



Legacy Cases

5th April 2007

In July 2006, the Home Secretary announced that there was an asylum “legacy” of around 450,000 cases, and the Home Office would clear this legacy within 5 years. To deal with these legacy cases, the Home Office have established a separate directorate – the legacy directorate.

What is a legacy case?

A legacy case is any case where all of the following apply:

- there has been a claim for asylum
- the Home Office records indicate that the case has not been concluded
- the case is not being dealt with by the New Asylum Model (NAM)

A claim for asylum will include a claim for humanitarian protection or discretionary leave, whether or not a claim for asylum under the Refugee Convention was made. Cases dealt with by NAM cannot become legacy cases. Similarly, it is not possible for a legacy case to transfer to NAM. (For information on NAM please see the separate information sheet called “New Asylum Model”.)

The Home Office have not provided comprehensive or clear information regarding legacy cases. ILPA is still seeking clarification from them. However, it seems that legacy cases will include:

- cases where the asylum claim remains outstanding
- cases where there is an outstanding appeal
- cases where asylum has been refused and any appeal dismissed, but the individual remains in the UK
- cases where a fresh claim for asylum has been made (a separate information sheet on “Fresh Claims” will be produced shortly)
- cases where the individual has been granted some form of leave to enter or remain, but this is limited and may need to be renewed (e.g. an unaccompanied child granted discretionary leave; a person granted discretionary leave for medical reasons)
- cases where the individual has been granted 5 years refugee leave or humanitarian protection and may apply for indefinite leave to remain at the end of that period
- cases where the individual has left the UK but the Home Office records have not been updated

Home Office legacy directorate

It is intended that, by the summer, there will be 1,000 Home Office staff working in the legacy directorate. They will not all be caseworkers with the authority to make decisions on individual cases. The legacy directorate will work through all the legacy cases.

The Home Office will consider a legacy case concluded when the individual has left the UK or been granted leave to remain in the UK. Working through a legacy case may include dealing with an appeal to the Asylum and Immigration Tribunal. The Home Office will treat a legacy case as closed if they cannot contact the individual, but they will first make what they consider to be reasonable efforts to make contact.

ILPA information service

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www.ilpa.org.uk/infoservice.html

Steve Symonds

ILPA legal officer

020 7490 1553

[steve.symonds](mailto:steve.symonds@ilpa.org.uk)

[@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

Prioritising cases

The Home Office have identified four criteria for cases, which they will prioritise. Those criteria are:

- cases of individuals who may pose a risk to the public
- cases of individuals who may easily be removed
- cases of individuals receiving support
- cases of individuals who may be granted leave to remain

However, the Home Office have said that it may be difficult for them to assess which cases are priority cases and which are not. They have confirmed they will select cases, so far as they can, according to the criteria. If a case is selected and it is found it does not fall within the criteria for prioritising, the caseworker will nevertheless work it through to conclusion.

Home Office legacy letters and questionnaires

The Home Office have been sending standard letters in response to letters or applications for further leave to remain from individuals who fall within the legacy cases. The Home Office letters have in the past simply stated that the individual's case will be concluded within 5 years. They have now confirmed that the letters will be changed. All cases will be concluded by July 2011. That is 5 years from the Home Secretary's announcement.

Receiving a standard letter does not indicate that a caseworker is actively dealing with the case. It indicates only that the case is regarded as a legacy case. The letter gives no indication when, within the period up to July 2011, the case will be dealt with. Home Office practice has been to send information on making a voluntary departure with the letter. This does not mean the individual should be expected to leave the UK.

When the Home Office select a legacy case, they send a questionnaire to the individual. This means the case is being actively dealt with by a caseworker, and will be dealt with through to a conclusion.

Legacy is not a regularisation process

Some people think the legacy questionnaire indicates the Home Office have begun a new 'amnesty' exercise for granting indefinite leave to remain to people in order to clear their backlog. This is not correct. The Home Office may grant leave to remain to some individuals. However, this will only happen if the individual's circumstances meet existing criteria for a grant of leave to remain.

Asking the Home Office to deal with a case

It may be possible to ask the Home Office to treat a case as a priority. Legal advice should be sought before someone asks that their case is treated as a priority. Even if the Home Office do prioritise a case, there is a risk this results in a decision that the person should be removed from the UK.