Home Office

Suitability: previous breach of UK immigration laws

Version 6.0

Contents

About this guidance

This guidance tells decision makers when an application for entry clearance, permission to enter or permission to stay must or may be refused, or when it may be cancelled on grounds of a previous breach of UK immigration laws.

Where the person is currently in breach of immigration laws, see: Re-entry bans.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Simplification of the Rules team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **6.0**
- published for Home Office staff on **14 November 2023**

Changes from last version of this guidance

Information on Appendix 'Electronic Travel Authorisation' added in the 'Introduction' section.

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Introduction

The rule on refusing entry clearance, permission to enter and permission to stay on the grounds of a previous breach of an immigration law, and cancellation of permission where a breach has occurred is covered in paragraphs 9.8.1 to 9.8.8 of the Immigration Rules.

Different provisions apply to applications made under:

- Appendix FM, except paragraphs 9.8.2(a) and (c) do apply where the application is for entry clearance
- An application on grounds of private life under paragraphs 276ADE to 276DH
- Appendix EU
- Appendix EU (Family Permit)
- Appendix Domestic Worker who is a Victim of Modern Slavery
- Part 11 (Asylum), except paragraphs 9.8.1 – 9.8.4 do apply to paragraphs 352ZH to 352ZS, and 352I to 352X, and 352A to 352FJ
- Applications for entry clearance or permission to stay granted by virtue of the ECAA Association Agreement
- Applications for permission to stay under Appendix ECAA Extension of Stay,
- Appendix S2 Healthcare Visitor
- Appendix Service Providers from Switzerland
- Appendix Adult Dependent Relative except paragraphs 9.8.2(a) and (c) do apply where the application is for entry clearance.

For suitability considerations under Appendix Electronic Travel Authorisation, refer to the Electronic Travel Authorisation guidance. Part 9 does not apply to Appendix Electronic Travel Authorisation and so this guidance does not apply to Appendix Electronic Travel Authorisation applications other than the sections specified in the Electronic Travel Authorisation guidance.

Please refer to the relevant guidance on how to handle cases in the categories listed above.

Effective date

These rules come into force on 1 December 2020 and apply to applications made on or after this date. Applications made before 1 December 2020 are subject to the previous Immigration Rules.

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What is a breach of immigration laws?

A person will have previously breached the UK's immigration laws if, when aged 18 or over, they have:

- overstayed (unless an exception applies)
- breached a condition of their permission
- been, or are, an illegal entrant ('illegal entrant' includes those who have attempted to enter illegally)
- used deception in an application for entry clearance or permission to enter (whether the application was successful or not)

Overstaying: exceptions

A person will not be treated as having overstayed for the purpose of this provision if they left the UK voluntarily (see: Voluntary and assisted returns) and any of the following applied:

- the person overstayed for 90 days or less and the overstaying began before 6 April 2017
- the person overstayed for 30 days or less and the overstaying began on or after 6 April 2017
- overstaying in relation to which paragraph 39E of the Immigration Rules (concerning out of time applications made on or after 24 November 2016) applied, together with any period of overstaying pending the determination of any related appeal or administrative review

Overstaying arising from a decision of the Secretary of State which was subsequently withdrawn, quashed, or which the Court or Tribunal required the Secretary of State to reconsider in whole or in part, will not be counted unless the challenge to the decision was brought more than 3 months from the date of the decision.

When a person has previously breached immigration laws

Where a person has previously breached an immigration law, they would normally be subject to a re-entry ban. For further information see: Re-entry bans.

Paragraphs 9.8.1. to 9.8.7. of Part 9 of the Immigration Rules set out when an application must, or may, be refused on the grounds that the person has previously breached the UK's immigration laws.

Burden and Standard of proof

The burden of proof is on the Home Office to show that a person has previously breached immigration laws. The standard of proof is the balance of probabilities (in that it is more likely than not).

Checking for evidence of a previous breach of immigration laws

You should check the information on the application form and on case working systems to see if there is evidence that the person previously breached immigration laws.

Other information which may be relevant: if appropriate:

- Department for Work and Pensions (DWP) checks
- HM Revenue and Customs (HMRC) checks

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Refusing entry clearance or permission to enter

This section contains guidance for decision makers on what to consider when a person seeking entry has previously breached immigration laws.

What to do when there has been a previous breach of immigration law

When a person who is applying for entry clearance or permission to enter has previously breached immigration laws, you must look at the date of application. If the date of application is within the relevant time period in paragraph 9.8.7 of the Immigration Rules, the application must be refused, unless one of the exemptions apply. This rule applies to all routes, except those listed in the introduction section of this guidance.

When the person has breached more than one of the UK's immigration laws, you must only take into account the breach which leads to the longest ban.

Calculating the relevant time period (re-entry ban)

You must consider when the immigration breach took place in the UK when determining whether the new application is within the relevant time period.

The relevant time period is calculated from the date the applicant left the UK after their breach, or where row (f) of the table applies, the relevant time period is calculated from the date of the refusal decision:

Time from date the person left the UK (or date of refusal of the application under row (f))	This applies where the applicant	And the applicant left the UK	And the applicant left the UK
(a) 12 months	left voluntarily	at their own expense	N/A
(b) 2 years	left voluntarily	at public expense	Within 6 months of being given notice of liability for removal or when they no longer had a pending appeal or administrative review, whichever is later.
(c) 5 years	left voluntarily	at public expense	More than 6 months after being

Time from date the person left the UK (or date of refusal of the application under row (f))	This applies where the applicant	And the applicant left the UK	And the applicant left the UK
			given notice of liability for removal or when they no longer had a pending appeal or administrative review, whichever is later.
(d) 5 years	left or was removed from the UK	as a condition of a caution issued in accordance with section 22 of the Criminal Justice Act 2003 (and providing that any condition prohibiting their return to the UK has itself expired)	-
(e) 10 years	was deported or removed from the UK	at public expense	-
(f) 10 years	Used deception in an application (for visits this applies to applications for entry clearance only).	-	-

Resetting the 6-month time period

In some cases, the 6 month time window in which a person must depart to benefit from a 2 year relevant time period, rather than a 5 year relevant time period, may be re-set to start again. The 6-month clock will have been re-set where the:

- removal decision was substituted for a new removal decision where a fault is found with the original decision
- person was appeal rights exhausted (ARE), but then lodged an out-of-time notice of appeal with the First-tier Tribunal seeking an extension of that time limit and the First-tier Tribunal extended the time limit:
  - the 6-month clock starts on the date the person was given notice of their removal decision or the date on which the subsequent out-of-time appeal was eventually dismissed, whichever is the later

- person made further submissions to the Secretary of State which following consideration under paragraph 353 of the Immigration Rules, are refused but found to constitute a fresh claim:
  - the 6-month clock restarts on the date the person is given notice of their new removal decision (which accompanies the refusal of their fresh claim) or the date on which they exhaust their appeal rights against that decision, whichever is the later
- person made further submissions to the Secretary of State which were only determined more than 12 months after their submission:
  - the 6-month time limit restarts from the point where the further submissions are determined and found not to constitute a fresh claim

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Applications made outside the relevant time period

If an application for entry clearance or permission to enter is made outside of the relevant time period e.g. where the relevant time period has expired, you must consider whether it is appropriate to refuse their application under paragraph 9.8.2 of the Immigration Rules. This rule applies to all routes, except those listed in the introduction section of this guidance.

Assessing the application

In order to make a decision under this paragraph, you will require evidence that the person has previously breached immigration laws, and either:

- previously contrived in a significant way to frustrate the intention of the Immigration Rules
- there are aggravating circumstances, such as a failure to co-operate with redocumentation, or absconding

Previously contrived to frustrate the intention of the rules and aggravating circumstances

When the circumstances of the previous breach of immigration laws are also aggravated by other actions with the intention to deliberately frustrate the rules, you must consider refusing entry clearance or permission.

This means when an applicant has done one or more of the following:

- been an illegal entrant
- overstayed
- breached a condition attached to their leave
- used deception in a previous application
- obtaining:
  - asylum benefits
  - state benefits
  - housing benefits
  - tax credits
  - employment
  - goods or services
  - National Health Service (NHS) care using an assumed identity or multiple identities or to which not entitled

and there are aggravating circumstances, such as:

- absconding
- not meeting temporary admission/reporting restrictions or bail conditions

- failing to meet the terms of removal directions after port refusal of leave to enter or illegal entry
- previous working in breach on visitor conditions within short time of arrival in UK (indicating a deliberate intention to work)
- receiving benefits, goods or services when not entitled
- using an assumed identity or multiple identities
- getting NHS care to which they are not entitled
- attempting to prevent removal from the UK, arrest or detention by Home Office or police
- escaping from Home Office detention
- switching nationality
- troublesome or frivolous applications
- not meeting the terms of the re-documentation process
- taking part, attempting to take part, or facilitating, in a sham marriage or marriage of convenience
- harbouring an immigration offender
- people smuggling or helping in people smuggling

Other factors

You must consider all the circumstances of the case. Factors which may be relevant to your decision include:

- why and how did the breach happen
- if a condition was breached, the period between the condition being imposed and the breach
- the period since the breach
- any other circumstances, such as the impact of a refusal on the individual or their family living in the UK

Appendix FM and Appendix Adult Dependent Relative

You may refuse an application for entry clearance only made under Appendix FM and Appendix Adult Dependent Relative where there has been a previous breach of an immigration law and the applicant has contrived in a significant way to frustrate the intention of the rules or there are aggravating circumstances.

In these cases, you do not need to consider if the application was made outside the relevant time period in paragraph 9.8.7(b) of the Immigration Rules.

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Permission to stay: failure to comply with conditions

This section provides guidance for decision makers on when to refuse an application for permission to stay in accordance with paragraph 9.8.3 of the Immigration Rules when a person has previously failed to comply with the conditions of their permission.

What are conditions

Conditions means the conditions attached to a person's permission to enter or stay under section 3 of the Immigration Act 1971, for example:

- a condition restricting employment or occupation in the UK
- a condition restricting studies in the UK
- a condition requiring the person to maintain and accommodate themselves, and any dependants, without recourse to public funds
- a condition requiring the person to register with the police
- a condition requiring the person to report to an immigration officer of the Secretary of State
- a condition as to residence

The condition(s) are made known to the person by written notice, either in a decision notice, endorsed on their passport or travel document, on their vignette or biometric residence permit (BRP) or in any other manner permitted by the Immigration (Leave to Enter and Remain) Order 2000.

Breach of a condition

Where there is evidence that the person has previously breached the conditions of their permission you must first consider whether subsequent permission was granted in the knowledge of the previous breach. If it was the application cannot be refused.

In other cases, you must consider any relevant information including (but not limited to):

- why and how did the breach take place
- the passage of time between the condition being imposed and the breach
- the passage of time since the breach
- any other circumstances, for example:
  - how long has the individual been in the UK and the reason for their application to stay in the UK
  - the impact a refusal decision may have on the individual and their dependants living in the UK

If you are satisfied that the application should be refused, you should explain your reason and set out what factors you considered.

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Cancelling permission: failure to comply with conditions

This section contains guidance for decision makers on when permission to enter or stay (including permission extended under section 3C of the Immigration Act 1971) may be cancelled under paragraph 9.8.8 of Part 9 of the Immigration Rules on grounds of a person's failure to comply with the condition(s) of their permission.

Cancellation means cancellation, variation in duration, or curtailment, of entry clearance or permission to enter or permission to stay, which can take effect immediately or at a specified future date and whether the person is in the UK or overseas.

This part should be read in conjunction with Suitability: Section 5.

What are conditions

Conditions means the conditions attached to a person's permission to enter or stay under section 3 of the Immigration Act 1971. For further information see: What are conditions.

Breach of a condition

Where there is evidence that the person has previously breached the conditions of their permission you first consider whether subsequent permission was granted in the knowledge of the previous breach. If it was the permission must not be cancelled on grounds of the previous breach.

In other cases, you must consider any relevant information when deciding whether to cancel permission, including (but not limited to):

- why and how did the breach take place
- the passage of time between the condition being imposed and the breach
- the passage of time since the breach
- any other circumstances, e.g.
  - how long has the individual been in the UK and the reason for their application to stay in the UK
  - the impact a decision to cancel leave may have on the individual and their dependants living in the UK

Burden and standard of proof

The burden of proof is on the Home Office to show that grounds for cancellation apply; for example, that the person has failed to comply with the conditions of their permission.

The standard of proof is the balance of probabilities (it is more likely than not). You must be able to show what the relevant grounds are and why, as a result, it is appropriate to cancel the persons permission to enter or stay.

You should provide the person with an opportunity to say why their permission should not be cancelled and, if you do so, you should include in your decision any representations made and your response to them. For further information, please see guidance on Suitability: false representations, deception, false documents, non-disclosure of relevant facts.

If you are satisfied that permission should be cancelled, you must explain your reasons and set out what factors you considered.

Dependants

If you decide to cancel permission in respect of an individual, you must consider whether they have any dependants in the UK and, if so, whether their permission should also be cancelled. For further guidance see: Suitability: Section 5.

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Exceptions

You should not normally refuse an applicant under paragraphs 9.8.1, 9.8.2 or 9.8.3 or cancel permission under paragraph 9.8.8 of Part 9 of the Immigration Rules on grounds of previous breach of immigration laws if either of the following apply:

- the person has been accepted by the Home Office as a victim of trafficking
- the person was in the UK illegally on or after 17 March 2008 and left the UK voluntarily before 1 October 2008

Victims of trafficking

If there is information on the Home Office systems that a person has been accepted by the Home Office as a victim of trafficking, or the person states that the Home Office has accepted them as a victim of trafficking, you must contact evidence and enquiries section using the Home Office Referrals process to check the information. Entry clearance officers must refer to their internal referral guidance for more information on referrals.

17 March 2008 concession

This concession only applies to voluntary departures, whether or not at public expense. It does not apply when the person was removed or deported from the UK. If a person has previously been issued with a notice identifying them as an immigration offender (form IS151A) or a decision has been made to remove them (form IS141A part 2 or IS151B), the applicant may still have left the UK voluntarily, so you must be satisfied that the immigration offender was actually removed (rather than departed voluntarily) before you decide that the concession does not apply.

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Decision notice

You must fully explain your reasons for the decision, including the evidence that you considered. Where refusal is discretionary you must record in the decision letter that you considered whether or not to refuse and explain why you decided to refuse.

If the application is for permission to enter or entry clearance and has been made before the relevant time period has expired, you should use the following refusal wording in your decision notice:

> Your application for permission to enter/entry clearance is refused under paragraph 9.8.1 of Part 9 of the Immigration Rules because you have previously breached immigration laws and have applied during the time period specified in paragraph 9.8.7 of Part 9.
>
> Home Office records show that you [have been in the UK illegally, breached your conditions of stay, overstayed/used deception in an application for entry clearance, permission to enter or permission to stay] and [left the UK voluntarily at own/public expense on...][was removed/deported from UK on.....]. Therefore, any application made before [date] which falls to be considered by reference to Part 9 of the Immigration Rules will be refused.
>
> It is therefore mandatory to refuse your application.

If the application is for permission to enter or entry clearance and has been made after the relevant time period has expired, you may use the following refusal wording in your decision notice:

> Your application for permission to enter/entry clearance is refused under paragraph 9.8.2 of Part 9 of the Immigration Rules because you have previously breached immigration laws.
>
> Home Office records show that you [have been in the UK illegally, breached your conditions of stay, overstayed/used deception in an application for entry clearance, permission to enter or permission to stay].
>
> In deciding whether to refuse your application I have carefully considered the circumstances of your case and I am satisfied that you contrived in a significant way to frustrate the intention of the rules/there were aggravating circumstances in addition to the immigration breach. These were [explain].
>
> I am satisfied that refusal is appropriate in your case because [reasons including what evidence has been considered]

If the application is for permission to stay, you may use the following refusal wording:

> Your application for permission to stay is refused under paragraph 9.8.3 of Part 9 of the Immigration Rules because you previously failed to comply with the conditions of your permission.

Home Office records show that on [date] you were granted permission subject to the following condition(s):

- [set out conditions imposed].

You did not comply with these conditions because on [date] you [explain how condition(s) breached].

I have carefully considered the circumstances of your case and have decided it is appropriate to refuse your application because [reasons including what evidence has been considered]"

Granting permission where previous breach

Where you decide to grant entry clearance or permission despite a breach of immigration laws you must set out on the case working system that you have done so and your reasons for doing so.

You may use the following paragraph in your decision letter:

'I have carefully considered the circumstances of your case and on this occasion, I have decided to grant your application despite your previous immigration breach because [give reasons].'

For entry clearance offices who do not issue a decision letter when granting entry clearance, you must provide the above information in a separate letter.

Cancelling permission

If cancelling permission, you must follow the 2-stage process. You must first provide the person with an opportunity to say why their permission should not be cancelled. If, after having considered any further representations, you decide to cancel permission you may use the following wording in your decision letter:

'You were granted [permission to enter/permission to stay as [type] under [route] of the Immigration Rules subject to the following condition(s):

[set out conditions imposed].

Your permission has been cancelled because you have failed to comply with the conditions of your permission. You did not comply with these conditions because [explain how condition(s) breached].

[On [date] you were asked to give any reason why your permission should not be cancelled. You said [provide detail].

I have carefully considered the circumstances of your case and have decided it is appropriate to cancel your permission because [reasons including what evidence has been considered].

Your [permission to enter/stay] is cancelled from [date].’

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