Home Office

Further submissions

Version 10.0

Contents

About this guidance

This guidance is for decision-makers considering protection or human rights based further submissions including those made by way of a valid application under the Immigration Rules.

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 Asylum Policy.

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 Guidance and Forms – making changes.

Publication

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

- version **10.0**
- published for Home Office staff on **28 June 2022**

Changes from last version of the guidance

Updated to:

- reflect the process to lodge valid further submissions, for example the current in-person process for lodging protection-based further submissions
- explain the decision-making process where further submissions are made outside of a valid application
- refer to asylum policies following the Nationality and Borders Act 2022, for example the differentiated asylum system

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Introduction

Purpose of guidance

This guidance explains the policy, process and procedure which must be followed when considering further submissions following the refusal of a protection or human rights claim, or where a protection or human rights has been withdrawn or treated as withdrawn. Protection claim means a claim for asylum and/or humanitarian protection. This guidance applies to all decision-makers considering protection or human rights based further submissions and covers:

- the process for making protection and human rights based further submissions
- considering evidence provided as further submissions
- how to apply paragraph 353 of the Immigration Rules

This instruction must be read in conjunction with the policy instructions:

- Asylum interview
- Assessing credibility and refugee status
- Humanitarian protection
- Exclusion under Articles 1F and 33(2) of the Refugee Convention
- Clearly unfounded claims – certification under section 94
- Late claims – certification under section 96
- Appendix FM and 276ADE (family members and private life): On or after 9 July 2012

The further submissions policy will only apply to dependants who have had a protection or human rights claim refused or withdrawn in their own right. For example, a child dependant who had their protection claim refused under the Family Asylum Claims process would have any further representations on protection grounds considered under paragraph 353 of the Immigration Rules and the further submissions policy. See the Family asylum claims guidance for more information on this process.

Dependants who have not had a protection or human rights claim refused or withdrawn cannot be considered under the further submissions policy. For example, a dependant who has only been considered under paragraph 349 of the Immigration Rules, cannot lodge further submissions as they do not meet the terms of paragraph 353 of the Immigration Rules. Such submissions would usually fall to be treated as a protection claim, subject to the usual procedural requirements, for example the requirement to make an asylum claim at a designated place. See the Dependants and former dependants guidance for more information on such circumstances.

Background

Those who make a protection or human rights claim are expected to disclose, at the earliest opportunity, all relevant information they can provide to support their claim.

Throughout the asylum and immigration process, claimants are provided with every opportunity to disclose all relevant evidence about why they need protection or why they should be allowed to remain in the UK on the basis of their human rights.

For protection claims, this is primarily achieved during the asylum claimant's substantive interview in which the applicant can provide the reasons why removal from the UK would be unlawful. Thereafter, the claim can be considered, and protection status (refugee status or humanitarian protection) granted to those who qualify for it in-line with our international obligations.

For human rights claims, this is generally achieved via an applicant submitting the appropriate application form, based on the reasons why the person says their removal from the UK would be unlawful, to provide all the evidence relevant to their claim.

The further submissions policy explains how further submissions in support of a protection or human rights claims are to be treated, where the claim has previously been refused, and appeal rights exhausted, or the claim has been withdrawn.

Further submissions on protection grounds must be made via the in-person process at a Service and Support Centre. In exceptional circumstances, further submissions on protection grounds may be lodged remotely.

Further submissions on human rights grounds should generally be made by way of the most appropriate application form. These will be considered in-line with the usual process times. Where a person cannot afford to make an application, they may be eligible for a fee waiver. For more information on fee waivers, please see the fee waiver guidance.

Where a person makes further submissions raising human rights matters but does not make an application, paragraph 353 of the Immigration Rules still applies – see 'when to apply paragraph 353' section. For example, where an individual responds to a Section 120 notice with representations on human rights grounds. There is no set time for the further submissions to be considered when they are raised outside of a valid application form. However, the further submissions must be considered before removal.

Policy intention

The policy intention is to maintain a firm but fair immigration system which grants protection and/or permission to stay to those who qualify for it, but tackles abuse and protects public funds by rejecting unfounded or repeat claims. This is achieved by:

- requiring protection-based further submissions from failed asylum seekers to be made in-person to minimise the risk of fraud by checking their identity
- requesting that further submissions on human rights grounds generally be made by means of a valid application form
- considering whether the new evidence means that the individual qualifies for protection status and/or permission to stay

- ensuring that unfounded or repeat claims can be rejected quickly
- using immigration detention where appropriate to ensure those who do not need protection and have no other right to be in the UK have their removal enforced quickly, where voluntary return is not successful

Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. In dealing with parents and children, you must see the family both as a unit and as individuals. Although a child's best interests are not a factor in assessing whether a fear of persecution is well-founded, the way you interact with children throughout the decision-making process and any decisions following the determination of refugee status must take account of the section 55 duty.

You must comply with this duty when carrying out actions set out in this instruction in respect of children and those with children. You must follow the principles set out in the statutory guidance Every Child Matters - Change for Children.

Our statutory duty to children means that in your engagement with children the processes you follow must demonstrate:

- fair treatment which meets the same standard a British child would receive
- the child's best interests being a primary, although not the only, consideration
- no discrimination of any kind
- timely processing of further submissions
- identification of those who might be at risk from harm

Whilst claimants are ordinarily required to make an appointment to submit protection based further submissions in person, they are not required to bring children with them. It is therefore unlikely that the requirement to lodge further submissions in person would adversely impact on a child to such an extent that it would override the public interest in reducing the risk of fraud and maintaining effective immigration control. However, you should consider any exceptional arguments as to why someone cannot travel to a specified Shared Service Centre to attend in person due to the interests of children, for example:

- the claimant cannot make suitable childcare arrangements
- travelling to a Shared Service Centre would force them to take the child out of school

Any decision to allow for lodging of protection further submissions outside of the in-person process must be approved by a senior caseworker.

Unaccompanied children under the age of 18 who wish to lodge protection-based further submissions can do so locally or remotely and are not required to travel to a Shared Service Centre. However, former unaccompanied asylum-seeking children aged 18 or over who wish to lodge protection-based further submissions must do so

in person in-line with the ‘further submissions process’ section. If they want to stay in the UK for other reasons, they are entitled to make a valid application on the appropriate route.

Considering further submissions from those who are under the age of 18 must be conducted by decision-makers who have completed the requisite training and are qualified to decide them. See Children’s asylum claims guidance when considering protection-based further submissions and 3.1 and 3.2a children guidance when considering non-protection-based further submissions. Even if further submissions are not lodged by the child, it is important not to lose sight of any child dependants. You must be vigilant and responsive to their protection and welfare needs and to consider how this could impact on the needs of the family as a whole.

You must keep this duty in mind throughout the asylum decision-making process and refer to other specific guidance available, as relevant, such as in the Dependants and former dependants, the Children’s asylum claims guidance, and the Family asylum claims guidance.

Failed asylum seekers who lodge further submissions on protection grounds, and who can demonstrate that they would otherwise be destitute, can make an application for section 4 support (Immigration and Asylum Act 1999). Asylum seekers who have at least one child under 18 will normally continue to be entitled to section 95 support (Immigration and Asylum Act 1999) after their asylum claim is finally determined, until they leave the UK. Therefore, if they file further submissions, they will normally be supported under section 95 while those further submissions are considered. Any decision on further submissions must consider the section 55 duty.

The family Immigration Rules and policies also take into account the need to safeguard and promote the welfare of children. The duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of a child in the UK, together with Article 3 of the UN Convention on the Rights of the Child, means that consideration of the child’s best interests must be a primary consideration in immigration decisions affecting them. This guidance and the Immigration Rules it covers form part of the arrangements for ensuring that we give practical effect to these obligations.

Safeguarding

Protecting vulnerable adults and children is a key cross-cutting departmental priority and safeguarding is everyone’s responsibility. If you believe that anyone may be in danger at any stage of the further submissions process, you need to take immediate action to ensure their safety. In all circumstances a referral should be made to the Safeguarding Hub and advice sought on case progression.

In an emergency, the case must be referred to emergency services without delay. The first person to become aware of an emergency must contact 999 and request the appropriate emergency service. Afterwards, you must then make a referral to the Safeguarding Hub for actions to be progressed.

You do not have to stop making a decision on the further submissions whilst a safeguarding issue is investigated. However, you must speak to your technical specialist or senior caseworker to check whether service of the decision is appropriate, or if the safeguarding issue needs to be considered together with the further submissions.

Safeguarding children

You must be vigilant that a child may be at risk of harm and where you are concerned about their welfare or protection issues be prepared to refer cases immediately. In such circumstances you must immediately contact the Safeguarding Hub, who will refer the case to the relevant local authority in accordance with the guidance in local authority child referrals. In an emergency, you must refer the case to emergency services immediately.

When referring cases involving children, there is no requirement to obtain the consent of any adults involved as the safeguarding of children is our primary responsibility as detailed in Section 55 of the Borders, Citizenship and Immigration Act 2009.

The Safeguarding Advice and Children's Champion (SACC) can also offer specialist safeguarding and welfare advice on issues relating to children, including family court proceedings and complex child protection cases. For more information see SACC.

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Legislation

The 1951 Refugee Convention

The Refugee Convention provides the framework for international refugee protection. Under the Convention, signatory states have obligations to refugees which include protection against non-refoulement, but also extend to other rights including freedom of religion, access to justice, education, employment, housing, public relief and the facilitation of integration and naturalisation in the host country. The UK implements its obligations to refugees, including furnishing them with their rights under the Convention, through domestic legislation which sets out refugees' permission to stay and associated entitlements.

The European Convention on Human Rights

The European Convention on Human Rights (ECHR) provides the framework for ensuring the rights and fundamental freedoms of individuals in European signatory states. As a signatory, the UK must make immigration decisions in-line with its obligations under the ECHR.

Domestic legislation

The Human Rights Act 1998 allows cases concerning the rights set out in the ECHR to be brought in the UK courts. This applies to all decisions made on or after 2 October 2000 and means all decisions must take account of rights and freedoms guaranteed under the ECHR. Further information can be found in the guidance on considering human rights claims raised within or alongside a protection claim, or in the family and private life guidance.

Section 82 of the Nationality, Immigration and Asylum Act 2002 (the '2002' Act) (as amended by the Immigration Act 2014) provides that a person can only appeal against refusal of a protection or human rights claim or revocation of protection status. When paragraph 353 is applied under the 2002 act, the rejection of further submissions that do not amount to a fresh claim will not generate a right of appeal because there is no new protection or human rights claim.

The Immigration Rules

Paragraph 353 in Part 12 of the Immigration Rules applies to further submissions on protection and human rights grounds. It sets out the circumstances in which further submissions will be considered and, if rejected, how to determine whether they amount to a fresh claim.

Paragraph 353B sets out when exceptional circumstances should be considered. This includes factors such as character, conduct, criminal record, compliance with reporting conditions, temporary admission and bail, and length of time spent in the UK beyond the migrant's control.

Paragraph 334 and 339C in Part 11 of the Immigration Rules sets out the requirements for refugee status and humanitarian protection in the UK.

Paragraph 349 of the Immigration Rules sets out the criteria for dependants in asylum claims and may be relevant when considering further submissions involving family members.

Appendix FM and Appendix Private Life of the Immigration Rules provide the basis on which a person who is not liable to deportation can apply for leave to remain in the UK on the basis of family or private life.

Part 13 of the Immigration Rules contains the Rules for considering family and private life in criminal deportation cases.

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Further submissions process

The further submissions process provides a mechanism for individuals to provide further representations in support of their protection or human rights needs following the refusal or withdrawal of an earlier protection or human rights claim.

All further submissions lodged must be considered under paragraph 353 of the Immigration Rules.

There are different processes available depending on whether the individual's further submissions are based on protection grounds, human rights grounds or both. The process for lodging further submissions may also differ depending on the specific circumstances, for example where the individual is subject to removal action.

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Lodging further submissions on protection grounds

From 2015, further submissions raising protection issues generally had to be lodged in-person at the Further Submissions Unit in Liverpool (or Belfast for those residing in Northern Ireland). This requirement was lifted in March 2020 in order to prioritise the safety and wellbeing of claimants and staff during the Covid-19 lockdown. In this period, claimants could lodge further submissions remotely – mainly via email.

From 16 August 2021, further submissions made on protection grounds must generally be made in person at one of the specified Service and Support Centres (SSCs). For the latest information on which SSCs have appointments available for the lodging of further submissions, please visit GOV.UK. Claimants must make an appointment to attend an SSC unless they fall into one of the exceptional categories in the 'exceptions to the 'in-person' process' section. If a claimant wishes to lodge further submissions remotely, you must decide whether the claimant meets the criteria, if necessary by consulting a senior caseworker, and you must inform claimants if their request to lodge further submissions remotely has been accepted or refused. If you refuse the request, then the claimant must book an appointment to lodge further submissions in-person at an SSC.

The Home Office operates an appointment only system for the lodging of further submissions. To make an appointment, the claimant must call the Further Submissions Unit using the information below:

Further Submissions Unit appointment line
Telephone: 0300 123 7377
Monday to Friday, 9am to 4pm

Further information about how to submit further submissions, including the address of the Further Submissions Unit and a link to the form which needs to be brought to the appointment is on the GOV.UK website.

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Lodging further submissions in-person

When attending an SSC to submit further submissions, claimants should bring all the documents referenced on their invite letter.

All documentary evidence requiring consideration must be submitted at the further submissions appointment as a decision will be made on the evidence available. The Home Office does not require principal claimants to bring dependants, including children, with them to their appointment but any information in respect of any dependents should be provided on the day. Where information on dependants is provided at a later date, but before you take a decision on the further submissions, then you must consider this information when making your decision. All further submissions must be recorded on the relevant computer system, see 'consideration process' section.

Exceptions to the in-person process

In exceptional circumstances, further submissions on protection grounds may be accepted either through local arrangements (attendance at a local Home Office site) or remotely (by email or post). The claimant (or their legal representative) must provide supporting evidence about the reasons why waiving of the 'in-person' requirement is appropriate and obtain prior agreement from the Further Submissions Unit. Claimants must contact the Further Submissions Unit (or the relevant operational unit) to ask for permission to submit evidence remotely using the email or postal address below.

Refused Case Management Customer Service Unit
CSUEC@homeoffice.gov.uk

Refused Case Management Further Submissions Unit
Level 7
The Capital Building
Old Hall Street
Liverpool
L3 9PP

Waiving of the 'in-person' requirement may occur where at least one of the following exceptional circumstances applies.

Inability to travel

Those who have a disability or severe illness and are unable to travel to an SSC as a result may lodge protection further submissions by an alternative method. Medical evidence that clearly indicates a disability or severe illness that results in the claimant being unable to travel to an SSC must be provided to support any remote lodging on this basis.

Children

Unaccompanied children under the age of 18 who wish to lodge further submissions can do so remotely and are not required to travel to an SSC. However, former unaccompanied asylum-seeking children aged 18 or over who wish to lodge further submissions on protection grounds must do so in person.

You must always consider the best interests of a child when considering requests for waiving of the 'in-person' requirement. For example, it may be appropriate to allow for remote lodging where in-person lodging would not be in the best interests of a child, such as due to:

- the claimant being unable to make suitable childcare arrangements
- travelling to an SSC would force them to take the child out of school

Ongoing judicial review

Where the claimant has an ongoing judicial review (JR) challenging a removal or enforcement decision, or where a JR application has been granted permission, further submissions on protection grounds should generally be accepted remotely. Any further submissions submitted whilst the JR is ongoing should be sent to the caseworker managing the litigation. This caseworker should then send the further submissions to the Further Submissions Unit (or the appropriate operational unit) for consideration. However, if a JR is settled by consent, any further submissions lodged at a later date (post-dating the consent order) must be lodged in person unless the consent order specifies otherwise.

Individual is detained in an Immigration Removal Centre or Short-Term Holding Facility

Where an individual is detained pending removal and wishes to make further submissions, they should immediately inform a Home Office official who will advise them on the action to take. It will usually be appropriate for the individual to submit their further submissions, whether personally or via their legal representative, to the relevant operational unit.

For detained cases managed by NRC, this is:

NRC Customer Liaison Team
17th Floor, Lunar House
40 Wellesley Road
Croydon
CR9 2BY
Fax 0370 336 9480
Email NRCDC@homeoffice.gov.uk

An individual in detention may also submit any further submissions to a prison officer, a prisoner custody officer, a detainee custody officer or a member of Home Office staff at their place of detention. Any further submissions, received from an individual in detention, should be immediately passed on to the relevant operational unit.

When another department receives further submissions from an individual in detention, they should immediately forward the further submissions to the operational unit responsible for detention.

Where possible, you should make a decision on the further submissions quickly so that the late claim can be resolved and the individual granted permission to stay or be removed as planned.

Criminal cases

Where the individual is subject to deportation proceedings or their case is otherwise being managed by the Foreign National Offenders Return Command, they can submit further submissions, in writing, directly to the Foreign National Offenders Return Command.

Cases in the family returns process

In family cases, it may be appropriate to accept further submissions at a local reporting event where self check-in removal directions are imminent or the Family Returns Process is at an advanced stage. Where a case is being considered as part of the Family Returns Process, you must consult with the relevant family engagement caseworker.

Individual comes to light through enforcement action

Where a failed asylum seeker or illegal migrant is encountered as a result of enforcement action, they should not normally be released solely on the basis of a stated intention to make further submissions. Further submissions can be submitted in person to enforcement staff where the person is detained. If and when further submissions are submitted, the individual's detention should be reviewed in line with the published detention policy guidance.

Where an individual is detained and has outstanding further submissions, you should immediately contact the operational unit responsible for the further submissions to request expedition.

Regardless of the way the further submissions have been lodged, they should be considered quickly so that permission to stay can be granted and the individual released where appropriate, or they can be removed quickly following refusal.

Protection based further submissions sent remotely without permission

If an individual submits protection based further submissions by post or email and the individual has not been permitted to send further submissions remotely, they must be rejected as invalid without substantive consideration. The further submissions should be returned to the sender (either the legal representative or the claimant) with the original correspondence. You must direct the individual to lodge further submissions in-person with the Further Submissions Unit. You must retain a copy on the Home Office case file, for example on Atlas, and case notes must be updated to reflect the action taken.

Action Reporting Centres must take

Reporting Centres must not accept any further submissions from those who are not detained unless they fall within one of the exceptional categories set out in the 'exceptions to the 'in-person' process' section. If an individual attempts to lodge further submissions at a reporting event, you must explain that they will need to make an appointment at an SSC to lodge further submissions in person, provide sufficient evidence to show they fall into one of the exceptional categories or request they make a valid application in the case of further submissions made on human rights grounds.

Timescales in section 4 support cases

Where an application for section 4 support is submitted, any protection-based further submissions lodged at the same time, or that are pending, should normally be decided as a priority. In section 4 cases where further submissions involve vulnerable adults or children, the case should be further prioritised. In cases where it is not possible to consider the further evidence and respond within the section 4 timescales, it may be appropriate to grant support. See Section 4 support guidance for further information.

Medico-Legal reports and medical evidence

Where a person informs you that they intend to seek medical evidence as part of further submissions, a decision or removal action must not normally be suspended.

Where a person submits evidence that they have been accepted for medical assessment with a view to a Medico-Legal Report (MLR) being prepared by a reputable provider, and or an organisation that applies a rigorous methodology to the production of reports, consideration must be given to suspending decision making in line with the Medical evidence in asylum claims guidance. To assist the assessment of whether to delay consideration of the further submissions, the claimant should specify how a report will be material to their claim in light of what has previously been determined.

Where an MLR is provided as part of any further submissions it must be fully considered and given appropriate weight in accordance with the principles set out in the Medical evidence in asylum claims guidance.

Dependants

Individuals must continue to meet the definition of a dependant in paragraph 349 of the Immigration Rules in order to be a dependant on protection-based further submissions. See the Dependants and former dependants guidance for further information.

Where a spouse, civil partner or unmarried partner or minor child of the main claimant was treated as a dependant on the initial asylum or human rights claim and

still wishes and qualifies to be treated as such, they must continue to be considered as a dependant on the further submissions.

Where a minor child was treated as a dependant on the initial asylum claim but turns 18 before further submissions are lodged, they will not qualify as a dependant on the further submissions and will need to make a first protection claim or apply for permission to stay in their own right.

Should a dependant have protection needs in their own right then they must claim asylum (or lodge further submissions if paragraph 353 applies) in their own right.

Family asylum claims

It is important to avoid inadvertently denying the right to claim asylum to children who were dependants on claims decided prior to the implementation of Family asylum claims, on 2 August 2021. Therefore, if a child who was a dependant on a failed asylum seeker's claim which was decided before 2 August 2021 attempts to lodge further submissions in their own right, they must be treated as having not previously had an asylum or human rights claim refused or withdrawn. Consequently, child dependants who have not previously received their own decision on an asylum or human rights claim with a right of appeal, must not be required to establish that they meet the fresh claim criteria under paragraph 353 of the Immigration Rules. In this circumstance, you must direct them to make an asylum claim in their own right. Claims can, if appropriate, be considered for certification. See the Family asylum claims guidance for further information.

UK born children

UK born children who are not British Citizens may be considered as a dependant on protection-based further submissions where they meet the definition in paragraph 349 of the Immigration Rules. UK born children with British Citizenship are free from immigration control and therefore do not need to be considered as a dependant on any further submissions.

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Lodging further submissions on non-protection (human rights) grounds

Further submissions on human rights grounds, such as Article 8 family or private life grounds, should normally be submitted as a valid application on:

- the FLR(FP) form on the basis of family and private life
- the FLR(O) form on the basis of medical grounds

Further submissions made by way of a valid application must be prioritised accordingly and processed within any published timescales for the consideration of applications, subject to any exceptions.

Where further submissions are submitted outside a valid application, you should still deal with them under paragraph 353 of the Immigration Rules and either grant permission to stay (if appropriate) or refuse / reject to enable enforcement action to be taken against those who make submissions with the aim of frustrating removal. Submissions made outside the application process are not subject to the timescales for consideration of applications and should instead be prioritised in the interests of administrative efficiency. In many cases, this will mean delaying consideration until the removal stage. Removal should not be enforced unless and until the further submissions have been considered in accordance with paragraph 353 and this guidance.

In criminal deportation cases where Article 8 issues are raised, you must consider whether the family and private life rules in Part 13 are met. See Criminality – Article 8 ECHR cases guidance.

Where non-protection further submissions are not made via a valid application form then you must record these on the relevant operational system within 24 hours of receipt. Although non-protection further submissions which are not made via a valid application need not be considered immediately, the fact that submissions were made must be recorded. The person concerned cannot be removed from the UK unless and until any outstanding human rights further submissions have been determined in line with paragraph 353 of the Immigration Rules.

Individuals who are in immigration detention should lodge non-protection further submissions with a Home Office official. These should be considered promptly and leave to remain granted (if appropriate), or removal proceedings continued.

Cases managed by Immigration Enforcement

Returns Preparation (RP) or the National Returns Command (NRC) are responsible for cases that raise further submissions on human rights grounds at the removals stage, except in most deportation cases.

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Considering suitability for detention

If, following the lodging of further submissions, you have rejected them and determined they do not amount to a fresh claim under paragraph 353 of the Immigration Rules, and there are no other barriers to removal, you must consider whether removal can be set imminently and whether the case is suitable for detention in accordance with the Immigration Enforcement: general instructions. You must also consider the guidance on mental vulnerability and detention.

Outstanding further submissions are not always a barrier to detention (including maintaining detention). There will be circumstances where you identify that removal can proceed in a realistic timeframe despite the outstanding further submissions, for example:

- absconders who later resurface to make further submissions or those who have otherwise failed to comply with the immigration and asylum process
- those who have lodged repeated unfounded claims
- those who have previously given false or unreliable information about the reasons why they cannot return to their country of origin to avoid enforced removal

You must make a decision on the further submissions quickly where removal action is imminent so that the individual can be granted permission to stay or removed as appropriate.

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Further submissions made on return from abroad

Individuals returning from abroad who raise protection or human rights needs are expected to do so in person to an Immigration Officer at the port of entry to the UK. Where a claimant returns from abroad, regardless of the length of time since they were last in the UK, when a previous human rights or protection claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of the Rules and any appeal relating to that claim is no longer pending, the case must be considered under paragraph 353 of the Immigration Rules unless:

- the claim was previously declared as inadmissible whether under either paragraphs 326E-F or 345A-B of the Immigration Rules in force prior to 28 June 2022, or under sections 80A or 80B and 80C of the Nationality, Immigration and Asylum Act 2002 and/or paragraph 327F or the Immigration Rules as in force on or after 28 June 2022 (see Inadmissible claims)
- the claim was incorrectly withdrawn under Paragraph 333C of the Immigration Rules

Where an individual makes a protection or human rights claim again in a different identity to their initial claim (a multiple claim), you must deal with this as a further submission by applying paragraph 353.

Where removal action is being considered and protection or human rights needs are raised by an individual at a port of entry who has had a protection and/or human rights claim refused or withdrawn, Border Force may refer the further submissions to Operational Support and Certification Unit (OSCU) for consideration while the individual remains detained. If detention beyond seven days is considered appropriate, the relevant Border Force team can refer the individual's case to the Detention Gatekeeper to consider whether to transfer the case to the National Returns Command to effect prompt removal should any further submissions be rejected.

If detention is not appropriate, the individual should be granted immigration bail to a reporting centre and advised to make further submissions in the appropriate way (see 'lodging further submissions on protection grounds' and 'lodging further submissions on non-protection grounds'). Any evidence an individual produces at port must be noted on the relevant operational system, retained and forwarded to the relevant operational team immediately. The relevant computer systems must be updated with a clear indication as to the reasons why immigration bail has been granted. See the section 'consideration process'.

Those who fail to lodge further submissions in a way outlined in the 'lodging further submissions on protection grounds' and 'lodging further submissions on non-protection grounds' sections will have a decision made on the evidence available,

but there is no specific timeframe in which a decision will be made as long as consideration is given before removal.

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Legal aid

The availability of legal aid is administered by the Legal Aid Agency (LAA), the Scottish Legal Aid Board (SLAB) and the Legal Services Agency Northern Ireland (LSANI). Failed asylum seekers who wish to make further submissions may be entitled to advice and assistance to complete the further submissions form. Those who have had a previous human rights claim refused, but who have never claimed asylum, and wish to make further submissions may also be entitled to legal assistance to help with the application process. This does not generally include funding for travel costs.

Once the further submissions have been made, they will be carefully considered by the Home Office. If it is decided that the further submissions amount to a fresh claim, legal aid may be available until any associated appeal rights are exhausted. Further information about eligibility for legal aid can be found at the following links:

- GOV.UK for England and Wales
- SLAB information line: 0845 122 8686 or at SLAB for Scotland
- LSANI information line: 028 9040 8888 or at LSANI for Northern Ireland

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Consideration process

You must consider further submissions that raise protection grounds, in accordance with the principles set out in the assessing credibility and refugee status and humanitarian protection guidance.

You must consider further submissions on ECHR Article 8 grounds in non-deportation cases, including those made by way of a valid application, in accordance with this guidance and relevant family guidance.

You must consider further submissions on ECHR Article 8 grounds in criminal deportation cases in accordance with part 13 of the Immigration Rules and the Criminality – Article 8 ECHR cases guidance.

You must consider further submissions in deportation cases, for reasons other than criminal convictions, outside the Immigration Rules – see guidance on Leave outside the Immigration Rules.

Further submissions, regardless of the way in which they are lodged, must be considered in accordance with this guidance and paragraph 353 of the Immigration Rules.

In all cases, where new information is provided, you must consider it alongside the previous material, taking all evidence available into account to consider whether to grant any permission to stay in the UK. You will also need to consider whether the further submissions amount to a fresh claim. However, where further submissions simply repeat information that has already been considered, you must refer to the previous refusal and appeal determination (if any) in rejecting the claim – you do not need to provide detailed reasons again if the issues have been properly considered previously and there has not been a significant change in circumstances, for example a change in the country situation or new caselaw.

Further submissions are not defined in paragraph 353 of the Immigration Rules. The purpose of the rule is to provide a mechanism for deciding whether a fresh protection or human rights claim has been made. Where it is decided that a fresh claim has not been made, there is no right of appeal against rejection of further submissions, even where the submissions are made by way of an application for permission to enter or stay. In such cases, it is important to distinguish between the refusal of the application for permission to stay and the rejection of the further submissions on which the application is based. However, where further submissions are rejected but it is considered that there is a fresh claim on protection or human rights grounds, the fresh claim is refused and a right of appeal is generated under section 82 of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014.

In the case of Robinson [2019] UKSC 11, the Supreme Court confirmed that paragraph 353 of the Immigration Rules remains relevant under the new appeals regime established by the Immigration Act 2014. Although the 2014 Act states that the refusal of any human rights or protection claim will attract a right of appeal, a

further submission is not a human rights or protection claim if it does not satisfy the test in paragraph 353. Therefore, there is no right of appeal against the rejection of further submissions which do not meet the test in paragraph 353.

Stage 1: consider whether to grant any form of permission to stay

In all cases where further submissions are received, you must first decide whether or not to grant refugee status or humanitarian protection (protection status), or permission to stay in the UK for human rights reasons (family or private life under the Immigration Rules) or on the basis of exceptional circumstances (discretionary leave or leave outside the rules). You must consider whether the new evidence, taken together with the old material (including any appeal determination, previous statements, or interviews), and any other change of circumstances, for example more recent country information or caselaw where applicable, should result in a grant of protection status and/or permission to stay in the UK.

The starting point of the consideration

You must always adopt the starting point that the findings in any final appeal determination override conclusions in the original decision letter. For example, if the original refusal letter disputed nationality but an Immigration Judge did not accept that conclusion, the nationality accepted in the final appeal must take precedence unless there are exceptional circumstances, such as fresh evidence which overrides such a finding. However, you must take particular care when a court determination is based on caselaw that no longer applies. For example, the judge may have found that a claimant can be discreet about their sexuality to avoid persecution. This finding, although part of a final appeal, must be considered in light of more recent caselaw which states that an individual cannot be expected to be discreet to avoid persecution. See HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31.

Interviewing

It is not mandatory to interview a further submissions claimant as decisions can normally be made based on the evidence provided by the claimant. However, where the specific circumstances of the case require you to interview the claimant again, you must do so. For protection-based further submissions, you must conduct the interview in accordance with the guidance on ‘Asylum interview’. This will not ordinarily be done during SSC appointment; a separate interview will be organised by the decision-making unit. It may also be necessary to interview those who provide further submissions on human rights only grounds, for example, an individual who asserts rights only under Article 8 of the ECHR, claiming that their private life would be adversely affected if returned due to their sexual orientation.

Where a failed asylum seeker has not previously been interviewed about their claim it may be necessary to arrange an interview, although a decision can be made if there is sufficient evidence to reach an informed decision. If an interview is arranged this must establish details about the initial claim and the further submissions. Where

a claimant has attended a previous interview, a subsequent interview may be used to assist to conclude the case. Questions should focus on the matters in dispute – there is no need to ask questions about issues that have already been considered. However, where additional evidence casts doubt on previous findings, such matters must be addressed. If an interview is deemed necessary and arranged for a later date because it cannot be conducted during the SSC appointment, and the claimant subsequently fails to attend without adequate explanation, any further submissions already lodged in person at the earlier SSC appointment must be decided on the information available.

Rejecting refugee status

If the further submissions raise protection issues and you do not grant refugee status, you must outline the reasons why the individual does not qualify for refugee status even where permission to stay on another basis is granted. Where these reasons have already been covered by an earlier decision or appeal, you must briefly summarise the reasons and explain why the new material, read together with the previous claim, does not meet the paragraph 353 test.

Appeals dismissed under detained fast track rules

Where further submissions allege unfairness on the basis that the individual's appeal was processed too quickly under the fast track rules (FTRs), caseworkers must consider the impact of the expedited appeals process on the claimant's ability to properly present their case. This will include whether the claimant provides additional evidence at the further submissions stage that they could and would have relied on earlier had their appeal been processed under the Principal Tribunal Rules.

Where an appeal was determined under the 2014 FTRs, it is open for the claimant to make an application under Rule 32 of the First-tier Tribunal Procedure Rules to have the decision of the First-tier Tribunal set aside and to have their appeal re-determined. This is following the Court of Appeal Judgment in The Lord Chancellor v Detention Action [2015] EWCA Civ 840, which concluded that the FTRs were unlawful. Claimants making further submissions on the basis of their appeal being processed too quickly under the 2014 FTRs should therefore be invited to make an application to the First-tier Tribunal under Rule 32.

Stage 2: considering whether there is a fresh claim

If you conclude that the further submissions do not justify a grant of permission to stay in the UK, they are rejected, and you must then go on to decide whether the further submissions amount to a fresh claim on protection or human rights grounds. The claimant will only be entitled to a right of appeal if it is accepted that there is a fresh claim.

Paragraph 353 states that submissions will amount to a fresh claim if they are significantly different from material that has already been considered. Submissions will only be 'significantly different' if the content meets both the following criteria:

- it has not already been considered; and
- taken together with previously considered material, it creates a realistic prospect of success before the Tribunal on protection or human rights grounds, including claims under Article 8 ECHR (which will be considered under the Family or Private Life Rules, where appropriate)

You must consider the further submissions against this two-part test.

Stage 2(a): has the content already been considered?

If the content of the submissions, in whatever form it takes, has previously been considered by the Home Office or by an Immigration Judge at appeal, the first test required in paragraph 353 is not met and there is no fresh claim. In such cases, it is not necessary to consider whether the material creates a realistic prospect of success (the second test) and the further submissions can be rejected without being considered as a fresh claim unless there has been a significant change in circumstances, for example a change in the country situation or new caselaw. You must write a brief letter referring to previous documents assessing the material in question, which must make clear that the further submissions are not recognised as a fresh protection or human rights claim. The letter must not reflect a consideration of the Immigration Rules other than paragraph 353.

Stage 2(b): is there a realistic prospect of success?

If the content of the submissions has not previously been considered, you must assess whether the new material, taken together with material previously considered, creates a realistic prospect of success. The question is whether the issues raised are at least arguable and could lead an Immigration Judge to take a different view. You must not conclude there is no realistic prospect of success just because the claimant's previous account was found to lack credibility. A claimant may have been untruthful in the past but be telling the truth now. An assessment of credibility must be based on all evidence available, taking into account the findings at appeal as a starting point.

Material must not be discounted entirely on the basis that it could or should have been disclosed earlier. However, you should challenge late disclosure, especially if there is no reason why the issues or evidence could not have been raised sooner. The need to challenge late disclosure is of particular relevance to submissions raised at the point of removal, where the claimant has had plenty of time to raise such evidence much earlier in the process but chose not to do so.

Consideration includes old and new material

You must consider all the available evidence when deciding whether there is a realistic prospect of success at appeal. Where further submissions are based wholly or partly on new evidence, this must not be considered in isolation, but must be considered in conjunction with the material previously submitted. The question is whether, in light of all the evidence available, the new material could (not necessarily

would) persuade an Immigration Judge – in other words whether it is realistically arguable notwithstanding rejection.

If you consider that this test is met, the further submissions must be treated as a fresh protection or human rights claim and your decision to refuse the claim will attract a right of appeal. If this test is not met, you must reject the submissions, making it clear that they have not been accepted as a fresh claim meaning that there is no new claim to refuse and no right of appeal. You must provide reasons why the further submissions have not been accepted as a fresh claim.

If a claimant challenges a decision that further submissions do not amount to a fresh claim by lodging a judicial review, the Court will ask whether the decision was reasonable. The decision will be reasonable if you have carefully and objectively considered the further submissions taken together with previously considered material, against the correct legal test (paragraph 353) and alongside any relevant circumstances at the time of your decision (such as country situation), and concluded that the new material does not create a realistic prospect of success at appeal and not arguably arrived at the wrong decision.

Considering protection and human rights issues separately

In certain cases, you may consider the protection aspect and the human rights issues separately. For example, further submissions that repeat previously considered protection grounds but raise new Article 8 ECHR grounds. In such cases, the protection grounds may not amount to a fresh claim because the material has previously been considered and dismissed. However, the Article 8 grounds may amount to a fresh claim if not previously considered and there is a realistic prospect of success before an Immigration Judge. In these circumstances, the protection grounds may be rejected without a right of appeal and the Article 8 claim accepted as a fresh claim under paragraph 353 of the Immigration Rules. You should note, however, that protection issues will usually be human rights issues under Articles 2 and 3 of the ECHR. If there is a right of appeal on human rights grounds, the appellant may raise such issues in the appeal. It is not possible under paragraph 353 to restrict a human rights appeal to non-protection grounds only.

Consider whether exceptional circumstances prevent removal

It is Home Office policy to remove those with no permission to stay from the UK unless it would be a breach of the Refugee Convention or ECHR, or there are exceptional circumstances for not doing so in an individual case.

Where further submissions on protection or human rights grounds are rejected and you have established whether or not they amount to a fresh claim, paragraph 353B of the Immigration Rules requires you to consider whether exceptional circumstances prevent removal. Exceptional circumstances under paragraph 353B can also be considered where an asylum or human rights claim has been refused, appeal rights have been exhausted and there are no outstanding further submissions.

Paragraph 353B of the Immigration Rules includes consideration of character, conduct and associations including any criminal record and the nature of any offence of which the migrant concerned has been convicted. Paragraph 353B does not apply to submissions made by individuals who are overseas and where the person is liable to deportation.

Asylum support

Where further submissions are rejected and there is no in-country right of appeal, you must consider whether it is appropriate to refuse or terminate support, according to the guidance on ceasing asylum support.

If the Asylum Support Tribunal (AST) lists an appeal against the termination of support on grounds that there is an appeal against the rejection of further submissions, you must write to the Tribunal to apply for the appeal to be struck out on the basis that there is no right of appeal against the rejection of further submissions. If an appeal is heard by the AST where the appellant argues that support should not have been terminated because there is an outstanding right of appeal against the rejection of further submissions, the appeal must be defended on grounds that there is no right of appeal against the rejection of further submissions (because they do not constitute a fresh claim and therefore there is no decision to refuse a claim). Those whose further submissions are rejected, and who have no other basis to stay, are expected to leave the UK.

Where further submissions are rejected but treated as a fresh claim under paragraph 353 of the Immigration Rules, there is a right of appeal against the decision to refuse the fresh claim. You must ensure that asylum support is not terminated until such appeal rights are exhausted.

In all cases where any form of permission to stay is granted, you must ensure that where a claimant is in receipt of asylum support, arrangements are made for this to be terminated. See guidance on Asylum support: Section 4 policy and processes for details on terminating support.

Decision letters and section 120

Section 120 of the 2002 Act allows the Secretary of State to impose an ongoing duty on claimants to raise new matters as soon as reasonably practicable after they arise. However, once a claimant has had a claim refused and further submissions rejected, they are expected to leave the UK and must not be given mixed messages about submitting yet further information when they have no basis to remain here. You must therefore only include section 120 wording in further submissions rejection letters on the rare occasions where this obligation has not previously been imposed. You must ensure that there is information and advice available to the claimant on the ways in which they can leave the UK – including via the Voluntary Returns Service.

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Differentiated asylum system

The Nationality & Borders Act 2022 introduced two groups of refugees; each group will be provided with a different form of permission to stay. However, this policy only applies to individuals granted refugee status following asylum applications made on or after 28 June 2022. This policy also applies to further submissions lodged on or after 28 June 2022.

For the purposes of the transitional arrangements only, individuals who sought to lodge further submission before the commencement date of 28 June 2022 but were provided with an appointment to attend a SSC to lodge further submissions on or after 28 June will be considered to have made their further submissions 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, for this cohort, this policy does not apply and instead, you should refer to the guidance on refugee and humanitarian protection leave.

However, if the individual does not attend their appointment, but later wishes to lodge further submissions on or after commencement, they will not be considered to have made further submissions before 28 June, and therefore made a protection claim (where paragraph 353 is met), 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 guidance will apply to their claim.

An individual granted refugee status will either be granted refugee permission to stay or temporary refugee permission to stay. The type of permission to stay granted is dependent on whether they meet the criteria in Section 12 of the Nationality and Borders Act 2022.

If an individual with refugee status meets both the requirements set out in Section 12(2) and, where applicable, the additional requirement set out in Section 12(3) of the 2022 Act, then they are a Group 1 refugee, and as such will be granted refugee permission to stay. Refugee permission to stay will last for 5 years and will include the right to work, recourse to public funds and access to family reunion. They will also be eligible for settlement on a protection route (also referred to as ‘settlement protection’) after having refugee permission to stay for 5 years (subject to a safe return review – see the settlement protection guidance).

If an individual with refugee status fails to meet the requirements of Section 12(2) and (3) of the 2022 Act, then they are a Group 2 refugee, and will be granted temporary refugee permission to stay as a result. Temporary refugee permission to stay will normally last for 30 months and will include the right to work, recourse to

public funds and no family reunion (unless a refusal would be likely to breach Article 8 of the European Convention on Human Rights). A recipient of temporary refugee permission to stay will be able to apply for further permission to stay after 30 months.

Making a 'grouping decision'

You only need to consider whether an individual who has lodged further submissions is a Group 1 or Group 2 refugee, as defined in Section 12 of the Nationality and Borders Act 2022, where you are granting refugee status. If the individual does not qualify for refugee status under paragraph 334 of the Immigration Rules, then you must not consider whether they would be a Group 1 or Group 2 refugee – this includes where you are refusing the further submissions with a right of appeal (accepting that they have made a fresh claim).

When deciding whether the individual is a Group 1 or Group 2 refugee, you must utilise the screening interview, substantive interview, contents of the further submissions and any other information available, for example case notes from Border Force, to decide which group a refugee falls into. You must decide whether the individual is a Group 1 or Group 2 refugee in relation to their actions relating to the lodging of the further submissions.

Section 12(2) of the Nationality and Borders Act 2022 states:

> The requirements in this subsection are that—
> (a) they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention), and
> (b) they have presented themselves without delay to the authorities.

When considering Section 12(2)(a), you must consider the most recent journey to the UK in the circumstance that the individual has returned to the UK from abroad following an earlier refusal or withdrawal of a protection and/or human rights claim.

When considering Section 12(2)(b), you must consider whether the further submissions were lodged without delay. You must disregard any delay which occurred to any earlier protection claim.

For more guidance on applying Section 12 of the Nationality and Borders Act 2022 to individuals who have lodged further submissions, please refer to the assessing credibility and refugee status guidance.

Rebuttal

Where you decide, based on the evidence available, that an individual is a Group 2 refugee as defined in Section 12 of the Nationality and Borders Act 2022, you must provide the individual with an opportunity to rebut this. In this situation, you must serve the 'Group 2 refugee rebuttal letter'. This will provide the individual with a minimum of 10-working days to provide representations as to why they are not a Group 2 refugee. In this letter, you must make clear the reasons for your provisional

decision, for example you must state which sub-section/s of Section 12 of the Nationality and Borders Act 2022 the individual has failed to meet.

Final decision

Where you decide that an individual is a Group 1 refugee, you can proceed to serve the decision granting refugee status and refugee permission to stay without providing a rebuttal period.

Where you have provided an individual with an opportunity to rebut the provisional Group 2 decision, you must wait for the individual to provide a response or wait a minimum of 10-working days. Where no response is received within the specified timeframe, you must make a decision based on the information available. Where, following the rebuttal period, you decide that the individual is a Group 2 refugee, you can proceed to serve the decision granting refugee status and temporary refugee permission to stay.

For more guidance on granting permission to stay on a protection route, including granting temporary humanitarian permission to stay, please refer to the permission to stay on a protection route guidance.

Related content
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When to apply paragraph 353

Earlier protection or human rights claim

Paragraph 353 of the Immigration Rules only applies where an earlier protection or human rights claim has been refused, withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. Paragraph 353 applies to all further submissions irrespective of whether they have been lodged in-person, remotely (if there is an applicable exception) or via a valid application in human rights cases. Paragraph 353 does not apply where either:

- a claimant has not previously lodged a protection or human rights claim
- a claim is pending, and an initial decision has not been made
- there is an appeal pending against refusal of a previous claim

No appeal pending against refusal of a previous claim

Paragraph 353 only applies where any appeal is no longer pending against a previous refusal of a protection or human rights claim. If there is an appeal pending, the claimant must raise all relevant matters, including any material that comes to light after the decision has been made but before the appeal hearing, in the context of that appeal.

Paragraph 353 also applies in cases where an earlier decision did not generate any right of appeal – because there is no pending appeal. In other words, there does not have to have been an appeal for paragraph 353 to apply to further submissions raised after an earlier claim has been refused. For example, if a claim was certified under section 96 of the Nationality, Immigration and Asylum Act 2002, or if a claim had been withdrawn or treated as withdrawn, there would have been no statutory right of appeal, but any further submissions must still be considered by applying paragraph 353. The exceptions to this are set out in the section on 'when paragraph 353 does not apply'.

Before the Immigration Act 2014 (which fully came into force on 6 April 2015), there was no general right of appeal against a decision to refuse a protection or human rights claim. Instead, where a claim was refused it was possible to appeal against a variety of other "immigration decisions" on the ground that the decision was unlawful on human rights or asylum grounds. In those rare cases where a claim was refused and an appeal or right of appeal under the old provisions is preserved, you should treat the appeal as "relating to the claim" for the purposes of paragraph 353 and not apply paragraph 353 to further submissions made while the appeal is pending.

Issues raised must relate to removal

Paragraph 353 only applies when further submissions raise protection or human rights issues that allege the UK would be in breach of our international obligations

under the Refugee Convention or the ECHR by removing the individual. This includes applications based on ECHR Article 8. If the person is not alleging that removal will breach either Convention but is instead making some other kind of human rights argument, for example, relating to the termination of asylum support, paragraph 353 does not apply.

It is not necessary for the claimant to explicitly refer to the ECHR for further submissions to constitute a human rights claim. If the claimant has previously been refused asylum or leave on the basis of a human rights claim, and appeal rights relating to that claim are exhausted, it is appropriate to apply paragraph 353 in respect of any human rights issues raised relating to removal.

A claimant who is ARE in relation to their asylum claim may apply for support under section 4 of the Immigration and Asylum Act 1999. The asylum support application must be considered against the criteria for granting that support (without reference to paragraph 353). For further information on entitlement to support see Asylum support: Section 4 policy and processes.

Withdrawn protection and/or human rights claims

Paragraph 353 of the Immigration Rules must be applied to further submissions made after an original protection or human rights claim has been withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. In such cases, further submissions may succeed on the first test as the content may not have been considered previously. However, it does not automatically follow that the submissions will meet the threshold to succeed at the second test (that, when taken together with the previously considered material, the submissions create a realistic prospect of success before an Immigration Judge, notwithstanding the rejection of those submissions). For further information on when a claim has been treated as withdrawn, see withdrawing asylum claims guidance.

No connection between initial claim and further submissions

Subject to the section below on 'when paragraph 353 does not apply', where a claimant's further submissions are entirely different to their original protection or human rights claim, paragraph 353 of the Immigration Rules must still be applied where the conditions set out above are met. For example, someone may initially claim asylum due to a fear of persecution on political grounds which is refused and dismissed at appeal but subsequently lodge further submissions on religious or Article 8 grounds. Despite the clear differences, this must still be treated as a further submission and not an 'initial' claim, so you must apply paragraph 353.

Contents Initial asylum or human rights claim certified under section 94

Subject to the section below on 'when paragraph 353 does not apply', paragraph 353 of the Immigration Rules must be applied to further submissions where the initial

claim has been certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002, the claimant is still in the UK and has not exercised their out of country appeal, or where the claim has been certified from 28 June 2022 there is no right of appeal. This is the effect of the Judgment in ZT (Kosovo [2009] UKHL 6), which says that, first you must consider whether they qualify for permission to stay (see 'Stage 1: consider whether to grant any form of permission to stay'). Where you conclude that they do not qualify for any permission to stay and the further submissions therefore fall for rejection, you must go onto consider whether the further submissions amount to a fresh claim (see 'Stage 2: considering whether there is a fresh claim'). If the section 94 certification still applies, then the claim will not have a realistic prospect of success (see 'Stage 2(b): is there a realistic prospect of success?'). For further information, see 'Clearly unfounded claims – certification under section 94'.

Initial human rights claim certified under section 94B

Subject to the section below on 'when paragraph 353 does not apply', paragraph 353 must be applied to further submissions where the initial claim has been certified under section 94B of the Nationality, Immigration and Asylum Act 2002, the claimant is still in the UK and has not exercised their out of country appeal. For further information, see Section 94B of the Nationality, Immigration and Asylum Act 2002.

Claimants who leave and then later return to the UK

If a claimant has previously had a protection or human rights claim refused, any appeal is no longer pending, and after having left the UK they then return and attempt to raise such issues again, paragraph 353 of the Immigration Rules applies regardless of how long they have been out of the UK (subject to the section below on 'when paragraph 353 does not apply'. If a decision is made to reject the further submissions and the submissions are not accepted as a fresh claim, you must refuse permission to stay with no right of appeal.

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When paragraph 353 does not apply

This section sets out the limited circumstances in which paragraph 353 should not be applied despite a claimant who has previously had a protection or human rights claim refused submitting further submissions.

Pre- 2 October 2000 asylum claim

Where a claimant lodged an asylum claim and this was refused by way of an appealable decision made before 2 October 2000 and where no further decision has been made since that date which gave the claimant an opportunity to appeal on human rights grounds, paragraph 353 of the Immigration Rules must not be applied to further submissions subsequently made on the basis of human rights.

This only applies to further submissions on the basis of human rights and applies even where the appeal itself took place after 2 October 2000. However, even if these conditions are met, paragraph 353 should be applied if either of the following conditions are met:

- the human rights issue was considered and rejected in the context of the ECHR at the asylum appeal against the pre-2 October 2000 decision
- there was a basic finding of fact made at that appeal which means that any claim based on those facts is likely to fail, for example, the claimant may have maintained a history or nationality found to be false and would therefore not be entitled to another appeal relying on the same false information

These cases are sometimes referred to as Pardeepan cases following a decision of the Immigration Appeal Tribunal (IAT).

Claimants refused refugee status but granted at least 12 months' permission to stay before 6 April 2015

Before 6 April 2015, some cases were refused without a right of appeal even where there was a human rights element. This was because those applications were made out of time (the individual held no valid leave when the application was made) and the refusal of an out of time application was not a decision that attracted a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002.

When section 10 of the Immigration and Asylum Act 1999 and section 82 of the Nationality, Immigration and Asylum Act 2002 were amended by the Immigration Act 2014, this created an 'enforcement gap' in some cases where the person had not received a removal decision following the refusal of their out of time human rights or protection based claim.

Cases considered to be in this 'enforcement gap' are not removable until they have been served with a decision that would generate a right of appeal, subject to

certification, therefore the application of paragraph 353 of the Immigration Rules is not appropriate in these circumstances.

On and after 6 April 2015 all refused human rights based applications will have been given a right of appeal (subject to certification) and so the 'enforcement gap' will not apply to human rights or protection claims refused after this date.

Claimants refused asylum but granted less than 12 months leave before 6 April 2015

Where a claimant was refused refugee status before 6 April 2015 but granted another form of permission to stay for one year or less, there was no right of appeal against the refusal to grant refugee status because section 83 of the 2002 Act only provided a right of appeal where permission to stay of more than one year had been granted. Such individuals had no opportunity to appeal against the refusal of refugee status where they were granted less than one year's leave, whereas the appeals provisions under section 82 of the 2002 Act (as amended) provide a right of appeal whenever a protection claim is refused, regardless of any permission to stay granted. Therefore, you must not apply paragraph 353 of the Immigration Act to any asylum or human rights submissions lodged after the refusal of the protection claim in cases where permission to stay of one year or less was granted for other reasons before 6 April 2015.

For example, unaccompanied asylum seeking children may have been refused asylum but granted less than 12 months' permission to stay due to lack of adequate reception arrangements. Such individuals may subsequently make an application for further leave or lodge further submissions on protection grounds. Where they have not previously had any opportunity to bring an appeal against the refusal of a protection claim, Paragraph 353 must not be applied. This may also apply to those granted 6 months limited leave under the restricted leave or discretionary leave policies. This section only affects claims decided before 6 April 2015.

Protection further submissions following human rights refusal

Where a claimant has had a previous human rights claim refused but has never claimed asylum, paragraph 353 of the Immigration Rules should not be applied to any protection representations raised. In these cases, you must inform the claimant that they should claim asylum should they wish to have their protection claim considered under Part 11 of the Immigration Rules. Where only non-protection human rights grounds have been raised then you must continue to consider these under paragraph 353.

Dependants

If an individual lodges further submissions having previously been named as a dependant on another person's asylum or human rights claim, paragraph 353 of the Immigration Rules does not apply where the person has not made an earlier asylum

or human rights claim in their own right either individually or as part of a Family Asylum Claim. However, it may be appropriate to certify any subsequent decision to refuse under section 96 on the grounds that they received a one-stop notice under section 120 of the 2002 Act when they were dependant on another person's claim and failed to raise protection or human rights grounds at the time. See the appeal and litigation guidance page for further information.

Discretion to appeal on the grounds of fairness

Claimants may alert us to the fact that they failed to attend their appeal hearing, through no fault of their own, for example, because the hearing notice had been sent to the wrong address. In such circumstances, the claimant may request a further right of appeal on the grounds that it was unfair that the appeal was dismissed without the opportunity to attend and give evidence. In this situation, it is not appropriate to apply paragraph 353 of the Immigration Rules. You must consider the details of the case and decide whether to exercise discretion to generate a further right of appeal on fairness grounds. These cases are sometimes referred to as Kazmi cases after a decision of the IAT (R v SSHD Kazmi [1995] ImmAR73). See Drafting, implementing and serving asylum decisions for further guidance.

Further submissions lodged overseas

Paragraph 353 does not apply to further submissions based on protection or human rights made from overseas. The UK's international obligations under the Refugee and ECHR Conventions do not extend to the consideration of asylum claims lodged abroad and there is no provision in the Immigration Rules for someone to be given permission to travel to the UK to seek asylum or any other form of protection.

If a claimant has been removed from the UK and attempts to submit an asylum claim or further submissions from another country (for example via a British Embassy), paragraph 353 does not apply, and the claim must not be considered.

Those who are abroad who wish to come to the UK must make an application for entry clearance in the appropriate category under which they wish to apply. Such applications will be considered in accordance with the relevant Immigration Rules.

Inadmissible claims

As has been set out, paragraph 353 applies only where a claim has been refused or treated as withdrawn. A decision to declare a protection claim inadmissible (whether under either paragraphs 326E-F or 345A-B of the Immigration Rules in force prior to 28 June 2022, or under sections 80A or 80B and 80C of the Nationality, Immigration and Asylum Act 2002 and/or paragraph 327F or the Immigration Rules as in force on or after 28 June 2022 is not such an outcome. Any further submissions in respect of such decisions must not be considered under paragraph 353.

Further submissions addressing protection issues in inadmissibility decisions must instead be considered as further representations to the decision (for those who have been served a decision but are pending removal), or as a claim for asylum (subject

to paragraph 327 of the Immigration Rules, for those who have returned to the UK following a previous inadmissibility decision).

If, following an earlier inadmissibility decision, a claimant raises further submissions addressing both protection and human rights, consideration of the further submissions must be separated. The material raised in respect of the protection claim must be considered as above. For non-protection based human rights claims consideration should be given to whether paragraph 353 applies (i.e. whether a human rights or protection claim has previously been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, remembering that a inadmissibility decision does not meet this criteria).

Related content
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Certification

Certification under section 94

It will not be appropriate to certify further submissions considered under paragraph 353 of the Immigration Rules as 'clearly unfounded' under section 94. Where further submissions are considered to be clearly unfounded, they will not meet the fresh claim test in paragraph 353 and there will be no right of appeal against rejection. As such there is no claim to certify and a certificate is not required. Equally, if it is accepted that there is a fresh claim (as the new material creates a realistic prospect of success), it would not be appropriate to certify under section 94 on grounds that the further submissions are clearly unfounded.

Certification under section 96

Section 96 of the Nationality, Immigration and Asylum Act 2002 provides a mechanism for removing the right of appeal against a decision to refuse a protection or human rights claim where that claim could have been made earlier, either at an appeal or following service of a section 120 notice. Section 96 is intended to prevent claimants from raising matters at the last minute to frustrate removal. It only applies when a right of appeal has been generated.

Paragraph 353 of the Immigration Rules must be applied to any further submissions before section 96 is considered. Consideration of certification only applies to cases in which we have rejected the further submissions but accepted that they amount to a fresh claim. You should refer to the appeal and litigation guidance on the application of section 96https://ukhomeoffice.sharepoint.com/sites/BICSGuidance/SitePages/appeals-and-litigation.aspx.

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Updating CID

You must also refer to the Asylum Case Owner CID Guide and the Drafting, implementing and serving asylum decisions for full details on updating CID and serving the decisions. The family and private life guidance provides details on implementing decisions in non-protection based human rights cases. In protection based further submissions, the decision process must include liaison with the support team to review and/or discontinue support promptly.

Recording receipt of further submissions – all cases

In most cases, where a claimant has had a previous asylum claim recorded on ACID, it will be appropriate to deal with any further evidence as a further submission **not** as a 'new' claim recorded on ACID. In all other cases, record the new evidence as a Further Submission case type as follows:

- Go to 'Case Creation/Link/Unlink' to create a new case type
- choose **one** of the following options:
  - **Further Submissions [In country, in person]:** protection based submissions only, never left the UK **and** submitted in person at a reporting event/appointment
  - **Further Submissions [In country – Postal]**: protection based submissions only, never left the UK **and** submitted by post
  - **Further Submissions [In country – return from abroad]**: protection based submissions only, clear evidence the person had left the UK – for example, lorry drop cases or where it is recorded that the person had returned/been removed – and has since travelled back to the UK
  - **Further Submissions [Port]**: protection based submissions only; person seeks permission to enter the UK and asks for asylum - records show they are either a failed asylum seeker or a previous asylum claim was withdrawn under 333c of the Immigration Rules
  - **Further Submissions [former absconder]**: protection based submissions only, applicant was formally recorded as an absconder but has now come to the attention of the Home Office
  - **Further Submissions Art 8 only [in country, in person]**: Article 8 ECHR submissions only, never left the UK **and** submitted in person at a reporting event/appointment
  - **Further Submissions Art 8 only [In country – Postal]**: Article 8 ECHR submissions only, never left the UK **and** submitted by post.
  - **Further Submissions Art 8 only [Port]**: Article 8 ECHR submissions only, person seeks permission to enter the UK - records show they are either a failed asylum seeker or a previous asylum claim was withdrawn under 333C of the Immigration Rules
  - **Further Submissions Art 8 only [former absconder]**: Article 8 ECHR submissions only, applicant was formally recorded as an absconder but has now come to the attention of the Home Office

Updating ACID when leave has been granted

This is when the outcome of the first ‘test’ is a grant of any leave. Update ACID with one of the following case outcomes as follows:

- locate the ‘Further Submissions’ case type
- update the Case Outcome tab with the relevant decision from the following:
  - Granted Asylum and LTE/LTR
  - Refuse Asylum – Grant HP
  - Refuse Asylum, Grant Family LTR
  - Refuse Asylum, Grant Private LTR
  - Refuse Asylum – Grant DL
  - Refuse Asylum, Grant LOTR
- ensure that expiry date of the leave is recorded under ‘expiry date’
- ensure that the correct condition code is recorded (1 or 1A)

Updating ACID when it is decided not to grant leave and not to accept a fresh claim for asylum or human rights

Use this case outcome when the further submissions have been rejected **and** there is no fresh claim, therefore no right of appeal. Update the Further Submission Case Type tab on ACID with ‘Further Submissions rejected – Paragraph 353 NO RoA’.

Updating ACID when it is been decided not to grant leave, but there is a fresh claim with an in-country right of appeal

Use this case outcome when the further submissions do not lead to a grant of leave but it is accepted that there is a fresh claim **and** it has been decided not to certify the case but to give an in country right of appeal. Update the Further Submission Case Type tab on ACID with ‘Fresh Claim refused – RoA’.

Updating CID when certifying under section 96

Use this outcome when it is decided not to grant leave, a fresh claim has been accepted and, following consideration of whether to exercise discretion, it is still considered appropriate to certify the claim under section 96(1) or 96(2) or both. Update the further submissions case type with one of the following:

- Fresh Claim Refused – s96(1) No RoA
- Fresh Claim Refused – s96(2) No RoA
- Fresh Claim refused – s96(1) & s96(2)

Related content
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