

*Community
Legal Service*



Claiming asylum

Your rights if you are a refugee

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8

Being recognised as a refugee is a complicated and difficult process. There are many laws, rules and regulations in the UK for dealing with asylum seekers, and dealing with asylum applications. This leaflet explains the main things asylum seekers need to know.

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Who qualifies for asylum?

Qualifying for asylum depends on whether you are a refugee, as described in the United Nations 1951 Refugee Convention. It says a refugee is someone who is outside his or her country of origin because of a well-founded fear of persecution for one of five reasons:

- race;
- religion;
- nationality;
- membership of a particular social group; or
- political opinion.

In almost any asylum application, there are many legal issues about these terms. Specialist help is vital.

Under the Refugee Convention, the UK government can't send you back to a country where you could be persecuted. This means you can't be sent back to your country of origin until it has been shown that there is little or no risk to you. You will not have to leave the country until your case, and any appeal you make, has been finally decided.

However, this only covers returning you to a country where you would be at risk, so you could be sent back to another safe country without your claim being considered (see 'Where you came from' on page 5).

If it looks as though you would be at risk only in a certain part of your country, you may be refused asylum because you can return and live in another part of your country.

Asylum is meant to protect you from possible risks in the future, not just from what has

happened in the past. So you might also be refused if the Home Office believes that circumstances have changed in your country, and you would no longer be at risk.

It's often difficult to prove that you would definitely be at risk. You need to show that persecution would be a 'serious possibility'.

Who isn't covered

The Convention says that certain types of people shouldn't qualify for asylum. These include people who have been involved in very serious criminal activity, or who are responsible for human rights abuse.

There are also 'cessation clauses', which say that you could lose your status if, for example:

- circumstances in your home country improve significantly by the time the Home Office makes a decision; or
- you return to your own country after becoming a refugee.

Special cases

Certain kinds of claim are more complicated than others. Where the claim is because of persecution by other groups in society, not by government forces, or where someone is fleeing from a civil war, the law can be very difficult to apply. This is also true in most cases where someone claims persecution because of 'membership of a particular social group'. If your claim falls into any of these categories, you will need expert advice.

Human Rights claims

Since October 2000, you've been able to make a claim based directly on Article 3 of the European Convention on Human Rights. This prohibits torture or inhuman or degrading

treatment. The UK would break the Human Rights Act if it sent someone back to a country where he or she would face such a risk.

Unlike under the Refugee Convention, you don't have to show any particular reason for the inhuman treatment, or show that that country is to blame. If you can show that you would face treatment prohibited under Article 3, the Home Office must allow you to stay, and will grant you 'exceptional leave to remain'.

How do I apply for asylum?

You can apply for asylum at any time, but you would normally apply either:

- to the immigration officer on duty at an airport or seaport when you first arrive; or
- at the Home Office, if you are already in the UK.

There are advantages and disadvantages with both options. If you apply to the Home Office after you arrive, you'll be able to meet up with friends and family, or to find a legal representative. You may not be able to find legal help if you apply at the airport or seaport.

However, if you don't apply when you enter the UK, the authorities may use the delay as a reason to refuse your application. This should not apply if you are already here lawfully (as a student, for example) when your reasons for fearing persecution in your country first arise.

Either way, the Immigration and Nationality Directorate of the Home Office is the government department which deals with applications. Applications made at other places are sent there for decision.

What happens when I apply?

There are several stages that you go through, and several things that will happen to you, while they look at your application.

The first interview

The first stage involves a short interview, called a screening interview. Your asylum claim will begin from the time of this interview. The purpose of this interview is to get a record of your personal details and how you arrived in the UK. This is partly to check whether you can be returned quickly to a 'safe third country' (see 'Where you came from' on page 5) instead of the UK dealing with your application.

This screening interview will usually happen as soon as you apply for asylum, but it might happen later if the authorities need to find an interpreter for you. They will also have to delay the interview if you are unwell.

If you have people to contact in the UK, you should insist that you are allowed to make a phone call before the interview. Whether this is to a relative, a friend, an advice service, lawyer, or an organisation such as Amnesty International, the authorities should not stop you without a good reason. If they won't let you make a call, make sure they tell you why. Ask them to put their reasons in writing.

Asylum interviews

The screening interview may be immediately followed by a longer, more detailed interview, unless you can show that you already have a legal representative (a lawyer or solicitor) to help with your application. If you do have a representative, their costs can usually be covered by Community Legal Service funds (see

'Further help' on page 11). But this won't generally allow your adviser to come to your screening interview, unless you are particularly vulnerable for some reason, or you are at risk of being sent to a detention centre or prison. Children on their own will also have a representative.

If you don't have a legal representative, and you are given a full asylum interview straight away, the information you give the officer will form the basis of your application. It will be difficult to add or change anything later. Make sure you are given a copy of the interview notes.

Identity documents

You will be fingerprinted, although children (especially those under 12) may not be. A photograph of everyone applying for asylum, including children, is attached to the identity document you will be given. This document, known as a Standard Acknowledgement Letter (SAL), is important, as it will usually be your only proof of identity. It has built-in security features, making it hard to copy. Any other documents you have brought with you will be held by the immigration authorities.

The Standard Acknowledgement Letter will normally say you are not allowed to work (but see 'Your right to work' on page 8). Check it straight away to make sure the details on it are correct.

Where you came from

As an asylum seeker, you can't be sent back to any country where you might face a risk of persecution. Your application must be considered and refused before you can be returned to the country you came from.

However, if you passed through another country, even for a very short time, the immigration authorities may try to return you there if it is a 'safe third country'. They will not look at your asylum claim if they do this.

If the 'safe third country' is one of the 14 European Union countries, the Home Office must send your details to that government. You can't be sent back until that country agrees to accept you. If you are to be returned to one of these countries, or to Switzerland, Norway, Canada or the USA, you can't appeal against the decision to send you there until after you've left the UK. Your only option to appeal in the UK is on the ground that making you leave would break your human rights. If the Immigration Service wants to return you to any country apart from these, you have the right to stay in the UK while your appeal is heard. But you can appeal only about whether the other country is 'safe', not whether you are a refugee.

Detention

You can be detained (in a detention centre or prison) unless you already have permission to stay in the UK when you apply. You are most likely to be detained if there's a chance you could be returned quickly to a safe third country, if you have travelled here on false documents and did not admit this when you first arrived, or if you are caught using false documents later on.

If you are detained, you have the right to:

- ask to be released by immigration officers on temporary admission (see 'What rights do I have while I'm waiting' on page 8); or
- apply for release on bail after seven days.

If you are detained, immigration officers must tell you why in writing. They must also give you regular notices to explain why they think you should continue to be detained.

Under a new priority system, some people are detained for a short time when they arrive. This is done on the basis of nationality. These people are sent to a 'reception centre' at Oakington, where their case is dealt with. People there are given independent legal advice (anyone else in detention must find this for themselves). They are also interviewed and the Home Office makes a decision on their application. This is all done within seven days.

If you are sent to Oakington, your case is likely to be refused. But you do have a right to appeal if you are refused.

Statement of evidence forms (SEFs)

If you are not detained, you will usually be given a form to fill in. This is called a 'statement of evidence' form (SEF), and you need to put your reasons for claiming asylum on it. What you say on this form will be taken as the reason for your claim, and it is important that it covers everything the Home Office will need to look at. You should always get advice if you can before filling in this form.

You must fill in the form and return it within 10 working days. It is difficult to get extra time to do this.

You can also expect to be called for a full interview about your claim with the immigration authorities later, but not if you haven't returned your SEF form. You can have a legal representative at the interview with you, if you have one, and an interpreter.

If you don't return the SEF form in time, or you don't turn up for an interview, you will normally be refused asylum for 'non-compliance'. The Home Office may not look at your case in detail, and will not interview you. So you must tell the authorities as soon as you can if you can't complete a form, provide documents you've been asked for, or turn up for an interview.

What can I live on while I am waiting?

If you have no money you can claim support while your case is considered. This scheme is run by the National Asylum Support Service (NASS). Children who are applying on their own are dealt with differently (they get support from local councils).

You, and anyone else living with you as a member of your household, can claim support:

- from the date you lodge your asylum application (or any application under Article 3 of the European Convention. See 'Human Rights claims' on page 3); and
- until it has been approved or an appeal has ended.

Applying for support

There is a very long form to fill in, in English, if you need support. You should be able to get help with the form wherever you are in the UK. This help is available from assistant organisations and their 'one-stop services' (their details will be included with the form), or from any local refugee support agency.

You can apply for accommodation (housing), financial support (money or food vouchers), or for both. You will not be given support unless you are 'destitute' (have no money). If you have any money or the National Asylum Support Service believes you can get some, you will have to live on that first.

If you are refused support, or if your support is taken away before your asylum application has been finally decided, you can appeal to the independent asylum support adjudicators.

What you can get

Support will be paid to you in the form of vouchers, which you can exchange in certain stores for food and other essential items. You will also get £10 a week in cash for each person in the household. If your case has not been decided after six months, you will get an extra payment of £50 in cash. But if you or anyone in your household has medical or other special needs which cost more than you have, you should claim for them. The Home Office was looking at this scheme at the beginning of 2001, and some changes may be made to it.

Where you will be given to live

If you need somewhere to live, you will be housed first on an emergency basis, usually in a hostel in London or Kent. You will then be sent ('dispersed') to another part of the country, unless you have a good reason to stay in London. Having close relatives in London won't generally be enough, but if you need special care because, for example, you have been tortured, you should be allowed to stay.

If you are 'dispersed', you won't have a choice of where you go. Each part of the country has a 'one-stop service' which should be able to give

you advice and help, and you should be put in touch with them.

If you don't want to be 'dispersed', you will probably only be able to get support, and not accommodation. You'll have to find somewhere to stay yourself (with friends, for example).

When support stops

Your support can end in three ways.

- If your asylum application is accepted, you will be given 14 days to move out of your accommodation and find other support. The one-stop service or other local advice agency will help you with that.
- If your asylum application is rejected, you will be given time to lodge an appeal. You will carry on getting support until your appeal finishes, plus 14 days after that.
- If you leave or damage the accommodation you have been given, or if the National Asylum Support Service believes you have other money, you will no longer get support.

'Hard cases'

Because your right to support ends when your appeal ends, you might still be here legally, but not be able to receive vouchers. Your case may go on to the High Court (see 'Certified cases' on page 10). Or support may be ended, even though you can't leave the country.

If this happens, you will not be able to claim support, but you can ask for some 'discretionary' help from the National Asylum Support Service. If your household includes children, you can get support from your local council. Otherwise, you may get nothing unless you have special medical needs.

What rights do I have while I'm waiting?

If you make an application when you arrive, at the airport, you probably won't be detained. Instead, you will be given temporary admission. The conditions of temporary admission are:

- to report back to the immigration authorities at a particular date and time that you will be told about;
- to live at a particular address; and
- not to work (usually).

If you don't meet these conditions, you could be detained. And if you don't report back when you're told to, you'll be treated as an 'illegal entrant'. You must tell the authorities straight away if you move.

The Home Office will send you an appointment for an interview at the address on your temporary admission notice. If you don't turn up, your application will be refused for 'non-compliance'. You could lose your right of appeal if you don't get notices sent to you, and you miss the time limit because of this.

If you can't get temporary admission

If officers don't give you temporary admission, you can apply for bail after seven days. You will usually need one or two people to stand as 'sureties'. These people must live in the UK and be willing to promise sums of money if you don't report back when you are told to.

There may also be other conditions, similar to temporary admission. You may have to regularly go to a police station or immigration office to sign in. If you break these conditions,

you may be breaking the law, and your sureties can lose the money they have promised.

The cost of preparing and presenting applications for bail will be covered by publicly funded legal help if you qualify (see 'Where can I get help with my claim?' below). You should ask your legal representative to apply for you.

Your right to work

As an asylum seeker, you won't normally be allowed to work in the UK. But you should be given permission to look for work after six months if your asylum application hasn't yet been decided within this time.

Other rights

As an asylum seeker, you can get free medical care, and you can register with a local doctor. In most areas, English-language classes are available free of charge, and there are some other further education courses, too.

Very little extra money is available, apart from the vouchers, but some travel costs can be paid. These will include fares to an interview with the immigration authorities and to an asylum appeal hearing. But you need to give the National Asylum Support Service five or six days' notice of the appointment to get this. You will also be paid to travel if you are sent to another part of the UK. The one-stop service can help you with these issues.

If you are getting publicly funded legal help, you may get your travel costs to go to an interview with your legal representative.

Where can I get help with my claim?

If you do not have enough money to pay for a lawyer, you should be able to get specialist

advice free of charge. But this is available only through solicitors and voluntary organisations who have an arrangement with the Community Legal Service (see 'Further help' on page 11).

There are also free services provided by other organisations, such as the Refugee Legal Centre, the Immigration Advisory Service, and some local agencies, particularly Law Centres. The one-stop service or a Citizens Advice Bureau can help you find any of these, though you won't always be able to find a legal advisor to help you immediately.

If you have been detained and you can't get to any of these organisations, you should try to contact one by phone, or speak to a member of the visitors' group. This is a group of volunteers who visit people who are detained, and can help put you in touch with services outside.

Your adviser must tell you in writing:

- what service you can expect;
- who to complain to if you have concerns about the advice service or advisor;
- whether you will have to pay a charge, and if so how it is worked out; and
- how to contact them when you need to.

It is against the law to offer advice or help with asylum cases unless the person is on the register of the Immigration Services Commissioner. Anyone who offers advice that isn't free must always tell you that free advice is also available. If you are not happy with any asylum or immigration advice, or you think any charge you have to pay is unfair, you may complain to the Commissioner who will investigate for you.

Using interpreters

The immigration authorities will provide you with an interpreter for any interview they carry out. Your legal representatives should also find one for you when you see them. Remember that interpreters are there to help you to communicate, and should just translate what is said, not give advice or answer questions for you. You should try to avoid using friends or family members for all but the simplest advice.

What will be the outcome of my claim?

Unless your claim is rejected, there are basically three different types of status you will be given.

Asylum (permanent residence)

If your claim is accepted, you will be granted asylum and given 'indefinite leave to remain' (permanent residence). If you are accepted in this way, your husband or wife and any children under 18, will also automatically be accepted. You are also entitled to get a Convention (blue) travel document which lets you to travel freely to all countries, except your country of origin.

You can work or study, and have the same rights to receive benefits as citizens do. If you do claim benefits, they may be backdated to cover the period between when you first applied and when your claim was accepted.

Exceptional Leave to Remain (ELR)

If you can't show that you meet all the conditions for recognition as a refugee, but it would still not be right to make you return to your country of origin, you may be given 'exceptional leave to remain' (ELR). In theory, this can be taken away at any time but in practice it is almost always given for four years, with the chance to apply for indefinite leave

after that. People with exceptional leave to remain have fewer rights to family reunion, travel and study than refugees.

Temporary protection

Occasionally, there may be a crisis in a country that is serious enough to be recognised internationally. This has applied recently to the former Yugoslav republics, for example.

There may be special programmes to help people escaping these conflicts, without looking at individual cases. Under these programmes people generally won't get permanent residence, and their status will probably be withdrawn after a few years.

What can I do if my claim is refused?

If your asylum application is refused, you will almost always be able to appeal against the decision. But if you want to make an appeal, you need to get advice very quickly.

You must return your filled-in notice of appeal within 10 working days of the decision. You must also give the reasons for any other claim you, or any member of your family, might have for being allowed to stay in the UK (for example, it would break your human rights if you were made to leave).

You will also be able to get publicly funded legal help throughout the appeal process if you meet two conditions. These are:

- you have no money to pay for advice; and
- your representative is satisfied that you have a good enough chance of success.

The Refugee Legal Centre or Immigration Advisory Service can also help with your appeal, free of charge. Their details are on the

appeal notice, as well as on page 11 of this leaflet. Remember that the appeals process may well take longer than the initial decision.

Certified cases

The appeals system works on two levels. If a first appeal is turned down, you may be able to apply for another appeal. If the Home Office thinks your claim for an appeal is not strong (for various reasons), it can 'certify' it. If it does this at your first appeal, you will have no right to another appeal. But if you have been a victim of torture, you cannot be 'certified'. When a certificate is accepted, it will be harder to challenge the Home Office's decision. You will also lose any right to support if you do challenge its decision (see 'Hard cases' on page 7).

'One-stop' appeals

If you have any other reason for you or any member of your family to stay here, you need to mention these at the same time as you ask for asylum. One of the most common reasons is that your human rights have been broken (see 'Human Rights claims' on page 3). But if you might have any other claim, for example, to work, for medical treatment, or for other family reasons, you must get advice quickly.

What happens if my appeals fail?

Remember that most asylum applications made in the UK are rejected. If you are finally refused after an appeal, you are expected to leave the country, unless you have another reason to stay here (for example, through marriage). The authorities may try to forcibly remove you if you don't go voluntarily. After your application has been refused, you may be detained, possibly in prison.

Further help

If you need a legal representative to represent you free of charge, you can find one through the Community Legal Service (CLS). See right for its details. There are other organisations which can provide expert advice with asylum and immigration issues.

The Immigration Law Practitioners Association (ILPA)

phone: 020 7251 8383

www.ilpa.org.uk

Immigration Advisory Service

phone: 020 7357 7511

www.iasuk.org

Refugee Legal Centre

phone: 020 7827 9090

Law Society

The Law Society, which represents solicitors in the UK, has an immigration panel of solicitors who can offer legal representation in asylum cases.

phone: 0870 606 6575

www.solicitors-online.com

The Community Legal Service

The Community Legal Service (CLS) is run by the Legal Services Commission, a public body which has replaced the Legal Aid Board.

A key aim of the CLS is to ensure that people find the right legal help easily and can be confident of the service they get. All legal services providers in the CLS must meet quality standards set by the Legal Services Commission before they can display the CLS logo (shown on the front cover of this leaflet). The CLS also includes a scheme for funding civil cases (formerly legal aid).

There are CLS Information Points in local libraries and many other public places, which have information leaflets and the CLS Directory of Services. The Directory lists lawyers and advice centres which have met the CLS quality standards, and many others.

You can also phone: 0845 608 1122

(minicom: 0845 609 6677)

to find out about advice centres and lawyers in your area, or visit the CLS website at: www.justask.org.uk.

About this leaflet

This leaflet is one of a series produced by Consumers' Association for the Legal Services Commission (LSC). Consumers' Association (CA) is the largest independent, not-for-profit consumer organisation in Europe. CA is committed to empowering consumers to make informed decisions about goods and services. For more information, visit CA's website at www.which.net.

To find out more about the LSC, visit the www.legalservices.gov.uk website, or contact your regional LSC office. Its address is in the phone book. There are also leaflets about LSC funding available at the website or through the LSC leaflet line (phone: 0845 3000 343).



This leaflet was written by Consumers' Association in association with the Immigration Law Practitioners Association and Mick Chatwin, a solicitor specialising in immigration law

This leaflet is one of a series being produced in 2001. All the titles below should be available by summer 2001 in a number of languages and formats. The leaflets will also be online at www.legalservices.gov.uk

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