Home Office

Drafting, Implementing and Serving Asylum Decisions

Version 12

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About this guidance

This guidance tells you how to draft, implement and serve decisions relating to asylum claims, further submissions, applications for further permission to stay and decisions to revoke protection status. It also covers unserved decisions. In addition to decision makers, this guidance will aid all who are responsible for carrying out any of the functions covered in this guidance.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker (SCW) cannot help you or you think that the guidance has factual errors, please email Asylum Policy.

If you notice any formatting errors in this guidance (broken links, spelling mistakes etc.) 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 **12.0**
- published for Home Office staff on **07 November 2023**

Changes from last version of this guidance

- updated in line with current drafting requirements
- changes made in light on the Nationality and Borders Act 2022
- updated in light of the Immigration (Notices) Regulations 2003 as amended by the Immigration (Notices) Amendment Regulations 2023
- links and references to legislation, guidance and caselaw updated
- sections have been restructured with some sections merged where details overlapped
- new sections have been added to expand on the instructions, and details updated to operational processes throughout
- terminology updated where appropriate

Related content
Contents

Introduction

Any document prepared to implement a decision must be accurate, convey relevant information and be served without undue delay. In all cases, the reasons for the decision must be recorded and all relevant security checks completed before any protection status or permission to stay is granted. This guidance ensures that the drafting, implementing and serving of asylum decisions is consistently applied across the Home Office.

You are expected to read and refer to the relevant policy instructions as required including:

- assessing credibility and refugee status
- cancellation and curtailment of permission
- certification under section 94 and 96
- dependants and former dependants
- disclosure and confidentiality of information in asylum claims
- discretionary leave
- family asylum claims
- family life (as a partner or parent), private life and exceptional circumstances
- further submissions
- gender identity in asylum claims
- gender issues in asylum claims
- humanitarian protection
- medical evidence in asylum claims
- pending prosecutions in asylum claims
- permission to stay on a protection route
- processing children's asylum claims
- refugee and humanitarian leave
- restricted leave
- revocation of protection status
- sexual identity issues in asylum claims
- withdrawing asylum claims
- implementing allowed appeals
- preparing appeal PF1 bundles guidance
- rights of appeal in asylum claims

Background

You play a key part in the UK's proud tradition of providing protection to those who need it in accordance with our international obligations under the Refugee Convention and European Convention on Human Rights (ECHR). Carefully considering asylum claims and making well-reasoned decisions is one of your fundamental responsibilities. You must ensure protection status is granted where it is needed and, those who do not qualify and have no right to stay in the UK are refused and provided with advice on returning home or referred for enforcement action where appropriate.

Decisions are implemented in two phases:

- the 'decision making' stage
- the 'service of decision' stage

In all cases when a decision is made, you must record the consideration of the claim, the reasons for the decision and prepare the relevant documentation. In all cases, you must produce a well-reasoned, timely and correctly served decision to ensure claimants have certainty about their immigration status in the UK.

Policy intention

The underlying policy objectives when drafting, implementing, and serving decisions are to:

- ensure all decisions are implemented accurately, effectively and efficiently without unnecessary delay, in accordance with relevant legislation and regulations in a way that conveys relevant information clearly and concisely
- promptly inform those granted permission to stay of the conditions, obligations and entitlements associated with that permission to support their integration in the UK
- promptly inform those who are refused of the reasons for that decision, provide details of how they can appeal where an appeal right exists and advise those who have no right to remain how they should prepare to leave the UK
- provide a record of the reasons explaining the outcome of the decision to allow those affected by the decision to make informed and reasonable representations should they wish to challenge it where that option is available, and to ensure an auditable record exists of the actions taken during the decision-making process

Definitions

The terms ‘asylum application’ and ‘asylum applicant’ are interchangeable with ‘asylum claim’ and ‘asylum claimant’. The Immigration Rules refer to ‘asylum applicants’, so the same term has been used when referring to the Immigration Rules, otherwise ‘claimant’ is used.

The Home Office is transitioning its electronic immigration data records from ‘Case Information Database (CID)’ to the new ‘Atlas’ system. References to CID actions in published guidance and policy will over time become outdated. The term ‘case working database’ in this updated policy refers to the actions you are required to complete on CID or Atlas. If an action is specific to only one system, then the name of that system is given, for actions which must be completed for both CID and Atlas the term ‘case working database’ is used.

Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. In dealing with parents and children, you must see the family both as a unit and as individuals. Although a child's best interests are not a factor in assessing whether a fear of persecution is well-founded, the way you interact with children throughout the decision-making process and any decisions following the determination of the asylum claim must take account of the section 55 duty.

You must comply with this duty when carrying out actions set out in this instruction in respect of children and those with children. You must follow the principles set out in the statutory guidance Every Child Matters - Change for Children.

You must keep this duty in mind throughout the asylum decision-making process and refer to other specific guidance available, as relevant, in the dependants guidance, the processing children's asylum claims guidance, and the family asylum claims guidance.

Safeguarding

Protecting vulnerable adults and children is a key cross-cutting departmental priority and safeguarding is everyone's responsibility. If you believe that anyone may be in danger at any stage of the asylum process, you need to take immediate action to ensure their safety. In all circumstances a referral should be made to the Safeguarding Hub and advice sought on case progression.

In an emergency, the case must be referred to emergency services without delay. The first person to become aware of an emergency must contact 999 and request the appropriate emergency service. Afterwards, you must then make a referral to the Safeguarding Hub for actions to be progressed.

You do not have to stop making the asylum decision whilst a safeguarding issue is investigated. However, you must speak to your technical specialist or SCW to check whether service of the asylum decision is appropriate, or if the safeguarding issue needs to be considered together with the asylum claim.

Safeguarding children

You must be vigilant that a child may be at risk of harm and where you are concerned about their welfare or protection issues, be prepared to refer cases immediately (whether that child is a dependant of the asylum claim or not). In such circumstances you must immediately contact the Safeguarding Hub, who will refer the case to the relevant local authority in accordance with the guidance in local authority child referrals. In an emergency, you must refer the case to emergency services immediately.

When referring cases involving children, there is no requirement to obtain the consent of any adults involved as the safeguarding of children is our primary responsibility as detailed in Section 55 of the Borders, Citizenship and Immigration Act 2009.

The Safeguarding Advice and Children's Champion (SACC) can also offer specialist safeguarding and welfare advice on issues relating to children, including family court proceedings and complex child protection cases. For more information see SACC.

Signposting to support services

Asylum claimants receive the information booklet for asylum applications which includes information on support services and you can refer claimants to the contacts for appropriate support which are detailed in this leaflet.

You must update case working databases to reflect that a safeguarding referral has been made. This is particularly important for those who are accommodated through the Asylum Accommodation and Support Contracts (AASC) where accommodation providers may also need to be informed of the safeguarding issues to provide additional support as necessary.

Related content
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Relevant legislation

Current UK asylum law is derived from a range of sources; international law, primary and secondary legislation, the Immigration Rules (which are in turn supported by policy and guidance), and a substantial body of caselaw. You can find more guidance on the legislation which governs asylum decision-making in the UK in the assessing credibility and refugee status guidance.

UK legislation

Regulations

Regulation 4 of the Immigration (Notices) Regulations 2003, requires the decision-maker to give written notice to a person of any appealable immigration decision. Regulation 5 requires that a notice given under Regulation 4(1) includes, or is accompanied by, a statement of the reasons for the decision and, that information is provided advising recipients of any rights of appeal.

The Immigration (Notices) (Amendments) Regulations 2014, set out the amendments to the Immigration (Notices) Regulations 2003 required by the Immigration Act 2014.

Technical amendments were made to the Immigration (Notices) Regulations 2003 ('2003 Regulations') to clarify that electronic service of asylum notices (such as decisions) includes service via portal. These Regulations were amended by the Immigration (Notices) Amendment Regulations 2023 ("2023 Regulations") and came into force on 9 October 2023.

Immigration Rules

Part 11 of the Immigration Rules sets out the provisions for the consideration of asylum claims and reflects our obligations under the Refugee Convention.

Paragraphs 333 and 336 require the Secretary of State to provide written notice of decisions on asylum claims in reasonable time including, where the claim is rejected, how to challenge the decision.

Paragraph 344C requires that a person granted asylum or humanitarian protection will be provided with access to information in a language that they may reasonably be expected to understand which sets out the rights and obligations relating to that status which the Secretary of State should provide as soon as possible after the decision has been made.

Paragraph 333C of the Immigration Rules sets out the circumstances in which it is appropriate to treat an asylum claim as withdrawn. It only applies to requests for international protection as outlined in Paragraph 327 of the Immigration Rules (definition of asylum claimant). It does not apply to non-protection based human rights claims.

Paragraph 358B of the Immigration Rules states that that an asylum claimant must notify the Secretary of State of their current address and of any change to their address or residential status. If not notified beforehand, any change must be notified without delay after it occurs.

Nationality, Immigration and Asylum Act (NIA) Act 2002

Section 94(1) of the Nationality, Immigration and Asylum Act 2002 states that the Secretary of State may certify that a protection or human rights claim as clearly unfounded. In all cases where a protection and/ or human rights claim falls to be refused decision-makers must consider whether section 94 certification is appropriate and claims that are clearly unfounded should be certified unless an exception applies. The Nationality and Borders Act 2022 removed the out of country right of appeal for any claims certified under section 94 on or after 28 June 2022 which means that these cases no longer have a right of appeal against the decision.

Immigration Act 2014

The Immigration Act 2014 amended section 10 of the Immigration and Asylum Act 1999, creating a single power of removal that can be used on any person who requires but does not have leave to enter or remain. A separate removal decision is no longer necessary. There is no longer any distinction between illegal entrants and overstayers. Those who are in breach of their conditions or obtained leave by deception may also be removed under this power but will need their leave to enter or remain to be brought to an end first (curtailed). All persons removed under this power must still be given notice of removal.

Section 15 of the Immigration Act 2014 changed the rights of appeal to the Tribunal, reducing these from 17 to 4. This means that an appeal can only be brought challenging a decision by the Secretary of State where a fundamental rights issue is raised. A fundamental right is where a human rights or protection claim is made, a decision is taken to revoke protection status, or by virtue of the Immigration (EEA) Regulations 2006, where a claim is made on EEA free movement grounds.

The new appeals provisions were introduced in a phased approach between 20 October 2014 and 6 April 2015 and have now been fully implemented. The appeals provisions mean that people will no longer have a specific right of appeal against a decision to make a deportation order. In addition, where new matters are raised at appeals that have not been considered by the Secretary of State, the Home Office must consent to the new matter being considered by the First Tier Tribunal.

Related content
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General drafting principles

This section tells you about the general drafting principles that apply in all cases and to anyone responsible for drafting decision-related documentation.

Drafting and referencing

You must draft any decision documentation adhering to the following:

- you must record the consideration of the claim and the reasons for the decision in every case
- if an asylum claim is refused, a reasons for refusal letter (RFRL) must be produced which includes the name of the decision maker and their unit – this includes where refugee status is refused but another form of permission to stay is granted
- the RFRL must clearly state all countries to where the claimant is potentially removable, see nationality: disputed, unknown and other cases
- you must prepare the entire RFRL from beginning to end using the relevant approved standard template, see documentation
- for Section 94 certified cases you must have received specific training to complete the decision
- if any form of permission to stay is granted, a grant minute must be drafted, in addition to the RFRL if applicable (for example where humanitarian protection is granted)
- you must use the correct implementation minute sheets and checklists for the decision outcome
- you must ensure all correspondence to a claimant or their legal representative is in clear and simple language, bearing in mind most claimants will not have English as their first language, and you must ensure correspondence is professionally drafted, grammatically correct and claimant focussed
- all sources must be correctly referenced with the full title and relevant date (but can be abbreviated in subsequent uses)
- all documents must be completed in the Document Generator (Doc Gen) within CID – for Atlas cases, all documents must be uploaded to Atlas

Referencing and sourcing of evidence

Where reference is made to specific questions asked at the screening or substantive interview, the question number must be quoted, for example, AIR Q22 or SCR Q4.1. You must cite the source of any objective evidence correctly. This includes information or documents obtained from sources such as the Country Policy and Information Team (CPIT) used to test credibility in the interview. You must reference the quotation but must not include it in the letter.

For example: “You stated that you published an article in Jahane Sanat newspaper criticising the Iranian government’s handling of the COVID 19 Pandemic on 23 October 2020 (SI 4.1, AIR Q28-30). However, it is noted from the International

Observatory of Human Rights that the newspaper was shut down by the government on 10 August 2020."

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Standard paragraphs and templates

When drafting your decision, you must choose the applicable, relevant template from those available on case working databases. The templates include a mixture of standard paragraphs, optional and free text sections, which are formatted in different coloured text so you can readily identify them. The standard paragraphs must be used and cannot be changed, as they provide the mandatory pieces of information that claimants must be told about the decision on their claim. The optional areas are formatted in blue text and you must only retain the details which are applicable to the decision you are making. Areas for free text are formatted in red text; here you have the opportunity to expand on details or include any other information you wish to include as part of your consideration. Both areas can be tailored according to the circumstances of the claim you are dealing with.

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All current approved standard wordings and templates can be found on Doc Gen or Atlas. See documentation.

Proofreading

You must proofread all correspondence you send to claimants or their representatives. Mistakes can adversely influence the case at the appeal stage, giving cause to suspect that 'anxious scrutiny' has not been applied to the decision, as well as being a waste of resources if decisions are returned for corrections or reconsiderations. It is therefore vital that accurate and relevant information is conveyed in all decisions.

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When proofreading you must look out for the following types of basic error:

- incorrect personal details such as name, gender, nationality, date of birth
- incorrect or missing contact details, such as postal or email address for claimant or representative
- missing or incorrect Home Office reference number
- missing case ID number
- incorrect country or nationality references
- standard paragraphs that are obviously irrelevant
- free text fields that have not been completed
- spelling or grammatical errors
- inconsistent font types, font sizes, spacing, alignment or anything else that appears as if sections have been copied and pasted

Related content
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The asylum decision

This section tells you what to include in a decision on an asylum claim. All asylum decisions must be made in accordance with the principles outlined in the relevant version of the assessing credibility and refugee status guidance. The various outcomes for an asylum claim are set out in asylum decision outcomes. Please refer to documentation, for the details on what is required for service of each of the asylum outcomes.

Date of decision

Irrespective of the date that the asylum claim was made, the relevant date to assess risk on return is the date the decision is being made. Once the decision has been taken, it should be implemented without delay. Please refer to serving asylum decisions for further details.

Expiry date for permission to stay

The expiry date for any permission must be for the period of time in line with the relevant policy. The expiry date must be consistently recorded for example, if 5 years permission is granted on 15 August 2023, the expiry date must be 14 August 2028 on all paperwork and Home Office systems.

Backdating permission

Grants of permission cannot be backdated, even if there is a delay with the decision including allowed appeals. Any request for grants of permission to be backdated must be referred to a senior caseworker (SCW). If the Court has come to a different view of the merits of the case, it is for the Secretary of State to decide the form and conditions of permission to be granted, in accordance with the Immigration Rules and published policies.

Asylum decision outcomes

When considering an asylum claim, you must consider eligibility for permission to stay in the UK in the following order: refugee status, humanitarian protection, family / private life and discretionary leave. Where permission to stay is granted under one of the policies, you do not need to continue consideration of the claim – for example, if refugee status is granted, you do not need to consider eligibility for humanitarian protection. A grant minute must be prepared when any form of permission is granted.

When the decision has been made not to grant any form of permission, consideration must be given to whether it would be appropriate to certify the decision. See the guidance on certified decisions.

A claim for asylum will result in one of the following outcomes:

Grant refugee status

Individuals who claimed asylum before 28 June 2022 and qualify for protection status (refugee status or humanitarian protection) are considered under the refugee and humanitarian protection leave guidance.

If you determine that the claimant should be granted refugee status, and the claim was made on or after 28 June 2022, you must consider these claims under the permission to stay on a protection route guidance.

Refuse refugee status; grant humanitarian protection

A reasons for refusal letter (RFRL) must be completed to explain why refugee status was not granted and outline any right to appeal the decision to refuse refugee status. For more information see humanitarian protection.

Refuse protection status; grant restricted leave

All individuals excluded from the protection of the Refugee Convention by virtue of Article 1F but who cannot be immediately removed from the UK due to ECHR barriers, for example Article 3 of the ECHR, will be dealt with under the restricted leave policy. Restricted leave is normally granted for a maximum of 6 months; however, all cases must be assessed individually on their merits. A RFRL must be completed to explain why protection status was not granted and outline any right to appeal the decision. For more information see the guidance on restricted leave.

Refuse protection status; grant permission under Article 8 Family/Private Life Rules

Where an Article 8 (family or private life only) claim is granted, permission to stay under Appendix FM (family life) or Appendix Private Life will normally be granted if they are not criminal cases. A grant minute must state the criteria under which leave has been granted and whether recourse to public funds has been granted. A RFRL must be completed to explain why protection status was not granted and outline any right to appeal the decision. For more information see the guidance on family life, private life and exceptional circumstances.

Refuse protection status, and Article 8; grant discretionary leave

Discretionary leave (DL) is considered where an individual does not qualify for protection status or family or private life but there are other exceptional circumstances which mean permission must be granted. A grant minute must explain why DL has been granted and the period of leave. A RFRL must be completed to explain why protection status and family or private life leave was not granted and outline any right to appeal the decision. For more information see the guidance on discretionary leave.

Refuse protection status and other forms of permission outright

You may conclude that a claimant is not eligible for any form of permission to stay. You must draft a RFRL to explain the reasons for this and outline any right to appeal the decision. As part of this, consideration must be given to whether it would be appropriate to certify the decision if the claimant is from a designated state listed in Section 94 of the Nationality, Asylum and Immigration Act 2002 or the asylum claim is clearly unfounded. See the guidance on certified decisions.

Children's asylum claims

Children who make an asylum claim in their own right must have their claim considered, and any decision to grant permission must be done in accordance with the relevant Immigration Rules. For more information on dealing with claims from children and unaccompanied asylum seeking children (UASC) please see processing children's asylum claims.

Family asylum claims

The family asylum claims process applies where the main claimant and their dependent children have common grounds of alleged persecution, which can be considered together. The main claimant will most likely be the only person interviewed and will provide the basis of claim for everyone attached to their claim. If any dependants of the main claimant make it known they have a different basis of claim, they must claim asylum in their own right and not be part of the family asylum claim process.

You must follow the dependants and former dependants guidance for dependants who are not claiming asylum in their own right or as part of the family asylum claims process.

Certified decisions

Only caseworkers who have received section 94 certified cases training can draft these decisions.

Section 94 of the Nationality, Immigration and Asylum Act 2002

Section 94(1) of the Nationality, Immigration and Asylum Act 2002 states that the Secretary of State may certify that a protection or human rights claim is clearly unfounded. In all cases where a protection and / or human rights claim falls to be refused decision-makers must consider whether section 94 certification is appropriate and claims that are clearly unfounded should be certified unless an exception applies.

The Nationality and Borders Act 2022 removed the out of country right of appeal for any claims certified under section 94 on or after 28 June 2022 which means that these cases no longer have a right of appeal against the decision. This applies irrespective of the date that the asylum and any human rights claim was made, so

even if the claim was made on or before 27 June 2022, there will be no right of appeal if the claim is certified under section 94. For more information see Assessing credibility and refugee status.

Section 96 of the Nationality, Immigration and Asylum Act 2002

Section 96 of the Nationality, Immigration and Asylum Act 2002 removes the right of appeal against a refusal of a protection or human rights claim that could have been made earlier. You must not consider certification under section 96 until you have considered the substantive merits of the claim and decided to refuse it. For more information see late claims: certification under section 96.

Further submissions outcomes

Where further evidence is submitted by a failed asylum seeker in support of their asylum and/or human rights claims, it must be considered before any removal action can take place. The possible outcomes are the same as an initial asylum decision unless the further submissions are rejected. For more information see the further submissions guidance.

Related content
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Withdrawals and non-compliance

Withdrawals

In some circumstances, it will be appropriate for an asylum claim to be treated as withdrawn in accordance with paragraph 333C of the Immigration Rules. Claims can either fall for implicit or explicit withdrawal.

You must follow the withdrawing asylum claims guidance when seeking to use the administrative outcomes of implicit or explicit withdrawals.

You must record the withdrawal on CID or Atlas or other relevant Home Office system and confirm consideration of the claim has been discontinued. You must also save all documentation relating to the withdrawal on case working systems.

If a withdrawal of a claim has not been served correctly, you must correct the situation. See an un-served decision for more information.

For handling incorrect withdrawals you must follow the withdrawing asylum claims guidance.

Non-compliance

If it is not appropriate to treat the claim as withdrawn, you must go on to consider whether it should be refused on non-compliance grounds under Paragraph 339M of the Immigration Rules.

Non-compliance is relevant when a claimant has failed without reasonable explanation to make a prompt and full disclosure of material facts or otherwise failed to assist in establishing the facts of their claim. The onus is on the claimant (or their legal representative) to provide a reasonable explanation for failing to comply. Reasonable explanations must be evidenced and you must follow the non-compliance guidance.

Drafting non-compliance refusals

Decisions to refuse asylum on the grounds of non-compliance must be implemented the same way as substantive decisions.

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Any evidence available must be considered in accordance with the ruling in Ali Haddad [2000] UKIAT 00008] which considered how decision makers should

approach cases of non-compliance. It confirmed that any information held about a claim, however brief, must be considered. This information may be in the form of comments noted by an immigration officer on arrival, comments recorded in the Asylum Screening Unit or correspondence from a legal representative etc.

Refusal under non-compliance is still a refusal of a protection claim, and therefore the claimant has a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002. For more information see current rights of appeals.

Incorrect refusals on non-compliance grounds

Where a claim has been incorrectly refused on non-compliance grounds, the decision must be withdrawn. If an appeal has been lodged against the incorrect refusal, the Presenting Officer must notify the Court that the decision to which the appeal relates has been withdrawn by the Home Office and a new decision will be made.

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Decision documentation

This section tells you what documentation must be provided when serving the asylum decision, and how to prepare the various types of documentation.

All decisions must be made in accordance with the principles outlined in the relevant assessing credibility and refugee status guidance and further submissions guidance. You must refer to the section on grant minute sheets for the correct documents to serve with each decision. The decision outcomes are set out in asylum decision outcomes.

It is essential to inform the claimant of the decision and ensure they are aware of what they need to do next. Those who are granted permission need to know about their rights and benefits to which they are entitled and those who are refused need to know about any right of appeal and the options for voluntary departure from the UK.

When preparing decision paperwork in doubtful nationality cases, you must refer to the guidance, nationality disputed, unknown and other cases.

You must use the appropriate decision template from Doc Gen or Atlas, complete all relevant sections and follow the instructional text as necessary.

Granting refugee status

You must use the relevant template to grant refugee status and refugee permission to stay.

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Other considerations when granting permission

Biometric resident permits (BRPs)

The BRP replaced the UK Residency Permit (UKRP) which was held in an Immigration Status Document (ISD) or passport as evidence of leave and was issued to anyone granted leave following their asylum application. The BRP is the sole evidence of permission. Passports must not be endorsed where these are held.

A BRP can be sent directly to the main claimant and any dependants, or via their representative along with the accompanying paperwork once they have been granted permission following their asylum claim.

If there are any errors on the claimant's BRP, or their details change, they must contact the Home Office within 10 days. If the claimant does not inform the Home Office, they may have to apply and pay for a replacement.

eVisas

The Home Office is developing a border and immigration system which is digital by default. An eVisa is an electronic record of a person's immigration status and it

removes the need for physical documents including BRPs. The transition towards eVisas is already underway, and most physical documents, including BRPs, are being gradually phased out.

From 1 January 2025 claimants will no longer need a BRP because they will be able to prove their immigration status online, without a BRP. Further information about this is available on the Visas and Immigration page of GOV.UK and the information will be updated as the work progresses.

Biometric enrolment

Biometrics must be enrolled at the earliest opportunity that is, at the point of screening. For claimants attending an interview located close to a Service and Support Centre (SSC), they will be asked to have their biometrics enrolled on the same day.

If for any reason, claimants are unable to register their biometrics on the day of their asylum interview, an alternative appointment must be made to attend their nearest SSC or asylum office as soon as possible. Dependants will be asked to enrol their biometrics on the same day they attend the screening appointment. If they are unable to enrol on this day, a separate appointment must be made for them to attend an SSC or, an asylum office.

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Serving decisions without biometric enrolment

If an individual does not fall to be excused from enrolling their biometrics, then every effort must be made for them to enrol before serving the asylum decision.

In cases where enrolment has not taken place after reasonable attempts, or the individual is not able to/not required to (according to the biometric information guidance), please consult with a SCW to confirm whether it is appropriate to proceed and serve the decision. If you are advised by a SCW to proceed, the grant documentation must be prepared and served as normal without biometric enrolment. In such cases, you must issue a BRP post grant enrolment letter to the main claimant and any dependants with the decision letter requesting their enrolment as

soon as possible. The case must also be monitored until enrolment takes place. If the claimant fails to enrol their biometrics a BRP cannot be issued. The covering letter issued with their grant of permission makes clear the importance of enrolling, and the consequences of not doing so. Without a BRP the claimant has no evidence of their status in the UK.

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Unaccompanied asylum-seeking children (UASC)

UASCs must have their biometrics taken as soon as possible. If in exceptional circumstances it has been authorised by a senior manager at SEO grade or above to grant permission to stay without biometric enrolment, the unaccompanied child will remain subject to local authority support.

Detained asylum casework (DAC)

Claimants released from DAC because of being granted permission will be issued with a notification letter advising them to enrol their biometrics at a suitable location nearest to the address to which they will be released. This letter must be issued by DAC staff. Other DAC cases that are released pre decision should only be requested to enrol if a decision is taken to grant permission to stay.

Failure to register biometrics and ending asylum support

An individual remains eligible for support under section 95 of the Immigration and Asylum Act 1999 for a prescribed period from the day they are notified of the decision on their asylum claim or the day their appeal is concluded. There is no legislative power to provide such support beyond prescribed periods, unless the asylum seeker's household includes a dependent child, who was dependent on the asylum support application before the end of the prescribed period. Therefore, claimants who fail to enrol their biometrics when requested to do so may have their

asylum support stopped. For further information please see the Ceasing Section 95 Support Instruction.

Caseworkers must ensure they update case working systems as early as possible so that asylum support caseworkers can take necessary action to review support offered.

Final reminder to enrol biometrics letter

If the claimant fails to enrol their biometrics following the grant of protection status or any other form of permission, the final reminder to enrol biometrics letter must be issued and 7 days allowed from the date of the letter for the claimant to comply with the request to enrol.

Termination of asylum support letter

Where the biometrics are not enrolled, and a reasonable explanation has not been provided, the termination of asylum support letter must be sent informing the claimant that their asylum support will end.

Replacing an Immigration Status Document (ISD)

If a request is received to replace an ISD document, you will need to record the reasons for the request. If the ISD is being replaced because of an amendment the UKRP must be withdrawn before the new BRP is issued. The ISD must be returned and destroyed securely by the local Secure Handling Area. If the ISD is reported as lost or stolen, the Vignettes Central Coordination team must be advised.

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Refusing asylum

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Reasons for refusal letter (RFRL)

When a protection claim is refused, the reasons why the individual does not qualify for protection status must be clearly set out and communicated to the claimant using the relevant template from Doc Gen or Atlas.

The content of RFRLs

The RFRL must:

- state the basis of claim, for more information see basis of claim
- be written clearly and concisely, addressing all issues material to the claim
- be in accordance with the law and relevant policy guidance
- any case law referenced must be in context, its relevance explained and must apply to the individual circumstances of the claimant
- avoid using overcomplicated words or sentence structure
- address the key aspects of the asylum claim, setting out the consideration of the claim
- be accurate and clear as the RFRL is the document which informs the claimant of the reasons for the decision taken on behalf of the Secretary of State
- ensure any important names of organisations, political parties, or religious groups etc are initially written in full followed by the abbreviation in brackets

Recording personal details on the RFRL

The following details should be correctly recorded at the beginning of the letter in the standard fields of the RFRL. The fields should auto-populate when using templates, but you must check the accuracy of these details:

- claimant's full name – aliases or other names, for example where a married woman uses both her maiden name and her married name this must be recorded as 'also known as' - if an alias is the claimant's name in a different order or a slightly different spelling, this does not need to be recorded on the RFRL
- false names – must not be recorded unless used in a previous claim in another identity (multiple claims), 'genuine identity' must be added after the accepted name, 'false identity' must be added after the false name
- nationality – use the correct term - for issues relating to doubted, disputed or dual nationality please refer to the guidance nationality: disputed, unknown and other cases - record stateless claims under the appropriate ICAO compliant nationality code, not the code from the country of residence
- date of birth – will auto-populate but must be checked against any details that may have subsequently become available for example at substantive interview
- disputed age – you must use the age estimated by the Home Office, not the claimed date of birth, 'disputed' must be added after the date of birth - see assessing age
- the case ID for Her Majesty's Court and Tribunal Services (HMCTS)
- the Home Office reference number (our reference)

- date of the letter must be the same as the date of decision in the RFRL and the case outcome field - if the RFRL is to be sent via email, it must also be sent on the day of decision
- if the claimant's personal details are incorrect on the letter, then you must update case working databases, if you have evidence of the correct details

Basis of claim

All RFRLs must include a basis of claim summarising the key facts and events material to the claim that sets out the reasons why asylum has been claimed. It must not include extensive detail or analysis subsequently referred to in the decision, details of family members in the UK, education, employment details, any analysis of the merits of the claim or lengthy details such as objective evidence from country reports or extracts from case law.

The basis of claim must be chronological and coherent so the events the claimant has stated have occurred can be easily followed. Where possible the claimant's own words must be used to avoid variations in meaning which may introduce a degree of inaccuracy.

Where the account given by the claimant in an asylum questionnaire, witness statement or any other document differs from other evidence they have provided and these differences are material to the consideration of the claim, these must be fully set out in the consideration of material facts. Explanations for discrepancies provided by the claimant should be addressed as part of the substantive consideration. Please see the Asylum Instruction on Assessing Credibility and Refugee Status for more information.

The future fear of the claimant should be included at the end of the basis of claim. This should include who the claimant fears, what they say will happen to them on return to their country of origin and why they believe this.

Human rights claims

Any human rights claims raised explicitly or implicitly, must be stated briefly in the RFRL. There is no need to address ECHR claims (including Article 8 issues) where refugee status or humanitarian protection is granted.

Discretionary leave does not need to be considered where any other form of permission has been granted, except in circumstances of UASCs. See processing children's asylum claims guidance.

Section 94 Certified Case recommendation and determination minutes

Designated states cases

For all decisions on designated states cases, you must clearly explain the reasons you are certifying the claim in the relevant refusal letter.

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Designated state cases can also fall to certification under section 94 of The Nationality, Immigration and Asylum Act 2002.For more information please see clearly unfounded claims: certification under section 94.

Basis of claim for decisions certified under Section 94

In addition to the above, as with non-certified cases, the basis of claim for decisions certified under Section 94 of the Nationality, Immigration and Asylum Act 2002 must include details of any efforts (or lack of) the claimant has made to obtain protection from the authorities in their home country and any internal relocation attempts (or lack of) they may have made prior to coming to the UK.

Avoid using the term “you claim”, in certified decisions, it is better to use the term “you state” as it is their statements in support of their claim that you are considering. All alternative accounts provided by the claimant must be included in the basis of claim in detail.

Full guidance on the section 94 certified case process, including the production of recommendation minutes can be found within the guidance for certification under section 94.

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Further submissions

For further submissions (FS) decisions, grants of other forms of permission can be served with a right of appeal (ROA) or without a right of appeal, depending on whether the further submissions amount to a fresh claim under paragraph 353 of the Immigration Rules. You must use the relevant template when serving the further submissions decision.

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Refusals

If the further submissions do not justify a grant of permission to stay in the UK, they can be rejected as a fresh claim, or treated as a fresh claim and certified, or treated as a fresh claim with a right of appeal, depending on whether the further submissions amount to a fresh claim under paragraph 353 of the Immigration Rules. It is therefore crucial that you serve the correct version of the decision template. Please see the guidance on further submissions for further advice.

Additional documentation

You may need to produce additional documentation with your decision depending on the circumstances.

Family Asylum Claims

Whilst family asylum claims can be considered collectively with a single decision made, the main claimant and each child named on the family asylum claim must be served with their own decision letter, as they are being treated as having made an asylum claim in their own right. See documentation for more information. In cases where refugee status is refused, the main claimant and each child will each have a right of appeal against this decision, and you must consider whether any other form of permission is appropriate. You must follow the guidance on Family Asylum Claims for these cases which covers child dependant's possible decision outcomes.

Dependant's decision letter

This must be issued to all dependants, who are not being treated as having claimed asylum in their own right (or as part of a family asylum claim). You must ensure the correct paragraphs in the template are included depending on the decision outcome. Dependants do not have a right of appeal against being refused if the main claimant's protection claim is refused. Normal practice is not to remove dependants from the UK where the main claimant has an outstanding appeal against the refusal. For further information, please refer to the guidance on dependants and former dependants.

Pro Forma (PF1)

A PF1 template must be prepared in all cases where there is a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002. You must ensure any auto populated information is current and correct. In UB (Sri Lanka) [2017] EWCA Civ 85, the Court of Appeal found that where country information or guidance is going to be relevant to the decision under appeal, there is a duty, to serve this on the Tribunal. You must annex that information to go in the appeal bundle. Please refer to the appeal PF1 bundling guidance for more information.

Appeal codes

Appeal codes assist Her Majesty's Courts and Tribunal Service (HMCTS) on validity issues. You must select the correct HMCTS code in the top right-hand corner of the decision letters.

Where a consideration under Paragraph 353 of the Immigration Rules has taken place (refusal of further submissions) and the claim has not been treated as a fresh claim, the letters will include the code NROA in the top right hand corner, indicating that there is no right of appeal against refusal of the further submissions.

Notices to illegal entrants and those subject to administrative removal

There is no longer a need to prepare a separate removal notice where the protection claim has been refused outright. You must ensure that if leave is cancelled, the RFRL covers this.

Any case which involves the removal of a foreign national offender (FNO) will be dealt with by the criminal casework team. And they have separate guidance to follow see foreign national offender returns criminal casework.

Notification letters and notices

You will need to serve all relevant documents as part of your decision. This is non-exhaustive and includes the Social Services notification and Refugee Council notification in the cases of UASCs.

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Photograph requirements

When granting any form of permission, we must have photographs of the main claimant and each dependant (if applicable) on our case working systems. The photographs must be cross checked against the images on Ident1, immigration asylum biometric system (IABS), central reference system (CRS), CID and Atlas. If you are in any doubt as to someone's identity, you must check with a SCW. If photographs are not available, you must request them from the claimant, legal representative or responsible adult, so they can be uploaded to the relevant systems.

One stop notice and statement of additional grounds

Where a person has been served with a section 120 notice, also referred to as a 'one stop' notice, they have an ongoing duty to inform the Secretary of State as soon as reasonably practicable of any new or additional reasons to remain in the UK (using the statement of additional grounds), and, if this is not done, when the claim is refused, it may be certified under section 96(2) of the Nationality, Immigration and Asylum Act 2002.

The duty to inform the Secretary of State of any new reasons applies to anyone who needs leave to be in the UK but does not have it, or anyone whose only leave in the UK is as a result of section 3C of the Immigration Act 1971.

There is no specific time limit within which a ground must be raised by a person who has been served a section 120 notice. If there is a gap in time between the new ground arising and it being raised with the Secretary of State, decision-makers will need to consider all the circumstances of the case to decide whether the delay was too long to be reasonable, including any explanation offered by the claimant.

This is included in the decision letters for the main claimant and dependant decision letters. You must use the correct decision letters to ensure the one stop notice is served with the decision.

Covering letters

You must produce the appropriate covering letter in scenarios such as returning original documents and issuing decisions to legal representatives.

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Leaflets

You must issue the following leaflets where relevant.

Assisted voluntary returns leaflets

The assisted voluntary returns leaflet must be provided to all those refused outright. This should not be provided if the claimant is detained because assisted voluntary return is not available to those who are in detention.

Department for Work and Pensions leaflet

The DWP leaflet must be issued to main claimants and dependants over the age of 16 who are granted permission. It explains to claimants how to find employment and apply for benefits. It is available in a number of languages and you must select the appropriate version or produce the English language version.

Integration loan leaflet

Integration loans are available to claimants over the age of 18, and their dependants who are granted refugee status or humanitarian protection. The scheme is designed to aid integration into UK society by providing interest-free loans to enable the purchase of items and services that facilitate integration. You must confirm this leaflet has been provided to the claimant on the relevant grant minute sheet. Claimants can also apply for this loan online using the GOV.UK form.

For more information see integration loan scheme application form and accompanying guidance.

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File checks for decision makers

As decision makers, you are responsible for ensuring all basic file management checks and initial implementation actions have been completed. This also applies to digital and electronic files. This includes:

- ensuring that the name, nationality, and date of birth are correct and correspond to file contents, and all case working databases
- checking for any erroneous documents, such as those that belong to another file
- checking the HO file reference produces the same personal details, when entered onto all case working databases
- ensuring all relevant documentation has been scanned and uploaded to Home Office Platform for Storage (HOPS) allowing any time for submission of further evidence to pass
- ensuring that all original personal and travel documents are copied to the Home Office file, scanned and uploaded to HOPS
- ensuring that valuable documents are dealt with in accordance with the guidance on retention of valuable documents
- ensure any fields marked as ‘unknown’ in all case working databases are updated where the information has subsequently been provided for example ‘place of birth’
- ensuring that the correct nationality codes have been recorded

The decision can then be served.

Related content
Contents

Checks prior to service of a decision

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Refusal checklist

You must complete the refusal checklist before serving the decision. Any errors identified must be corrected before the decision is served.

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Legal representatives covering letter

Where the claimant is represented, copies of all documents provided to the claimant and any dependants, must be provided for their legal representative. A standard covering letter can be used for this purpose.

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Where there are safeguarding issues apparent from the claim it may be appropriate to serve the decision only on the legal representative. You must seek guidance from your local safeguarding lead. Please also refer to the safeguarding section for further information.

File management and minute writing

In most cases, the asylum claim will be considered and progressed through electronic systems such as Atlas, and you may need to carry out other tasks via paperless working methods such as document storage. Please speak to your SCW or technical specialist if you have any queries about paperless working.

File management

Every asylum claim, immigration application or written enquiry made to the Home Office and copies or scans of all documents relating to any decision made must be added to a claimant's case record. Clear records must be maintained so that:

- the actions or decision can be explained or justified in the event of a dispute
- the factors leading to the action or decision can be clearly seen and similar cases or those of family members handled consistently
- a clear record is maintained of the movements of valuable documents, for example passports
- those to whom a case is referred, or who deal with subsequent correspondence or subsequent submissions on a case, can clearly see and understand all aspects of the preceding action including the proposals or decisions made

Minute writing

It is important to make a clear note of all aspects of the consideration and decision-making process, including details of any contact you have had with the claimant, their legal representative or responsible adult. Effective minutes must:

- note any action or actions taken
- provide information about the status of a case
- explain concisely any details of an outstanding problem
- give instructions and make requests
- suggest a course of action
- always be signed and dated by the decision maker

Legal obligations

Data Protection Act 2018

Case files are covered under the provisions of the Data Protection Act 2018. Therefore, you must ensure any information recorded is:

- accurate, relevant and up to date
- not excessive for the purpose
- not retained for longer than necessary
- protected against loss or damage

For further information, please see Managing and protecting information and data - Home.

Freedom of Information Act 2000

Case files are also covered by the provisions in the Freedom of Information Act 2000. Under the Act, the Home Office is obliged to provide upon request from the claimant, any information contained in their case file. It must also be provided upon request from their legal representative or responsible adult (in accordance with the disclosure in asylum claims guidance). You must ensure that anything you record is written in a professional manner and that inappropriate opinions are avoided.

Valuable documents

As part of their asylum claim, claimants may submit valuable documents for example, their passports, identity documents, marriage certificates, court papers etc. You must refer to the guidance on retention of valuable documents for further advice.

Case working databases

The Home Office is transitioning its electronic immigration data records from CID to the new Atlas system. References to CID actions in published guidance and policy will over time be updated to refer to Atlas. You must update these databases detailing any actions you have taken on the case, requests for information from the claimant, their legal representative or responsible adult, or further enquiries made to other government departments (OGDs) or non-government organisations (NGOs). For more information please see case working systems.

Home Office Platform for Storage (HOPS)

You must use the HOPS system in all cases to search for documents relating to the asylum claim for which you are drafting a decision. HOPS will contain all documents the Home Office has received from the claimant, their legal representative or responsible adult and any documents we have issued to them at any stage of the asylum process. If you receive or send documents at any stage of the decision-making process, you must ensure they are scanned onto HOPS.

For further information about HOPS, please speak to your line manager or technical specialist.

Related content
Contents

Serving asylum decisions

This section tells you how to serve the asylum decision.

Decisions are usually served by email to the claimant's email address where possible (and their legal representative where applicable) and you do not require consent from the claimant's legal representative before serving the decision in this way. While decision service via email is the default method of service, an option will continue to be available to request decision service via post. If a claimant or their legal representative has advised another method of service is preferable for them to receive the asylum decision, you should ensure this is recorded on Home Office systems.

You must be aware of any safeguarding instructions relating to the claim and serve to others such as the claimant's legal representative or responsible adult where appropriate.

There may also be legitimate reasons to serve the asylum decision to other parties, and you must be vigilant when serving the asylum decision to those other than the claimant. Please refer to disclosure and confidentiality of information in asylum claims for more information.

See Regulation 7 of the Immigration (Notice) Regulations 2003, the Amendment of the Immigration (Notices) Regulations 2008 and immigration rules appendix SN; service of notices for further information on the ways a decision can be served and when the decision is deemed to have been served.

Serving decision by email

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Serving asylum decisions via email is the default method of service. Before serving the decision, you must check case working databases to confirm that the claimant or their legal representative has not raised any objections to receiving the decision in this way. If there are objections, you must use an alternative method of service that is suitable.

If there are no objections, you can proceed with an email. When the decision is ready to be served you must attach all decision documents listed in the relevant decision checklist and record the email address the documents are to be sent to and the date of service on the checklist. You must then update all relevant caseworking systems with the decision service details.

Where the notice is sent by email, it is deemed to have been served on the day it was sent.

When serving decisions to an email address, you must always carefully check you have the right email address, and not serve a decision via email if you have no current email address, or you know an individual is no longer contactable at the recorded email address to avoid a data breach. You must send the decision with a 'delivery receipt' request and record the delivery receipt response on the casework system to confirm service.

If you receive an automated response stating the email address was defective or the email was undeliverable, you must check you entered the correct email address. If it was correct, make one further attempt to send the email. If your attempts to serve to the email address are unsuccessful, you must try to serve the decision to the last known or usual postal address or email address of the individual or the individual's representative, where available. If these attempts are unsuccessful, and you have exhausted all other attempts to serve the decision to the individual via post and email, you must serve the decision on file.

Please speak to your SCW if you have any questions about serving an asylum decision by email.

Serving decisions by post

When the decision is ready to be served, you must place all decision documents listed in the checklist in a suitably sized envelope addressed to the claimant or their representatives by recorded delivery. You must record the delivery address on the implementation minute sheet and relevant caseworking systems together with details such as what was sent and when, and where and who it was sent to. Due to the Royal Mail phasing out both signed for and special delivery stickers, the Home Office are transitioning to their Click & Drop service. This will enable users to print out the required tracking information onto a label before attaching them to the relevant envelope prior to dispatch. Please speak to your admin team manager for more information about the Click & Drop service and producing the postage labels.

Where a notice is sent by post, it is deemed to have been served on a second working day after it was posted.

Serving decisions in person

The Secretary of State reserves the right to serve any decision in person. This method is usually most appropriate where there are safeguarding concerns on the claim. You must check whether service in person has been requested by the claimant, their legal representative or responsible adult. If service in person has been requested, then you must arrange for this to be done.

Where service in person has not been requested by the claimant, their legal representative or responsible adult; but there are case specific issues that suggest service in person would be the most appropriate course of action, you must arrange

for this to be done and update the relevant caseworking system. This may be appropriate for example where there are safeguarding concerns, but the claimant has not specifically asked for the decision to be served in person.

If you are in any doubt about whether service of the asylum decision is appropriate while safeguarding issues are ongoing, please speak to your technical specialist or SCW, and follow the guidance on safeguarding.

When the decision is ready to be served in person, a 'Decision Service Event' must be booked. You must prepare two copies of the Decision Service Event Record along with all relevant documents so that they can be presented and explained to the claimant. Both copies of the Decision Service Event Record must be taken and after the decision has been served in person, the claimant must be asked to sign both copies and given one copy. The other copy must be scanned onto HOPS, placed on file and a decision service event checklist completed.

You must clearly indicate on the relevant checklist if the decision needs to be served in person and you must update the relevant case notes on case working databases.

Serving decisions by portal

The Manage Asylum Claim (MAC) portal is a new digital tool being developed that will be used by decision makers and immigration advisors in the future to upload documents associated with an asylum claim, including supporting evidence, interview transcripts and asylum decisions.

The Immigration (Notices) Amendment Regulations 2023 came into force on 9 October 2023 and states that sending asylum notices (such as decisions) electronically includes service via portal. They also clarify that where the asylum notice is uploaded to the portal, the notice will be deemed to have been received on the day on which the claimant or representative receives an electronical notification that the notice has been uploaded.

Further information will be provided to claimants, legal representatives / immigration advisers and decision makers nearer the time of operationalisation of the MAC portal. This will include other options to serve decisions for claimants where an alternative method of service has been chosen, or using the portal is not deemed appropriate. Details of how to access the portal, once it is operational, will be published on www.gov.uk/claim-asylum.

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Delay serving decisions

Delays in implementing any decision must be kept to a minimum. You must implement any decision to grant protection status or another form of permission without delay, subject to the result of any security or criminality checks. If the result of these checks could affect the type or duration of permission granted, it may be necessary to delay implementing the decision, for example to await the findings of a criminal court case. For further guidance on when a decision should be held due to a pending criminal prosecution, please see pending prosecutions in asylum claims.

If you identify any safeguarding issues with regards to when and how your decision is served, please speak to your senior caseworker before serving the decision.

Problems serving the asylum decision

You may deal with claims which present problems at the point of serving the asylum decision. Valid service is deemed to have taken place if, the requirements set out in Regulation 7 of the Immigration (Notices) Regulations 2003 have been met. See an un-served decision and serving decisions to file for more information.

Please speak to a SCW in all instances where problems serving the decision are encountered.

Death of a claimant

If you receive notification that a claimant has died prior to serving their asylum decision, you must not send any letter addressed to that person. You must handle such cases with sensitivity and respect, and with due regard to the needs of the deceased individual's family.

You must normally allow a minimum period of one month after the date on which the individual died before you contact any dependants about the case (if applicable). In exceptional circumstances, which may include safeguarding issues, urgent travel, dependants' leave expiring, or dependants getting in touch to request a response, you may contact dependants before a month has passed since the death. Please discuss with your senior caseworker if you need further advice.

Before you take any action on the claim, you must obtain evidence which confirms the main claimant has died to ensure that information is correct. You must contact the individual who notified you of the death to ask them what their relationship is to the deceased and to send you both the following:

- written notification that the claimant has died
- certified copy of an individual's death certificate

Once you have confirmation of the death, you must, scan the documents onto HOPS, record the individual's death on case working databases, and update the outcome to 'deceased'.

If the Home Office holds the deceased claimant's passport you must also advise the individual who notified you of the death that, the Home Office will return the passport (valid or expired) to the deceased individual's UK Embassy or High Commission to be cancelled and the family will receive a letter from the Home Office to confirm that. You do not need to request the passport if you do not have it.

If the deceased individual had been granted permission to stay in the UK and has a biometric residence permit (BRP) which is not currently with the Home Office, you must request for it to be returned so it can be cancelled and destroyed.

If the deceased individual had dependants who were granted permission on the basis of their relationship with the individual, you must consider whether it is appropriate to cancel the dependant's permission. There may be grounds in individual cases to allow more time, but you must justify this in the case notes and decision letter and seek authorisation from your SCW. For more information about whether cancellation is appropriate, please see cancellation and curtailment of permission guidance.

It is also open to any dependants who have their own protection needs to claim asylum in their own right.

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Serving decisions to file

This section tells you when it is necessary to serve an asylum decision to file. Service to file is the last resort and you must not consider it unless reasonable efforts have been made to serve the asylum decision to the claimant or their representative.

Background

Under the 2003 (Procedure) Rules, effective from 1 April 2003, the appeal period starts when the notice of decision is 'served'. Consequently the Immigration (Notices) Regulations 2003 (Statutory Instrument 2003 Number 658) were drafted to allow decisions to be served 'on file' where a claimants whereabouts or place of abode is unknown.

Establishing whether serving a decision to file is appropriate

You must give written notice about any appealable decision as stipulated under Regulation 4 of the Immigration (Notices) Regulations 2003. A notice given to the claimant's representative (where applicable) is taken to have been given to the claimant. The service on file provision does not apply where a representative appears to be acting for the claimant unless it is impossible to serve the decision to the representative. For example the representative does not meet the criteria in section 84 of the Immigration and Asylum Act 1999 which states only persons qualified can provide immigration advice or services.

Confirming a claimant's address

If an address has not been supplied for the claimant, the representative must be contacted to request the claimant's address. Generally, you must serve the asylum decision directly to the claimant and copy the representatives. In addition, you must also be aware of any safeguarding instructions and when requested serve to the claimant's responsible adult.

Legal representative no longer acting on a claimant's behalf

If a representative confirms that they are no longer acting for the claimant, service is still valid providing the representative did not tell the Home Office before the decision was served. The papers should be sent direct to the claimant where there is a valid address. The claimant must be told the date they were served on the representative. Any effort by the Home Office to advise the claimant of the decision at this point helps to reduce the chance of an out-of-time appeal being allowed to proceed at later stages in the removal process. You must clearly record every effort to serve the decision on case working databases.

There are different methods of serving the decision on file, see serving asylum decisions. The appropriate one will depend on the individual circumstances.

Serving outright refusals to file

You must use the service to file checklist for outright refusals to record that all conditions necessary for service on file as set out in Regulation 7 of the Immigration (Notice) Regulations 2003, paragraphs (1) and (2) have been met. You must prepare all appropriate documents and upload copies to HOPS and Atlas.

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Serving grants to file

You must make every possible effort to serve the decision to the claimant through contact details available to the Home Office, including through legal representatives. If the attempts to serve the grant to the claimant are unsuccessful, then the decision can be served to file. You must prepare all appropriate documents and upload copies to HOPS and Atlas.

Claimants re-establishing contact following service on file

When a claimant re-establishes contact directly or through their legal representative after a decision has been served on file, how the case will be handled depends on where and how contact is re-established. In all cases the claimant must be given a copy of the notice and the details of when and how it was given as soon as practicable. In the case of an outright refusal, this is in line with Regulation 7 (3) of the Immigration (Notices) Regulations 2003.

This must be done regardless of whether further submissions are made at the time contact is made. It will usually be the responsibility of the unit which encounters the claimant or their representative to ensure that the decision documentation is issued to them as soon as practicable. When the decision paperwork is dispatched to the claimant or their legal representative, you must record this separately on CID and Atlas.

Identifying served and un-served decisions

A served decision

You will need to check the following to confirm whether a decision has been served:

- case notes for a dispatch address and recorded delivery number
- correspondence for any reference to the decision being received
- case working databases for any reference to the decision being served

An un-served decision

Where the decision was dispatched but has been returned undelivered without valid service having taken place, this is an un-served decision. The return of undelivered documents does not mean valid service has not taken place. Valid service is deemed to have taken place if, the requirements set out in Regulation 7 (2) of the Immigration (Notices) Regulations 2003 have been met stating, decisions shall be deemed as served if the notice is signed and placed on file/casework systems in the following circumstances:

- a person's whereabouts are not known
- no address has been provided for correspondence and the decision maker does not know the last-known or usual place of abode or business of the person or the address provided is defective, false, or no longer in use by the person
- no representative appears to be acting for the person

A decision may not have been served if:

- the case file or decision letter was sent to another unit to serve and this did not take place
- the case file or decision letter was forwarded to the wrong location before service of decision
- the case file or decision letter was temporarily 'lost' after the decision was made but before service
- the case was flagged as a 'service pending case' and has not been concluded
- there are recorded delivery packages on file which have not been delivered

If after considering all the available evidence, you are not satisfied that the asylum decision has been served, the case must be reviewed to determine whether the original decision is still appropriate. A reliable current address should be established. If a reliable current address is not available, consideration should be given to serving the decision to file. See establishing whether service on file is appropriate; serving outright refusals; claimants re-establishing contact following service on file.

Handling un-served decisions

To determine whether a decision is still appropriate, you must consider the age of the decision and the specific circumstances of the case.

Decision made less than four weeks ago

Generally, decisions do not need to be reviewed if less than four weeks has been passed since the decision date. This is because it would be rare for the decision to change in this timeframe. An exception to this may be where additional evidence has come to light in the interim period.

Decision made over 4 weeks ago

If the asylum decision was made between 4 weeks and one year ago, you must:

- review the grant minute / RFRL to ensure the decision is in line with current policy and implementation procedures
- minute the file, and case working systems to confirm that the decision has been reviewed
- if no amendments are required, arrange service of the decision keeping the original date and include the following apology and explanation of delay in the covering letter:

‘Your claim has been recorded as determined on [date]. However, [we did not have a reliable address/free text], therefore we were unable to serve the decision at that time. Your claim has been reviewed prior to service of the decision but no changes have been deemed necessary. I apologise for this delay and any inconvenience it may have caused.’

If the decision is not in line with current policy and implementation procedures or requires amendment for some other reason, but is still an outright refusal, you must:

- update the grant minute / RFRL as appropriate
- withdraw the original decision for reconsideration and re-enter the new decision
- ensure dispatch status is listed as stopped on CID for the previous decision and the date of the previous decision is recorded on Atlas
- refer to these instructions in the reasons box
- dispose of original decision documents and replace with new versions
- arrange service of the decision in accordance with current implementation procedures
- upload all decision documentation to Atlas

If the decision is not in line with current country policy or implementation procedures or requires amendment for some other reason, and now merits a grant of permission you must:

- grant in accordance with current implementation procedures using current templates
- withdraw the original decision for reconsideration and re-enter the new decision
- ensure dispatch status is listed as stopped on CID for the previous decision and the date of the previous decision is recorded on Atlas
- refer to these instructions in the reasons box
- dispose of original decision documents and replace with the new versions
- update case working databases with the new outcome and arrange for dispatch
- upload all decision documentation to Atlas

Un-served grants of permission and retrospective grants

Permission to stay cannot be granted retrospectively.

You may encounter problems serving the asylum decision in cases whereby the claimant's whereabouts are unknown, and they have no legal representative or responsible adult to serve the decision to. Provided the requirements set out in Regulation 7 of the Immigration (Notices) Regulations 2003 have been met, decisions shall be deemed as served if the notice is signed and placed on file.

See problems serving the asylum decision for more information.

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Requirement to notify the claimant

In Anufrijeva [2003] UKHL 36], the House of Lords found that a decision does not have legal consequences for the claimant until they have been notified, which, under the Immigration (Notices) Regulations 2003, is 2 working days after the service of the decision, or until reasonable steps to notify the claimant have been taken. Until this happens no decision has been notified and as a result there are no legal consequences.

The effect of this is, where the decision to grant permission was never served either by post, email, electronically, in person or to file, the permission does not exist because no permission has legally been granted. If the decision was not communicated in any way to the claimant, the decision should be reviewed before notification as appropriate.

It is important to note that the case is still recorded as determined upon completion of the Notices of Decision. The recording of the outcome on case working systems is for the maintenance of internal government records only and cannot be taken to mean that the claimant has been notified or that the determination has taken effect.

The main question that must be considered before taking action is whether the claimant has a legitimate expectation that they will be granted permission.

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Legitimate expectation

This section tells you how to identify where a claimant may have a legitimate expectation, usually to a grant of permission.

What is a legitimate expectation?

A legitimate expectation arises when an individual has been given an explicit clear and unambiguous assurance about their immigration status. This can be done either orally or in writing or by way of an endorsement in their passport.

This means that where the determination was recorded, but the decision was not served, there will be no legitimate expectation unless the Home Office (or another government department or body) has notified the claimant of that decision.

If the claimant was notified of the decision this may have raised a legitimate expectation that they would be granted permission, and this must be fully investigated.

Identifying ‘legitimate expectation’ claims

Where a claimant has been given reason to believe that they would be granted permission it is usually established through their own or their legal representatives’ communication with the Home Office. This should be clear from correspondence on file and may include:

- stating that the claimant has been informed they have been granted permission
- querying their current immigration status
- requesting the relevant documents to confirm a grant of permission

Where records show that a decision to grant permission was made but never served, care must be taken not to inadvertently raise a legitimate expectation as part of any contact with the claimant or their representative. The case must be investigated and reviewed on its own merits and must establish:

- the terms of the permission allegedly granted
- when the claimant alleges the decision was made and communicated
- the terms of the alleged permission as put forward by the claimant
- how the claimant alleges the decision was communicated and in what circumstances
- who the claimant alleges communicated the decision
- what documentary evidence has the claimant received

The claimant must be asked to forward any relevant evidence as part of the investigation and clarification of their immigration status. You must make it clear to the claimant or their legal representative that, you need to consider the assertion, are neither accepting or denying that such permission has or ever will be given and, will respond once the final decision has been clarified. In all cases, a senior officer of at

least SEO grade must oversee the handling of a potential legitimate expectation case.

Considering whether there is a legitimate expectation

The following is a non-exhaustive list of factors that need to be taken into account when considering whether to accept that a legitimate expectation has been created:

Origin of information supplied to claimant

Information relating to immigration matters can only come from officials with actual or apparent authority for notifying individuals about immigration. Therefore, the Home Office may not be bound to information supplied by a Department or official without this responsibility. It is not possible to say whether a Department has apparent authority because it depends on the context and cases must be assessed individually.

For instance, the Asylum Support case work team is part of the Home Office and so will reasonably be regarded by the claimant as representing the Asylum and Protection group and therefore, we are likely to be bound by the information they supply.

Other Departments or bodies will not generally have apparent authority but if the Department purports to have received the information from the Home Office and that is plausible, for example the Department for Work and Pensions (DWP), Asylum Support provider or Local Authority then it may be reasonably be regarded as having authority.

Deciding whether or not to accept if another Department has apparent authority, must always balance and take consideration of any other evidence of how a legitimate expectation may have arisen.

Documents and wording

Consideration must be given as to how the information was supplied and what information is provided. You must consider what it actually states, for example does it say that permission has been granted, or does it suggest permission will be granted at some future date?

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Timeliness of our response

Undue delay in responding to claimants to clarify any queries about information they have received, or their immigration status could strengthen a claim for legitimate expectation. In the absence of clarification from the Home Office, the claimant may have come to rely on the incorrect information.

Timing of contradictory information

If the claimant received contradictory information from the Home Office indicating a grant of permission and an outright refusal, the time that passed between these two events may be significant. For example, if they were informed that they had permission and they were able to rely successfully on this information for a period of several years before being informed that their claim had in fact been refused then a legitimate expectation may have been created.

Nature of the claim

Consider if it is possible or reasonable, in the context, that information received may have given rise to a legitimate expectation. For example, it is not reasonable that somebody could legitimately expect that they would be granted refugee status when they had not actually made an asylum claim, and where there is such a clear error no legitimate expectation will arise.

No legitimate expectation exists

Where the evidence does not establish that a legitimate expectation has arisen, you must:

- reconsider the decision in line with current policy
- update the Home Office file (if applicable) and case working databases clearly explaining the history of the case and the subsequent review
- use the following wording in the covering letter:

‘We note that you informed the Home Office on [date] that you believe that you have a legitimate expectation of a grant of [insert specific form of permission to stay]. Following consideration of all the information available, I have concluded that no legitimate expectation has been created and that you have no entitlement to leave on this basis. I have made a decision on your claim in accordance with current country information and policy guidance’.

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Where legitimate expectation exists

The cases where a legitimate expectation has been created will fall within the following two categories: where the intended period of permission has expired, or where there is still leave remaining.

Where the intended period of permission has since expired

You must:

- review and reconsider the case on its current merits in line with current policy
- draft the appropriate documentation including a covering letter selecting the options appropriate to the facts to explain the decision
- use the following wording:

‘I note that you were informed/notified/it was indicated on [date] that you would be granted/were/was entitled to number of months/years of [insert specific form of permission to stay]. However, no such permission was granted and any such entitlement has now expired. I have therefore considered whether you have any current entitlement to leave and a decision, which accompanies this letter, has been made on your claim in accordance with current country information and policy guidance’.

Where the intended permission still has a period remaining

You must:

- grant the claimant and any dependants permission as appropriate, in line with current policy
- redraft the RFRL and any other decision documentation using current versions of the templates
- ensure the date of the RFRL and all documentation is the current date
- ensure any permission must be dated to expire on the same date as in the original determination
- update case working databases with the correct dates of the new decision

- if it is not clear what leave should be granted or for how long, the case must be discussed with a SCW or Technical Specialist - prepare a covering letter using the suggested following wording:

‘I note that you have been told by an official that you would be granted permission until [date] because of the particular circumstances of your case. The decision that accompanies this letter confirms the leave you have been granted and explains what you are entitled to and what you need to do next’.

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Managing documents

This section tells you how to handle documents submitted by claimants or their legal representatives, including when it is appropriate to retain documents.

Replacing biometric residence permits (BRPs)

Any request to replace a BRP following a decision to grant leave must be reviewed before the BRP is re-issued. See the Asylum Instruction Lost, stolen, unserved or incorrect status documentation.

Retaining documents

This section applies only to documents accepted to be genuine.

The Home Office must know where retained passports and identifying documents are located at all times. These items are valuable and will either need to be returned following a grant of leave or retained to facilitate removal action where appropriate. You must follow the instructions within retention of valuable documents guidance when handling documents from claimants.

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Power to retain documents

The power to retain passports and other documents comes from Section 17 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 which states:

> ‘Where a document comes into the possession of the Secretary of State or an immigration officer in the course of the exercise of an immigration function, the

Secretary of State or an immigration officer may retain the document while he suspects that:

- a person to whom the document relates may be liable to removal from the United Kingdom in accordance with a provision of the Immigration Acts, and
- retention of the document may facilitate the removal

Where a claim has been refused and removal is being considered, documents that may assist in that removal must be retained. If the claimant has been granted limited leave, it will not usually be appropriate to retain the documents, but copies must be retained. See retention of valuable documents.

Dealing with claims of non-receipt of valuable documents

The return of valuable documents to a claimant, or their representative, by post must always be by special delivery. The special delivery number must be recorded on case working systems. Identifying a valuable document is covered in the retention of valuable documents guidance.

Claims that documents have not been received must always be investigated. The team who served the decision and the post room must be contacted to determine if the letter was dispatched. If so, the Post Office must be contacted to discover if the letter was delivered, and if so, who signed for it. The Royal Mails' Track and Trace service allows for the status of recorded deliveries to be tracked. A copy of the signature or other confirmation should be requested if tracked delivery is disputed and records indicate otherwise. The Home Office are transitioning to Royal Mail's Click and Drop service and this will also allow you to download a report that shows information on your despatched letters.

Requests for the return of valuable documents

If valuable documents are requested before a decision has been made on the claim, this must normally be refused on the grounds that they are required for the consideration of the claim. The claimant or the legal representative should be informed that the documents will be returned once the claim has been concluded.

The withdrawing asylum claims guidance states asylum claims will be automatically withdrawn in line with Paragraph 333C of the Immigration Rules when the claimant:

- requests that their passport is sent back to them for travel outside the Common Travel Area (CTA), unless permission to travel has been authorised
- embarks for any destination outside the UK, (including within the CTA), without permission

Requests for documents for a specific purpose

Any requests for the return of documents for a specific purpose, for example opening a bank account or applying for a driving licence, must be refused. Photocopies of the documents are permitted, and you must:

- include the decision maker's name at the end of each page
- send the ICD.1098 covering letter for the return of original documents and scan a copy for upload to HOPS
- include the appropriate contact number
- ensure the covering letter lists all the documents being sent, their issue numbers and the number of pages photocopied
- ensure the covering letter contains the following text:

'These documents are / This document is currently being held by the Home Office. Each of the photocopied document pages have been signed to confirm that they are held. If you wish to confirm that these documents are held by the Home Office, please phone the number listed at the top of this page and giving this reference number [HO Reference number]'.

Recording lost and misplaced documents

Any loss or misplacement of records or valuable documents by the Home Office must be recorded on the Record Management System (RMS). You must follow the in-country lost document standard operating procedures to record the loss, and to inform the claimant and the correct departments of the loss.

For further information see guidance and policy on personal data. And data protection for guidance on the UK GDPR and Data Protection Act 2018.

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Travel documents and travel abroad

The biometric residence permit (BRP) is the sole evidence of a claimant's permission to stay in the UK. Claimants must not book travel outside of the UK until they receive their BRP. Doing so may put them at risk of being denied boarding by carriers, being unable to prove their immigration status or possibly being refused re-entry to the UK at the border.

From 1 January 2025 claimants will no longer need a BRP. They will be able to prove their immigration status online, without a BRP. Further information about this is available on gov.uk.

If a claimant has been granted refugee status, they:

- can travel outside of the UK on their national passport if they still hold a valid national passport, except to the country they have been recognised as requiring protection from
- may apply for a Home Office issued Convention Travel Document (CTD) if they do not have a national passport or their national passport has expired

If a claimant has been granted humanitarian protection, they:

- can travel on their national passport if they still hold a valid national passport
- should apply for a Certificate of Travel (CoT) if they don't have a national passport

CTDs can be used by eligible claimants to travel outside of the UK, except to the country which they have been recognised as requiring protection from. Information on how to apply for a CTD on GOV.UK at: https://www.gov.uk/apply-home-office-travel-document/refugee-travel-document.

A claimant cannot be in possession of their national passport (valid or expired) and a CTD at the same time.

If a claimant applies for a national passport from the country they have been recognised as a refugee from in the future, or travels to their home country, their refugee status may be reviewed and revoked. For more information please refer to the revocation of protection status guidance.

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