



Home Office

Suitability: Exclusion from Asylum or Humanitarian Protection

Version 5.0

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About this guidance

This guidance is for decision makers assessing the following:

- whether an application for entry clearance, permission to enter or permission to stay should be refused on the grounds that the applicant is excluded from protection, or would have been excluded if they had made a protection claim, or if their previous claim was determined without consideration of whether they should be excluded from protection
- whether someone's entry clearance or permission should be cancelled on the grounds that they are excluded from protection, or would have been excluded if they had made a protection claim, or if their previous claim was determined without consideration of whether they should be excluded from protection

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, 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 you can email the Guidance Rules and Forms team.

Publication

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

- version **5.0**
- published for Home Office staff on **28 June 2022**

Changes from last version of this guidance

- updated to reflect changes to paragraphs 339D and 339GB of the Immigration Rules

Related content

[Contents](#)

Introduction

Paragraph 9.5.1. of [Part 9 of the Immigration Rules](#) provides that entry clearance, permission to enter and permission to stay may be refused on suitability grounds where the applicant is, or would be, excluded from protection.

Paragraph 9.5.2. of Part 9 of the Immigration Rules provides that entry clearance, permission to enter and permission to stay held by a person may be cancelled where the applicant is, or would be, excluded from protection.

The purpose of these provision is to prevent a person who is, or would be, excluded from protection seeking to enter or remain in the UK on a different route.

It is likely that where this ground applies other suitability grounds under Part 9 will also apply (for example non-conducive grounds or criminality grounds).

These rules come into force on 1 December 2020 and apply to applications made on or after this date. Applications made before 1 December 2020 are subject to the [previous Immigration Rules](#), whereby entry clearance or permission to stay in the UK for a purpose not covered by the rules must be refused. Please see previous guidance for instructions on handling applications made before 1 December 2020: Grounds for refusal and cancellation (suitability).

Paragraphs 9.5.1. and 9.5.2. do not apply to:

- [Appendix FM](#)
- [Appendix Private Life](#)
- [Appendix Settlement Family life](#)
- [Appendix AF](#)
- [Appendix EU](#)
- [Appendix EU \(Family Permit\)](#)
- [Appendix Domestic Worker who is a Victim of Modern Slavery](#)
- [Part 11 \(Asylum\)](#), except paragraph 9.5.1 applies to 352ZH to 352ZS, and 352I to 352X, and 352A to 352FJ
- applications by virtue of the ECAA Association Agreement
- applications for permission to stay under [Appendix ECAA Extension of Stay](#)
- [Appendix S2 Healthcare Visitor](#)
- [Appendix Service Providers from Switzerland](#)

What is exclusion from protection?

A decision maker may refuse an application for entry clearance, permission to enter and permission to stay or cancel entry clearance or existing permission on the grounds that the applicant, or person, has previously made a protection claim in the UK and any of the following apply:

- a decision has been made that the person is excluded from being a Refugee under paragraph 339AA of Part 11 of the Immigration Rules

- a decision has been made that the person is excluded from humanitarian protection under paragraph 339D of Part 11 of the Immigration Rules
- a decision has been made that the person's humanitarian protection is revoked on the grounds of exclusion under paragraph 339GB of Part 11 of the Immigration Rules
- a decision has been made that the person is a danger to the security or having been convicted by a final judgement of a particularly serious crime, the person is a danger to the community of the UK under paragraph 339AC of Part 11 of the Immigration Rules

An application may also be refused, or entry clearance or permission cancelled, on any of the above grounds if the person would be excluded from protection but the person has not yet made a protection claim, or the person made a protection claim which has already been decided, but it was decided without considering whether the person was excluded from protection.

Burden and standard of proof

The burden of proof is on the Home Office to show that the suitability grounds apply. When deciding whether the person is excluded from protection the standard of proof and the consideration of exclusion is as set out in the exclusion guidance. For further information, see: Exclusion under Articles 1F and 33(2) of the Refugee Convention.

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Part 11 of the Immigration Rules

The exclusion grounds are set out in detail in [Part 11 of the Immigration Rules](#). In broad terms they are as follows:

Exclusion from the Refugee Convention

Asylum applicants can be excluded from the Refugee Convention under paragraph 339AA of the Immigration Rules.

A person can be excluded where there are serious reasons to consider that they have:

- committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee
- been guilty of acts contrary to the purposes and principles of the United Nations

These provisions are defined in Section 36 of the [Nationality and Borders Act 2022](#).

Exclusion from humanitarian protection

A person can be excluded from a grant of humanitarian protection under paragraph 339D of the Immigration Rules if there are serious reasons for considering that they, either:

- have committed, instigated or otherwise participated in the commission of a crime against peace, a war crime, a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes
- have committed, instigated or otherwise participated in the commission of a serious non-political crime outside the UK prior to their admission to the UK as a person granted humanitarian protection
- have been guilty of acts contrary to the purposes and principles of the United Nations
- have been convicted by a final judgement of a particularly serious crime (as defined in Section 72 of the [Nationality, Immigration and Asylum Act 2002](#)), constitutes a danger to the community of the UK
- is a danger to the security of the UK

Revocation of humanitarian protection

Under paragraph 339GB of the Immigration Rules, humanitarian protection can be revoked if the Secretary of State is satisfied that the person granted humanitarian protection should have been or is excluded from humanitarian protection under paragraph 339D of the Immigration Rules.

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Decision templates

You must fully explain the reasons for the decision, including the evidence that was considered.

Example refusal wording: exclusion from protection

Your application for entry clearance/permission to enter/permission to stay as [route] is refused because you previously claimed asylum in the UK on [date] and a decision was taken to exclude you from the Refugee Convention/humanitarian protection on [insert date]. I am therefore satisfied that you do not meet the suitability requirement as you are excluded from protection and paragraph 9.5.1. of Part 9 of the Immigration Rules applies.

In deciding whether to refuse your application, I have carefully considered the circumstances of your case. I am satisfied that refusal is appropriate because [reasons including what evidence has been considered including why granting the application is not appropriate].

Cancellation of entry clearance or permission

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

Advice on when entry clearance or permission may be cancelled is set out in the [What is exclusion from protection?](#) and Part 11 of the Immigration Rules sections of this guidance.

Where an application is being refused on the grounds that the applicant is excluded from protection and they have extant entry clearance or permission, you must also consider whether to cancel that entry clearance or permission under paragraph 9.5.2. of Part 9 of the Immigration Rules.

Where this ground applies it is likely that other grounds for cancellation in Part 9 will also apply (for example non-conducive grounds or criminality grounds).

In most cases, the exclusion evidence will have been considered in deciding the current application. However, if the exclusion information was not considered at the time of that decision, or the exclusion decision has been made subsequently, it may be appropriate to cancel existing entry clearance or permission.

Cancellation is discretionary and you must consider whether it is appropriate to do so based on the circumstances of the individual case. Relevant considerations may include Human Rights or Article 8 issues, the passage of time if the initial exclusion decision was made a long time ago or that a decision has already been made not to cancel leave under a different ground in Part 9.

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If the person whose entry clearance or permission is being cancelled has dependants, who have entry clearance or permission you will also need to consider whether to cancel their entry clearance or permission. See: Grounds for refusal and cancellation (suitability).

Example wording: cancellation of permission on exclusion from protection grounds (protection claim made)

You were granted [entry clearance/permission] on [date] under [route] of the Immigration Rules.

On [date] [your protection claim was refused and] you were [excluded from the Refugee Convention/humanitarian protection/found to be a danger to the security/community of the UK] for the reasons set out in that decision.

I have carefully considered the circumstances of your case and I am satisfied that it is appropriate to cancel your [entry clearance/permission] as [route] because [reasons including what evidence has been considered].

Your [entry clearance/permission] is cancelled from [date].

Example wording: cancellation of permission on exclusion from protection grounds (no protection claim made)

You were granted [entry clearance/permission] on [date] under [route] of the Immigration Rules.

On [date] a decision was made that you would be excluded from [the Refugee Convention/humanitarian protection] if you made a protection claim for the following reasons/reasons set out in that decision.

I have carefully considered the circumstances of your case and I am satisfied that it is appropriate to cancel your [entry clearance/permission] as [route] because [reasons including what evidence has been considered].

Your [entry clearance/permission] is cancelled from [date].

Cancellation of leave and refusal of permission to enter at the border

Immigration Officers at the border will sometimes be required to cancel someone's existing leave, or refuse them permission to enter, where a decision has already

been taken to exclude them from protection. Immigration Officers will need to check the Warnings Index to see if an individual has been refused protection.

Considering cases under Appendix FM or Appendix AF

Part 9 of the Immigration Rules does not apply to applications made under Appendix FM (family) or Appendix AF (armed forces) but these have equivalent provisions. These are at paragraph S-LTR.1.8 of Appendix FM and at paragraph 8(ca) of Appendix AF.

Applications for limited or indefinite leave to remain (referred to as permission to stay in Part 9) under Appendix FM and AF must be refused if the person has previously been excluded from protection or found to be a danger to the security of the UK, or would have been excluded if they had made an asylum claim.

This guidance applies to consideration under those provisions, but refusal is mandatory unless the person should be granted on the basis of exceptional circumstances in family cases. For further advice on what may constitute exceptional circumstances in respect of Appendix FM, see: Family life (as a partner or parent), private life and exceptional circumstances.

There are no provisions to refuse an application for entry clearance or permission to enter, or to cancel entry clearance or permission, on grounds of exclusion from protection under Appendix FM or Appendix AF.

Considering cases under Appendix EU

For information about refusal and cancellation under Appendix EU, see: EU Settlement Scheme suitability requirements.

Related content

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