



Home Office

Refugee and humanitarian protection leave in asylum claims lodged before 28 June 2022

Version 1.0

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About this guidance

Relevance of the date that the asylum claim was made

This guidance is version 1.0 but it combines elements of the previous guidance documents on 'refugee leave (version 4.0)' and 'humanitarian protection (version 5.0)'. The guidance explains the leave to remain to be granted to individuals who qualify for refugee status or humanitarian protection where their claim was lodged before 28 June 2022 (where [transitional arrangements](#) do not apply). 28 June 2022 is the 'commencement date' for the relevant sections of [the Nationality and Borders Act 2022 \('2022 Act'\)](#) and the associated changes to [Part 11 of the Immigration Rules](#).

Consequently, this guidance informs you of the leave to remain which must be granted in relation to asylum applications made before the commencement date.

For guidance on granting permission to stay (which has the same meaning as 'leave to remain') to individuals who qualify for refugee status or humanitarian protection following a claim lodged on or after 28 June 2022, please refer to the permission to stay on a protection route guidance.

Transitional arrangements

For the purposes of the transitional arrangements only, individuals who sought to register an asylum claim before the commencement date of 28 June 2022 but were provided with an appointment to attend a designated place to register their asylum application on or after 28 June will be considered to have 'made an asylum claim' before the commencement date but only if they attend their scheduled appointment (or, in the event that it is cancelled or rescheduled by the Home Office, the rescheduled appointment). Therefore, this version of the guidance v11.0, will apply to their claim.

However, if the individual does not attend their appointment, but later wishes to register a claim for asylum on or after commencement, they will not be considered to have 'made an asylum claim' unless (a) there were circumstances beyond their control that made it impossible for them to attend the appointment scheduled for them, (b) they contacted the Home Office as soon as reasonably practicable to warn/explain of the said circumstances and apply for a new appointment and (c) they provided the Home Office, as soon as reasonably practicable, with evidence to demonstrate their inability to attend the scheduled appointment which they say they were unable to attend. In such cases, this policy does not apply and instead, you should refer to version 1.0 of the permission to stay on a protection route guidance.

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 Asylum Policy 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 cleared:

- version **1.0**
- published for Home Office staff on **28 June 2022**

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Introduction

Purpose of guidance

Where an asylum applicant qualifies for refugee status under [paragraph 334 of the Immigration Rules](#), or for humanitarian protection under [paragraph 339C](#), they will be granted leave to remain under [paragraph 339Q](#). This guidance informs you of the leave to remain which you must grant to asylum applicants who are granted refugee status or humanitarian protection under [Part 11 of the Immigration Rules](#). This includes the leave granted to individuals either at initial decision stage or following an allowed appeal.

This guidance must be read in conjunction with other asylum policy guidance, in particular:

- assessing credibility and refugee status
- humanitarian protection
- exclusion (Article 1F) and Article 33(2) of the Refugee Convention
- revocation of refugee status
- settlement protection

Background

The UK has a proud record of providing protection for those who genuinely need it, in accordance with our international obligations, for example under the [Refugee Convention](#) and [European Convention on Human Rights](#).

The [New Plan for Immigration](#), including via the [2022 Act](#), has reformed the immigration and asylum system. One way in which the system has been reformed is to introduce two separate groups of refugees. An individual's grouping will depend on several factors which are outlined in [Section 12 of the 2022 Act](#). Each group of refugees will be granted a different form of permission to stay (the same as 'leave to remain') with different conditions. Group 1 refugees will be granted refugee permission to stay, whilst Group 2 refugees will be granted temporary refugee permission to stay. Meanwhile, individuals who qualify for humanitarian protection will be granted temporary humanitarian permission to stay. However, these policies only apply to asylum applications made on or after 28 June 2022, the 'commencement date' (see ['transitional arrangements'](#)).

Grants of refugee status or humanitarian protection following asylum applications made before the commencement date will have broadly similar conditions as each other. For example, applicants who are granted refugee status or humanitarian protection will both have permission to work, have access to broadly the same rights and benefits as British citizens and can apply for settlement after a probationary period of limited leave if they still need international protection.

Individuals are also commonly granted five years leave to remain, after which they can apply for settlement protection (also referred to as indefinite leave to remain).

Policy intention

The policy objective in granting leave to remain to individuals with refugee status or humanitarian protection is primarily to afford protection to those who cannot leave the UK by providing a period of limited leave to remain. The policy is designed to:

- meet our international obligations under the [Refugee Convention](#) by granting refugee status and an appropriate period of leave to remain to those who need our protection
- meet our international obligations under the [European Convention on Human Rights](#) by granting humanitarian protection and an appropriate period of leave to remain to those who cannot leave the UK as in doing so they would face a real risk of serious harm
- maintain a fair immigration system that requires all migrants, including those granted refugee status, to earn the right to settlement, and all the benefits that come with it, by completing an appropriate period of limited leave
- ensure that safe return reviews are carried out so that protection is provided for as long as it is needed, but make clear that those who no longer need protection will need to apply to stay on another basis or leave the UK

Application in respect of children

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#) requires the Home Office to ensure that immigration and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. This applies to children who claim asylum in their own right and those dependent on their parents' asylum claim.

Applicants who are granted refugee status or humanitarian protection are normally granted leave to remain for 5 years and any children who are under 18 and dependent on the asylum application will be granted leave to remain in line with the main applicant. Unaccompanied children who claim asylum and qualify for refugee status or humanitarian protection are also normally granted leave to remain for 5 years. However, there may also be exceptional reasons to grant a longer period of leave and you should refer to the section on [applications for longer periods of leave](#) below.

You must carefully consider any evidence provided as to how a child will be affected by a grant of limited leave to remain rather than immediate settlement (indefinite leave to remain). In the vast majority of cases the impact will not be significant because five years leave to remain provides appropriate protection in accordance with our international obligations and access to benefits and services that a child may require. It is therefore very unlikely that best interests considerations in an individual case will override the wider policy intention to require all migrants to complete an appropriate period of permission to stay before being able to apply for settlement. Any grant of a longer period of permission to stay would fall under the discretionary leave policy.

Although a child's best interests are not a factor in assessing whether their protection status and leave to remain, or that of their parents, should be revoked you must have regard to the section 55 duty in considering whether other leave may be appropriate following such action. The statutory guidance, [Every Child Matters – Change for Children](#), sets out the key principles to take into account in all actions. See also Revocation of refugee status.

Where there are child welfare or protection concerns that may involve safeguarding issues within the family unit the case must be referred immediately to the local safeguarding team, who will refer the case to the relevant local authority in accordance with guidance on making safeguarding referrals. In an emergency the case must be referred to the police. The Office of the Children's Champion can also offer advice on issues relating to children, including family court proceedings and complex cases.

For further information on the key principles to take into account, see: Section 55 children's duty guidance. See also Processing asylum applications from children guidance.

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Legislation

The 1951 Refugee Convention

The [Refugee Convention](#) provides the framework for international refugee protection. The Convention requires signatory states to uphold the principle of non-refoulement but does not specify details on how principles ought to be implemented domestically, for example the length of permission to stay to be granted to those recognised as refugees – this is for signatory states to determine via domestic legislation.

Domestic legislation

[Section 72 of the Nationality Immigration and Asylum Act 2002](#) sets out how the serious criminality provision in Article 33(2) is to be interpreted. In particular, section 72(2)(a)-(b) states:

A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is:

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least two years.

However, the presumption that a person constitutes a danger to the community is rebuttable.

Immigration Rules

[Part 11 of the Immigration Rules](#) sets out the provisions for considering asylum claims:

- [paragraph 334](#) sets out the criteria that must be met for an individual to be granted refugee status
- [paragraph 339C](#) sets out the criteria that must be met for an individual to be granted humanitarian protection
- [paragraph 339Q](#) sets out the conditions for granting a residence permit and 5 years' leave to remain to those with refugee status or humanitarian protection

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Granting refugee or humanitarian protection leave

Duration and conditions of leave

Those who qualify for refugee status under [paragraph 334](#) or humanitarian protection under [paragraph 339C](#) of the Immigration Rules should normally be granted a residence permit (leave to remain) under [paragraph 339Q](#).

You must refer to and apply [Part 11 of the Immigration Rules](#) as they were in-place prior to the commencement date (the Immigration Rules were amended on the commencement date to take into account changes made in the [2022 Act](#)). A copy of these now archived Immigration Rules can be found here. [Paragraph 339Q](#) read:

“339Q(i) The Secretary of State will issue to a person granted refugee status in the United Kingdom a residence permit as soon as possible after the grant of refugee status. The residence permit may be valid for five years and renewable, unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that the applicant is a danger to the security of the United Kingdom or having been convicted by a final judgment of a particularly serious crime, the applicant constitutes a danger to the community of the United Kingdom or the person’s character, conduct or associations otherwise require..

(ii) The Secretary of State will issue to a person granted humanitarian protection in the United Kingdom a residence permit as soon as possible after the grant of humanitarian protection. The residence permit may be valid for five years and renewable, unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that the person granted humanitarian protection is a danger to the security of the United Kingdom or having been convicted by a final judgment of a serious crime, this person constitutes a danger to the community of the United Kingdom or the person’s character, conduct or associations otherwise require..

(iii) The Secretary of State will issue a residence permit to a family member of a person granted refugee status or humanitarian protection where the family member does not qualify for such status. A residence permit may be granted for a period of five years. The residence permit is renewable on the terms set out in (i) and (ii) respectively. “Family member” for the purposes of this sub-paragraph refers only to those who are treated as dependants for the purposes of paragraph 349.

(iv) The Secretary of State may revoke or refuse to renew a person’s residence permit where their grant of refugee status or humanitarian protection is revoked under the provisions in the immigration rules.”

Leave to remain granted under [paragraph 339Q\(i\), \(ii\) or \(iii\)](#) will normally include a residence permit on the following terms:

- an initial period of 5 years’ leave to remain

- immediate and unrestricted access to the labour market, recourse to public funds and the opportunity to apply for a refugee integration loan
- a 5-year route to settlement for those who continue to need protection
- no requirement to demonstrate a knowledge of language and life in the UK when applying for settlement

Family members

Family members of an applicant who have been accepted as dependants on an asylum application in accordance with [paragraph 349](#) of the Immigration Rules, will normally be granted leave to remain in line with the main applicant under [paragraph 339Q](#). See the Dependants and former dependants guidance.

Those who are granted refugee status or humanitarian protection are also able to sponsor their partner and children under the age of 18 to join them in the UK under the family reunion provisions in [paragraphs 352 to 352FJ](#). This would normally be through an application for entry clearance, but family members can also apply in country. Exceptional circumstances or compassionate factors may justify a grant of entry clearance or leave for family members of those with refugee status or humanitarian protection who do not meet the relevant provisions of the Immigration Rules. See the Family reunion guidance.

Applications for longer periods of leave

Those who are granted refugee status or humanitarian protection are normally expected to complete the appropriate qualifying period of leave to remain before being eligible to apply for settlement. A grant of 5 years' leave to remain will be a sufficient length of time save in the most exceptional of circumstances.

In some cases, there may be compelling reasons to justify a longer period of leave to remain, such as immediate settlement, but this would only apply in the most exceptional of circumstances. This means not only a situation which is unusual but one which is distinguished to a high degree from others who need international protection, to the extent that it is necessary to deviate from the normal grant of permission to stay. Where, in light of the specific situation of a vulnerable person a longer period of leave to remain is appropriate, this may be considered under the discretionary leave policy.

The applicant must provide specific evidence in support of why a longer period of leave to remain is appropriate. In the case of medical or mental health issues, the evidence must specifically address why the longer period of leave to remain is relevant to the applicant and why a grant of 5 years leave to remain (with an opportunity to renew that permission to stay) is insufficient. It is highly unlikely that a request for indefinite leave to remain (ILR) on account of, for example, employment or educational opportunities will succeed but decision makers must consider if there are any other reasons to divert from a normal period of permission to stay. Any immediate grant of settlement must be approved by a senior manager at senior executive officer (SEO) or above.

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Refusing refugee or humanitarian protection leave

Exclusion

The [Refugee Convention](#) contains specific exclusion provisions under Article 1F for those who would otherwise be refugees but who have committed war crimes, crimes against humanity or other serious crimes outside the country of refuge. The Immigration Rules, in particular [paragraph 339D](#), also have exclusion provisions from humanitarian protection which are broadly similar to Article 1F. Those who fall within these provisions are excluded from refugee status and/or humanitarian protection and must not be granted leave to remain under [paragraph 339Q of the Immigration Rules](#) in the UK.

Criminality

[Article 33\(2\) of the Refugee Convention](#) permits the refoulement of refugees who are considered to be a danger to national security or, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community. However, there are occasions where such removal cannot proceed, for example, due to a breach of the European Convention on Human Rights. In such circumstances, individuals do not qualify for refugee status under [paragraph 334\(iii\) and \(iv\)](#) or humanitarian protection under [paragraph 339C\(iv\)](#) and must not be granted leave to remain under paragraph 339Q of the Immigration Rules in the UK. Another form of leave to remain, for example restricted leave, where removal cannot proceed.

For further guidance see Exclusion (Article 1F) and Article 33(2) of the Refugee Convention.

Official – sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

Revocation

Where refugee status or humanitarian protection has been revoked or renounced, an individual must not be granted any further leave to remain on a protection route. Normally, any extant leave to remain should be curtailed or revoked following the revocation or renunciation of refugee status or humanitarian protection.

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Settlement

Individuals granted refugee status or humanitarian protection may be eligible to apply for settlement protection (also referred to as indefinite leave to remain) once they have completed the required probationary period of 5 years' limited leave.

A settlement application must be made using the appropriate application form, which is available on the GOV.UK website:

<https://www.gov.uk/government/publications/application-to-settle-in-uk-as-refugee-form-set-protection-route>.

A safe return review will be conducted as part of the consideration of a settlement protection application to ensure that the applicant continues to require protection in the UK.

For more information on the settlement protection process, please refer to the settlement protection guidance.

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