



Home Office

# Asylum Support Applications from European Union Nationals or People with Refugee Status Abroad

Version 1.0

This document provides instruction on handling requests for asylum support from EU Nationals or people who have Refugee status in an EEA State.

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# Application of this instruction in respect of children and those with children

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#) requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to section 55. The Home Office instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all relevant activities.

Our statutory duty to children includes the need to demonstrate:

- fair treatment which meets the same standard a British child would receive
- the child's interests being made a primary, although not the only consideration
- no discrimination of any kind
- asylum applications are dealt with in a timely fashion
- identification of those that might be at risk from harm

## **Related content**

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# About this guidance

This policy provides guidance on handling applications for asylum support from EU Nationals or people who have Refugee status in an EEA State after the departure of the United Kingdom from the European Union.

## 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.

## Publication

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

- version **1.0**
- published for Home Office staff on **18 December 2020**

## Changes from last version of this guidance

- The relevant content of previous published instructions about support arrangements for EU nationals and those granted refugee status in an EEA state has been moved to the new Home Office guidance template.
- The guidance has also been updated to reflect changes to the Asylum Support Regulations 2000, which maintain the position that EU citizens who claim asylum are generally ineligible to receive asylum support for either themselves or their dependants.
- The guidance has also been updated to provide further detail of the circumstances in which a person with refugee status in an EEA state may require support in order to avoid a breach of their ECHR rights.

### Related content

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For full context see Asylum support policy and process instructions pages

### Related external links

[Asylum support instruction pages](#)

# Background

This guidance provides instructions for caseworkers on handling applications for asylum support from asylum seekers who are nationals of the European Union (EU) and their dependants and the handling of applications from people who have been granted refugee status by European Economic Area (EEA) states and their dependants.

The EEA is made up of the member states of the European Union as well as Liechtenstein, Norway and Iceland.

## **Related content**

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# Applications for Section 95 support from EU nationals

Paragraph 326E of the Immigration Rules sets out that asylum claims from EU nationals must be treated as inadmissible unless there are exceptional circumstances. Paragraph 326F of the Immigration Rules sets out when exceptional circumstances apply. The onus is on the claimant to provide written reasons why their claim should be considered exceptionally.

Regulation 4(4)(d) and (e) of the Asylum Support Regulations 2000 provides that an EU national and any dependants of such a person are ineligible to receive support under section 95 or 98 of the Immigration and Asylum Act 1999 unless their asylum claim has been found to be admissible under paragraph 326F of the Immigration Rules because exceptional circumstances apply.

Applications for section 95 support from EU nationals and their dependants should therefore be refused unless their asylum claim has been found to be admissible for exceptional circumstances. Applications for support under section 98 of the 1999 Act should also be refused unless the asylum claim has been found to be admissible for exceptional circumstances.

## Refugee status abroad

Paragraph 4(2) of Schedule 3 to the Nationality, Immigration and Asylum Act 2002 defines a person as having refugee status abroad if:

- they do not have the nationality of an EEA State; and
- the government of an EEA State has determined that they are entitled to protection as a refugee under the Refugee Convention

The effect of Schedule 3 to the 2002 Act is that a person who has been granted refugee status by an EEA state and any dependant of such a person is generally ineligible to receive support under sections 95, 98 or 4 of the Immigration and Asylum Act 1999.

However, support may nonetheless be provided to the extent necessary to prevent a breach of the person's rights under the European Convention on Human Rights.

## Undertaking a human rights assessment

The consideration of whether the provision of accommodation is necessary to avoid a breach of the human rights of a person with refugee status in an EEA state will usually require an assessment of whether they are likely to suffer inhuman or degrading treatment contrary to Article 3 of the European Convention on Human Rights (ECHR) if they are not provided with accommodation and other assistance to meet their daily living needs while they are in the UK. However, decision makers

should only provide accommodation for these reasons if it is clear that the person cannot reasonably be expected to leave the United Kingdom. Otherwise, the individuals can avoid a breach of their human rights by leaving the UK.

Article 3 of the European Convention on Human Rights (ECHR) is the prohibition on torture or inhuman or degrading treatment or punishment.

When it appears on a fair and objective assessment of all relevant facts and circumstances that an individual applicant faces an imminent prospect of serious suffering caused or materially aggravated by denial of shelter, food or the most basic necessities of life, this is likely to be considered inhuman or degrading treatment contrary to Article 3 of the ECHR (see: *R (Limbuela) v Secretary of State* [2005] UKHL 66).

The decision maker will therefore need to assess whether the consequences of a decision to deny a person accommodation would result in a person suffering such treatment. To make that assessment it may be necessary to consider if the person can obtain accommodation and support from charitable or community sources or through the lawful endeavours of their families or friends. Where the decision maker concludes that there is no support from any of these sources then there will be a positive obligation on the Secretary of State to accommodate the individual in order to avoid a breach of Article 3 of the ECHR.

However, if the person is able to return to the EEA country where they have refugee status and thus avoid the consequences of being left without shelter or funds, the situation outlined above is changed. This is because of the following:

- there is no duty under the European Convention on Human Rights to support foreign nationals who are freely able to leave the UK (see: *R(Kimani) v Lambeth LBC* [2003] EWCA Civ 1150)
- if there are no legal or practical obstacles to return home, the denial of support by a local authority does not constitute a breach of Human Rights (see: *R (W) v Croydon LBC* [2007] EWCA Civ 266)

A genuine obstacle would only usually exist if either:

- the person is unable to leave the UK because of a physical impediment, or other medical reason:
  - the test here is usually whether the person is physically able to travel by air to the EEA where they have refugee status
  - a person who claims to be unfit to travel will usually need to provide supporting evidence from a medical practitioner
- the person is unable to leave the UK because they do not have the necessary travel documentation but are taking reasonable steps to obtain one:
- reasonable steps should usually be taken to mean that they have applied for the necessary travel document from the EEA state where they have refugee status, but may include where they are complying with Home Offices processes to obtain an emergency travel document to facilitate their return

Unwillingness to return is not the same as inability to return, so where there is a genuine obstacle to return the person can be expected to take steps to resolve the obstacle where it is reasonable to do so (for example by applying for a travel document through the national embassy or high commission).

If there are no legal or practical obstacles preventing the person leaving the United Kingdom, it will usually be difficult for a person to establish that the Secretary of State is required to provide support in order to avoid breaching their human rights.

Clearly, however, if there are obstacles in place that mean the person cannot leave the United Kingdom, or they are taking reasonable steps to put themselves in a position whereby they can leave the United Kingdom but there is likely to be an unavoidable delay in those steps reaching fruition, then it may be necessary to continue to provide accommodation support to avoid the inhuman treatment and breach of Article 3 rights described above.

If a decision maker is unsure as to whether it would be appropriate to provide, or continue to provide, support in any given case, a senior caseworker should be consulted as part of your decision-making process.

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