



Home Office

# Permission to stay on a protection route for asylum claims lodged on or after 28 June 2022

Version 2.0

# Contents

Contents .....	2
About this guidance .....	3
Contacts .....	3
Publication .....	3
Changes from last version of this guidance .....	3
Introduction .....	4
Relevance of the date that the asylum claim was made .....	4
Transitional arrangements .....	4
Background .....	4
Policy intention .....	5
Application in respect of children .....	6
Legislation .....	7
The 1951 Refugee Convention .....	7
Immigration Rules .....	7
Domestic legislation .....	7
Permission to stay on a protection route .....	8
Family members .....	9
Refusing permission to stay on a protection route .....	10
Allowed appeals .....	11
Applications for further permission to stay on a protection route .....	12
Pre-Nationality and Borders Act 2022 claims .....	12
Post-Nationality and Borders Act 2022 claims .....	12
Applications for longer periods of permission to stay .....	12
Settlement protection .....	13
Safe return review .....	13
Individuals who do not apply for further permission to stay .....	14

# About this guidance

This instruction provides guidance to decision-makers on the duration of and conditions attached to permission to stay, previously referred to as leave to remain, to be granted to those who have been granted refugee status or humanitarian protection under [Part 11 of the Immigration Rules](#). This includes those granted at initial decision stage or following an allowed appeal. This guidance only applies to decisions on asylum applications made on or after 28 June 2022.

## 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 Team.

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

## Publication

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

- version **2.0**
- published for Home Office staff on **17 July 2023**

## Changes from last version of this guidance

- updated to remove reference to the differentiation policy which was paused in the July 2023 Immigration Rules changes as explained in the [Written Ministerial Statement of 8 June 2023](#)

### Related content

[Contents](#)

# Introduction

## Relevance of the date that the asylum claim was made

This guidance is version 2.0 and it explains the circumstances in which it would be appropriate for you to grant permission to stay on a protection route.

This guidance is for decision-makers considering asylum claims lodged on or after 28 June 2022 or asylum claims that need to be considered as if they had claimed asylum before 28 June 2022 under transitional arrangements.

28 June 2022 is the 'commencement date' for the relevant sections of the [Nationality and Borders Act 2022 \('2022 Act'\)](#) and the associated changes to [Part 11 of the Immigration Rules](#).

For asylum claims lodged before this date, please see Refugee and humanitarian protection leave in asylum claims lodged before 28 June 2022.

## Transitional arrangements

For the purposes of the transitional arrangements only, individuals who sought to register an asylum claim before the commencement date of 28 June 2022 but were provided with an appointment to attend a designated place to register their asylum application on or after 28 June will be considered to have 'made an asylum claim' before the commencement date but only if they attend their scheduled appointment (or, in the event that it is cancelled or rescheduled by the Home Office, the rescheduled appointment). Therefore, for this cohort, this policy does not apply and instead, you should refer to the guidance on Refugee and humanitarian protection leave in asylum claims lodged before 28 June 2022.

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

## Background

The UK has a proud record of providing protection for those who need it, in accordance with our international obligations, for example under the Refugee Convention and the European Convention on Human Rights ('ECHR'). Those recognised as refugees because they have a well-founded fear of persecution in their country of origin for

reasons covered by the Refugee Convention are normally granted refugee status and refugee permission to stay in the UK. Those recognised as facing a real risk of serious harm in their country of origin are normally granted humanitarian protection and humanitarian permission to stay in the UK.

An individual granted refugee status will be granted refugee permission to stay on a protection route as defined in [paragraphs 352G and 339QA of the Immigration Rules](#). An individual granted humanitarian protection will be granted humanitarian permission to stay on a protection route as defined in [paragraphs 352G and 339QB of the Immigration Rules](#). Permission to stay on a protection route will be valid for a minimum of 5 years and will include the right to work, recourse to public funds and access to family reunion. They will also be eligible to apply for settlement on a protection route (also referred to as 'settlement protection') after having permission to stay on a protection route for 5 years – see the Settlement protection guidance.

This instruction must be read in conjunction with the main asylum policy instructions, in particular:

- Assessing credibility and refugee status in asylum claims lodged on or after 28 June 2022
- Humanitarian protection in asylum claims lodged on or after 28 June 2022
- Exclusion (Article 1F) and Article 33(2) of the Refugee Convention
- Revocation of protection status
- Asylum policy instruction: Settlement protection
- Processing children's asylum claims

## Policy intention

The policy objective is primarily to provide a period of permission to stay in the UK to those with protection status because they cannot be expected to leave the UK. The policy is designed to:

- meet our international obligations under the Refugee Convention by granting refugee status and an appropriate period of permission to stay to those who need our protection
- meet our international obligations under the ECHR by granting humanitarian protection and permission to stay to those who cannot be expected leave the UK as in doing so they would face a real risk of serious harm
- maintain a fair immigration system that requires all migrants, including those granted protection status, to complete an appropriate period of permission to stay in order to be granted the right to settlement
- ensure that safe return reviews are carried out when considering applications for further permission to stay on a protection route so that protection is provided for as long as it is needed, but make clear that those who no longer need protection will need to apply to stay on another basis or leave the UK

## Application in respect of children

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

Those who are granted protection status are normally granted permission to stay on a protection route for 5 years and any children who are under 18 and dependent on the asylum claim will be granted permission to stay in line with the main claimant (if they do not have protection needs in their own right).

Unaccompanied children who claim asylum and qualify for refugee status or humanitarian protection are also normally granted in-line with this policy. However, there may also be exceptional reasons to grant a longer period of permission to stay and you should refer to the section on applications for longer periods of permission to stay below.

Although a child's best interests are not a factor in assessing which form of permission to stay to grant to them or their parents, you must have regard to the section 55 duty in considering whether other leave may be appropriate following such action. The statutory guidance, [Every Child Matters – Change for Children](#), sets out the key principles to take into account in all actions.

Where there are child welfare or protection concerns that may involve safeguarding issues within the family unit, the case must be referred immediately to the Asylum Safeguarding Hub who will refer the case to the relevant local authority. There is no requirement to obtain the consent of any adults involved as safeguarding the child is our primary responsibility. In an emergency the case must be referred to the police without delay. 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 further information on the key principles to take into account, see: Section 55 children's duty guidance. See also Processing asylum applications from children guidance.

### Related content

[Contents](#)

# 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.

## Immigration Rules

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

- [Paragraph 334](#) sets out the criteria that must be met for an individual to be granted refugee status
- [Paragraph 339C](#) sets out the criteria that must be met for an individual to be granted humanitarian protection
- [Paragraph 339Q](#) A-C sets out the conditions for granting permission to stay on a protection route to individuals with refugee status or humanitarian protection, and their dependants

## Domestic legislation

[Section 72 of the Nationality Immigration and Asylum Act 2002](#) is the UK's definition of when the serious criminality provision in Article 33(2) is to be applied. In particular, section 72(2)(a)-(b) states:

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

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least 12 months.

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

### Related content

[Contents](#)

# Permission to stay on a protection route

The [Nationality and Borders Act 2022](#) and [Part 11 of the Immigration Rules](#) contains the legal framework within which a person granted refugee status or humanitarian protection in the UK will be provided with permission to stay.

Those with refugee status or humanitarian protection will be granted permission to stay on a protection route in the UK and will normally be granted / provided with the following:

- an initial period of 5 years' permission to stay
- immediate and unrestricted access to the labour market
- recourse to public funds
- full access to the family reunion route for their family members
- the opportunity to apply for a refugee integration loan
- a 5-year route to settlement for those who continue to need protection on the settlement protection route
- no requirement to demonstrate a knowledge of language and life in the UK when applying for settlement

## Related content

[Contents](#)



# Family members

Family members who have been accepted as dependants on the asylum claim in accordance with [paragraph 349](#) of the Immigration Rules will normally be granted permission to stay in line with the main claimant under [paragraph 339QC](#). See [Dependants and former dependants guidance](#).

You must consider the best interests of children granted permission to stay on a protection route, whether they are the main claimant or a dependant on a family member's claim.

Those who are granted permission to stay are also able to sponsor their partner and children under the age of 18 to join them in the UK under the family reunion provisions in [paragraphs 352 to 352FJ](#). This would normally be through an application for entry clearance, but family members can also apply in-country. See the published policy on Family reunion: for individuals with protection status in the UK.

## **Related content**

[Contents](#)

# Refusing permission to stay on a protection route

Only those granted refugee status under [paragraph 334 of the Immigration Rules](#) or humanitarian protection under [paragraph 339C of the Immigration Rules](#) can be granted permission to stay on a protection route. Any individual who does not have refugee status or humanitarian protection must not be granted permission to stay on a protection route under [paragraph 339QA-QB of the Immigration Rules](#).

## **Related content**

[Contents](#)

# Allowed appeals

All decisions to refuse a protection claim attract a right of appeal under [Section 82 of the Nationality, Immigration and Asylum Act 2002](#). This includes where refugee status is refused, but humanitarian protection is granted, or where refugee status and humanitarian protection is refused, but another form of leave to remain, such as discretionary leave, is granted.

## **Related content**

[Contents](#)

# Applications for further permission to stay on a protection route

## Pre-Nationality and Borders Act 2022 claims

For guidance on granting permission to stay to individuals granted refugee status or humanitarian protection as a result of asylum claims made before 28 June 2022, please see the refugee and humanitarian protection leave guidance.

## Post-Nationality and Borders Act 2022 claims

Individuals who having claimed asylum (or lodged further submissions) on or after 28 June 2022 were granted temporary refugee permission to stay (as a Group 2 refugee) or temporary humanitarian permission to stay will be re-granted a period of permission to stay which expires five years after the date of their original grant of permission to stay. The new grant of permission to stay will have the same conditions afforded to recipients of refugee permission to stay under this policy.

Eligible individuals will be contacted by the Home Office and requested to return their (and their dependants') current Biometric Residence Permit.

Upon receipt of the Biometric Residence Permit and absent exceptional circumstances, the claimant will be granted permission to stay on a protection route within three months. After serving a total of five years on a protection route (including any period served with temporary refugee or humanitarian permission to stay), the claimant may then apply for settlement on a protection route. For more guidance, please see the Settlement on a protection route guidance.

## Applications for longer periods of permission to stay

This guidance outlines the normal length of permission to stay which will be provided to an individual granted refugee status or humanitarian protection in the UK. However, there may be exceptional circumstances which warrant a longer period of permission to stay. A claimant may make such a request as part of their initial claim or make an application at any point thereafter. A claimant may also have indicated particular vulnerabilities as part of their asylum claim which you must consider in deciding whether to grant a longer permission to stay, even if the claimant has not made a specific request or application for a longer period of permission to stay.

A longer period of permission to stay will only be granted in the most exceptional of circumstances. This means not only a situation which is unusual but one which is distinguished to a high degree from others who need international protection, to the extent that it is necessary to deviate from the normal grant of permission to stay.

The claimant must provide specific evidence in support of why a longer period of permission to stay is appropriate. In the case of medical or mental health issues, the

evidence must specifically address why the longer period of permission to stay is relevant to the claimant and why the normal period is insufficient. It is highly unlikely that a request for indefinite permission to stay (also referred to as 'indefinite leave to remain' or 'settlement') on account of, for example, employment or educational opportunities will succeed but you must consider if there are any other reasons to divert from a normal period. The best interests of the child must also be considered in deciding whether a longer period permission of stay may be appropriate. Any grant of a longer period of permission to stay, including indefinite permission to stay, must be approved by a senior manager (SEO or above).

## Settlement protection

Individuals with refugee status or humanitarian protection and permission to stay on a protection route are eligible to apply for settlement protection after 5 years on a protection route.

Such individuals should apply on the specified application form in the last 28-days of their current grant of permission to stay.

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

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

## Safe return review

All those who apply for further permission to stay on a protection route, including settlement protection, will be subject to a safe return review with reference to the country situation at the date the application is considered. Those who still need protection upon applying will normally qualify for further permission to stay or settlement. You must consider the conditions attached to grants of further permission to stay when considering applications for further permission to stay. In the vast majority of cases, it is likely that a person's protection needs will remain and that further permission to stay or settlement would be granted on that basis. You must refer to the Settlement Protection instruction for more detailed guidance on conducting safe return reviews.

An individual's case may also be reviewed either when triggered by their actions, for example, they are convicted of a particularly serious crime, or in light of a significant and non-temporary change in conditions in their country of origin such that they no longer need protection. Permission to stay on a protection route may be curtailed or revoked under [339QD of the Immigration Rules](#) where someone no longer needs, is no longer entitled to protection due to their actions, or should not have been given protection under the Refugee Convention. See Revocation of protection status for further guidance.

## Individuals who do not apply for further permission to stay

Where an individual on a protection route does not apply for further permission to stay before their current permission expires or does not apply for further permission to stay at all, they become an overstayer and are no longer entitled to the benefits associated with a valid period of permission to stay on a protection route, for example permission to work.

They also become liable to removal but remain in need of international protection until and unless their refugee status or humanitarian protection is revoked. Therefore, you must revoke their refugee status or humanitarian protection before they are removed. For more guidance on when it is appropriate to revoke refugee status or humanitarian protection, please see the Revocation of protection status guidance.

Where evidence comes to light that an individual has overstayed and has not made an application for further permission to stay, you must consider whether there are grounds to refer the case to the Status Review Unit. For more guidance on when it is appropriate to refer cases to the Status Review Unit, please see the guidance on revocation of protection status.

The reasons why an individual with refugee status or humanitarian protection applied late for a further period of leave should be explored including by contacting the applicant if necessary. Reasons could include:

- lack of legal advice or poor advice
- language difficulties
- level of education
- destitution or near destitution
- illness
- experiences of social marginalisation
- inability to travel (for example due to a pandemic)

Where the individual provides sufficient reasons for the late application, and there are no reasons to refer the case to the Status Review Unit for consideration of revocation, then you must process the application for further permission or settlement protection in the normal way.

In cases where an applicant does not provide sufficient reasons why their application was not made in time, they should still be presumed to be entitled to protection, though their case can be referred to Status Review Unit for a review of their continuing need for protection should there be grounds to do so. Should protection status be retained, you must normally grant a further period of permission to stay in-line with this guidance.

### Related content

[Contents](#)