



Home Office

Implementing allowed appeals

Version 1.0

Contents

| | |
|---|----|
| Contents..... | 2 |
| About this guidance..... | 3 |
| Contacts | 3 |
| Publication | 3 |
| Changes from last version of this guidance | 4 |
| Implementing an allowed appeal..... | 5 |
| Granting leave | 5 |
| Dependants | 6 |
| Immigration Health Surcharge | 6 |
| Judicial reviews on implementing allowed appeals..... | 7 |
| Where the Tribunal had no jurisdiction to allow the appeal..... | 7 |
| Disagreement with the Tribunal’s decision | 7 |
| Pending criminal charge or prosecution or conviction..... | 7 |
| New or variation application received before allowed appeal implemented..... | 8 |
| How to treat gaps in leave where an appeal is allowed. | 8 |
| How to treat gaps in leave where an appeal is allowed. | 8 |
| Biometrics..... | 8 |
| Re-opening a decision..... | 10 |
| When can a decision be re-opened? | 10 |
| Fresh evidence..... | 10 |
| Where circumstances have significantly changed..... | 11 |
| Action to be taken when a decision is re-opened | 12 |
| Allowed appeals where the appellant was removed from or required to leave the UK pending the appeal..... | 13 |
| Process for implementing allowed appeals outside the UK | 13 |
| Protection appeals | 14 |
| Returns protection appeals | 14 |
| Allowed Appeal how to return to UK..... | 16 |
| Notification of grant of entry clearance | 17 |
| Arrangements for your return to the UK | 18 |

About this guidance

This guidance sets out the approach to be taken on implementing allowed appeals. It is intended for anyone responsible for implementing an allowed appeal (including litigation caseworkers dealing with judicial reviews related to implementing allowed appeals and Border Force Officers dealing with those returning to the UK after an allowed appeal). It also sets out the process to be followed where an appellant was required to leave the UK before they could appeal, and that appeal has been allowed.

In this guidance an “allowed appeal” means an appeal which the Home Office has lost, and “decision” means the decision being appealed.

The teams currently responsible for implementing allowed appeals are:

- Post decision casework: who implement appeals where the decision was made by a team in temporary migration, permanent migration, European casework or family and human rights
- Asylum appeals implementation team: who implement appeals on protection claims where the decision was made by a team in asylum, refused case management or complex casework
- Returns preparation: who implement appeals where the decision was made by returns preparation
- Criminal casework directorate: who implement appeals where the decision was made by criminal casework
- Decision Making Centers (DMC): who implement appeals where the decision was a refusal of entry clearance (the DMC who made the decision being appealed will be responsible for implementation)

Allowed appeals are identified by the ‘PTA Not - Sought Daily Report’ and implementation teams should check the report for any appeals that are for their area.

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 appeals 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 the Guidance Rules and Forms team.

Publication

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

- version 1.0

- published for Home Office staff on 04 August 2020

Changes from last version of this guidance

This guidance is new, it replaces all previous guidance on this issue.

Related content

[Contents](#)

Implementing an allowed appeal

This section sets out the options available when an appeal is allowed.

An allowed appeal should be implemented, and leave should be granted in line with the determination, unless either of the following apply:

- the determination is being onwards appealed
- the decision being appealed is [being re-opened](#)

An allowed appeal should be implemented promptly, otherwise the individual may not be able to access benefits and services to which they are entitled, and they may bring a judicial review challenging the delay in implementation.

Granting leave

Where the allowed appeal requires a grant of leave you should normally grant the leave set out in the determination. If no leave is identified the list below sets out common scenarios and the action you should take; the list is not exhaustive:

- where the determination finds that the relevant Immigration Rules are met, you should grant the leave or entry clearance set out in the relevant rules
- where the determination states that the requirements of a specific policy are met, you should grant the leave or entry clearance set out in the specific policy
- where the appeal is allowed on both protection and human rights grounds, you should grant the most beneficial leave, which will normally be protection-based leave
- where the appeal is allowed on A8 human rights grounds and the appellant does not qualify for leave under the Rules you should normally grant the appropriate leave for A8 cases
- where the appeal was allowed (non-A8) human rights grounds you should apply any relevant policy or, if there is none, consider why the appeal was allowed and grant the appropriate leave, taking into account the guidance on [Leave to remain outside the immigration rules](#)
- where a visitor appeal is allowed on human rights grounds, you should grant leave or a visa under the visitor rules, or if those rules are found not to be met, you should grant leave outside the rules which is for the same period and subject to the same conditions as would be granted under the visitor rules
- where an appeal against revocation of protection status is allowed and the appellant is in the UK, you should withdraw the revocation decision which will restore protection status and, if relevant, grant the protection leave which was cancelled at the time of the revocation decision
- where an appeal against revocation of protection status is allowed and the appellant is outside the UK you should withdraw the revocation decision and, if appropriate, inform the appellant that they will need to apply for entry clearance to return to the UK, following the same process as [Allowed appeals where the appellant was removed from the UK pending the appeal](#)

- where an EEA appeal is allowed both under the EEA Regulations and on human rights grounds, you should only issue the documentation required under the EEA Regulations
- where an appeal under the EU Settlement Scheme is allowed you should grant either pre-settled status or settled status in line with the determination
- where a deprivation of nationality appeal is allowed and a deprivation order has already been made, you should withdraw the deprivation order which will restore nationality (if no deprivation order has yet been made no further action is required)

Where there is a query about implementing an allowed appeal contact appeals policy.

Dependants

Where the appellant has dependants, including children, you should consider whether they should be granted leave in line with the appellant. For example, where a parent made an application or claim which included dependent children and they were all refused but no appeal was made by the dependent children, or where they have appealed but their appeal has not yet been determined, you should consider whether implementation of the allowed appeal has implications for the dependants and, if so, take the necessary action.

Immigration Health Surcharge

Normally the immigration health surcharge (IHS), where it applies, will be paid at the point of application. However, where the applicant has applied for indefinite leave to enter or remain the IHS is not payable. If the appellant succeeds in their appeal but is not entitled to indefinite leave to remain the IHS will not have been paid.

If the IHS is payable the team implementing the allowed appeal must request that that where relevant IHS is paid. If the payment is not then made and the appeal is allowed solely on human rights grounds, you should still grant 30 months leave, but the appellant must be informed that they may have to pay for some medical treatment. The following wording should be used:

“As you have not paid the Immigration Health Surcharge you may be charged for certain NHS services unless an exemption applies.”

Judicial reviews on implementing allowed appeals

Where a judicial review is to be settled based on a consent order that says an allowed appeal will be implemented, or implemented in a particular way, the litigation caseworker must check with the team responsible for implementing the allowed appeal before the terms of the consent order are agreed.

If the consent order states that leave will be granted on the terms set out in the allowed appeal, or the consent order, the implementing team must grant that leave (so should undertake any necessary checks before agreeing the terms of the consent order or include any necessary caveats): failure to do so may mean the Home Office is in contempt of court.

Where the Tribunal had no jurisdiction to allow the appeal

You cannot decide not to implement an allowed appeal because you think the Tribunal had no jurisdiction to allow the appeal. Any dispute about the Tribunal's jurisdiction must be raised at the appeal or in an onward appeal. Where the jurisdiction of the Tribunal is not successfully challenged, the determination of the Tribunal will be valid and must be implemented.

Disagreement with the Tribunal's decision

The Tribunal is responsible for interpreting the law. Where the Tribunal allows the appeal any disagreement about the decision must be raised at the appeal or in an onward appeal, otherwise the appeal must be implemented. You cannot refuse to implement an allowed appeal simply because you do not agree with it.

Pending criminal charge or prosecution or conviction

An appeal must be implemented in line with the determination even if you are aware that the appellant:

- may be charged with a criminal offence
- has been charged with a criminal offence but has not yet been convicted

It is unlawful to “deliberately delay giving effect to the ruling in the hope that something might turn up to justify not implementing it” Mersin (2000) EWHC Admin 348).

The possibility of a criminal charge or conviction does not amount to a change in circumstances. Where someone is granted leave following an allowed appeal and is subsequently convicted of an offence deportation action must be considered in the normal way.

New or variation application received before allowed appeal implemented

Where an appeal is allowed and, before it has been implemented, a valid new application is received, you should still implement the allowed appeal. The new application should be considered by the appropriate decision-making area and may result in a variation of leave.

How to treat gaps in leave where an appeal is allowed.

Where an application is made and the person's leave has been extended by section 3C of the Immigration Act 1971, it will be further extended if an in-time appeal is made. Where an application is made after the person's leave has already expired, or they had no leave, section 3C will not extend leave while the appeal is pending.

How to treat gaps in leave where an appeal is allowed.

Where an application is made and the person's leave has been extended by section 3C of the Immigration Act 1971, it will be further extended if an in-time appeal is made. Where an application is made after the person's leave has already expired, or they had no leave, section 3C will not extend leave while the appeal is pending.

Where a person has leave under section 3C, the appellant must be treated as if they had held leave continuously see the Position following an allowed appeal in the [Leave extended by section 3C \(and leave extended by section 3D in transitional cases\)](#). Where there is any question about the effect of any gap in leave appeals policy should be consulted.

Biometrics

An allowed appeal must not be implemented until there are up to date biometrics as set out in the UKVI Operating Mandate.

Official - sensitive: start of section

The information on this page has been removed as it is restricted for internal Home Office use only.

The information on this page has been removed as it is restricted for internal Home Office use only.

Official – sensitive: end of section

Related content

[Contents](#)

Re-opening a decision

This section explains when it is possible to implement an allowed appeal by re-opening the decision being appealed and serving a new decision.

When can a decision be re-opened?

Finality of litigation is an important legal principle and both parties to an appeal are bound by the outcome. It will only be in exceptional and limited circumstances that re-opening the decision will be appropriate.

The circumstances in which a decision can be re-opened are:

- there is [fresh evidence](#) about the facts on which the appeal was allowed, for example evidence of deception
- the [circumstances have significantly changed](#) and a new decision is required on up to date facts

Fresh evidence

Where an appeal is allowed, you should not look for new evidence to undermine the findings of the determination. The principle that the Tribunal's determination, unless appealed, is binding has been consistently upheld by the courts and it is therefore vital that any checks relating to the evidence are completed before, and addressed at, the appeal.

Where fresh evidence does come to light and, as a result, you do not think the appeal should have been allowed, an onward appeal should usually be made on that basis, even if the onward appeal is out of time. Permission to appeal out of time can be sought on the ground that the fresh evidence was not previously available. If permission to appeal is refused it may be possible in limited circumstances to re-open the decision and take the fresh evidence into account. The case [of Ullah \(2019\) EWCA Civ 550](#) confirms this.

The principles to be applied when taking fresh evidence into account in deciding whether to reopen a decision are that the evidence:

- could not have been obtained with reasonable diligence for use at the appeal
- would probably have had an important influence on the outcome of the appeal, although it need not be decisive
- must be apparently credible, and in cases of fraud the evidence must be clear and manifest: for further guidance on fraud see the [general grounds for refusal guidance](#)

In any cases where you re-open the decision on the basis of false representations having been made you must follow the procedural fairness process set out in the false representations guidance.

It will only be in exceptional circumstances that fresh evidence will allow you to re-open a decision and the criteria above must be met.

Any decision not to implement an allowed appeal must be discussed with Appeals policy before any action is taken.

Where circumstances have significantly changed

An allowed appeal should normally be implemented irrespective of any change of circumstances between the appeal being allowed and leave being granted. For example, in a protection claim where there has been a change in the country conditions, such as regime change, you should normally still implement the allowed appeal. There should be no delay in implementing the allowed appeal where the country situation is unclear simply in order to wait for the position to become clearer.

However, if after the appeal the person is convicted of an offence and is liable for automatic deportation then a deportation order must be made unless one of the exceptions apply. Where automatic deportation may apply, before implementing an allowed human rights appeal the caseworker should consider whether one of the exceptions to automatic deportation obviously applies. This is because considering whether to issue a deportation order is a statutory duty.

In deciding whether the person does fall under an exception to automatic deportation the findings of fact by the Tribunal must be the starting point. Where the person obviously falls under an exception or an exemption the appeal must be implemented. Where the person may fall for automatic deportation the process set out in the section “decision to make a deportation order” in Immigration Directorate Instructions Deporting non-EEA foreign nationals must be followed.

Any further representations received must be considered as set out in the section “representations and making a deportation order” in the Immigration Directorate Instructions Deporting non-EEA foreign nationals. As the person has already won a human rights appeal if the caseworker decides to refuse the representations, or even if no further representations are made, the person must be informed they have a further right of appeal. The reason why there must be a further right of appeal is that as a human rights appeal has previously been allowed in pursuing deportation, we are again refusing a human rights claim, but in the subsequent human rights appeal the Tribunal will consider whether the human rights claim can succeed given the public interest in favour of deportation.

Where you are considering not implementing an allowed appeal because of a significant change of circumstances you must contact Appeals policy before any action is taken.

Action to be taken when a decision is re-opened

Where there was a right of appeal against the original decision (including any transitional appeal, which arose pre-Immigration Act 2014 changes), if you re-open the decision that has been successfully appealed you must make a new decision giving the reasons why the decision was re-opened and providing full, updated reasons for the new decision. There will be a fresh right of appeal against the new decision.

Related content

[Contents](#)

Allowed appeals where the appellant was removed from or required to leave the UK pending the appeal

This section sets out the process for implementing an allowed appeal where:

- the appellant's claim was certified and they had to leave the UK before bringing their appeal – for further information see: [Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#) or Late claims: certification under section 96
- the appellant's asylum claim falls to be considered elsewhere in the EEA, or other safe country – for further information see: Dublin III Regulations. For information on appeals where the claim is inadmissible see Inadmissibility: EU grants of asylum, first country of asylum and safe third country concepts
- the appellant has an appeal under [the Immigration \(European Economic Area\) Regulations 2016](#) or under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 and left the UK whilst their appeal was pending
- a decision was made under section 10 of the 1999 Act before 6 April 2015 where the appellant only had a right of appeal after they left the UK – for further information see: [Rights of appeal guidance](#).

The responsibility for implementing an allowed appeal falls to the team who would have dealt with the allowed appeal if the person had not left the UK. For details of the team responsible see: [teams responsible for implementing allowed appeals](#).

Process for implementing allowed appeals outside the UK

Where the appeal has been allowed on non-protection grounds (i.e. not asylum or humanitarian protection) and is not being onward appealed and the appeal rights are exhausted the process to follow is set out below. For protection appeals see [Process for allowed appeals - protection](#).

Where the appeal is not being onward appealed the in-country team responsible for dealing with the allowed appeal must first contact the Central Operations Team within UKVI to establish which Decision Making Centre (DMC) covers entry clearance applications in the country where the appellant is now. The in-country team must then email the DMC informing them that the appeal has been allowed.

Where the appellant is a visa national the in-country team must inform the appellant that their appeal has been allowed using the template letter at [Allowed Appeal how to return to the UK](#).

Where a person has been required to leave the UK prior to the appeal being concluded, the appellant's overseas contact address, outside the UK, should be on their appeal form which will be on the casework system.

Where there are concerns about the appellant's eligibility for entry clearance, the DMC will refer the application to the in-country casework team responsible for implementing the allowed appeal for further guidance.

Where a decision is taken to grant entry clearance, the area responsible for the allowed appeal should grant 30 days leave outside the immigration rules to coincide with the appellant's proposed travel plans. This should be done at the same time as the grant is made. The letter at Notification of grant of entry clearance advise the appellant that they must inform the in-country casework team of their arrival in the UK before the 30 days expires. That team will then arrange for the allowed appeal to be implemented. Contact details for the in-country casework team must be given in the letter.

This process must be followed even where the applicant is a non-visa national to ensure that they are not delayed at the Border and that they are not admitted as visitors, which would be an inappropriate form of leave given the intention is that applicants will be granted further leave when their appeal is implemented.

Protection appeals

It is possible for the Home Office to remove appellants before they appeal on protection grounds if the claim is certified as clearly unfounded under section 94. Where a protection appeal is allowed it is important that the need for action is identified and arrangements are made to return the appellant as soon as possible.

Given that the appeal has been allowed, the claim will not be "clearly unfounded" and therefore even if the Specialist Appeals Team (SAT) seek to appeal the decision, arrangements must normally be made to return the appellant immediately to minimise any risk to them. If there are specific exceptional reasons why the appellant should not be returned to the UK immediately you should raise this at Grade 7 level.

Where a protection appeal is allowed, SAT will forward the appeal determination to the case working team responsible for making the original protection decision by high priority e-mail. The following text must be used in the subject header:

"URGENT ACTION REQUIRED: allowed protection appeal where the appellant is outside the UK."

The e-mail must be copied to Appeals policy.

Returns protection appeals

When the in-country team receives the allowed appeal, they must immediately make the relevant Grade 7 in their team aware. Where a protection appeal has been allowed, the priority is normally to return the appellant as soon as possible. In these situations, it is usually quicker to arrange a visa waiver than to ask the appellant to make an application which will have to go through the relevant DMC. To ensure visa

waivers can be issued quickly, it is important that they are only issued where there is an allowed protection appeal.

Border Force are responsible for issuing visa waivers and therefore the in-country team must contact them with the details of the case to arrange a visa waiver for the appellant. Returns Logistics should also be consulted to see whether issuing a visa waiver would cause any practical difficulties for the appellant. For example, it may be easier for the appellant to pass through their own country's immigration control with entry clearance rather than a visa waiver.

Where Border Force agree to issue a visa waiver and Returns Logistics confirm that there is no reason why a visa waiver cannot be used, the in-country team must then contact the appellant using their overseas contact address, normally provided on the appeal form. The template should be used to obtain the details of their travel documents and specific arrangements for travel to the UK (carrier, flight number and date and time of departure and port of arrival). Once received, this information must be passed to Border Force.

In the event that the person is a non-visa national contact Border Force and Returns Logistics so they can advise on whether the person will need any documentation. You will also need to write to the person asking what flight they will be arriving: see the template letter [Arrangement for return Non visa national protection appeal](#). The details of return must be passed on to Border Force.

Once the appellant has returned to the UK, if the allowed appeal is being challenged by the Home Office the team that made the original decision and who are responsible for implementing the appeal will be responsible for managing the case and deciding what bail conditions should be set, a decision will also need to be made by IE on whether to detain the appellant. This should be discussed with Border Force before the appellant returns to the UK, so that they can take the appropriate action.

The in-country team is also responsible for managing the case while the appeal is pending. If the appellant is not detained it's their responsibility to consider whether any support should be provided and, if so, to put the necessary arrangement in place and adding the relevant information to the template letter Arrangements for return to the UK: visa waiver or [Arrangement for return Non visa national protection appeal](#).

Where the appeal is not being challenged, the in-country team should inform Border Force who will normally grant bail and give the appellant the details of the in-country casework team, with instructions to contact that team within 30 days of arrival so that they can arrange to implement the allowed appeal.

Related content

[Contents](#)

Allowed Appeal how to return to UK

Dear **Name of appellant and any dependents named in the allowed appeal**

Your appeal against the decision of **date** has been allowed and the Home Office is not appealing the decision. **In a deport case add in.** The decision to deport you has been revoked.

If you now wish to return to the UK, you will need to obtain a visa. You can do this by going online to visas-immigration.service.gov.uk completing the application form "Return to the UK".

If you have any questions about this letter, please contact me by e-mail or at the address given above.

The letter sent to the appellant must be copied to the Decision Making Centre so that they are aware that an application is expected.

Yours sincerely

**Caseworker
Team**

Notification of grant of entry clearance

Dear Name of **appellant and any dependents being granted entry clearance**

This letter is about your application for entry clearance to allow you to return to the UK after your appeal against the decision of **date** was allowed.

Your application has been granted which means that when you arrive in the UK you will have permission to be in the UK (known as Leave to Enter) **from (add date)**. Your passport/travel document contains a vignette (visa sticker), which you can use to travel to the UK. The vignette is valid for 30 days

What you must do after arrival in the UK

Please contact the team responsible for your case using the contact details below, who will arrange for your stay to be extended in line with the outcome of your appeal

The contact details you will need are:

Add contact of the team implementing the allowed appeal.

Please make sure that you contact this team before **date**, when your permission to stay in the UK expires. If you cannot do so, or if you have any other questions about the content of this letter, please tell us as soon as you can. If you are in the UK, you should use the contact details given above. If you are outside the UK, please contact **add contact details for the local Decision-Making Centre**.

Yours sincerely

Caseworker

**cc UK caseworker or team
Appellant's representative (if any)**

Arrangements for your return to the UK

Dear Name of **appellant and any dependents**

Use if a visa national

This letter is about making arrangements for your return to the UK following your allowed appeal against the decision of **date to (insert details as appropriate)**'.

End section

Use if a non visa national

This letter is about making arrangements for your return to the UK following your allowed appeal against the decision of **date to (insert details as appropriate)**'.

End section

If you now wish to return to the UK, in order to facilitate your travel and entry to the UK we need to know for you **(and any dependants)**:

- your passport number
- which airline you will be flying with
- the flight number
- your expected time and place of arrival in the UK
- whether you expect to change planes or leave the aircraft for any other reason in another country

This is because the airline will not allow you to board a flight without evidence that you will be admitted to the UK. Once we have these details, we will notify the airline that we have agreed to admit you to the UK

Add in details about what will happen on arrival, for example, will leave be granted, will the applicant be bailed or detained upon arrival.

If you have any questions about this letter, please contact me at the above address or by email/telephone.

Yours sincerely

**Caseworker
Team**

cc Appellant's representative (if any)