

Handling applications from convicted criminals, persons on remand and detained cases

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1. Introduction

This guidance sets out procedures for asylum caseworkers handling cases where the asylum claimant has been either (a) convicted of a crime, and may be in prison; or (b) on remand (where the accused individual awaiting a court trial is either in detention, or (c) subject to other restrictions on movement intended to secure their return to court e.g. bail). Procedures for processing detained cases where the claimant has been convicted of an immigration offence are also covered (see 9).

The three possible scenarios in which an asylum caseworker would need to consider an asylum claim from a convicted criminal are as follows; a foreign national has been convicted of crime in the United Kingdom and then claims asylum from prison; an asylum claimant lodges a claim and during the asylum process is then convicted of a crime in the United Kingdom; or when an asylum claimant has been convicted of a crime in his country of nationality, or another third country.

In addition to the three scenarios outlined above this section sets out the procedures for handling applications where an asylum claimant is in prison for an offence under section 2 of the Asylum and Immigration (Treatment of Claimant's, etc.) Act 2004 (see 10).

This section also sets out guidance for senior caseworkers on handling applications for asylum which fall within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002 (see 11).

2. The role of the Criminal Casework team

When a foreign national is convicted of a crime in the United Kingdom, depending on the nature of the crime, it is open to the court sentencing the subject to recommend his deportation. In practice this is a power the courts do not always use, although the convicted individual remains liable to deportation on conducive grounds i.e. that his presence in the United Kingdom is not conducive to the public good.

The Criminal Casework Team (CCT) collates papers on all convicted foreign nationals who are either:-

- recommended for deportation by the court (section 3(6) of the 1971 Immigration Act); or
- who need to be considered for deportation on conducive grounds (section 3(5)(a) of the 1971 Immigration Act) where the individual has been convicted and sentenced to imprisonment for a period of at least 12 months (2 years in the case of an EEA national) or has received 3 convictions in the previous 5 years (a list of crimes which may merit conducive deportation action is contained at Annex A). Notification of cases under section 3(5)(a) is usually on a Nominal Index Card (NIC) sent by the prison to CCT. However, notification could also come from the police, the courts, or Customs & Excise.

3. Timing of deportation action

When a convicted criminal sentenced to imprisonment claims asylum, consideration and implementation of the asylum decision must be delayed until towards the end of the sentence. This enables simultaneous service of the asylum decision with the Notice of Intention to Deport or other immigration decision, triggering one right of appeal covering the asylum and immigration decisions.

This requirement follows the case of Chindamo (Appeal Number [00/TH/2345]) in which the Immigration Appeal Tribunal found in allowing the appeal that deportation action was initiated too early into the custodial sentence. As a result not all relevant factors regarding the claimant had been taken into consideration, and action was taken without regard to any rehabilitation which might occur during the sentence.

4. Handling applications from convicted criminals currently in prison

4.1. Referrals from the Criminal Casework Team

A foreign national currently in a prison in the United Kingdom may notify IND that he wishes to apply for asylum either in writing or by informing his duty officer in prison. Although postal applications for asylum are not generally accepted after 8 February 2003, written requests to lodge an asylum claim may still be actioned where the claimant is unable to attend an Asylum Screening Unit (ASU) in person.

In these circumstances the Criminal Casework Team (CCT) should already have been notified by the prison of a foreign national's liability to deportation. On receipt of this notification, CCT will raise a case file, allocate a HO reference number and input the deportation case on CID. Case files raised by CCT for convicted criminal cases should have a yellow 'Convicted Criminal' sticker attached to the front of the file.

4.2. Arranging the asylum interview

Criminal Casework Team (CCT) retain the case file during the claimant's custodial sentence, during which they will arrange for an Immigration Officer from either the Local Enforcement Office (LEO) or the Criminal Casework Support Team (CCST) to visit the prison to conduct a screening interview. A substantive asylum interview will also be completed where appropriate. The completed SEF-Interview Record should then be returned to CCT.

CCT will attach the SEF-Interview Record to the case file and hold until shortly prior to the initiation of deportation action. At this point CCT will pass the case file to ACU 1 to allocate to a case management unit in Asylum Casework Group (South) on a rota basis.

4.3. Considering the asylum claim

Only Asylum Casework Group (South) considers asylum claims referred from Criminal Casework Team (CCT). On receipt of the case file, the caseworker should update CID as indicated at 4.2 above (if not already actioned by CCT) to record the case type, screening and interview. The caseworker should then proceed with consideration of the asylum claim.

4.3.1. Articles 1F and 33(2) of the 1951 Refugee Convention

The provisions of Article 1F and 33(2) of the 1951 Refugee Convention enable the refusal of asylum even where the claimant has demonstrated a well-founded fear of persecution.

Article 1F applies to persons who are not considered deserving of international protection, excluding some asylum seekers from the protection of the 1951 Convention. Article 33(2) provides that in some circumstances persons can be removed from the UK, even though they may have a well-founded fear of persecution in the country to which they are removed.

If Article 1F or 33(2) applies, asylum can be refused but ECHR and other humanitarian considerations should be addressed as in any other application.

4.3.2. Article 33(2) and section 72 of the Nationality, Immigration and Asylum Act 2002

Under Article 33(2) enforced return is permitted only if the refugee either presents a danger to the security of the United Kingdom, or has been convicted of a particularly serious crime and is a danger to the community.

Cases where Article 33(2) may be applicable will be brought to the attention of Senior Caseworker Unit (SCWU) in Asylum Casework Group (South) (ACG (S)) by the Criminal Casework Team (CCT). Senior caseworkers should follow the guidance set out in 11 when handling cases where section 72 is applicable. **Only senior caseworkers based in ACG (S) should handle these cases.**

4.4. Implementing decisions on cases referred from the Criminal Casework Team

Casework management units should not implement the asylum decision as directed in standard instructional minute sheets. Caseworkers should instead follow the procedure set out below.

1. Following proof-reading procedures, produce six copies of the reasons for refusal letter (RFRL), attaching one to file and placing five loose on file aside.
2. Complete the PF1 proforma and attach a hard copy to file.
3. E-mail the Criminal Casework Team (CCT) account (# IS Criminal Casework Team) to inform them that a decision has been reached on the case. The subject of the e-mail should read 'Decision reached on the asylum application of [claimant],[HO ref], referred to ACD by CCT'. The e-mail should also clearly identify the caseworker's name, unit and contact number, and advise that the file is being forwarded to CCT.
4. Update CID

4.4.1. Forwarding the case file to the Criminal Casework Team

After the caseworker has produced the RFRL and e-mailed the decision outcome to the Criminal Casework Team (CCT), the case file should be sent to CCT.

If the asylum claimant is still in prison, the case file should be **walked** to CCT by

Team Support.

If the sentence has been served, and the claimant is detained beyond end of sentence, the case file should be sent to CCT through the internal post

Caseworkers and their team support should ensure that file tracking is updated accordingly.

4.4.2. Serving the decision

The Criminal Casework Team (CCT) should arrange service of the asylum decision together with the Notice of Intention to deport. Either the Immigration Officer serving the decision or CCT should update CID to show that the decision has been served.

CCT should then retain the case file awaiting receipt of the appeal in accordance with local practice.

5. Handling applications where the claimant has been convicted of a crime after lodging an asylum application

5.1. Caseworker action on receipt of notification of a court conviction

When a foreign national is convicted of a crime in the United Kingdom, law enforcement agencies will normally notify IND via the Criminal Casework Team or Local Enforcement Office (see 2). There will, however, be occasions where an asylum claim has already been lodged when the conviction takes place. In these circumstances, written notification of a conviction (this may come from the police, the courts, or Customs & Excise) may be linked directly to the case file at any stage of the asylum process.

5.2. Post-decision notification

If the asylum application is at the post-asylum decision stage, then the file should be referred to either;

- Appeals Directorate - if there is an outstanding appeal; or
- London Workflow Team/United Kingdom Immigration Service Regional Command - if appeal rights have been exhausted or if no appeal was lodged; or
- Criminal Casework Team - if a recognised refugee has been convicted of a crime falling within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002 (for further guidance see Asylum Policy Unit Notice 06/2004 - Section 72 of the NIA Act 2002: Particularly Serious Crimes).

Caseworkers are advised to establish which specific units within these areas may have responsibility for handling this type of case before forwarding the case file. Caseworkers and their team support should ensure that file tracking is updated accordingly.

5.3. Pre-decision notification

If a decision has not yet been made on the asylum claim, the caseworker should in the first instance contact the Criminal Casework Team (CCT) to establish whether the conviction is sufficiently serious to merit their attention and/or action. If the

notification includes a court-recommended deportation order, relates to a crime normally meriting conducive deportation action (see Annex A) or falls within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002, CCT will normally have an interest in the case.

5.3.1. Criminal Casework Team interest cases

If the crime is sufficiently serious to merit Criminal Casework Team (CCT) attention and/or action the caseworker should update CID and then forward the case file immediately to CCT.

Caseworkers and their team support should ensure that file tracking is updated accordingly.

CCT should then retain the case file until the initiation of deportation action late in the custodial sentence (see 3).

5.3.2. No Criminal Casework Team interest

If the crime is not sufficiently serious to merit CCT attention and/or action the caseworker should proceed with the consideration of the asylum claim in accordance with standard procedures contained in the Considering Applications section of the manual. If a substantive asylum interview has not yet been conducted, caseworkers should arrange for the claimant to be interviewed (see 5.4)

5.3.3. Implementing non-CCT interest cases

Where the claimant is in prison, the caseworker should complete all the relevant decision paperwork and update CID as appropriate.

If the claimant is represented, the decision should be served to his legal representatives and the case file forwarded to WIPs APC or Layby.

If the claimant is not represented, the caseworker should arrange service of the decision in person by either an immigration officer from the nearest Local Enforcement Office (LEO) or forward the papers directly to the prison itself.

If serving via the LEO, caseworkers are advised to discuss the case by telephone with an immigration officer from the LEO in the first instance, and then forward the case file for the immigration officer's attention.

When forwarding the case file to the LEO, caseworkers should minute the case file indicating the documents to be served, and request that CID be fully updated with details of service. The minute should also indicate that the case file should be returned after service. Following the return of the case file from the LEO, caseworkers should check that the decision has been served correctly and CID fully updated. If so, the case file should be forwarded to WIPs APC or Layby.

If serving direct to the prison, caseworkers should obtain the name and address of the relevant duty officer by contacting the relevant prison. The caseworker should then update CID, and forward the decision paperwork to the duty officer by first class recorded delivery, with a brief covering letter detailing the caseworker's contact name/number and explaining the action required. Prison duty officers should be asked to notify caseworkers when the decision has been served in order to update CID. Caseworkers should always check that the decision has been served correctly

and CID fully updated before forwarding the case file to WIPs APC or Layby.

5.4. Arranging interviews in pre-decision cases

Where the asylum claimant has been convicted and imprisoned, and requires a substantive asylum interview, caseworkers should contact the Local Enforcement Office (LEO) nearest the prison to arrange for an Immigration Officer to interview the claimant.

Caseworkers are advised to discuss the case by telephone with an Immigration Officer from the LEO in the first instance, and once a mutually agreeable date is agreed forward the file for the Immigration Officer's attention. The case file should be properly minuted indicating which casework management unit the file should be returned to, and refer the interviewing officer to the most current version of the SEF-Interview Record form.

On return receipt of the case file in the casework management unit, the SEF-Interview Record should be attached to file. If CID has not already been updated to include the interview, caseworkers should update CID.

Caseworkers should then proceed with the consideration of the asylum claim in accordance with standard procedures contained in the Considering Applications chapter of the manual.

6. Handling applications from persons on remand

6.1. General principles

Notification that a foreign national is on remand may be received from the police or other law enforcement agencies. Persons on remand have been charged with a crime and are awaiting a court trial. The accused individual will be remanded either in custody (dual detention if served with illegal entry papers or identified as a section 10 overstayer) or be subject to other restrictions on their movement intended to secure their return to court e.g. bail. Foreign nationals who have already been convicted of a crime may also be released on bail pending their return to court to be sentenced.

Please note that the guidance outlined below is **not** applicable where the claimant is on remand for offences under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. For guidance on handling cases subject to section 2 see 10.

6.2. Post-decision notification

If the asylum application is at the post-asylum decision stage when notification of remand is received, then the file should be referred to either;

Appeals Directorate - if there is an outstanding appeal; or

London Workflow Team/United Kingdom Immigration Service Regional Command - if appeal rights have been exhausted or if no appeal was lodged.

Caseworkers are advised to establish which specific units within these areas may have responsibility for handling this type of case before forwarding the case file. Caseworkers and their team support should ensure that file tracking is updated accordingly.

6.3. Pre-decision notification

6.3.1. Notifying the Criminal Casework Team of remand prisoners

Although the Criminal Casework Team (CCT) do not handle remand cases, caseworkers should ensure CCT are notified of claimants on remand for serious crimes such as murder, manslaughter or a serious sexual offence. This is in order for CCT to monitor these cases in anticipation of a possible conviction. Caseworkers should record the fact that CCT have been notified of a remand prisoner by minuting the case file.

6.3.2. Claimants remanded in custody

A foreign national currently remanded in custody (RIC) in a prison in the United Kingdom may notify IND that they wish to apply for asylum either in writing or by informing their duty officer in prison. Although postal applications for asylum are not generally accepted after 8 February 2003, written requests to lodge an asylum claim may still be actioned where the claimant is unable to attend an Asylum Screening Unit (ASU) in person.

In these circumstances the caseworker should contact the Local Enforcement Office (LEO) nearest the prison to arrange for an Immigration Officer to screen/interview the claimant (see 5.4 above) if this has not already taken place.

Once the screening and substantive asylum interviews have been completed, the asylum claim is ready to be decided (see 6.4).

6.3.3. Claimants remanded on bail, or subject to other restrictions short of detention

Claimants remanded on bail (ROB), subject to other restrictions short of detention, or bailed pending their return to court for sentencing, will generally be able to attend the asylum screening unit in either Croydon or Liverpool. It is therefore possible to screen and substantively interview them in the normal manner.

When arranging screening and substantive interviews for claimants on remand, caseworkers should bear in mind the start date of the trial, or the date of the return to court for sentencing. Ideally, both the screening and substantive asylum interview should be completed while the claimant remains remanded on bail, as the custodial sentence may commence immediately upon completion of the trial. Where this is not possible subsequent action will depend on whether the claimant becomes a convicted criminal (see 5).

6.4. Considering the asylum claim

6.4.1. Claimant is on remand for a serious crime

If the claimant is on remand for a serious crime which would normally merit conducive deportation action (see Annex A) or falls within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002 (for further guidance see Asylum Policy Unit Notice 06/2004 - Section 72 of the NIA Act 2002: Particularly Serious Crimes), caseworkers should normally delay making a decision on the asylum claim until the claimant is either acquitted or convicted.

Caseworkers should hold the case file in the Case Management Unit (CMU) until the

prosecution against the claimant is resolved. If the claimant is subsequently convicted, the caseworker should update CID and then forward the case file immediately to Criminal Casework Team (CCT).

Caseworkers and their team support should ensure that file tracking is updated accordingly.

CCT should then retain the case file until the initiation of deportation action late in the custodial sentence (see 3).

If the claimant is not subsequently convicted, caseworkers should proceed with the consideration of the asylum claim in accordance with standard procedures contained in the Considering Applications chapter of the manual.

6.4.2. Claimant is on remand for a non-serious crime

If the claimant is on remand for a crime which would not normally merit conducive deportation action (see Annex A) or falls within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002 (for further guidance see Asylum Policy Unit Notice 06/2004 - Section 72 of the NIA Act 2002: Particularly Serious Crimes), caseworkers should proceed with the consideration of the asylum claim in accordance with standard procedures contained in the Considering Applications chapter of the manual.

Where the claimant is in prison, the caseworker should complete all the relevant decision paperwork and update CID as appropriate.

If the claimant is represented, the decision should be served to his legal representatives and the case file forwarded to WIPs APC or Layby.

If the claimant is not represented, the caseworker should arrange service of the decision in person either by an Immigration Officer from the nearest Local Enforcement Office (LEO) or forward the papers directly to the prison itself.

If serving via the LEO, caseworkers are advised to discuss the case by telephone with an Immigration Officer from the LEO in the first instance, and then forward the file for the Immigration Officer's attention.

When forwarding the case file to the LEO, caseworkers should minute the case file indicating the documents to be served, and request that CID be fully updated with details of service. The minute should also indicate that the case file should be returned after service. Following the return of the case file from the LEO, caseworkers should check that the decision has been served correctly and CID fully updated. If so, the case file should be forwarded to WIPs APC or Layby.

If serving direct to the prison, caseworkers should obtain the name and address of the relevant duty officer by contacting the relevant prison. The caseworker should then update CID, and forward the decision paperwork to the duty officer by first class recorded delivery, with a brief covering letter detailing the caseworker's contact name/number and explaining the action required. Prison duty officers should be asked to notify caseworkers when the decision has been served in order to update CID. Caseworkers should always check that the decision has been served correctly and CID fully updated before forwarding the case file to WIPs APC or Layby.

7. Handling applications from claimants convicted of a crime in their country of nationality or a third country

7.1. General principles

If the asylum claimant declares, or is otherwise known to have received, a criminal conviction in their country of nationality, or a third country, the caseworker should give due consideration to the nature and context of the conviction. A criminal conviction abroad will not necessarily exclude an asylum claimant from a grant of leave in the United Kingdom, and may in fact form a central part of the claimant's positive evidence in support of their claim. However, there may be scope to apply Article 1F of the 1951 Refugee Convention in these circumstances.

Caseworkers should always refer potential 1F cases to their senior caseworker.

Senior caseworkers should take into account the nature of the offence and whether it is serious enough to come within the scope of section 72 of the Nationality, Immigration and Asylum Act 2002 (for guidance on crimes which are considered to be particularly serious see Asylum Policy Unit Notice 06/2004 - Section 72 of the NIA Act 2002: Particularly Serious Crimes).

If the claimant has been convicted of a crime which comes within the scope of section 72 then senior caseworkers should refer the case to Criminal Casework Team (CCT). For further guidance on how to handle cases coming within section 72 see 11.

7.2 Extradition requests

Extradition provides for the return of persons accused or convicted of serious offences from the United Kingdom to other jurisdictions or vice versa. The domestic legal framework for this is the Extradition Act 1989. The United Kingdom has general extradition relations with over 100 countries and co-signatories of international conventions that contain extradition provisions relating to specific forms of very serious crimes. The Act also provides for negotiation of a special arrangement for extradition with states with which no other provision exists.

8. The Rehabilitation of Offenders Act 1974

The Rehabilitation of Offenders Act (ROA) 1974 came into force in 1975. Its purpose is to rehabilitate offenders who have not been re-convicted of any serious offence for some time, to penalise the unauthorised disclosure of their previous convictions and to amend the law of defamation.

Once rehabilitated, a person's conviction in any country is regarded as 'spent'. This means that from that point he is treated as though he had never been charged with, convicted of, or sentenced for, the offence in question i.e.:

- he may deny a spent conviction;
- he may decline to answer questions about a spent conviction; and
- apart from in certain specified proceedings, evidence of a spent conviction is not admissible.

Where an asylum claimant has received a conviction which must now be regarded as 'spent' under the ROA, the asylum claim must be considered in accordance with standard procedures contained in the Considering Applications section of the manual. There is no scope to apply Articles 1F/33(2)/section 72 in 'spent' cases.

9. Handling applications from persons detained under immigration powers

9.1. General principles

Foreign nationals may be detained under immigration powers i.e. they have committed an immigration offence rather than a criminal one. An asylum claimant may also be detained to establish identity or basis of claim, or in cases where there is reason to believe he will fail to comply with any conditions attached to the grant of temporary admission or release. Asylum claimants whose claims have been refused may be detained to effect removal if there is reason to believe they will fail to comply with the conditions of temporary release.

Please note that the guidance outlined below is **not** applicable where the claimant is on remand for offences under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. For guidance on handling cases subject to section 2 see 10.

9.2. The role of the Management of Detained Cases Unit

The Management of Detained Cases Unit (MODCU) manages detained cases reaching 28 days in detention (with the exception of Single Case Files - see below). The Gatekeeper Team control access to the long term beds within the estate to ensure that only cases with a good prospect of removal are accepted. Any case involving a failed asylum seeker which passes into long term detention has case ownership passed to MODCU. Those cases with no asylum background remain the responsibility of the Port or LEO who requested the bed.

MODCU conducts detention reviews on all cases where approval has been given to enter long term detention (asylum and non-asylum). The Bail Team complete bail summaries on all MODCU owned cases to defend applications for Adjudicator's Bail.

9.3. Detained Non-suspensive Appeal and Super Fast Track cases

Detained Non-suspensive appeal (NSA) cases are interviewed at Oakington, and the asylum decision is made either at Oakington, Croydon or Liverpool by NSA accredited asylum caseworkers. Further instructions for handling NSA cases may be found in the NSA cases section of the Manual.

Super Fast Track (SFT) cases are dealt with at Harmondsworth (referrals via the Oakington co-ordinator). Asylum interviews are carried out by the caseworkers at Harmondsworth and the cases remain in detention throughout the appeal process. MODCU has no input into these cases until the claimant reaches 28 days in detention or has exhausted appeal rights.

9.4. Detained single case file cases

9.4.1. General principles

Where MODCU confirm that long term detention has been authorised, the front of the case file is marked as 'Single Case File Detained' by the Port and transferred to the File Creation Unit. MODCU is responsible for arranging the interview (either by an interview-trained caseworker or by an Immigration Officer at the removal centre).

The case file will be held in ACU 1 pending receipt of the SEF-Interview Record from MODCU. ACU 1 liaise with MODCU on a weekly basis to monitor progress of the interview. On receipt of the SEF-Interview Record, ACU 1 should attach the papers to the case file and ensure CID is fully updated to record the interview.

ACU 1 should then forward the case file to CMU H2, the casework management unit responsible for considering all SCF detained asylum cases.

9.4.2. Considering the asylum claim

On receipt of the file, CMU H2 Team Support should update file tracking and pass the file to the Team Leader to allocate. The caseworker should in the first instance telephone MODCU to confirm that the claimant is still detained. If the claimant has been released, the caseworker should minute the file with the details and remove the detained flag. The case will proceed as normal as a non-detained case.

Where the claimant is still in detention, the decision should be made within 24 hours of receipt of the file on the case management unit.

9.4.3. Implementing the asylum decision

Caseworkers should follow the appropriate ACD minute sheet up to the stage where the decision is being served. All paperwork relating to the decision should then be faxed to MODCU to arrange service. Caseworkers should note the minute sheet accordingly and place a copy of the Fax Report on file.

Additional updating of CID will then be completed by MODCU.

Where the decision attracts a right of appeal, the case file must be sent directly to 'Team 6-Detained, APC 1', and not to WIPS APC or Layby.

9.4.4. Additional representations

Should the caseworker receive any of the following:-

- Representations from the family for the release of the detained claimant
- Change of circumstances e.g. Sponsor, arrival of passport, lack of removal
- Application to release on Temporary Admission /Temporary Release

they should minute the file clearly, place a copy of the request/application on the file and forward the original request to MODCU.

10. Handling applications from claimants in prison for offences under section 2 of the Asylum and Immigration (treatment of claimants, etc.) Act 2004

10.1. Introduction

This section gives guidance for caseworkers on the procedures to follow when handling applications for asylum from claimants who are in prison, either on remand or following conviction, for an offence under section 2 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("section 2").

Although the decision making process is the same as that for normal asylum cases, and can be handled by all suitably trained caseworkers, for operational reasons it has

been decided that the interviewing of such claimants who are in prison should only be conducted by caseworkers in designated Case Management Units (CMUs). CMUs 4 and 5 in Asylum Casework Group (South) (ACG (S)) and CMU H12/H13 in Asylum Casework Group (North) (ACG (N)) are the units currently designated to conduct section 2 interviews.

10.2. Background

Under section 2(1) a person commits an offence if at an interview at which he seeks leave to enter or remain in the United Kingdom, he does not have with him an immigration document which is in force and which satisfactorily establishes his identity and nationality or citizenship. In the main, the offence is intended to discourage people from destroying or disposing of their immigration documents en route to the United Kingdom. In particular, to discourage them from doing so in order to conceal their identity, age or nationality in an attempt to increase the chances of success of a claim or to make consideration of their claim more difficult and/or to thwart removal.

A person convicted of the offence may be imprisoned for up to two years.

Historically, where a foreign national had been imprisoned for an offence and then went on to apply for asylum, their application would normally have been considered by the Asylum Casework Directorate (ACD) following release. If these cases needed to be expedited for any reason then an Immigration Officer would have conducted the substantive asylum interview.

However, in order to maintain ACD's "2" targets, and the fact that time spent in prison following conviction for an offence under section 2, on current experience on average, ranges from 2 to 10 months it has been decided that such claimants should be interviewed whilst still in prison in parallel with standard time scales for handling a normal asylum claim.

10.3. The role of the Immigration Service

If a person is charged with an offence under section 2, IS will update CID to reflect that an asylum application has been lodged and also that the claimant has been charged with an offence under section 2.

Although IS will retain ownership of prosecution cases, Asylum Casework Directorate (ACD) will be responsible for conducting the substantive interview and making any subsequent asylum decision. IS will forward the screening interview, ARC details and any other asylum related paperwork either by the Single Case File (SCF) courier service, if the case originates at Gatwick or Heathrow airports, or by 1st class recorded delivery to the File Creation Unit (FCU) based in Asylum Casework Group (South) (ACG(S)). Included also will be a Pro Forma, BP8, which informs ACD that the port file will be kept by IS pending outcome of the criminal prosecution case.

10.4. Identification and Allocation of files subject to section 2 in ACD

10.4.1. Paperwork received by the File Creation Unit

The IS will send any asylum related paperwork, either by courier or first class recorded delivery, to the File Creation Unit (FCU). Upon receipt of any paperwork from the IS, which includes a Pro Forma BP8, FCU caseworkers should raise a sub file. The file should then be forwarded to Asylum Co-ordination Unit 1 (ACU1) Team

A for allocation to a Case Management Unit (CMU).

10.4.2. Handling of section 2 files by Asylum Co-ordination Unit 1 Team A

Upon receipt of the file from File Creation Unit (FCU), Asylum Co-ordination Unit 1 (ACU 1) Team A caseworkers should check to see if there is a Pro Forma BP8. If the file contains a BP8 then ACU 1 Team A caseworkers should check on CID to see if it is a section 2 prosecution case. Where section 2 action is being pursued there will be a case type on CID, which will read "S2 Failure to produce a document at interview". If CID shows that a section 2 prosecution is being pursued then the file should be flagged on red paper with the sticker given at Annex D.

However there may be some occasions where caseworkers may not be able to determine what offence a claimant has been charged with because CID has not been updated. In such situations caseworkers should first check through the file and then, if they are still not able to determine the offence, contact the originating port directly.

Important - Please read carefully

ACU1 Team A caseworkers should also contact the originating port in order to determine the outcome of the prosecution case and the release date. If the prosecution case is still pending caseworkers should try and ascertain from the originating port a provisional date by which the outcome will be known. The case file should then be placed in a local hold until the outcome of the prosecution case can be obtained. If no provisional date for the outcome of the prosecution case can be obtained then caseworkers should make weekly checks with the originating port.

Once the outcome of the prosecution case has been obtained, and if the claimant has been found guilty, caseworkers should then follow the procedures outlined below.

When obtaining the outcome of the prosecution case, caseworkers should also determine from the originating port whether the claimant has been court recommended for deportation following completion of sentence. If the court has recommended deportation action then caseworkers should contact a HEO in Criminal Casework Team (CCT) to see if they have an interest in the case. If CCT have an interest in the case they will request the case file be forwarded to them if a decision to refuse asylum is to be made. ACU1 Team A caseworkers should minute the file for the attention of the decision making caseworker with instructions to forward the case file to the CCT following completion of the Reasons for Refusal Letter for service by them.

Please note under no circumstances should a claimant be booked in for an interview if they are currently being held on remand.

ACU 1 Team A caseworkers should then contact the Prison Service in order to ascertain the location of the prison at which the claimant is being held.

Upon confirmation of prisoner location ACU 1 Team A caseworkers should forward the case file to ACU 1 Team B.

ACU 1 Team A caseworkers should not wait for receipt of a statement of Evidence Form (SEF) before forwarding the case file to Team B. In the majority of cases it will be unlikely that the claimant has been issued with a SEF form. Even in cases where a SEF has been issued, by virtue of the fact that the claimant is in prison, it is unreasonable to expect them to submit a completed SEF within the prescribed

period. Failure to submit a SEF should not be grounds for refusing the case on non-compliance grounds where the claimant is either on remand or serving a prison sentence following conviction under section 2.

10.4.3. Handling of section 2 files by Asylum Co-ordination Unit 1 Team B

Caseworkers in Asylum Co-ordination Unit 1 (ACU 1) Team B should determine whether the case file should be allocated to a Case Management Unit (CMU) in Asylum Casework Group (ACG) North or South depending on where the claimant is being detained and in accordance with standard procedures for allocation of files between North and South.

If the claimant is being detained at a location, which comes under the remit of ACG (N), then the case file should be forwarded to ACU 11 in Liverpool.

Croydon Procedure

If the claimant is being detained at a location which comes under the remit of ACG (S) then ACU 1 Team B caseworkers should book a legal visit slot at the prison as follows:-

1. Check to see if a Risk Assessment (RA) has been carried out for the prison. A spreadsheet, titled Prisons with Risk Assessments, which contains a list of all the prisons where a RA has been conducted can be found in the "Section 2" folder on the Transfer Drive.
2. If a RA has not been carried out for the prison then contact the Team Leader of either CMU 4 or 5 and request that one be carried out. Pending outcome of the RA the file should be placed in a local hold.
3. However, if a RA has been conducted then continue to book the interview and go to the following website address which lists the contact details and visiting times for all English and Welsh prisons,
<http://www.hmprisonservice.gov.uk/prisoninformation/locateaprisin/>
4. Note the visiting times available for legal visits and the fax number for the required prison. Please note that visiting times are not always given for all prisons. However a contact number is always available from the website which caseworkers can use to ascertain visiting times. Legal visit booking procedures are different for individual prisons, some require that a the booking be made by telephone, whilst others will only accept bookings by fax.
5. Allocate the case to either CMU 4 or 5.
6. Contact the Team Leader of the unit to which the case file is to be allocated and obtain the name of a caseworker who will be able to conduct the interview on the chosen date.
7. Book a legal visit at the prison.
8. Upon receipt of confirmation of the legal visit slot from the Prison Service place the interview details on file.
9. Update CID with interview booking details.

10. Forward the case file to the Interview Booking Unit (IBU) to make arrangements for an interpreter to attend for interview.

10.4.4. Handling of section 2 files by Asylum Co-ordination Unit 11 Liverpool Procedure

Following receipt of file from Asylum Co-ordination Unit 1 (ACU 1), caseworkers in ACU 11 should follow the procedure outlined below.

1. Check to see if a Risk Assessment (RA) has been carried out for the prison. A spreadsheet, titled Prisons with Risk Assessments, which contains a list of all the prisons where a RA has been conducted can be found in the "Section 2" folder on the Transfer Drive.
2. If a RA has not been carried out for the prison then contact the Team Leader for CMU H12/H13 and request that one be carried out. Pending outcome of RA the file should be placed in a local hold.
3. Input an interview request and store the file in NWQ23 to await confirmation from IBU.
4. On receipt of confirmation forward the file to CMU H12/H13.

10.4.5. Interview Booking Unit Procedures Croydon Procedure

Upon receipt of file in Interview Booking Unit (IBU) from Asylum Co-ordination Unit 1 (ACU 1) Team B, caseworkers should:-

1. Book an interpreter to attend prison for interview.
2. Prepare 2 copies of the ACD.2780 (Detained Invitation to Interview Letter) sending one copy to the claimant and placing the remaining copy on file. If the claimant is represented then an additional copy should be prepared and despatched to the representative.
3. Provide the prison where the interview is to be conducted with the name of the interpreter who will be attending.
4. Minute the file with the name and the Central Interpreter Unit (CIU) number of the interpreter who will be attending the interview.
5. Forward the case file to the relevant Case Management Unit (CMU).

Liverpool Procedure

Upon receipt of request in Inbox from Asylum Co-ordination Unit 11 (ACU 11), Interview Booking Unit (IBU) caseworkers should:-

1. Telephone the prison at which the claimant is being held at and asked to be referred to Legal Visits. Contact details for all English and Welsh prisons can be obtained at the following website

<http://www.hmprisonservice.gov.uk/prisoninformation/locateaprison/>

2. Provide Legal Visits booking with claimants details and make a provisional booking. Explain to them that it is an asylum interview and that this may take longer than the two hour slot normally allotted.
5. Contact the Team Leader of the unit to which the case file is to be allocated and obtain the name of a caseworker who will be able to conduct the interview on the chosen date.
7. Book an interpreter to attend prison for interview.
8. Provide Legal Visits section of the prison with interviewing officers and interpreters details and confirm interview slot.
9. Upon receipt of confirmation of the legal visit slot from the prison service forward details to the relevant CMU to place on file.
10. Update CID with interview booking details.
11. Prepare 2 copies of the ACD.2780 (Detained Invitation to Interview Letter) sending one copy to the claimant and placing the remaining copy on file. If the claimant is represented then an additional copy should be prepared and despatched to the representative.
12. Contact the relevant CMU and ask them to minute the file with the name and the Central Interpreter Unit (CIU) number of the interpreter who will be attending the interview.
13. Forward the case file to the CMU H12/H13

10.4.6. Instructions to be given to interpreters attending prison interviews

When booking an interpreter to attend for interview at prison (see 10.4.3.), Interview Booking Unit (IBU) should inform them that they must take with them to the prison their Home Office pass, if they have one, or a recognisable form of photographic identification such as a passport or driving license. Interpreters should also be provided with the telephone number of the Case Management Unit (CMU) conducting the interview and instructed to call the number 30 minutes before the scheduled time of the interview. This will enable the CMU to provide the interpreter with the mobile telephone number of the interviewing officer so that they may meet at a pre-arranged location near the prison. **Interpreters should be informed that under no circumstances should they attempt to enter the prison without the interviewing officer.**

10.5. Handling of section 2 cases in Case Management Units prior to interview

10.5.1. Team Leader actions

Upon receipt of the case file Team Leaders should confirm whether a Risk Assessment (RA) has been carried out for the prison at which the claimant is being held. If a RA has not been carried out and there is time to conduct one before the interview date then Team Leaders should do so. However, if there is insufficient time for a RA to be carried out then Team Leaders should contact the prison by fax and cancel the interview. Team Leaders should then arrange for a RA to be carried out and then send the file to Asylum Co-ordination Unit 1 (ACU 1) Team B or ACU 11, as appropriate, so that they may arrange another interview. Interview Booking Unit (IBU)

should also be informed of the cancellation of the interview so that they may inform the interpreter not to attend.

If a RA has already been conducted then Team Leaders should allocate the file to a caseworker. However, before doing so Team Leaders must ascertain whether the caseworker has had the relevant training for conducting prison interviews.

If the claimant is a female, Team Leaders should try and ascertain from the file whether her basis of claim makes mention of rape or sexual assault. If a female claimant's account does cover such areas then Team Leaders should allocate the interview to a female caseworker. In practise this will be difficult to achieve since it is unlikely that the file will have either a Statement of Evidence Form (SEF) or a statement. In such cases it would be prudent for Team Leaders to allocate the file to a female caseworker.

10.5.2. Caseworker actions

Caseworkers should prepare for the interview as normal. In addition to normal preparations on the day prior to the interview caseworkers should:-

- Plan route and mode of transportation to reach the prison.
- Make sure that a working mobile telephone has been allocated and that the battery is fully charged.
- Make sure that a portable PACE recorder has been allocated and that the battery is fully charged.
- Take a photocopy of the Statement of Evidence Form (SEF) and of any other statement submitted by the claimant, blacking out any personal details.
- Prepare NINO and interview paperwork.
- Have sufficient interview record continuation sheets.

10.6. Conducting the interview

10.6.1. Pre-interview preparations

Caseworkers should make sure that they have the following before they leave for the interview:-

- Home Office Identification Pass
- Additional identification in the form of a passport or a driving license
- Fully charged and working mobile phone
- Fully charged portable PACE recorder
- 8 blank audio cassettes
- Plastic wallet
- Personal Alarm
- Photocopy of SEF and/or statement
- Completed NINO and interview paperwork
- Sufficient interview record continuation sheets
- 2 black pens
- Brown A4 envelope

NB: If the interview is scheduled for the morning and there would be insufficient time for the caseworker to come to the office and then depart for the prison, then the above equipment should be taken home on the day prior to the interview.

If caseworkers intend to use the Underground then they should plan their journey so that they are within mobile reception at least 30 minutes before the scheduled time of interview. This is so that there is enough time for the interpreter to contact them and arrange a meeting place (see 10.4.4. above).

Caseworkers are reminded that all asylum applications lodged in the United Kingdom are confidential. Under no circumstances should caseworkers take the actual case file with them to interview. Caseworkers should only have a photocopy of the SEF and/or statement, if available, with all personal details blacked out which they may use for reference during the interview. **If there is a SEF and/or statement then under no circumstances should caseworkers read these documents whilst they are travelling on Public Transport.** Caseworkers should make sure that all official paperwork is placed in a secure bag whilst in transit.

10.6.2. Arrival at the prison

Upon arrival at the prison caseworkers should:-

- Meet the interpreter at a pre-arranged location, preferably near the prison entrance.
- Confirm with the interpreter whether they have either a Home Office pass or an alternative form of identification such as a passport or driving license.
- Call Case Management Unit (CMU) using mobile telephone provided to inform that you have arrived at the prison with the interpreter and are about to enter the premises. Team Leaders will record the time at which caseworkers entered the prison.
- Upon entering the prison caseworkers should present themselves at reception and state the purpose of the visit.
- Caseworkers should follow any instructions given by the Prison Service staff.

10.6.3. The interview

Caseworkers should follow normal procedures for conducting asylum interviews as instructed in Conducting Asylum Interviews.

In addition at the start of the interview the following statement should be read out to claimants,

"You should be aware that if you are not entitled to funded representation at the asylum interview, cannot afford your own representation, and wish to have your asylum interview tape-recorded, IND will offer facilities. Please note that if you do have such representation, then choosing not to have your representative present at your interview will not entitle you to have your interview tape-recorded. If your interview is recorded you will receive one copy of the tape(s), on receipt of your dated signature. IND will retain one copy of the tape(s)."

If the claimant states that they wish for their interview to be tape recorded then caseworkers should set up the portable PACE recorder before commencing with the interview.

Under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 when deciding whether to believe a statement made by a claimant, the fact that a claimant has attempted to enter the United Kingdom without a valid travel

document **may** be considered as damaging to credibility. Therefore, in addition to asking questions considered to be damaging to credibility as defined under section 8, caseworkers must also ask the claimant about their failure to produce a valid travel document when they attempted to enter the United Kingdom irrespective of the fact that they have already been convicted of an offence under section 2 (please see the section relating to credibility in the Asylum Policy Instruction on Assessing the Asylum Claim).

If the claimant wishes to submit any documentary evidence in support of their application then this should be accepted, even where documents have not been translated into English. It is unlikely that a claimant who is being held in prison will have had the opportunity to get any documents translated into English.

At the end of the interview caseworkers should inform the claimant that they, or if they are represented their representative, will be sent copy of their interview record within five working days. If the interview has been tape recorded then the claimant should be given any tape(s) of the interview after obtaining a dated signature on the interview record acknowledging receipt.

The claimant should be also be informed that they have five working days to submit any further representations in support of the asylum application. The claimant should be informed that if they wish to submit any documents in support of their claim then they do not have to be translated into English.

The interview record and any documents submitted by the claimant should be placed in a brown A4 envelope, which should then be sealed. The envelope should then be placed in a secure bag. If the interview has been tape recorded then any tape(s) of the interview should be placed in a plastic wallet.

10.6.3.1. Claimants who refuse to be interviewed

If a claimant refuses to be interviewed then caseworkers should bring to their attention that it is to their benefit that they co-operate with the interview process. Claimants should also be reminded that failure to co-operate could lead to their application for asylum being refused on grounds of non-compliance.

If the claimant continues in refusing to be interviewed then caseworkers should terminate the interview and leave the prison.

10.6.3.2. Claimants who claim to be too ill to be interviewed

If a claimant claims that they are too ill to be interviewed and have a headache or similar ailment, caseworkers should in the first instance remind them of the importance of co-operating with the interview process and that failure to co-operate could lead to their application for asylum being refused on grounds of non-compliance.

If the claimant persists in claiming that they are too ill to be interviewed then the interview should be terminated. The claimant should be informed that they have five working days to submit any evidence as to why they could not be interviewed. Claimants should be directed to contact the Prison Medical Officer (PMO) to obtain such evidence. Caseworkers should then leave the prison premises.

10.6.4. Departure from prison

Upon leaving the prison caseworkers should phone their Case Management Unit (CMU) to confirm that they have completed the interview. Caseworkers should note that the CMU will have an approximate estimated duration of interview noted. Failure to contact the CMU after the expiration of a specified period following the end of the estimated duration of interview will result in the Team Leader contacting the Prison in order to ascertain whether the interview was conducted. If it transpires that an interview was conducted and the caseworker has left the prison then the police may be alerted after a specified period. It is therefore imperative that caseworkers contact their CMU following interview.

If caseworkers intend on not returning to the office then the CMU should be informed of this and every precaution should be taken to prevent loss or misplacement overnight of the confidential interview record and associated papers, mobile phone and mobile PACE recorder.

10.7. Handling of section 2 cases in Case Management Units post interview

10.7.1. Updating CID following interview

Caseworkers should update CID to reflect whether an interview has been conducted or not.

10.7.2. Interview record

Caseworkers should send a copy of the interview record to the claimant, or if represented, their representative without delay. The interview record should be posted using first class recorded delivery. If the interview record is being sent directly to the claimant then the claimant's prisoner number should be clearly written on the envelope. A short covering letter for the attention of the duty officer should be included stating that the interview record should be given to the claimant.

10.7.3. Claiming expenses

Caseworkers should remember to put in a claim for any travel or accommodation expenses incurred as a result of conducting a prison interview. For guidance on how to claim expenses please contact the Business Support Team.

10.7.4. The decision

Caseworkers should wait until at least after five working days following the interview before making a decision on the claim.

That fact that a claimant has been convicted for an offence under section 2 should not prejudice the outcome of any asylum decision. Caseworkers should reach a decision on the claim as instructed in Considering Asylum Claims.

However, under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 when deciding whether to accept a statement made by a claimant, caseworkers shall take into account, as damaging the claimant's credibility, any behaviour to which that section applies (please see the section relating credibility in the Asylum Policy Instruction on Assessing the Asylum Claim). The fact that a person has been convicted of an offence under section 2 may be evidence that he has behaved in a way relevant under section 8 and therefore may be relied on as being damaging to credibility. However, the asylum claim and the issue of credibility should be considered in light of all the information relating to the case and hence a

conviction for a section 2 offence does not necessarily mean that the claim in its entirety is not credible.

It should be noted that section 2 relates only to entering or seeking to enter the United Kingdom without a passport or other immigration document whereas section 8 deals with other types of behaviour which shall be taken as damaging to credibility and therefore the caseworker will still need to question the claimant concerning this behaviour if it is of relevance to the claim.

Before making a decision caseworkers should check through the minutes on file to see whether there is any interest in the case from Criminal Casework Team (CCT). CCT will have an interest in the case if the court has recommended that the claimant be deported following completion of sentence. If there is a minute on file indicating CCT interest then caseworkers should contact them and inform them of what the decision on the asylum application is likely to be. If the decision is to be a refusal then caseworkers should draft the Reasons for Refusal Letter and then send the case file to CCT for service of decision.

When a decision has been made caseworkers should inform the originating port of what that decision is.

10.7.5. Service of decision

Where a decision has been made the case file should be forwarded to the Asylum Decision Service Unit (ADSU) as normal.

ADSU caseworkers should serve the decision as in a normal port case to the representative, if the claimant is represented. However where the claimant is not represented, ADSU caseworkers should check whether the claimant is still being held at the prison at which the interview was conducted, has been transferred to another prison or has been released. Caseworkers can check prisoner location either through the Prisoner Location Service (PLS) or by contacting the prison directly by fax. If the claimant is still being detained at a prison at the time of decision then caseworkers should obtain the name and address of the relevant duty officer by contacting the relevant prison. All relevant decision paperwork should be despatched to the Duty Officer by first class recorded delivery, with a brief covering letter detailing the caseworker's contact name/number and explaining the action required. Prison Duty Officers should be asked to notify caseworkers when the decision has been served in order to update CID. Caseworkers should always check that the decision has been served correctly and CID fully updated before forwarding the case file to WIPs APC or Layby.

Where the claimant has been released then ADSU caseworkers should check to see if there is an address on file or if the claimant is being housed by NASS. If no address can be found then the decision should be served on file in accordance with APN 03/2005 (when available).

11. Applying section 72 of the Nationality, Immigration and Asylum Act 2002 to asylum claimants

11.1. Introduction

This section gives guidance on the procedures to follow for the application of section 72 of the Nationality, Immigration and Asylum Act 2002 ("section 72"). It relates to asylum claimants who have been convicted of a serious criminal offence, and who

fulfil the section 72 criteria.

Because of the complex and serious nature of section 72 only senior caseworkers should handle these types of cases.

For operational reasons only senior caseworkers in Asylum Casework Group (South) should be allocated these cases.

11.2. Background

Section 72 of the Nationality, Immigration and Asylum (NIA) Act 2002 provides an interpretation of Article 33(2) of the 1951 Convention relating to the Status of Refugees.

Article 33(2) states that a refugee may be returned to a country where they have a well-founded fear of persecution if, having been convicted by a final judgement of a particularly serious crime, they are considered to pose a danger to the community of the protecting country. In effect, Article 33(2) negates the principle of non-refoulement set out in Article 33(1) in relation to serious criminals and exempts them from Convention protection.

11.3. Criteria for the application of section 72

Section 72 (subsection (2)) of the NIA Act 2002 defines a particularly serious crime as one for which a prison sentence of two years or more is imposed.

Section 72 also applies where a person was convicted overseas and sentenced to a period of at least two years imprisonment and could have been sentenced to at least two years imprisonment if convicted in the United Kingdom for a similar offence (subsection (3)).

Section 72 (subsections (4) and (5)) also enables the Secretary of State to specify particular offences in an order so that a person convicted of a specified offence, irrespective of the length of sentence, would fall within the scope of Article 33(2) and be presumed to be a danger to the community. The Secretary of State made such an order, which came into force on 12 August 2004.

The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 is contained within Asylum Policy Unit Notice 06/2004 - Section 72 of the NIA Act 2002: Particularly Serious Crimes.

Section 72 is applicable to cases even where the claimant was convicted of a crime before the NIA Act 2002 and the NIA Act 2002 (Specification of Particularly Serious Crimes) Order 2004 came into force.

Further guidance on the criteria for the application of section 72 can be obtained from the Asylum Policy Instruction on Articles 1F and 33(2) of the 1951 Refugee Convention (when available).

11.4. General principles for the application of section 72

Where a refugee has been convicted of a crime that meets the criteria of section 72 (see 11.3.), and they do not rebut the presumption that they pose a danger to the community, their removal is not contrary to the 1951 Refugee Convention and the principle of non-refoulement.

Similarly where an asylum claimant is convicted of a crime that brings them within the

scope of section 72 and where they do not rebut the presumption that they are a danger to the community their removal is not contrary to the Refugee Convention. As such, their asylum claim should be refused on the basis of section 72 alone without any substantive consideration. However any Human Rights claim must be considered substantively, as removal could still be contrary to the ECHR.

In every case where section 72 is applied, the individual is given the opportunity to rebut the presumption that they pose a danger to the community of the United Kingdom. Where the individual seeks to show that they are not a danger to the community, the onus is on them (and not the Secretary of State) to demonstrate this. If an individual makes a successful rebuttal, regardless of the seriousness of the offence committed, section 72 will not apply. Only if the rebuttal is unsuccessful will the individual be refused under section 72.

11.5. The role of the Criminal Casework Team

The Criminal Casework Team (CCT) is primarily responsible for handling cases where a foreign national has been convicted of a crime in the United Kingdom and the court has recommended that following release deportation action should be pursued. They also handle criminal cases, which need to be considered for deportation action on conducive grounds. CCT will hold overall responsibility for cases where the application of section 72 is appropriate. Their primary function will be to obtain and assess the claimant's rebuttal.

11.5.1. Basic process for asylum claims that may fall under section 72

If, following investigation, Criminal Casework Team (CCT) deem that the claimant has not rebutted the presumption that they are a danger to the community, they will pass the case file to Asylum Casework Group (South) (ACG(S)) for informal consideration of the asylum claim. ACG(S) will be responsible for informally considering the asylum claim and for addressing in full any applicable ECHR articles in the section 72 Reasons for Refusal Letter (RFRL). ACG(S) will then pass the file back to CCT who will proceed with the service of the section 72 RFRL and the intention to deport notice.

11.5.2. Recognised refugees who may fall under section 72

Criminal Casework Team (CCT) are automatically informed when foreign nationals, including refugees, are convicted of a crime in the United Kingdom. Where a recognised refugee has been convicted of a particularly serious crime, which falls within the scope of section 72, CCT will handle these cases. If, in the unlikely event senior caseworkers encounter any cases where a recognised refugee has been convicted of crime which fulfils the section 72 criteria, then they should forward the case file directly to CCT.

However senior caseworkers should note that in cases where a refugee falls within the scope of section 72, consideration should be given to whether they still have a fear of persecution in their country of nationality. If the reasons why a person was granted refugee status no longer exist in their country of origin then it may be appropriate to take cessation of refugee status action under clauses 1C(5)-(6) of the Refugee Convention. Taking cessation of refugee status action reduces, but does not entirely eliminate, the likelihood of removal being a breach of the United Kingdom's obligations under the ECHR. Senior caseworkers should therefore give consideration to the possibility of taking cessation action where a recognised refugee falls within the scope of section 72. When CCT encounter a case where a recognised refugee

falls within section 72 then they may request ACG(S) senior caseworkers to look into possible cessation of refugee status action. For further guidance please see Cessation and Cancellation of Refugee Status (when available) and the Asylum Policy Instruction on Cessation and Cancellation of Refugee Status (when available).

11.6. The processes between CCT and ACG(S) in handling section 72 cases

11.6.1. Identification and transportation of section 72 files

The section 72 reasons for refusal letter (RFRL) allows for the rebuttal of any representations received from the claimant regarding the presumption that they are a danger to the community to be addressed, alongside the Article 33(2) and human rights aspects of the claim. Once the Criminal Casework Team (CCT) caseworker has completed the reasons for refuting the claimant's rebuttal on the section 72 RFRL template, a copy will be printed and attached to the case file. CCT will then inform the SEO senior caseworker for the country in question in ACG (S) by email that the refutation of the claimant's rebuttal has been completed on the Document Generator system.

The file will then be sent to the ACG(S) SEO senior caseworker for consideration of the asylum and ECHR aspects of the case.

CCT will flag files subject to section 72 action with a sticker for easy identification purposes. The sticker will read "SECTION 72 CRIMINAL CASE". It is imperative that all cases flagged with this sticker are given priority.

11.6.2. Allocation of files in Senior Caseworker Unit

Criminal Casework Team (CCT) will allocate the case file to SEO senior caseworkers according to their geographical / regional specialisms. The SEO senior caseworker may then reallocate the file within their command to an HEO senior caseworker according to their country specialism or relevant expertise.

11.6.3. Consideration of section 72 files

Upon receipt of the file senior caseworkers should check if an Immigration Officer has undertaken a substantive interview. Although the section 72 guidance note (Asylum Policy Unit Notice 06/2004 - Section 72 of the NIA Act 2002: Particularly Serious Crimes) states that in cases where section 72 is to be applied it is not necessary to substantively assess the asylum application, in practise there must be sufficient information on file to enable senior caseworkers to fully consider the asylum claim and any ECHR claim. This is for the purposes of producing a minute which will assist the Presenting Officer (PO) in the event that the section 72 certificate is not upheld by an adjudicator at the appeal stage.

Criminal Casework Team (CCT) usually retain the case file during the claimant's custodial sentence and should have arranged for an Immigration Officer from a Local Enforcement Office (LEO) or CCT to visit the prison for a substantive interview. However if the asylum claimant still requires a substantive interview or more information is necessary, senior caseworkers should return the file to CCT with a minute explaining that an interview needs to be conducted or, if further information is required, exactly what information is needed.

11.7. The decision

Upon receipt of the file from Criminal Casework Team (CCT), Asylum Casework Group (South) (ACG(S)) senior caseworkers should have a copy of the section 72

reasons for refusal letter (RFRL) (ACD.2682 - Reasons for Refusal Letter (section 72)) on file, with the rebuttal aspect already having been completed by a CCT caseworker. Senior caseworkers should address the Article 33(2) and any ECHR aspects of the claim on the section 72 RFRL as instructed in 11.9. below. The section 72 RFRL will state that the Secretary of State has relied solely on the provisions of section 72 of the NIA Act 2002 in refusing the claim and therefore should not contain any substantive consideration of the asylum claim.

Although asylum claimants subject to section 72 will not have their cases formally considered, senior caseworkers should complete a full (internal) consideration minute to be filed aside (ACD.2683 - Consideration Minute (section 72)). The Presenting Officer (PO) at appeal will rely upon this consideration minute if the section 72 certificate is not upheld.

The consideration minute should detail the basis of the claim, and give a full account of whether or not the claimant would have qualified for asylum and the reasons why.

11.8. Consideration of Human Rights issues

Human Rights issues should be considered and addressed in the usual manner in the section 72 reasons for refusal letter (RFRL). All relevant Human Rights articles under which an individual has claimed, or implied reasons for a potential breach, should be addressed.

However senior caseworkers should note that asylum claimants subject to section 72 will also fall to be excluded from Humanitarian Protection in accordance with paragraph 2.5 of the Asylum Policy Instruction on Humanitarian Protection. Therefore if it is considered that removal would constitute a breach of either Articles 2 or 3, e.g. claimant is at real risk of death or inhuman or degrading treatment or punishment, then senior caseworkers should consider granting Discretionary Leave for a period of six months in accordance with paragraphs 2.6 and 5.1 of the Asylum Policy Instruction on Discretionary Leave.

When considering Article 8, senior caseworkers should bear in mind that, since there is a proportionality test (the right to private and family life balanced against the interests of national security, public safety or the economic wellbeing of the country), the fact that a person fits into an exclusion category will mean that any interference with their family life is likely to be proportionate and their removal would not be a breach of Article 8. However each case is different and must be treated on its merits.

Individuals who cannot be removed due to legal reasons, for example ECHR considerations, will be subject to a review of their Discretionary Leave every six months. In order to be eligible to apply for settlement in the United Kingdom, they will need to have accrued a total of ten years continuous grants of Discretionary Leave.

11.9. Implementing section 72 decisions

Senior caseworkers should not implement the asylum decision as directed in standard instructional minute sheets. Senior caseworkers should follow the procedure set out below.

11.9.1. Procedure for implementing section 72 decisions

Criminal Casework Team (CCT) will already have completed the rebuttal aspect of the section 72 reasons for refusal letter (RFRL) and have it saved on the Document

Generator system. In order for senior caseworkers to deal with the Article 33(2) and Human Rights aspects of the section 72 RFRL, CCT will have placed a Print Stop on the letter to indicate that it has not been despatched.

1. Access the section 72 RFRL on the Document Generator system and complete the Article 33(2) and Human Rights aspects of the claim.
2. Produce four copies of the section 72 RFRL and attach one copy to the file. The remaining three copies should then be securely attached to the copy already on file with paperclips.
3. Print and attach one copy of the internal consideration minute to the case file.
4. Update CID.

11.10. Service of decision

Senior caseworkers should contact the relevant Criminal Casework Team (CCT) caseworker when the file is ready for service.

Senior Caseworker Unit (SCWU) team support should then walk over completed files to 14th Floor, Lunar House for serving by CCT staff.

11.11. Dealing with dependants

Family members of an asylum claimant whose claim is being dealt with under section 72 will normally fall to be refused.

However, some dependants may also apply for asylum in their own right, and such claims should be considered on their merits. They cannot be excluded from the protection of the Refugee Convention solely because of the actions of the principal claimant. If the dependant's own asylum claim meets the requirements for inclusion under Article 1A, and they are not excluded from protection due to their own actions, then they should be granted asylum.

Further guidance on dealing with the dependants of asylum claimants subject to section 72 may be found in the related Asylum Policy Instruction on Articles 1F and 33(2) of the 1951 Refugee Convention (when available).

11.12. Section 72 and the right of appeal

Where an asylum claim is refused on grounds that Article 33(2) applies, the same appeal rights apply as in a case where the claim has been refused without any reliance on these exclusion grounds and an immigration decision has been taken under section 82 or section 83 of the NIA Act 2002. For further guidance see the Asylum Policy Instruction on Rights of Appeal.

The immigration decision arising from refusal of asylum under section 72 will normally be to make a deportation order under section 5(1) of the Immigration Act 1971 or to refuse to revoke a deportation order under section 5(2) of the Immigration Act 1971. The appeal rights which emanate from these decisions are under section 82(2)(j) or section 82(2)(k) of the NIA Act 2002 respectively.

Although the general right of appeal is the same, there are important procedural differences. Where section 72 applies the appellate authority will deal first with the Secretary of State's certificate (to the effect that the person has committed a

particularly serious crime and constitutes a danger to the community). If the section 72 certificate is upheld, the appeal must be dismissed in so far as it relies on asylum grounds. However this does not exclude the adjudicator from allowing the appeal only on Human Rights grounds.

If the section 72 certificate is not upheld, the Presenting Officer will, if the claim were to have been refused, rely on the internal consideration minute to argue that the asylum claim should be dismissed.

12. Further guidance

Asylum Process Manual:

- Considering Asylum Claims
- Conducting Asylum Interviews
- Cessation and Cancellation of Refugee Status (when available)
- Minute writing

Asylum Policy Instructions:

- Assessing the claim, chapter 1, section 2
- Articles 1F and 33(2) of the 1951 Refugee Convention (when available)
- Cessation and Cancellation of Refugee Status (when available)
- Humanitarian Protection
- Discretionary Leave
- Rights of Appeal

Annex A - Criminal cases meriting conducive deportation action

The following list provides a general guide to those crimes which would usually warrant conducive deportation

1. If they commit a serious crime for which their sentence is 12 months or more OR they commit minor offences more than 3 times in 5 years.
2. Any serious violent crime which would include the following:

- Murder
- Manslaughter
- Rape
- Armed Robbery
- Arson
- Kidnapping

3. Supply or import of class A drugs

4. Burglary

5. Sex Trafficking

6. Sex Offenders(Sex offences in Schedule 1 of the Sex Offenders Act 1997)

- Section 1 (Rape)
- Section 5 (intercourse with a girl under 13)
- Section 6 (intercourse with a girl between 13 and 16)
- Section 10 (incest by a man)
- Section 13 (indecent between men)
- Section 14 (indecent assault on a woman)

- Section 15 (indecent assault on a man)
- Section 28 (causing or encouraging prostitution of, intercourse with, or indecent assault on, girl under 16)

7. Racist attack

8. Drug offences

- Anyone found guilty of unlawfully producing, supplying, or possessing with intent to supply controlled drugs.
- Assisting or inducing the commission outside the UK of drug offences
- Drug smuggling; unlawfully supplying or offering to supply articles used to administer or prepare controlled drugs.
- Illegally manufacturing, transporting or distributing substances which can be used to unlawfully produce controlled drugs.
- Possessing or knowingly carrying or concealing controlled drugs on ships.