



Home Office

# Permission to work and volunteering for asylum seekers

Version 7.0

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# About this guidance

This guidance tells you about handling requests for permission to work from asylum seekers, failed asylum seekers, and those who have submitted protection based further submissions. It also covers volunteering.

Employers should consult [Home Office guidance](#) before employing a foreign national who is not settled in the UK to establish whether that person is allowed to work here and whether there are any restrictions or conditions on the type of employment the person is legally entitled to undertake.

## Contacts

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

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

## Clearance and publication

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

- version **7.0**
- published for Home Office staff on **12 January 2017**

## Changes from last version of this guidance

- updated to include reference to criminality and delay when considering permission to work applications
- improved guidance on applying for permission to work to provide clarity for claimants on what is expected
- updated information about the difference between working for a voluntary organisation and volunteering to make clearer that asylum seekers are able to volunteer
- new guidance template applied, and section and paragraph numbering removed in line with guidance requirements

### Related content

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# Introduction

## Purpose of instruction

This guidance explains how caseworkers must consider requests for permission to work from those who have lodged an asylum claim or further submission which remains outstanding. It also provides guidance on the fact that asylum seekers can undertake volunteering at any stage of the asylum process.

## Background

Those who claim asylum in the UK are not normally allowed to work whilst their claim is being considered. They are instead provided with accommodation and support to meet their essential living needs if they would otherwise be destitute. The Home Office may grant permission to work in accordance with this policy to asylum seekers whose claim has been outstanding for more than 12 months through no fault of their own. Those who are allowed to work are restricted to jobs on the shortage occupation list published by the Home Office. Any permission to work granted will come to an end if their claim is refused and any appeals rights are exhausted because at that point they are expected to leave the UK. Those who are granted leave have unrestricted access to the labour market.

Asylum seekers are encouraged to volunteer whilst their claim is being considered. Volunteering involves spending time, unpaid, doing something that aims to benefit the environment or someone (individuals or groups) other than, or in addition to, close relatives. By volunteering for a charity or public sector organisation, asylum seekers can support their local community, and this will also assist with their integration if they are granted leave to remain in the UK.

## Policy intention

The policy objectives in restricting permission to work for asylum seekers and failed asylum seekers whilst their claim is considered are to:

- protect the resident labour market for British citizens and those lawfully resident here, including those admitted under the Immigration Rules for employment or business purposes and recognised refugees
- ensure a clear distinction between economic migration and asylum that discourages those who do not need protection from claiming asylum to benefit from economic opportunities they would not otherwise be eligible for
- prevent illegal migration for economic reasons and protect the integrity of the asylum system so that we can more quickly offer protection to those who really need it
- be clear that asylum seekers can undertake volunteering as this provides a valuable contribution to the wider community and may help those who qualify for leave to remain here to integrate into society

## Application in respect of children

Considering an application for permission to work is an immigration function and as such must take into account the need to safeguard and promote the welfare of children in the UK. This is in accordance with requirements under Section 55 of the [Borders, Citizenship and Immigration Act 2009](#). This means caseworkers need to take account of the impact on children of a refusal to grant permission to work.

Those who do not cooperate with the asylum process and are responsible for the delay in considering their claim should not be granted permission to work. It may be argued that refusing permission is not in the best interests of a child. Provision is made in the asylum process for the essential safeguarding and well-being needs of children who are dependent on their parents' claim through appropriate support and accommodation arrangements where this is needed. It is therefore very unlikely that a decision to refuse permission to work for an adult would adversely impact on a child or override the public interest in refusing permission to those who do not comply with the process.

[Paragraph 360](#) of the Immigration Rules only applies to the principal applicant in an asylum claim and there is no provision to grant permission to work to dependants on the claim.

Children under the age of 18 should not be given permission to take employment. However, unaccompanied asylum seeking children or children dependent on their parents are entitled to secondary education whilst their claim is being considered. They are also able to take part in work experience placements or training if that forms part of their education.

For further information on the key principles to take into account, see: [Section 55 Children's Duty Guidance](#).

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# Relevant legislation

## European legislation

The European Council Directive 2003/9/EC (the 'Reception Conditions Directive') lays down minimum standards for the reception of asylum seekers in Member States. It was transposed into UK law through changes to the Immigration Rules, the [Asylum Support Regulations 2000](#) and the [Asylum Seekers \(Reception Conditions\) Regulations 2005](#). The UK currently remains bound by Directive 2003/9/EC.

Article 11 of the Reception Conditions Directive 2003/9/EC covers employment for asylum seekers. It allows Member States to deny access to the labour market for up to 12 months and impose conditions on employment for those who are granted permission to work.

## Domestic legislation

For the purposes of this guidance the terms 'employee' and 'worker' are defined in statutory provisions, in particular:

- Section 230 of the [Employment Rights Act 1996](#) defines the terms 'employee' and 'worker'

Further information on [employment status](#) and [volunteer placements, rights and expenses](#) is available on GOV.UK.

## The Immigration Rules

[Part 11B of the Immigration Rules](#) sets out the criteria for granting asylum seekers permission to take up employment. In particular:

- paragraph 360 sets out that asylum seekers may apply for permission to work if they have not received an initial decision on their claim within 12 months but this will only be considered if that delay was through no fault of the claimant
- paragraph 360A sets out the restrictions on employment for those granted permission to work under paragraph 360 and refers to the [Shortage Occupation List](#) published by the Home Office
- paragraph 360B makes clear that any permission to work granted will only be valid until the claim has been determined and any appeal rights are exhausted
- paragraphs 360C to 360E mirror the provisions set out above for failed asylum seekers who have lodged protection based further submissions and were introduced on 9 September 2010 following the Supreme Court judgment in [ZO \(Somalia\) \[2010\] UKSC 36](#)

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# Permission to work application process

All applications for permission to work from asylum seekers or failed asylum seekers should be made by writing to UK Visas and Immigration (UKVI) and should include the following information:

- full name of the applicant, date of birth and nationality
- Home Office reference number
- a statement setting out the request for permission to work
- contact details for the applicant and legal representative (if they have one)

Applications must be sent to the one of the following teams:

## **Asylum Casework Teams**

Asylum seekers awaiting an initial decision on their claim should submit any request for permission to work to the relevant asylum team dealing with their claim.

## **Complex Casework Directorate**

Applications for permission to work from failed asylum seekers who have outstanding further submissions are dealt with by Complex Casework and should be sent to:

Permission to Work Team  
Administrative Unit  
Level 7, The Capital  
New Hall Place  
Liverpool, L3 9PP

Any decision to grant permission to work must not be taken without first reviewing the asylum claim or further submission to assess why a decision has been delayed. Requests must be dealt with as soon as possible and without unnecessary delay. Where caseworkers are minded to grant permission to work they must first refer the case to a Senior Caseworker.

## **Applications for permission to work at reporting centres**

If a request for permission to work is made at a reporting centre, staff should advise the applicant to contact the team dealing with their case. Reporting centre staff must not take a decision to grant permission to work.

## **Applications for permission to work in litigation**

Where a request for permission to work is submitted as part of a pre-action protocol letter or judicial review application relating to another matter, the claimant must be advised that they need to make a formal application in writing to UKVI in order for their request to be considered. A request for permission to work will not be considered unless it is made in accordance with the process set out above.

### **Related content**

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# Considering permission to work applications

Applications for permission to work by asylum seekers awaiting an initial decision only need to be considered where a decision by the Home Office on their asylum claim is still pending and has been outstanding for more than 12 months. This requirement is set out in [Part 11 B of the Immigration Rules](#) in Paragraph 360.

Following the Supreme Court judgment in [ZO \(Somalia\) \[2010\] UKSC 36](#) the Rules were amended on 9 September 2010 so that failed asylum seekers whose further submissions have been outstanding for more than 12 months can also apply for permission to work.

The following criteria are relevant and must be considered by caseworkers when deciding whether to grant permission to work:

## Outstanding UKVI decision on protection grounds

To consider any permission to work application there must be an asylum claim or further submission on protection grounds that has not been decided by UK Visas and Immigration (UKVI) and has been outstanding for at least 12 months from the date the claim was lodged. This only applies to UKVI decisions. Where a decision has been made within 12 months but an appeal against that decision is still pending an individual will not be granted permission to work.

Caseworkers dealing with a permission to work application must first review the asylum claim to assess the reason for the delay and ensure that the case is not unnecessarily delayed any further.

## Delay

The Home Office must consider applications for permission to work if the delay is not, in the Secretary of State's opinion, the claimant's fault. Caseworkers must take into account how much of the 12 month delay is down to the claimant. This includes considering the reasons behind the claimant's contribution to any delay, such as repeated or long periods of non-compliance with the asylum process. Permission to work must be refused where the delay was their fault.

Where an individual puts forward reasons for failing to comply with required procedures, these must be taken into account when considering whether the delay was their fault. For example periods of serious illness would be an acceptable reason, a prison sentence would not. If there is evidence that absconder action has been taken at some point and there is no further evidence that the applicant has resumed contact, permission to work must be refused.

## Criminality

Asylum seekers or failed asylum seekers who have been convicted of criminal offences must not be granted permission to work if the decision on their asylum



claim has been delayed to await the outcome of any prosecution. Any delay on this basis is, at least in part, attributable to the claimant.

## Dependants

There is no provision in the [Immigration Rules](#) to grant permission to work to dependants of an asylum seeker or failed seeker even where the claim or further submission has been outstanding for more than 12 months. Where permission to work is granted to the main claimant caseworkers need to make clear that this permission does not extend to any dependants.

## Applications from asylum seekers with existing leave

When considering permission to work applications, caseworkers must check the individual's current immigration status. If permission to work is issued to an individual with extant leave this is not under [Paragraph 360](#). This is because they will remain subject to the conditions of their existing leave until it expires, for example, a student may be restricted to a certain number of hours rather than subject to Paragraph 360, for example, the shortage occupation list.

Those who claim asylum whilst they still have limited leave in another capacity that allows them to work may ask whether they can still work beyond the date on which their leave expires. This will depend on whether they apply for further leave before their current leave expires.

Where an application for further leave was made in time and the type of leave previously granted did not prohibit work, the claimant is able to carry on working on the same conditions until their asylum claim is finally determined. Section 3C of the [Immigration Act 1971](#) (as amended) automatically extends the leave of a person who applies for further leave to remain providing they have existing leave to enter or remain when they lodge the application. The claimant must be informed that they can continue to work on the same terms as their previous visa.

If a further leave application is made out-of-time then they cannot benefit from 3C leave and any conditions attached to that leave, including permission to work, cease from the date the leave expires. If the claimant has not made an application for further leave, or if the application was lodged after their current leave expired, caseworkers should refuse permission to work unless they meet the requirements under [Paragraph 360](#).

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# Granting or refusing applications

## Granting permission to work

Caseworkers must use the template letter **ASL.4264** and choose option 1 when granting permission to work. This informs the individual of the conditions of their permission to work and advises them to contact Department for Work and Pensions (DWP) to be issued with a national insurance number. It also advises them to contact the Central Events Booking Unit (CEBU) to have their Application Registration Card (ARC) amended to reflect their permission to work.

The **ASL.4264** must be retained by claimants as proof of permission to work for [Job Centre Plus](#) and future employers.

Caseworkers must update the case file and relevant Home Office records when granting permission to work. This allows reporting centre staff and the Croydon Contact Centre to verify that their permission to work is legitimate. The following wording must be used when updating Home Office records:

- permission to work request received in [name of team] on [date]
- request granted on [date]
- permission to work restricted to the Shortage Occupation List (SOL)
- granted on basis of: [further submissions outstanding for more than 12 months / asylum claim outstanding for more than 12 months / other – give detail (delete as applicable)]
- **ASL.4264** sent/handed to the applicant/representative at [address] on [date]
- name of caseworker
- name of team
- telephone number (including external code)

The **ASL.4264** (option 1) informs the individual that they are required to have their ARC amended and must provide employment details when available, so that a review of their eligibility for and level of asylum support (if any) can be conducted. Failure to do so will result in any support being discontinued. Caseworkers must ensure that a review of support is conducted when employment details are received. See [Assessing eligibility for asylum support](#) for further guidance.

## Confirming permission for those with extant leave

Where a claimant has a continuing right to work because they still have extant leave in another capacity, caseworkers must use template letter **ASL.4043** and select 'option 1 – In time option'. When the claimant does not have continuing permission to work, caseworkers should select 'option 2 – Out of time option'.

## Travel costs

For information regarding travel costs for asylum seekers to travel to an ARC issuing site see GOV.UK, [22A.3 of the Enforcement Instruction and Guidance](#).

## Shortage Occupation List (SOL)

If an asylum seeker or failed asylum seeker is granted permission to work (subject to the exceptions listed in the section on [Applications from asylum seekers with existing leave](#)), this must be restricted to jobs on the [Shortage Occupation List \(SOL\)](#), published by the Home Office.

The Home Office will not routinely review claimants' qualifications and experience when considering permission to work applications to determine whether they have the necessary skills to obtain employment in a shortage occupation, although we reserve the right to do so if there is particular cause for concern. It is the responsibility of the claimant and potential employer to ensure the job is one which is included on the list of shortage occupations and that the claimant is qualified for the position being offered before taking up the post.

The government sets the SOL following recommendations from the [Migration Advisory Committee \(MAC\)](#). The MAC was tasked to assess whether jobs are skilled, in shortage, and whether it is sensible to fill that shortage via migration from outside the European Economic Area.

## Refusing permission to work

In cases where it is appropriate to refuse an application for permission to work, caseworkers must use template letter **ASL.4264** and select option 2. Reasons for refusing permission to work might include the following:

- the asylum claim (or further submission) has not been outstanding for 12 months
- the delay is entirely the result of the claimant's actions or inaction
- the delay is partly due to the claimant's actions or inaction and it is not appropriate to exercise discretion in their favour
- there is evidence of criminality
- further submissions are not protection based and are instead based on Article 3 medical grounds or Article 8 family grounds where a valid charged application should have been made

Caseworkers must update the case file and relevant Home Office databases when refusing permission to work. This allows enforcement staff to verify that permission to work has not been granted. The following wording must be used:

- permission to work request received in [name of team] on [date]
- permission to work refused on [date]
- permission to work refused because: [asylum claim not outstanding for 12 months or more / further subs not outstanding for 12 months or more / further subs not asylum-based / delay is the claimant's fault / other - give detail (delete as applicable)]
- **ASL.4264** sent/handed to the claimant /representative at [address] on [date]
- name of caseworker
- name of team
- telephone number (including external code)

## Revoking permission to work

Where an asylum seeker or failed asylum seeker is granted permission to work because their claim has not been decided, this will come to an end when the asylum claim or further submission has been refused and any appeal rights against refusal are exhausted.

Caseworkers should monitor their caseload and once the asylum claim has been finally determined, or the further submissions have been concluded, must clearly update Home Office records to reflect that the individual's permission to work has ceased.

The ARC will then need to be amended as soon as possible to reflect the fact the permission to work is once again prohibited.

There is no need to take any action to revoke permission to work where an asylum seeker is granted refugee status, humanitarian protection, leave under the family rules or discretionary leave because following the grant they have unrestricted access to the labour market.

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# Volunteering

Volunteers are those who give their time for free to charitable or public sector organisations without any contractual obligation or entitlement. They are not [employees](#) or [workers](#) as defined by various statutory provisions.

Volunteering can be undertaken at any stage of the asylum process but such activities must not interfere with scheduled events such as a substantive asylum interview, regular reporting event or re-documentation interview. These events will not be rescheduled to accommodate volunteering. Organisations offering such opportunities will need to allow some flexibility so that volunteers can attend interviews or appointments around their volunteering. Volunteering must also not undermine the effective removal of those who do not need protection and do not qualify to remain in the UK on any other basis.

Asylum seekers can volunteer whilst their claim is considered without being granted permission to work. It is Home Office policy to support asylum seekers volunteering for charities or public sector organisations. However, this must not amount to engagement as an 'employee' or a 'worker' and it is the responsibility of the individual and the organisation they are volunteering for to check that such activity does not mean they are working in breach of conditions. The organisation should also undertake all relevant safeguarding checks required. Any personal details provided by the claimant as part of the immigration process cannot be confirmed by the Home Office for use in any other context other than immigration matters.

Key elements in establishing whether someone is a volunteer rather than an employee or worker are whether there is an obligation on the individual to perform the work, and an obligation on the organisation to provide it; and whether the individual is rewarded for the work, through money or benefits in kind. Volunteers may be reimbursed for expenses incurred whilst volunteering, for example, for travel and food but should not receive any other payment. If any other payment is received the role may be classed as an employee or worker. Working or being employed by a charity or voluntary organisation is subject to the same restrictions as employment in other sectors. Genuine volunteering roles are not subject to these restrictions.

To summarise, the principal difference is that volunteering must not amount to unpaid work, or job substitution. In particular:

- there should be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance for the same)
- there should be no contractual obligations on the volunteer and they should not enjoy any contractual entitlement to any work or benefits
- the volunteer is helping a registered voluntary or charitable organisation, an organisation that raises funds for either of these, or a public sector organisation
- volunteering is not a substitute for employment, that is fulfilling a role that a salaried worker would normally fulfil

Organisations need to be clear about the legal status of volunteering roles they create before they recruit people to such roles. The guidance above is to help organisations understand the distinctions. However, if in doubt about whether a specific opportunity constitutes engagement as an employee or worker or volunteering, organisations should seek independent legal advice before taking on volunteers who are asylum seekers and who do not have permission to work.

## **Working for a charity**

Asylum seekers or failed asylum seekers awaiting the outcome of an asylum claim or further submission cannot work as an employee or a worker, even for a voluntary organisation, unless they have been granted permission to work under [Paragraph 360 of the Immigration Rules](#).

Further information is available on GOV.UK: [Preventing Illegal Working](#).

## **Enquiries from employers and voluntary organisations**

Caseworkers must be aware that under no circumstances must they reply directly to enquiries by employers on a particular case without first seeking the permission of the claimant, as this may contravene our obligations under the [Data Protection Act 1998](#).

Further advice for employers can be found on the [Employers and educational providers](#) page on GOV.UK.

### **Related content**

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### **Related external links**

[Volunteer placements, rights and expenses](#)

[The National Council for Volunteering \(NCVO\) – volunteering page](#)