



Home Office

Pending prosecutions in asylum claims

Version 2.0

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About this guidance

This guidance tells staff including asylum decision-makers and Presenting Officers about the process they must follow where a claimant has a pending criminal prosecution.

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 **2.0**
- published for Home Office staff on **19 January 2023**

Changes from last version of this guidance

- Updates to reflect changes brought in by the [Nationality and Borders Act 2022](#)

Related content

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Pending prosecutions in asylum claims

This instruction does not relate to prosecutions under Section 31 of the Immigration and Asylum Act 1999. Guidance for such prosecutions is distinctly different and this interim position does not replace the [Section 31 Immigration and Asylum Act 1999: defence against prosecution guidance](#) – whereby decisions on outstanding asylum claims should, generally, be taken before the conclusion of an investigation into a Section 31 offence.

There is no specific time frame within which a decision on a person's asylum claim must be made in circumstances where there is a criminal prosecution pending against them, either in the UK or abroad. However, in line with paragraph 333A of the Immigration Rules, where a decision cannot be made on an asylum claim within 6 months of the date it was recorded or within any revised timeframe notified to a claimant as a result of a pending prosecution, then you should inform the claimant of the delay where the claimant has made a specific written request for an update. You should also inform the claimant, and their legal representative, of the reason for the delay – citing the specific details of the pending prosecutions which can be shared under Article 9.2(f) of the UK GDPR – and provide an estimate of when you expect a decision can be taken on the asylum claim. Any estimate does not oblige you to take a decision in the provided timeframe.

There are a number of facts that will determine how long a claim from a person with a pending prosecution recorded against them must be held undecided including:

- the stage the criminal proceedings have reached
- when the relevant criminal justice system is in a position to resolve it
- the severity of the crime in question, including the possible resulting sentences

Where a claim falls for refusal

It is preferable to make an asylum decision once all relevant facts are available. Therefore, claims from those with a prosecution pending are normally held for as long as required. However, in the interest of not placing claims on hold unnecessarily, where the outstanding claim falls for outright refusal under the Immigration Rules as it stands based on existing evidence, it may be resolved without waiting for the criminal court's decision. Any decisions taken before the conclusion of a criminal trial must be clearly noted on casework systems such as Atlas or CID to ensure that the relevant facts are on record for Presenting Officers (PO) should the case be appealed.

Before the appeal hearing PO must establish the current position of the pending prosecution by refreshing the Police National Computer (PNC) results. If between the date of decision and the court hearing the claimant has been found guilty of a crime then the PO must bring this to the attention of the immigration court and, if necessary, reflect this in their submissions particularly in respect of any exclusionary and/or suitability criteria. It may be appropriate for the PO to refer to their Senior Case Worker (SCW) to adjourn the hearing for further investigation to take place, if

the issues cannot be considered during the Tribunal hearing, for example because information has arisen which requires a further interview.

Official - sensitive: start of section

The information in this section has been removed as it is restricted for internal Home Office use.

The information in this section has been removed as it is restricted for internal Home Office use.

Official - sensitive: end of section

Where the pending prosecution could have a material impact on the decision

Where the claim does not fall for refusal as it stands, and the potential sentence, if the claimant is found guilty, would meet the threshold for exclusion under Article 1F of the Refugee Convention, the criteria in Article 33(2), revocation of refugee status under paragraph 339AA-B, or suitability criteria under the family/private life rules, the claim would usually be put on hold pending the final resolution of any criminal proceedings.

Such scenarios might include where:

- the prosecution concerns an offence which could result in a sentence of 12-months or more for convictions on or after 28 June 2022, or 24-months or more for convictions before 28 June 2022, the prosecution concerns crimes that could bring the claimant in-scope of Article 1(F) of the Refugee Convention, for example war crimes, crimes against peace or crimes against humanity
- the claimant has had a series of minor offences recorded which indicates they are a persistent offender who shows a particular disregard for the law
- there is evidence that the claimant is considered to represent a danger to the security of the UK
- there is evidence that the claimant's presence in the UK is deemed not conducive to the public good, for example: on national security grounds, because of their character, conduct or associations or those who engage in unacceptable behaviours, in the UK or abroad, including undertaking, proposing to undertake or espousing extremist views

For further information, please refer to the relevant Exclusion under Articles 1F and 33(2) of the Refugee Convention policy guidance.

Where there are compelling circumstances which warrant a grant prior to the conclusion of the criminal proceedings

Occasionally, there may be very compelling individual circumstances which tip the balance in favour of deciding an asylum claim on the evidence available without awaiting the criminal court's verdict even where the sentence would meet the relevant thresholds, described in the [Where the pending prosecution could have a material impact on the decision section](#). However, this should be in the scarcest of circumstances and all such cases must be discussed with your senior caseworker (SCW) and Asylum Policy before proceeding to grant.

The SCW must keep a record of any grant of refugee status or other form of leave that is made before a criminal case is concluded. It must be monitored so that if a prosecution results in a conviction and penalty the case must be referred as appropriate to Criminal Casework or the Status Review Unit. Where appropriate, refugee status must be revoked.

Where the pending prosecution sentence will not have a material impact on the decision

To avoid claims unnecessarily being placed on hold, where the potential sentence does not meet the thresholds, and would likely have no impact on the outcome of the asylum claim, a decision can be taken to grant an outstanding claim ahead of the final resolution of any criminal proceedings.

Furthermore, this guidance does not apply to prosecutions at the pre-charge stage or upon arrest, though for serious crimes you must check with the police as to their likely next steps and timeframes so that you can make an informed decision to potentially hold any decision action or await further updates.

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