refugee Convention by virtue of Article 1F but who cannot be immediately removed from the UK due to Article 3 of the European Convention of Human Rights (ECHR) will be dealt with under the restricted leave policy (formerly known as Restricted Discretionary Leave). Restricted Leave should usually only be granted for a maximum of six months at a time and may include additional restrictions. See Restricted Leave AI for how to process and manage these cases.

5. Refusal of asylum, Humanitarian Protection, and Article 8 (Family/Private Life), grant of Discretionary Leave**:** Discretionary Leave is Leave granted outside the Immigration Rules. See Discretionary Leave and Processing Asylum Applications from Children AIs for the appropriate criteria and periods of leave. An RFRL must be drafted to explain why neither asylum, HP or **briefly** leave under the Family Rules was not granted. See the AI Implementing Substantive Decisions for further guidance including how to implement the decision and draft an RFRL. A consideration minute must be put on file, stating specifically the criteria under which Discretionary leave has been granted, the period of leave being granted and an expiry date.

6. Refusal of asylum, Humanitarian Protection, leave under the Family Rules and refusal of Discretionary Leave: a RFRL must be drafted, addressed to the applicant directly detailing the reasons for refusing the claim/s. For further guidance on how to draft an RFRL see the Recording of the Consideration of a Claim where Asylum is to be refused below.

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11 Drafting Decision Documentation

- In all cases where a decision is made, the decision maker is required to record the consideration of the claim and the reasons for the decision. Further Information on the content of the RFRL can be found in the section 'The Contents of the Reasons for Refusal Letter'.

11.1 Recording the consideration of a claim where asylum is to be granted

- Following consideration and determination of the claim, decision makers must prepare a Consideration Minute and place it on the left-hand side of the file in all cases where asylum has been granted. The minute must set out the decision maker's consideration and the conclusion to justify the grant of leave and should be clear, concise, objective and impartial. As this is an internal document it should be drafted in the third person i.e. "The applicant claimed…" rather than "you claimed…"

Applicants details

- Decision makers must begin the minute with the applicant's personal details, including full name, date of birth and nationality.

Basis of asylum claim

- The basis of claim does not need to be too detailed and lengthy. What is important is that the basis of claim is logical, concise, and clearly set out. It should contain only the material facts and should not contain any details that are not subsequently referred to in the Decision. There is no need to include details of family members in the UK; lengthy analysis of the claim itself or lengthy details such as objective evidence (e.g. COIS reports).

- Decision makers must very briefly set out the basis of the asylum claim. This should include:
  - ✓ Who – Key figures involved for example: - Police, Other Clan members, neighbours etc.
  - ✓ What – Key events where appropriate cited together - for example, 'The applicant claims to have been detained on a number of occasions between [date] and [date];
  - ✓ Why – Reasons for the key events – for example in 1999 you left Turkey because your father was a member of the opposition party etc.
  - ✓ When – Record the key dates relevant to the claim
  - ✓ Where - locations and or context for key events – for example demonstrations or places of arrest.
  - ✓ Reason for claim (Convention reason / non convention)
  - ✓ Immigration History including date asylum claimed.
  - ✓ Future fear – what, who and why.
- Note any Human Rights claims raised by the applicant (explicit) or identified by the decision maker (implied) briefly, there is no need to address ECHR claims in the Consideration Minute itself where asylum is granted.

Addressing visa matches

- It is a mandatory requirement to address the fact of a visa match in all Consideration Minutes. The following paragraph must be included in the basis of claim section when a visa match is identified.

> It is noted that you applied for a visa to the United Kingdom on DD/MM/YY, and this visa was granted/refused. [Free text for placing the visa application and refusal/issue in context with what is known about arrival circumstances and relevant evidence from the applicant about the visa].

General Drafting Guidance

- ✓ Number each paragraph throughout the Consideration Minute
- ✓ Clearly record exactly why status and protection are being given to the applicant.
- ✓ Correctly reference each source, see Referencing for guidance. For example, the COIS report for Iraq would be referenced as 'UK Border Agency, Country of Origin Information Report – Iraq, published 25 March 2011. To minimise length and for efficiency, decision makers consider the use of footnotes.
- ✓ Sign and date the Consideration Minute – this should be done by the decision maker and include the decision maker's name, unit/team, and telephone number.
- ✓ A copy of the minute must be placed on the left hand-side of the applicant's file and recorded on Doc Gen.

11.2 Recording of the consideration of a claim where asylum is to be refused

- This section explains how to prepare the Reasons for Refusal Letter (RFRL). If a decision maker is refusing asylum outright a consideration minute is not generally required as the reasons for refusal of asylum, Humanitarian Protection and Discretionary Leave are explained in the RFRL, a copy of which must always be placed on file.
- If there are other issues relating to this decision such as advice from a SCW or another Business area, it should be recorded on a minute sheet if appropriate and placed on the left hand side of the UK Border Agency file.

11.3 Requirement to give reasons for refusal

- Reasons for the refusal must* be given when it is decided to refuse a claim for asylum. This is the case even if leave is granted following the refusal.

> * A notice given under Regulation 4(1) is to include or be accompanied by a statement of the reasons for the decision to which it relates Immigration (Notices) Regulations 2003 Regulation 5(1)(a). Regulation can be found at the Office of Public Sector Information Website: www.opsi.gov.uk/si/si2003/20030658.htm

- If a decision has been taken to refuse asylum after substantive consideration, the decision-maker will need to draft a reasons for refusal letter. This should clearly set out the reasons why the application is being refused.

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11.4 Drafting a NSA RFRL

- Decision makers must be accredited before considering asylum applications from countries listed in Section 94 (4) of the Nationality Immigration and Asylum Act (NIA) 2002 (NSA Cases) that attract an out of country appeal-NSA cases. (See AI Certification Under Section 94 Of The NIA Act 2002 AI) See NSA cases below.

11.5 The Content of the Reasons for Refusal Letter (RFRL)

- The RFRL should be written clearly and concisely addressing only those points material to the claim. The decision must be in accordance with the law, asylum instructions and any relevant policy guidance. Any case law quoted must be in context, the relevance explained and must apply to the applicant's individual circumstances. Subject to the need to express legal requirements accurately, decision makers should bear in mind that English may not be the first language of the applicant and should avoid using over-complicated words or sentence structure.
- The RFRL should address the key aspects of the asylum claim and set out the decision-maker's consideration of the application. Care needs to be taken in terms of accuracy and clarity of content because the RFRL is the document which informs the applicant of the reasons for the decision taken on behalf of the Secretary of State regarding their claim for asylum. It is important that any names of organisations, political parties or religious groups etc are initially written in full followed by the abbreviation in brackets. Where there is a right of appeal, and this is being exercised, the RFRL provides the Case Owner or Home Office Presenting Officer with information on which they can base their submission to the Immigration Judge.

11.6 Stock Letter Templates

- Templates for standard RFRLs, based on the guidance given in this section, have been created for use by operational staff. There are six different versions available. To ensure that the most current and accurate version is used, staff must use the templates provided on DOC GEN:
    - ACD.0015 is the standard RFRL template to be used in most cases.
    - ACD.1956 should be used when a RFRL is being prepared for applicants entitled to reside in the countries listed in Section 94(4) of the Nationality, Immigration and Asylum Act (NIA) 2002 (Non Suspensive Appeal (NSA) cases) (see Certification Under Section 94 Of The NIA Act 2002 AI for further guidance on how to use this template).
    - ACD.2220 or ACD.2221, as appropriate, should be used when a RFRL is being prepared for active review cases.
    - ACD.1000 or ACD.1005, as appropriate, should be used in cases where the refusal of asylum involves administrative non-compliance.

11.7 Responsibility for Preparing the RFRL

- An officer trained for the purpose of considering asylum claims must prepare the entire RFRL from beginning to end see Immigration Rule 339HA. (Note: This does not apply to NSA cases).

11.8 Standard Wordings

- There are a few pre-prepared blocks of generic text which have been designed to assist operational staff. They can be inserted within the RFRL templates using the standard wordings toolbar button available in the Document Generator. They will not be complete paragraphs and may contain optional or free text that must be tailored by the decision maker according to the details of each specific case. All current approved standard wordings can be found on the Document Generator and decision makers must be aware that they should only use these standard wordings in their decisions.

11.9 Dependants

- Details about dependants such as name, address, date of birth, should not be recorded in the RFRL (Note: this instruction does not apply to NSA cases – see RFRL where the applicant is entitled to reside in a country listed in section 94(4) of the Nationality, Immigration and Asylum Act (NIA) 2002 (NSA cases).
- Further guidance on how to deal with dependants is currently under review.

11.10 Numbering of paragraphs

- Each paragraph throughout the reasons for refusal letter should be numbered.

11.11 Recording applicant's details on the RFRL

- The following details should be correctly recorded at the beginning of the letter in the standard fields of the RFRL. Decision makers should note that these fields will auto-populate when using Doc Gen. However, it is the responsibility of the decision maker to ensure the accuracy of these details.
    - Applicant's name in full
    - Nationality
    - Date of birth
    - Home Office reference number (Our ref)
    - Date of the letter

Applicant's name

- The forenames and family name(s) of the applicant should be spelt out in the RFRL exactly as they appear on the front of the case file where this is not in dispute.

    David SMITH

Applicant known by more than one name

- Aliases or other names by which the applicant is currently known (e.g. where a married woman uses both her maiden name and her married name) should be indicated on the RFRL thus:

    Sandra SMITH

    Sandra DUNCAN (Also known as)

- False names used by the applicant, for example, on documents used to gain entry to the United Kingdom should not be recorded on the RFRL. Where an applicant has made a

previous claim in another identity (multiple applications), the name accepted as genuine should be recorded:

John SMITH (genuine identity)

- Below nationality and date of the letter, details of all false identities should be listed as follows:

AKA

John MARK (False identity)

2nd February 1985

BRITISH

Applicants Nationality

- Decision makers should use the correct term for the applicant's nationality. If unsure of the correct term, seek advice from a SCW. When there is an issue relating to the applicants nationality (doubted, disputed, stateless etc) the decision maker must refer to the Nationality – Doubted, Disputed and Other cases AI containing specific instructions on both how to set out the various nationality details as well as giving instructions on other Standard Paragraphs that are required in these cases.

Applicant's Age

- The applicants date of birth will auto-populate when using DOC GEN, but this must be checked against any up to date details that may have subsequently become available – for example at the substantive interview.

Disputed Age Cases

- Where the applicant's age is still in dispute, the age estimated by the UK Border Agency must be cited, not the applicants claimed date of birth. 'Disputed' should be added after the date of birth in the applicant's details section as follows:

22 November 1988 (Disputed)

(See Assessing Age AI)

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11.12 Opening Paragraph of the RFRL (Part A)

(Note – the following text appears in the header of every page of the ASL.0015 RFRL Template)

'The factual accuracy of statements recorded in this letter has been assessed for immigration purposes only.'

REASONS FOR REFUSAL

You have applied for asylum in the United Kingdom and asked to be recognised as a refugee under the 1951 Convention relating to the Status of Refugees (the Convention) on the basis that it would be contrary to the UK's obligations under the Convention for you to be removed from or required to leave the UK. You claim to have a well-founded fear of persecution in country. A person is a refugee where, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, that person is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable, or owing to such a fear, is unwilling to return to it and who is not excluded from the protection of the Convention.

Your application has not been considered by the Secretary of State personally, but by an official acting on behalf of the Secretary of State.

Consideration has also been given to whether or not you qualify for a grant of Humanitarian Protection in accordance with paragraph 339C of the Immigration Rules. A person will be granted Humanitarian Protection in the UK if the Secretary of State is satisfied that:

- substantial grounds have been shown for believing that the person concerned, if the person returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to
- such risk, unwilling to avail him or herself of the protection of that country; and
- the person is not excluded from a grant of Humanitarian Protection.

In accordance with paragraph 326B of the Immigration Rules, consideration has also been given to any Article 8 elements of your claim and whether you may be eligible for a grant of limited leave to enter or remain in the UK.

Consideration has also been given to whether you may be eligible for a grant of limited leave to enter or remain in the UK in accordance with the published Asylum Instruction on Discretionary Leave.

Standard Paragraphs for Unaccompanied Asylum Seeking Children

- If applicable standard the wording for a UASC case must be inserted after Part A (see Processing applications from children AI).

Standard Paragraph for cases when a UASC has not been required to attend an interview.

- Where an application from a child, who was not required to attend a substantive asylum interview, has been refused, the Reasons for Refusal Letter must contain the relevant child-related paragraphs which are stored on DOC GEN in the UASC folder

Standard paragraph for age dispute cases

- In the majority of cases it is expected that by the time the case is refused, the issue of age will have been resolved, usually by way of a Merton-Compliant Age Assessment. In cases where an applicant's age is still in dispute, decision makers must insert the following paragraph after Part A, tailoring as applicable:

When you made your application for asylum/human rights, you claimed that your date of birth is date. However, you have failed to produce any satisfactory evidence to substantiate this claim. Although you claimed to be a child your physical appearance/xxxx (other reasons) before the screening officer suggested that you were over eighteen. In the absence of any satisfactory evidence to the contrary, it is not accepted you are a child for the purposes of Paragraph 349 of HC 395 (as amended).

- For further details on Disputed Age Cases, see Assessing Age AI)

Basis of Claim

- The purpose of the basis of claim is to serve as a very brief summary of the applicants claim, an introduction to the RFRL and to demonstrate to the applicant, their representatives and to the AIT Judge(s), that when making a decision, the decision-maker was aware of all significant aspects of the claim and fully considered the particular circumstances.

- This section should set out full details of the key events and issues outlined by the applicant in a logical order. Full reference to the interview as well as any written statements (or SEF in UASC cases) submitted should be made, using the applicant's own words where possible. All alternative accounts of the asylum claim must also be recorded here.
- The basis of claim should comprise of four elements:
    1. The Convention and non-Convention reasons for claiming asylum;
    2. Any Humanitarian Protection issues raised;
    3. Any human rights issues other than Humanitarian Protection (and any truly compelling circumstances raised; see the AI on Discretionary Leave).
    4. Events, incidents and reasons that led to the applicant leaving his country and seeking international protection and what he fears will happen on return.

- The basis of claim should begin with the standard opening wordings shown below, which are automatically provided in the relevant template on DOC GEN and must be used in the order in which they are set out below:

  Your claim for asylum is based upon your fear that if returned to country, you would face mistreatment due to your race and due to your religion and due to your nationality and due to your membership of a particular social group and due to your political opinion and due to a reason not covered by the Geneva Convention. Your claim for Humanitarian Protection is based upon your fear that if returned you would face a real risk of the death penalty or execution and unlawful killing and torture or inhuman or degrading treatment or punishment in the country of return and serious and individual threat to your life or person by reason of indiscriminate violence in a situation of international or internal armed conflict.

- Decision makers must delete the options in the standard text that do not apply. Where the applicant fears persecution for a non convention reason the phrase 'a reason not covered by the Geneva Convention' should be deleted and the specific reason added (e.g. 'because your business partners have threatened to kill you because they say you owe them money').

Standard ECHR (other than Article 2/3) Opening Paragraph

- This may be deleted if not applicable to the case.

  You also claim that your removal to country would be a breach of free text (any other Article(s) raised by applicant not already mentioned above) of the ECHR.

11.13 Free text for basis of claim

- Note – the following sentence must be placed immediately before the 'free text' section of the Basis of Claim.

  > The following paragraphs are a summary of your statements and evidence in support of your application for asylum.

Addressing visa matches

- It is a mandatory requirement to address the fact of a visa match in all RFRLs. The following paragraph must be included in the basis of claim section when a visa match is identified.

  > It is noted that you applied for a visa to the United Kingdom on DD/MM/YY, and this visa was granted/refused. [Free text for placing the visa application and refusal/issue in context with what is known about arrival circumstances and relevant evidence from the applicant about the visa].

- In the 'free text' section decision-makers should cite page, question and paragraph numbers from interviews and SEFs or statements, ensuring that only the key points that relate to the material facts are included and preferably set out in chronological order, focusing on:

  - Who – key figures involved (both state and non-state) for example – police, other clan members, neighbours etc.
  - What – key events (where appropriate cited together) – for example 'The applicant claims to have been detained on a number of occasions between [date] and [date].
  - Why – reasons for the key events – for example 'In 1999 you left Turkey because your father was a member of the opposition party'.
  - When – record only the key dates relevant to the material facts
  - Where – locations and context relevant to the key events.
  - Reason for claim – note all fears mentioned by the applicant regarding possible return to the country of nationality or habitual residence, including where appropriate any Convention/non-Convention reasons.
  - Immigration History including the date asylum was claimed. Any relevant Human Rights claims raised by the applicant (explicit) or identified by the decision maker (implied).

- If there are significant differences between the claim as set out in the SEF (if applicable) and at the interview, then decision makers should set out the basis of claim in the same way as mentioned above, but by using two different paragraphs in the 'free text' section, opening as:
    - 'In your SEF your claim for international protection is based on…' and
    - 'In your interview your claim for international protection is based on…'

- Alternatively, decision makers may set out the information given in the SEF and separately record additional (and relevant) information or clarifications provided at the interview.

Length of the basis of claim

- The basis of claim does not need to be too detailed and lengthy. What is important is that the basis of claim is comprehensive, logical, concise, and clearly set out. It should contain only the material facts and should not contain any details that are not subsequently referred to in the Decision. There is no need to include details of family members in the UK; lengthy analysis of the claim itself or lengthy details such as objective evidence (e.g. COIS Reports).

Helpful Tips for completing a concise basis of claim

- Use bullet points or sub-paragraphs to list or summarise events concisely and prevent repetition. For example;

You claimed in your Screening Interview (SI) dated [ ]and your Statement of Evidence Form (SEF) dated [ ] and your Asylum Interview Record (AIR) dated [ ] that:

a.) You were born in x on date y in and are of z ethnicity (SI [page], SEF [page]).
b.) In 199x when you were y years old your family fled to country because your father was a member of z Party and was wanted by the country Security forces (SEF page, AIR Q)
c.) …SEF page, AIR Q

- Always cite document, page, paragraph or question numbers when referring to the applicant's evidence;
- The basis of claim should not contain **any** analysis of the facts claimed, as this will be addressed in the 'consideration of the claim' section of the letter;
- Any event or incident that is addressed in the bulk of the RFRL must be mentioned in the basis of claim;
- If the name of a political party (or any other term that can be abbreviated) is used, the full title of the party should be given in the first instance, with any abbreviation included in brackets.
- Do not copy directly from the applicant's statement or SEF when drafting the basis of claim i.e. do not replicate in the RFRL the poor grammar or misuse of language employed by the applicant or their representative in the original SEF/ statement;
- Identify the claimed incidents **briefly** but there is no need to go into a great deal of detail;
- Do not mention adverse credibility inferences under Section 8.

11.14 Standard Refusal Paragraphs (1)

- Insert the appropriate paragraph below after the Basis of Claim section:

Your claim has been considered, but for the reasons given below it has been concluded that you do not qualify for asylum or Humanitarian Protection. It has also been concluded for the reasons given below that you do not qualify for limited leave to enter or remain in the UK in accordance with the published Asylum Instruction on Discretionary Leave.

Your claim has been considered but for the reasons given below it has been concluded that you do not qualify for asylum. However, it has been decided to grant you Humanitarian Protection and limited leave to enter/remain in the UK in accordance with paragraph 339E of the Immigration Rules. This is because free text (to explain reason).

Your claim has been considered but for the reasons given below it has been concluded that you do not qualify for asylum or Humanitarian Protection. However, it has been decided to exercise discretion in your favour and grant you limited leave to enter/remain in the UK in accordance with the published Asylum Instruction on Discretionary Leave because (Article 3 medical) of your medical condition/(UASC's) you are an unaccompanied child for whom we are not satisfied that adequate reception arrangements in your own country are available/XXXX (other reason).

11.14 Setting out the Consideration of the Claim (Asylum)

- The next part of the RFRL should be the consideration of the material facts of the claim. References to question and page numbers should be included where appropriate. See Making the decision above for further details.

- A finding on the applicant's nationality is normally the first finding to be made as, if this is not accepted, the credibility of the rest of the claim will usually be called into question. For further details on dealing with nationality doubtful, disputed or other cases regarding nationality, see the AI – Nationality: doubtful, disputed and other cases.

    - Where a minor's age is in dispute, this will also normally be amongst the first findings made; as such a dispute is normally based on a Merton-compliant Age Assessment which is considered to carry significant weight.

11.15 Setting out the consideration of the material facts and credibility

- (Note: The following does not apply to a RFRL being prepared for use in Non Suspensive Appeal (NSA) cases. See Drafting a NSA RFRL and Certification under the section 94 of the NIA Act 2002 for further information on NSA cases.
- Decision makers should not automatically structure their credibility assessments in chronological order but instead put forward first those arguments which are based on the strongest evidence and thus carry most weight. If aspects of a claim cause doubt to be cast on other parts of the evidence then these aspects need full consideration prior to the assessment of those parts of the evidence consequently brought into doubt.

- Once those aspects of the claim which carry most weight have been dealt with, the decision maker should then turn to those aspects about which there is less certainty. It is

also important to remember that when completed, the interview record is evidence submitted by the applicant. Whilst it is not necessary to accept every claim within the interview, it is inappropriate to refer to a 'lack of evidence' in the RFRL when a verbal account is available.

- Decision makers must ensure that after they have outlined each credibility point, their conclusions are explicitly stated. Some example wordings are below:

  '...It is concluded therefore that you were not detained as you claim.'

  '...It is not accepted that it would have been possible for you to escape from your alleged attackers in the way you have described'

  '...Your claim to have been tortured is therefore rejected'

11.16 Section 8 – See Annex A for further guidance.

- Under Section 8 of The Asylum and Immigration (Treatment of Claimants, etc) Act 2004 decision makers are required to take into account as damaging to the applicant's credibility any behaviour they think is designed or likely to conceal information, mislead, or obstruct or delay a decision. Decision makers should ensure that the RFRL contains the relevant Section 8 paragraphs. It is important to remember that it is incorrect to start consideration of the credibility of the claim by reference to Section 8. In order to avoid any suggestion that Section 8 has been the starting position, decision makers should avoid referring to Section 8 at the start of the RFRL. See 5.3.3 Benefit of the Doubt and General credibility above and see Annex A for further guidance on Section 8.

11.17 Immigration Issues

- Immigration issues should only be included in any RFRL if material to the consideration of the case and the decision. Immigration issues may include the following elements:

1. **Journey details**
   - Decision makers should set out their consideration of any aspects of the applicant's journey to the United Kingdom deemed relevant to the consideration and subsequent decision and should avoid recording any unnecessary points regarding immigration issues. Points relating to this matter must be relevant to the asylum claim.

2. **Events on and after arrival in the United Kingdom**
   - If applicable, decision makers should set out their consideration of any relevant events which happened either at immigration control upon arrival in the United Kingdom or after they entered, and which were relevant to their consideration and subsequent decision to refuse asylum.

11.18 Incidents of Non-Compliance

- For guidance on the appropriate grounds and relevant paragraphs of the Immigration Rules to refuse a case on non-compliance grounds, see the AI on Non Compliance.

- The reasons for refusal letter should be prepared in accordance with the instructions in this section, setting out the consideration of any information on the case file. After the consideration of the claim has been recorded, the following wording should also be included in the letter:

> You were asked to attend for an interview on date and time in connection with your claim for asylum in the United Kingdom. However, you did not attend at the date and time requested and no satisfactory explanation has been given. You have therefore taken an unreasonable time to provide evidence required to establish your claim under the asylum rules.

11.19 Future Fear

- The decision maker must make an evaluation of the applicant's future fear- is it well founded and are there reasonable grounds for believing that the persecution feared might occur on return to their country of origin.

11.20 Identifying Convention reasons and Non Convention reasons

- This section should begin by setting out whether or not the applicant's fear of persecution brings them within the scope of one or more of the five Convention reasons and if so, which Convention reason(s). It should then go on to set out the reasons why the United Kingdom's obligations under the Refugee Convention have not been engaged (for information on the five Refugee Convention reasons see section on Convention Reasons.

11.21 Non Convention reason

- In cases where the applicant's fear of persecution does not bring him within the scope of the Convention, the reasons why should be set out in full, beginning with the following wording:

> The reason you have given for claiming a well founded fear of persecution under the terms of the 1951 United Nations Convention relating to the Status of Refugees, is not one that engages the United Kingdom's obligations under the Convention. Your claim is not based upon a fear of persecution in country because of race, religion, nationality, membership of a particular social group or political opinion.

11.22 Inclusion in the Convention

- The decision maker must consider whether the applicant falls within the criteria of Article 1A of the Geneva Convention or is excluded for any reason covered under Articles 1F, 1D OR 1E.

- Article 1F applies to persons who are not considered to be deserving of international protection**.** It excludes some asylum seekers from the protection of the 1951 Convention**.** (See the Exclusion under Article 1F of the Refugee Convention AI.)

11.23 Sufficiency of protection and internal relocation arguments

- These will not apply in all cases but where they are applicable, they should be located as part of the 'future fear' consideration. If they have been included as part of a consideration at the highest argument, they should be included after the consideration of the material facts of the claim and not as the initial consideration. (See Internal Relocation AI for further details).

11.24 Consideration of Humanitarian Protection

- Following the consideration of the asylum aspects of the claim decision makers should set out in the RFRL, their consideration of any Humanitarian Protection aspects of the claim against Paragraph 339C of the Immigration Rules (as explained in the Humanitarian Protection AI). Decision makers must consider whether there is any breach of Articles 2 & 3 of ECHR in this section. This must make direct reference to the material facts evaluated in the credibility section. Where Humanitarian Protection is being refused the reasons why should be set out. If refusing Humanitarian Protection, on the same grounds as asylum, there is no need to repeat the arguments, decision makers should refer back to the relevant paragraphs in the asylum consideration. The consideration of Humanitarian Protection paragraph should always conclude with the sentence:

  Therefore, you do not qualify for Humanitarian Protection.

11.25 Consideration of Article 8 (Family and Private Life)

- Following consideration of any protection aspects of the claim, decision makers must set out in the RFRL, their consideration of any Article 8 family or private life aspects of the claim against the relevant Immigration Rules. Where leave is being refused, the reasons must be set out briefly in a separate paragraph making use of the relevant standard wording where applicable.
- Where a claim based on Article 8 Family or Private Life is refused, the appropriate refusal wordings as set out in IDI Chapter 8, Appendix FM 9.0 must be used in the RFRL.

11.26 Consideration of Discretionary Leave

- Where Humanitarian Protection is being refused, following the consideration of the Humanitarian Protection related aspects of the claim, decision makers should set out in the RFRL, their consideration of any Discretionary Leave aspects of the claim against the published policy in the Asylum Instruction on Discretionary Leave. Where Discretionary Leave is being refused, the reasons why should be set out **briefly**. As above, each aspect considered should be addressed in a separate paragraph. The consideration of Discretionary Leave paragraph should always conclude with the sentence:

  Therefore, you do not qualify for Discretionary Leave.

- Consideration of Discretionary Leave should include consideration of any ECHR aspects of the claim that have not been covered in the reasons for refusing Humanitarian Protection or leave under the Family Rules.

- If it is considered that there is a clear ECHR right to be addressed, but that it falls to be refused, reasons should be recorded in the RFRL. Any such articles should be addressed using the paragraphs contained in the Asylum Instruction on Considering Human Rights. If no further specific ECHR Articles are mentioned or clearly raised on the facts of the case, it is not necessary to address all the issues that might conceivably apply.

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11.27 The Formal Refusal Paragraphs

Asylum and Humanitarian Protection

- The main body of the reasons for refusal letter should always conclude with the formal refusal of the asylum claim:

> In the light of all the evidence available, it has been concluded that you have not established a well-founded fear of persecution and that you do not qualify for asylum. Your asylum claim is therefore refused under paragraph 336 of HC395 (as amended). It has also been concluded that you have not shown that there are substantial grounds for believing that you face a real risk of suffering serious harm on return from the UK and that you do not qualify for Humanitarian Protection. Therefore your application has also been refused under Paragraph 339F of the Immigration Rules. Your application has been recorded as determined on date.

Where refusal includes non-compliance

- In cases where refusal involves non-compliance decision makers must add that the applicant has also been refused under Paragraph 339M of the Immigration Rules (HC 395) to the formal refusal paragraph in the letter.

> In the light of all the evidence available it has been concluded that you have not established a well-founded fear of persecution and that you do not qualify for asylum. Your asylum claim is therefore refused under Paragraphs 336 and 339M of HC 395 (as amended). It has also been concluded that you have not shown that there are substantial grounds for believing that you face a real risk of suffering serious harm on return from the UK and that you do not qualify for Humanitarian Protection. Therefore your application has also been refused under Paragraph 339F and 339M of the Immigration Rules. Your application has been recorded as determined on date.

- See the Non-Compliance AI

Formal rejection of Human Rights claim

- Where a claim based on Article 8 Family or Private Life has been rejected. The appropriate refusal paragraphs must be used. See the IDI Chapter 8, Appendix FM 9.0.
- Where any other human rights claims have been refused the following paragraph must be inserted after the formal refusal of the asylum claim and any Article 8 Family/Private Life claim:

On the basis of the information you have provided, it has been concluded that your removal would not be contrary to the United Kingdom's obligations under the ECHR.

11.28 Referencing and sourcing of evidence

- Where decision makers are using answers to specific questions posed at the screening or substantive interview as part of the credibility section, the number of any question being referred to and the page of the interview on which it appears should be quoted in the RFRL e.g. AIR 22 / SCR 4.1.

- Decision makers should state the source of any objective evidence used in the RFRL. This includes information or documents that are obtained from sources such as COIS Reports, or US State Department Reports used to test an applicant's credibility in the RFRL. This is helpful to the Presenting Officer and Immigration Judge at the appeal stage.

- Although decision-makers can refer indirectly to information contained in documents which cannot be annexed, the source of such information must not be revealed. For guidance on documents which cannot be annexed, and therefore whose source cannot be directly referred to in the RFRL, see the AI – Implementing Substantive Decisions. If the decision maker uses information from one of the documents which cannot be annexed they should minute the case file, for the attention of the Presenting Officer, informing him where the document containing the relevant information appears on the case file.

Information marked 'Restricted' and/or 'Not for Disclosure outside UK Border Agency'

- Decision makers must not include information from sources marked as 'Restricted' and/or 'Not for Disclosure outside UK Border Agency' in the RFRL.

External sources

- Where information from outside sources has been used to create questions designed to test an applicant's credibility, the source of such information should be recorded in the RFRL. A minute for the attention of the Presenting Officer should be attached to the left hand side of the case file, and a copy of the relevant document annexed to the PF1. Similarly, where decision makers have consulted a SCW, any information which they provide, and which is used as the basis of questions to test an applicant's credibility, must be sourced, and a copy of the advice sought and received placed on the case file and minuted for the attention of the Presenting Officer.

11.29 Referencing COI in Decision Letters

- Correct referencing for each source is essential (see link to Referencing for guidance). For example, the COIS Report for Iraq would be referenced as *'*UK Border Agency*,* Country of Origin Information Report – Iraq, published 25 March 2011*'*. To minimise the length and for efficiency, it is recommended that decision makers use footnotes in the RFRL.

11.30 Requirement to Proofread RFRLS

- Careless drafting errors in the RFRL and other decision documents, such as incorrect details for the applicant and references to the wrong country or nationality in standard paragraphs, can significantly damage the credibility of the Home Office in the eyes of applicants, Ministers, MPs, representatives, corporate partners and the public, and can adversely influence our case at the appeal stage. Such errors can give the impression that full care and individual consideration has not been given to the case. To prevent this, and bearing in mind that it can be more difficult to spot errors in one's own work, the RFRL and other decision documents should be proofread by another person to identify any simple errors for correction before they are dispatched.

- The proofread is intended to be a quick check involving one read through. The purpose is **not** to review the decision but only to identify any immediately apparent and simple errors in the RFRL. The member of staff proofreading the letter should look out for the following types of basic error:

    - Errors in the applicant's personal details (i.e. name, gender, nationality, date of birth)
    - Missing or incorrect Home Office reference number
    - Incorrect references to the applicant's country or nationality
    - Standard paragraphs that obviously do not relate to the applicant's country or nationality, or 'free text' fields in standard paragraphs that have not been completed.
    - Obvious typing or grammatical errors.

- The officer responsible for drafting the RFRL should be notified of any errors of this kind and they should then make the necessary corrections before arranging for it to be dispatched.

11.31 Signing the RFRL and placing on file

- The RFRL must always be signed by the officer who drafted it. Letters **must** be signed by the decision-maker 'acting on behalf of the Secretary of State'*. The form of text given below **must** be used: no variation is permissible.

    [manuscript signature]

    name of decision maker in (typescript)

    Regional Asylum Team/ Unit /LIT
    acting on behalf of the Secretary of State

How many copies of the letter should be prepared

- Six original copies of the RFRL should be prepared. All six copies must be signed and dated by the officer who wrote it. One copy should be hole punched and attached to the right hand side of the case file, the other five copies should be attached to the left side of the case file with paper clips.

Where the decision-maker has written the letter but not signed it

- If the decision-maker who wrote the RFRL has not signed the letter or any of the copies, and it is not possible for them to do so, another officer may sign all copies of the letter.

Where the decision-maker has written the letter but signed only one copy

- If the officer who wrote the RFRL letter has signed only one copy, and is unable to sign the other copies, e.g. they are no longer working in the Unit, the signed copy of the letter should be destroyed and another blank copy produced. All six blank copies can then be signed by another officer. The original signed copy should not be kept on file and the other five copies merely signed by another officer as all six copies of the letter should all be exact copies of one another.

11.32 NSA Reasons for Refusal Letters and Recommendation Minutes

- The RFRL in NSA cases differs in certain respects from the guidance above. Please refer to the appropriate guidance in the Non Suspensive Appeals (NSA) Certification under Section 94 of the NIA Act 2002 Asylum Instruction.

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Annex A: Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Section 8 of the 2004 Act came into force on 1 January 2005. It provides a framework for the consideration of credibility issues in asylum and human rights applications and imposes an obligation on all deciding authorities (Immigration Officers, the Secretary of State – including decision makers acting on his behalf - and Immigration Judges).

In accordance with Paragraph 339N of the Immigration Rules, decision makers should note that in determining whether the general credibility of an applicant has been established they must have regard to the provisions covered by Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to regard certain behaviours on the part of an applicant adversely when they assess the applicant's general credibility. However the fact that section 8 considerations have the force of law does not mean they are to be given more weight than other factors which impact on credibility. The Act does not relieve decision makers of their obligation to give due weight to all the facts of the case, including any background information that is available and relevant.

A deciding authority is required to take into account any of the behaviours listed under Section 8 when determining whether to believe a statement made by or on behalf of a person who makes an asylum or human rights claim. The first step for decision makers is to consider whether Section 8 applies to an applicant's behaviour. If it does, then it must be taken into account when determining the asylum application.

The behaviours specified in Section 8 are not exhaustive or determinative. Credibility can be undermined in other ways and, depending on the circumstances, it may be appropriate to refuse on other credibility grounds entirely. On the other hand, the points in the applicant's favour may outweigh the points against, even though the points against include Section 8 points – Section 8 prescribes types of behaviour that potentially damage credibility but not the extent of the damage, which is for the decision maker to decide in the circumstances of each case.
If a claim is refused and Section 8 factors have been taken into consideration, the reasons for refusal letter must explain why the applicant's behaviour is considered as damaging to the applicant's credibility. If a claim is accepted but Section 8 factors exist, the grant minute must show consideration of the behaviours relevant under S8.

An assessment of credibility will always depend on the full circumstances of the individual case. The fact that Section 8 considerations have the force of law **does not** mean they are to be given more weight than other factors which impact on credibility. A poor immigration history does not, on its own, justify the rejection of a claim without considering the other material claimed facts. The Act does not relieve decision makers of their obligation to give due weight to **all** the facts of the case, including any background information that is available and relevant.

General Requirement

In considering an asylum or human rights claim, there is a general requirement under Section 8(1) to take into account as damaging to the claimant's credibility any behaviour by the claimant that the decision maker thinks is designed or likely to:

- conceal information;
- mislead; or
- obstruct or delay the handling or resolution of the claim.

Specified Types of Behaviour

As well as this general requirement, certain types of behaviour are also listed in Section 8 as behaviour which must always be treated as damaging to the claimant's credibility. These are:

- failure **without reasonable explanation** to produce a passport on request;
- production of a document that is not a valid passport as if it were. **Note:** there is no "reasonable explanation defence" in this case;
- destruction, alteration or disposal of a passport, ticket or other travel document **without reasonable explanation**;
- failure **without reasonable explanation** to answer a question asked by a deciding authority;
- failure to take advantage of a **reasonable opportunity** to make an asylum or human rights claim while in a safe country
- failure to make an asylum or human rights claim until notified of an immigration decision, **unless the claim relies wholly on matters arising after the notification**

failure to make an asylum or human rights claim before being arrested under an immigration provision, **unless there was no reasonable opportunity to claim before the arrest or the claim relies wholly on matters arising after the arrest**.

Passport, Other Travel Documents and Interviews

References to a passport include a document designed to serve the same purpose. Whether a document, such as a ticket, relates to travel will be dependent on the circumstances of the case. A passport is valid for Section 8 purposes if it relates to the person concerned, unless it has been altered unofficially or was obtained by deception. In circumstances where an applicant produces a document but immediately advises an immigration officer that it is false, Section 8 does not apply as the applicant made no attempt to produce the document as if it were valid.

Although the onus is on the applicant to provide a reasonable explanation for failing to produce (or for destroying) a travel document, decision makers will have to asses whether any explanation given is reasonable in all the circumstances of the case. If the applicant gives a reasonable explanation, decision makers must not make negative inferences about the applicant's credibility on this ground.

Similarly, failure by an applicant without reasonable explanation to answer a question posed by a deciding authority must be treated as damaging to the applicant's credibility. An applicant who fails to co-operate should be warned that non-compliance may affect the assessment of the claim. This includes, for example, a failure to address the question asked as well as a refusal to speak at all. But care should be taken to ensure that the failure did not arise from a misunderstanding or a failure by the official to ask appropriate questions. Reasonable steps must be taken to ensure that the applicant understands what is required.

If the claim is refused and the decision maker considers that this provision applies, the reasons for the refusal letter should explain why it does and how it affects the overall assessment of the claim.

What is a 'reasonable explanation'?

The question of what constitutes a reasonable explanation is not one to which it is possible to give an exhaustive answer. What is reasonable in one case may not be reasonable in another, but the following may be reasonable explanations:

- Exceptional situations where the applicant could not easily have disobeyed the instructions of an agent who facilitates immigration into the UK. This may be the case for some unaccompanied minors, the very elderly or for people with mental disabilities.
- Cases where an adult is severely traumatised or where cultural norms may make it difficult for a person to answer questions at interview or to disobey instructions, including instructions about documents and particularly across gender and social class. See the AIs on Conducting Asylum Interviews for advice on dealing with victims of torture and Gender Issues in the Asylum Claim.
- Situations where a person can show that a document was destroyed or disposed of as a direct result of force, threats or intimidation, e.g. where an individual was forced at knife-point to give a document to someone else.
- Where the document has been lost or stolen and the individual can substantiate such a claim (usually with a police report of the loss/theft).

A reasonable explanation must itself be believable.

Failure to Claim in a Safe Country

An applicant who has had a reasonable opportunity to make an asylum claim in a safe third country is expected to do so. A reasonable opportunity means that the applicant could have approached the authorities at the border or internally, as long as there is no reason to think that the claim would not have been received. Decision makers must consider each case on its merits. For example, it might be thought that someone who spent several weeks in France before coming to the UK must have had a reasonable opportunity to claim there. But this would not be reasonable if the applicant was imprisoned by smugglers throughout that time.

A 'safe country' for the purpose of Section 8 is limited to the states listed in Part 2 of Schedule 3 to the 2004 Act (and changed to include Bulgaria and Romania in the Asylum (First List of Safe Countries) (Amendment) Order 2006)**.** These are the states that currently participate in the Dublin II arrangements:

Austria	Finland	Italy	Poland
Belgium	France	Latvia	Portugal
Bulgaria	Germany	Lithuania	Romania
Republic of Cyprus	Greece	Luxembourg	Slovak Republic
Czech Republic	Hungary	Malta	Slovenia
Denmark	Iceland	Netherlands	Spain
Estonia	Ireland	Norway	Sweden

If the country is not on the list then Section 8 will not apply. That does not mean that decision makers cannot take into account a failure to apply for protection elsewhere as damaging to credibility, but they are not obliged to do so under Section 8.

Decision makers must be aware that the United Kingdom is not considered a safe country for the purposes of Section 8(4). Section 8(7) defines "safe country" as "a country to which Part 2 of Schedule 3 applies" and the UK is not listed in Part 2 of Schedule 3. It is not included because Part 2 of Schedule 3 is a list of safe third countries, i.e. countries other than the United Kingdom and the country of nationality. A delay in making a claim for asylum in the United Kingdom should be considered under paragraph 339L of the rules.

What is a 'reasonable explanation'?

It will be necessary to assess whether or not an opportunity was reasonable for the individual applicant concerned. Age, education, experience, culture and gender are among the things to think about. Most adults might reasonably be expected to find a policeman, for instance, but a small child might not.

If the claim is refused and the decision maker considers that this provision applies, the reasons for the refusal letter should explain why it does and how it affects the overall assessment of the claim.

Claims Triggered by Immigration Decisions

If the claim is made after the applicant is notified of an immigration decision, the deciding authority must regard the applicant's credibility as potentially damaged under Section 8 **unless the claim relies wholly on matters arising after notification**. An immigration decision in this case means one of:

- refusal of leave to enter the UK
- refusal to vary leave to enter or remain in the UK
- a decision to remove a person by way of directions under section 10(1)(a),(b), (ba) or (c) of the Immigration and Asylum Act 1999 or under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 971(illegal entrants, crewmen, family members and overstayers)
- a decision to make a deportation order
- a decision to take action in relation to a person's extradition from the UK
- a grant of leave to enter or remain in the UK

This provision is aimed primarily at those who use a late claim to block or complicate further action against them. Applicants who wait until they are granted leave before making an asylum or human rights claim are also included, as it is reasonable to expect people with urgent reasons for remaining in the UK to state these at the earliest opportunity. In cases where the provision might be applicable, the applicant must be given the opportunity to explain the timing of the claim.

It should be noted that circumstances do change. This may give a person grounds for claiming that they did not have previously, which is why the provision does not apply where the claim relies wholly on matters arising after the notification of the immigration decision.

Notification

If an asylum claim is made after an individual has been told the result of another claim or application, Section 8 may apply. What matters is how the person was notified and the date on which notification occurred. Under the Immigration (Claimant's Credibility) Regulations 2004, notice may be given:

- orally (including orally by phone) or
- in writing by hand, by fax, by email or by post. For Section 8 purposes, there are no requirements as to the form in which a notice has to be written out.

Notice served upon a representative is to be taken to have been served on the applicant.

Claims Prompted by the Applicant’s Arrest

An applicant’s credibility must be treated as potentially damaged under Section 8 if the claim is made after the applicant’s arrest under an immigration provision **unless** there was no

reasonable opportunity to make the claim before the arrest, or the claim relies wholly on matters arising after the arrest.

The arrest must relate to immigration (or extradition) issues. The provisions concerned are:

- sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971;
- paragraph 17 of Schedule 2 to the 1971 Act;
- section 14 of the 2004 Act; and
- the Extradition Acts 1989 and 2003

If an applicant has been arrested prior to making a claim, decision makers should consider whether they had a reasonable opportunity to make a claim before the arrest. Circumstances may change to give a person grounds for claiming asylum that they did not have before the arrest, which is why the provision does not apply where the claim relies wholly on matters arising after the applicant's arrest.

What is a 'reasonable opportunity'?

An applicant has had a reasonable opportunity to claim asylum before being arrested if they could have approached the authorities at any time after their arrival in the UK. Each case should be considered on its merits. For example someone who is apprehended by the police soon after getting out of a back of a lorry is less likely to have been able to make a claim before arrest than someone who passed through immigration control when arriving in the UK.

Passage of Time

There is no time limit on taking into consideration behaviour under Section 8. However as a general rule the older the behaviour the less weight it is should be given in the overall assessment of credibility.

Cases Where Credibility May not be an Issue

In certain types of asylum or human rights cases there may not be a need to make an assessment of credibility when assessing the claim. In these cases Section 8 would not be an issue.

Non-suspensive appeal (NSA) cases

The UK Border Agency will usually leave aside the question of credibility when deciding cases for certification under section 94 of the Nationality, Immigration and Asylum Act 2002. Where credibility is not considered, Section 8 does not apply. Where credibility is an issue, whether the certificate relates to a section 94(4) listed state or a 'case-by-case' consideration, Section 8 must be taken into account.

For further guidance on the treatment of credibility in NSA cases, see the AI on Certification Under Section 94 of the NIA Act 2002.

Further representations (and fresh claims)

In cases where the original claim has been considered and the appeal rights exhausted, further submissions will have to meet the requirements of paragraph 353 to be considered a fresh claim (see the AI on Further Representations). If they do, Section 8 will apply to the consideration of the fresh claim. However Section 8 **does not** apply to further representations that do not amount to a fresh claim. Applicants requesting further leave following a period of humanitarian protection

or discretionary leave (or exceptional leave) may, or may not, make fresh asylum or human rights claims in tandem with their further leave applications.

Cases in which no substantive asylum interview is conducted

The UK Border Agency may not conduct a full asylum interview with some applicants, such as some unaccompanied minors (e.g. those under 12 years old) or those who have been severely traumatised. In these cases credibility is still likely to be an issue and will need to be considered carefully. The credibility of someone who is not interviewed substantively should not be accepted without question although it may be appropriate to attach less weight to the behaviour concerned if the applicant has had no opportunity to explain it. In these cases a preliminary screening interview may have been conducted and this can be used as an aide to assessing the claim but without a substantive interview special considerations apply to the assessment of credibility.

Decision makers should be aware that, where the applicant has been given no opportunity to explain inconsistencies care should be taken about using the inconsistencies to question credibility. Where a full interview is not conducted it may be difficult for an applicant to provide an explanation for their behaviour. If credibility is an important factor, an applicant should be invited to respond to our doubts in writing, if necessary with the help of a responsible adult.

In deciding whether an explanation is reasonable, decision makers should consider the age of the applicant and any evidence that their mental faculties are impaired.

Agents and Representatives

Section 8 contains no explicit provision on whether to take into account the actions of anyone acting as an agent on behalf of the applicant in regard to credibility. This does not prevent the actions of agents from being considered, but decision makers should be careful to distinguish between the credibility of the applicant, which is unlikely to be affected by the independent actions of an agent, and the credibility of the claim, which may be affected. This may seem a fine distinction, but a failure by the agent to respond to specific questions put by the UK Border Agency in relation to the claim and the provision of false evidence by the agent could seriously undermine the credibility of the claim, even though they would not affect the credibility of the applicant if it were shown that the applicant did not know what was being done on his or her behalf.

Document Control

Change Record

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1.0	MO	07/03/07	Reformatted
2.0	UU/SL	12/11/07	Procedures Directive
3.0	JW	11/08/08	Qualification Directive
4.0	JL	30/10/08	Update branding only
5.0	DHT/LJ	30/06/10	Revised and consolidated
6.0	LW/LJ/KG	01/02/2012	Revised/Remove 395c
7.0	LJ	05/07/2012	Article 8/Discretionary Leave changes
8.0	BG	30/07/2012	RT Zimbabwe / Danian Update