



Home Office

Additional guidance on the eligibility of additional family members under the Afghan locally employed staff relocation schemes

Version 1.0

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About this guidance

This guidance explains the eligibility criteria for additional dependants and family members seeking to join Afghan locally employed staff (LES) and who do not qualify under the existing immigration rules.

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 Armed Forces 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 **04 June 2021**

Changes from the last version of this guidance

This is the first version of this guidance published in this format.

Related content

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Introduction

Purpose of instruction

This guidance tells you about the eligibility criteria for additional dependants and family members of Afghan locally employed staff (LES) who wish to relocate to the United Kingdom, but who do not qualify under the immigration rules.

Background

There are two relocation schemes for former Afghan locally employed staff (LES) – the ex gratia scheme (EGS) and the Afghan relocations and assistance policy (ARAP). The [Afghan locally employed staff relocation schemes](#) guidance provides details of the background to the EGS and the ARAP and the qualification criteria for dependants under both are defined within the [immigration rules](#).

Following the introduction on 1 April 2021 of the ARAP, international forces, including those from the UK, announced their intention to withdraw from Afghanistan by the Autumn of 2021.

Owing to the deteriorating security situation in Afghanistan, it has become necessary to add to the guidance to enable employing departments and caseworkers to assess applications for additional dependants and family members asking to join the LES being relocated. These cases will be exceptional, and the majority of cases will be considered within the immigration rules.

Policy intention

The policy objective is to ensure that applications from additional dependants and family members who do not qualify for relocation under the ARAP or EGS, but who have asked to be permitted exceptionally to relocate alongside an LES, are dealt with fairly and consistently.

Applications in respect of those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 places an obligation on the Secretary of State to take account of the need to safeguard and promote the welfare of children who are in the UK when carrying out immigration, asylum and nationality functions. Therefore you must take into account the need to safeguard and promote the welfare of any children living in the UK who may be affected by an application from overseas, as well as an application made from within the UK when considering each application.

In practice, this requires you to consider the best interests of the child in decisions that have an impact on that child. This is particularly important if a decision might lead to a child having to leave the UK, or where there are obvious factors that adversely affect the child, or where a child or a person caring for the child ask us to take particular circumstances into account. All decisions must demonstrate that the

child's best interests have been considered as a primary, but not necessarily the only, consideration. You must be vigilant that a child may be at risk of harm and be prepared to refer cases immediately to a relevant safeguarding agency where any child protection issues arise.

Where there are child welfare or protection concerns in the UK that may involve safeguarding issues within the family unit the case you must make an immediate referral to the local authority using the local authority child referrals process and the local authority child referral form. In an emergency the case must be referred to the police. The Safeguarding Advice and Children's Champion (SACC) team can also offer advice on issues relating to children, including family court proceedings and complex cases.

For posts overseas the statutory duty does not apply but where a safeguarding need comes to their attention posts should be open to establishing ways of working with local agencies in order to develop arrangements that will protect children, or promote their welfare, or reduce the risk of their being trafficked and exploited.

The Home Office guidance on '[Every Child Matters – Change for Children](#)' sets out the key principles to take into account in all cases involving a child in the UK.

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Relevant legislation

This section tells you which section of the immigration rules relates to Afghan locally employed staff (LES) including dependants.

Immigration rules

[Part 7 of the immigration rules](#) provides the legal framework for those eligible for relocation under the ex-gratia scheme or who have been assessed as being in need of relocation under the Afghan relocations and assistance policy.

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Who qualifies as a dependant?

This section explains who qualifies under the immigration rules as a dependant of an individual relocating under the ex gratia scheme (EGS) or the Afghan relocations and assistance policy (ARAP).

Criteria under the immigration rules

Paragraphs 276BE1–276BS1 of the [immigration rules](#) define who can qualify as a partner and minor dependent child of local employed staff (LES).

LES who qualify for relocation under the immigration rules may include a partner and any minor dependent children in their application for limited leave to enter the UK as their dependants.

Information on criteria for dependants can be found on [Gov.UK](#) and in the guidance on [Afghan locally employed staff relocation schemes](#), but the key points include the following:

- only spouses, partners and dependant minor children under the age of 18 qualify for relocation
- dependants must be Afghan nationals and in Afghanistan at the time when an application is made

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Process for consideration of additional dependants

This section provides guidance on the process for considering requests for additional family members to accompany relocating Afghan locally employed staff (LES) outside of the immigration rules.

Receiving applications from additional family members

The normal visa application process for relocation under both the ex gratia scheme (EGS) and the Afghan relocations and assistance policy (ARAP) is explained in the guidance for the [Afghan locally employed staff relocation schemes](#).

In most cases, the existing rules on eligibility should be adhered to, but there may be instances, as set out in the exceptional circumstances section of this guidance (below), when an assessment of the risks and individual circumstances lead to a grant of leave outside the immigration rules.

In cases where LES make requests for additional family members to accompany them, the process below should be followed.

There is no requirement for all family members to travel at the same time, although it is preferable for them to do so. However, circumstances may mean that separate travel by family members must be considered. If necessary, arrangements can be made for family members to travel before the LES, for example, in cases where HMG has asked the LES to remain in Afghanistan to continue working, but where the family members would be at risk if they also remained there.

If an LES is already settled in the UK, they can apply to relocate additional members of their family in line with this guidance, but LES making fresh applications for relocation from Afghanistan, must include all family members they would like to relocate at the time of making the application. Additional family members cannot be added after they have arrived in the UK.

LES makes a request for additional family members to accompany them

The employing department makes an assessment of whether the additional family members fall within the criteria as defined in the immigration rules. If they do fall within this criteria, the normal process should be followed. If not, the guidance below must be followed.

Assessment of additional family members: relationships and risk

If the additional family members do not fall within the existing criteria, the LES should be informed of that and advised to put any exceptional reasons in writing if they feel that the family members in question should nonetheless be able to accompany them to the UK based on exceptional circumstances.

The exceptional circumstances guidance is below, but the employing department must ask for supporting documentation to verify both the relationship and any claim that the family members would be at risk if they remained in Afghanistan.

The acceptable documents that can be provided to demonstrate the relationship can include, but is not limited to, the following:

- marriage certificate
- death certificate
- birth certificate
- documents to confirm primary care of a child

The employing department must include a summary of why they believe leave outside the rules is appropriate including the reasons for the conclusion they have reached.

It is the responsibility of the applicant and dependant to provide sufficient evidence to demonstrate that they are related as claimed.

Key factors when assessing suitability for leave outside the rules (LOTR) include the proximity of the family relationship, the family circumstances of the individuals involved (including the nature and extent of any dependency) and the way in which the LES employment has led to any risk to the family member and what those risks are judged to be.

Documents produced to demonstrate any risk faced by additional family members as a result of the LES employment must be assessed by the Afghan Threat and Risk Evaluation Unit (ATREU) in the British Embassy Kabul.

Once ATREU has reached a decision, each additional family member who is to be considered by UKVI under the exceptional criteria must complete an application form and have their biometrics taken. That information is then forwarded to UKVI along with copies of all supporting documents.

UKVI, upon receipt of the application, will then assess the request for additional family members to be included in the relocation in line with both the exceptional circumstances below and the guidance on leave outside the immigration rules. The final decision on whether additional family members can accompany an LES will be taken by UKVI, but they will be strongly guided by the initial assessment made by the employing department and ATREU.

Any decision by UKVI to include additional family members in the relocation must be agreed at senior caseworker level.

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Consideration of exceptional circumstances

This section tells you about the consideration of exceptional circumstances put forward by locally employed staff (LES) seeking to relocate additional family members who do not qualify for relocation under the immigration rules.

What constitutes exceptional circumstances?

In most circumstances, only dependants and family members who meet the requirements of the immigration rules are eligible to relocate with the LES. However, there may be exceptional cases where LES ask for additional family members to be able to relocate with them. In such cases, they should be advised that the criteria as outlined in the immigration rules will be adhered to unless there are exceptional circumstances that would lead to a consideration of leave outside the rules (LOTR) being granted. Those reasons must be provided by the LES along with any supporting documentation to confirm both the relationship between them and the risk faced by the family members.

There is separate guidance relating to [LOTR](#) stating that it can only be granted when 'a refusal of entry clearance or leave to remain would result in unjustifiably harsh consequences for the applicant or their family, but which do not render refusal a breach of ECHR Article 8, refugee convention or obligations'.

LOTR should only be considered where either there are genuine, verifiable concerns about the safety and security, or vulnerabilities of, specific family members that must be taken into account. It is not intended to provide an alternative to leave in line with the relevant immigration rules for most individuals.

Security concerns

There may be exceptional circumstances where the work of the LES has led to specific threats or intimidation of members of their family who would not normally qualify for relocation under the immigration rules.

If the LES makes a request for additional family members to accompany them on that basis, the employing department, normally the Ministry of Defence (MoD) or Foreign, Commonwealth and Development Office (FCDO), must obtain all available and relevant information to enable ATREU to make an assessment of the level of risk faced by those family members.

If the risk is assessed as high and immediate, ATREU may recommend to the Home Office that they are included with the LES for relocation alongside family members who qualify under the immigration rules.

The assessment must confirm that the risk is specific to the additional family member(s) and related to the work undertaken by the LES in order for relocation to be considered.

Additional vulnerabilities

There may be instances where the LES asks for individual family members to be relocated alongside him/her because of specific vulnerabilities faced by that family member which have led to an exceptional dependence on the LES, and that the family member would be unable, even with the practical and financial help of the sponsor, to obtain the required level of care or protection in Afghanistan because it is not available and there is no person there who can reasonably provide it or because it is not affordable.

The expectation is that the normal rules on dependency will apply in all but the most exceptional and unusual circumstances which the LES must be able to demonstrate.

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