



Home Office

Settlement: guidance on when to vary a settlement application and grant permission to stay

Version 1.0

This guidance applies to settlement applications under Appendix Settlement Family Life, Appendix Private Life, Appendix Innovator, Appendix FM, and Appendix Hong Kong British National (Overseas).

Contents

Contents.....	2
About this guidance.....	3
Contacts	3
Publication.....	3
Changes from last version of this guidance	3
Granting permission to stay after an application for settlement.....	4
Process for granting permission to stay after an application for settlement	4
Casework errors or further information	6

About this guidance

This guidance explains when and how decision makers should vary an application for settlement (indefinite leave) and grant permission to stay. It applies to settlement applications under Appendix Family Life, Appendix Private Life, Appendix Innovator, Appendix FM, and Appendix Hong Kong British National (Overseas).

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 Simplification of Rules Taskforce.

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 **24 June 2022**

Changes from last version of this guidance

This is new guidance.

Related content

[Contents](#)

Granting permission to stay after an application for settlement

This page explains the process where an applicant does not meet the requirements to be granted settlement but does appear to meet the suitability and eligibility requirements to be granted further permission to stay on their current route.

This guidance also applies to settlement applications made under Appendix Settlement Family Life and Private life, where the applicant does not meet certain suitability requirements for settlement. Please refer to Settlement: family and private life guidance.

This ensures that an applicant who continues to qualify for permission to stay is not refused settlement and left without status. When an applicant applies for settlement under a relevant route, they will normally be notified of this process on the form and must confirm they understand it will apply to them. You do not have to check the form to confirm they have done so.

Process for granting permission to stay after an application for settlement

You must first consider the settlement application.

If the applicant does not meet the requirements for settlement, before refusing the settlement application you must consider whether they meet all the suitability and eligibility requirements to be granted further permission to stay on their current route.

If you believe the applicant is likely to meet the suitability and eligibility requirements for permission to stay you must record on the casework system that you intend to vary their application from an application for settlement to one for permission to stay (subject to payment of the Immigration Health Surcharge). For information on how much Immigration Health Surcharge the applicant will have to pay please refer to the Immigration health surcharge guidance.

You must identify if the applicant needs to pay the Immigration Health Surcharge (IHS) for a permission to stay application. They will normally on these routes, but there are some exemptions which are set out in the Immigration health surcharge guidance or they may be entitled to a partial fee waiver for the IHS.

The exemption you are most likely to encounter is a child in local authority care. In cases where there is no IHS payable for the permission stay application you should record that the IHS is not required and grant the applicant permission to stay.

You must explain on the decision notice granting permission to stay the reason or reasons they did not qualify for settlement and that you have instead granted permission to stay.

When the IHS applies you must write to the applicant requesting payment of the IHS using correct template:

- for Innovator and Hong Kong BN(O) applicants this will be IHS_ Request_ Vary Settlement To Permission IC (admin review routes)
- for family and private life applicants this will be IHS_ Request_ Vary Settlement To Permission IC (fee waiver) – this version allows the applicant to apply for a fee waiver for the Immigration Health Surcharge (IHS), which is only available on human rights routes

This template needs to notify the person:

- they do not meet the requirements for settlement – you must not refuse the settlement application at this point as if you did, this would bring to an end any section 3C leave and may break continuous residence and prevent the applicant from qualifying for settlement in future
- why they do not meet the requirements for settlement – you must explain which requirements they do not meet and why, as you would in a settlement refusal letter

The template also informs the applicant:

- you are varying their application to permission but they must pay the IHS before that application is considered
- on Innovator and Hong Kong BN(O) routes, that they must pay the Immigration Health Surcharge (IHS) within 14 days
- on family (partner, parent, child) or private life routes, that they must either pay the Immigration Health Surcharge (IHS) or apply for a fee waiver for the Immigration Health Surcharge (using the fee waiver form no gov.uk) within 14 days
- if they do not pay the IHS (or, where available, apply for a fee waiver), their application for permission to stay will be rejected as invalid
- they will not receive a refund of their settlement fee - there is no requirement to pay an additional fee for the application for permission to stay

At the end of the 14 day period (starting from the date the notification is sent) you must check both:

- the IHS portal, to see if the IHS has been paid
- for family (partner, parent, child) or private life applications, the casework system, to see if the applicant has applied for a fee waiver

Once the IHS has been paid and if the applicant meets all eligibility and suitability requirements, you should grant permission to stay.

If an application has been made for fee waiver, you must wait for the fee waiver application to be decided before considering the application for permission to stay. If the application for a fee waiver is successful, you should grant permission to stay. If the application for a fee waiver is not successful, you should write again to the

applicant informing them they have a further 14 days to pay the Immigration Health Surcharge using Settlement – Request_for IHS after unsuccessful fee-waiver request_variation of Settlement to Permission IC.

If the IHS has not been paid (or, where relevant, a fee waiver has not been applied for or has not been successful) you must reject the application for non-payment of the IHS and record this on the caseworking system. You will need to send the appropriate notification to the applicant using the relevant template.

Where an application is rejected after this process the settlement application fee is not refunded as the applicant has had a full consideration of their settlement application.

This guidance applies even where the person has time remaining on their current permission at the point of settlement. In such a case you should grant the person the whole period of permission to stay allowed (for example, 30 months on family applications). To determine how much IHS is required you should subtract the IHS they have already paid (for the period of permission they have remaining) from the total length of time they are being granted. If the time remaining is not a multiple of 6 months, follow the Immigration Health Surcharge guidance to determine the correct amount.

The new grant of permission to stay will vary their existing permission.

Where a person has time remaining and chooses not to pay for the IHS / apply for a fee waiver, you should follow the process above and reject their application for permission as invalid. They will still have their remaining permission if it has not yet expired. You should not cancel any remaining permission to stay unless there are specific grounds to do so.

Casework errors or further information

There is no right of appeal, or administrative review or right of reconsideration where a settlement application is varied and permission to stay has been granted.

After you have notified the applicant of the change, if, before the 14 day period is over, the applicant contacts you to notify you that they believe there has been an error in the decision that they do not appear to qualify for settlement, you should consider any further information they provide only where this is relevant to the reasons they do not meet the settlement requirement.

For example:

Where an applicant did not meet the qualifying period requirement because they were absent for more than 180 days in a 12 month period, and you said their absences were not for one of the reasons for permitted absences in Appendix Continuous Residence – the applicant may contact you with evidence that the absences over 180 days were for a permitted reason. If you are now satisfied all the suitability and eligibility requirements for settlement are met you must grant settlement.

If the information provided does not change your intended decision on settlement, or the applicant provides information that is not relevant to the reasons their application failed to meet the settlement requirements, you should send a further letter addressing their representations and explaining the reasons they still do not meet the requirements for settlement. You should allow them a further 14 days to pay the IHS or apply for a fee waiver (as relevant).

Related content

[Contents](#)

Related external links

[Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](#)