



Home Office

Asylum Policy Instruction PERMISSION TO WORK

Version 6.0

1 April 2014

Contents

Section 1: Introduction	3
1.1 Purpose of Instruction	3
1.2 Background	3
1.3 Policy Intention on permission to work and volunteering activities	3
1.4 Considering the best interests of children	4
Section 2: Relevant Legislation	5
2.1 The Immigration Rules	5
2.2 Delay	5
2.3 Applications granted before 09/09/2010	6
2.4 Applications received before, but outstanding on, 09/09/2010	6
2.5 Applications from asylum seekers with extant leave	6
2.6 Shortage Occupation List (SoL)	6
Section 3: Voluntary Activities	7
3.1 Voluntary Work	7
3.2 Volunteering	7
3.3 Enquiries from employers and voluntary organisations	8
3.4 Travel costs	8
Section 4: Processing applications for permission to work	9
4.1 Deciding the application for permission to work	9
4.2 Dependants	9
4.3 Granting permission to work	9
4.4 Refusing permission to work	10
4.5 Revoking permission to work	11
4.6 Applications to extend permission to work from those with leave in the UK	11
Section 5: Miscellaneous	12
5.1 Paragraph 360 of the Immigration Rules from 5 February 2005 to 8 September 2010	12
Annex A: Template Letter	13
Text of response to permission to work request	13
Change Record	16

Section 1: Introduction

1.1 Purpose of Instruction

With certain exceptions, asylum applicants are not permitted to take employment pending the final determination of their claim. This instruction provides guidance on handling requests for permission to take employment from asylum applicants, failed asylum seekers, and those who have submitted asylum based further submissions.

It does not provide guidance on handling requests for permission to take employment from those undergoing an active review at the age of 17 and a half, who were granted Discretionary Leave (DL) under the Unaccompanied Asylum Seeking Children (UASC) DL policy in place before 6th April 2013 or those granted under [Paragraphs 352ZC to 352ZF](#) of the Immigration Rules since 6th April 2013. See [Processing Applications from Children AI](#) for further details.

1.2 Background

The Home Office may receive requests for permission to work from those who have lodged an asylum claim or further submissions. Such requests need to be considered in accordance with this guidance. As part of the implementation of the EU Reception Conditions Directive, [Paragraph 360](#) of the Immigration Rules was amended to reflect that from 5 February 2005 asylum applicants who have been waiting for more than 12 months for an initial decision may apply for permission to work.

1.3 Policy Intention on permission to work and volunteering activities

The underlying policy objective in restricting permission to work for asylum seekers and failed asylum seekers is to protect local labour markets. It is appropriate to restrict access to employment for asylum seekers whilst their claim is considered to prevent illegal migration for economic reasons. However, there are circumstances where it will normally be appropriate to grant permission to work where:

- ▶ the claimant has waited more than 12 months for an initial decision on their asylum claim (or asylum based further submissions); and
- ▶ the delay in reaching a decision is through no fault of the claimant.

Although it is accepted that volunteering provides a valuable contribution to the wider community, it is Home Office policy to remove those who do not have a right to remain. Whilst volunteering can be undertaken at any stage of the asylum process, failed asylum seekers with no legal right to remain are expected to leave the UK. Any volunteering must not delay their departure or removal.

[Back to Contents](#)

1.4 Considering the best interests of children

Considering an application for permission to work is an immigration function and as such must take into account the need to safeguard and promote the welfare of children in the UK. This is in accordance with requirements under Section 55 of the Borders, Citizenship and Immigration Act 2009. This means caseworkers need to take account of the impact on children of a refusal to grant permission to work.

Those who do not cooperate with the asylum process and are responsible for the delay in considering their claim should not be granted permission to work. It may be argued that refusing permission is not in the best interests of a child. Provision is made in the asylum process for the essential safeguarding and well-being needs of children who are dependant on their parents claim through appropriate support and accommodation arrangements where this is needed. It is therefore very unlikely that a decision to refuse permission to work for an adult would adversely impact on a child or override the public interest in refusing permission to those who do not comply with the process.

[Paragraph 360](#) of the Immigration Rules only applies to the principle applicant in an asylum claim and there is no provision to grant permission to work to dependants on the claim.

Children under the age of 16 should never be given permission to take employment.

For further information on the key principles to take into account, see: [Section 55 Children's Duty Guidance](#).

[Back to Contents](#)

Section 2: Relevant Legislation

2.1 The Immigration Rules

[Paragraph 360](#) of the Immigration Rules was amended to reflect that from 5 February 2005 asylum applicants who have been waiting for a year for an initial decision may apply for permission to work. It was further amended on 9 September 2010, in order to:

- ▶ provide for failed asylum seekers to obtain permission to work in certain circumstances, following the Supreme Court judgment in [ZO \(Somalia\) \[2010\] UKSC 36](#) ; and
- ▶ restrict the type of employment asylum seekers and failed asylum seekers can take up (see [Shortage Occupation List](#)).

[Paragraph 360](#) as amended states:

- ▶ only asylum seekers who have not received an initial decision on their claim within 12 months and failed asylum seekers who have made further submissions on asylum grounds but who have not received a decision on those further submissions after 12 months can apply for permission to work;
- ▶ they will not be eligible for permission to work if the delay was their fault;
- ▶ those granted permission to work will be subject to the following restrictions:
 - ▶ they may only take up a job which is included on the shortage occupation list (at the time an offer of employment is accepted);
 - ▶ they may not take up employment in a self-employed capacity; and
 - ▶ they may not set up a business.
- ▶ permission to work will come to an end:
 - ▶ for asylum seekers: once the asylum application has been finally determined (that is, once appeal rights are exhausted); and
 - ▶ for failed asylum seekers: once a negative decision has been taken on a further submission or, in the event that appeal rights are granted, those appeals are exhausted.

2.2 Delay

The Immigration Rules require the Home Office to consider applications for permission to work if the delay cannot, in the Secretary of State's opinion, be attributed to the applicant.

Caseworkers must take into account how much of the 12 month delay is attributable to the applicant. This includes considering the reasons behind the applicant's contribution to any delay, including repeated or long periods of non-compliance with the asylum process. Permission to work must be refused where the delay was their fault. However, where an individual has an acceptable reason for failing to comply with required procedures, this must be taken into account when considering delay attributable to the applicant. For example periods of serious illness would be an acceptable reason, a prison sentence would not.

In Older Live Cases Unit (OLCU), where there is evidence that absconder action has been taken at some point and there is no further evidence that the applicant has resumed contact, permission to work must be refused.

[Back to Contents](#)

2.3 Applications granted before 09/09/2010

Any asylum seeker who has already been granted permission to work will continue to have permission to work, without any change to the conditions, until their asylum claim has been decided and their appeal rights exhausted. It is not necessary to review the conditions of their permission to work or to restrict these to the shortage occupation list.

2.4 Applications received before, but outstanding on, 09/09/2010

Applications for permission to work from asylum seekers (not failed asylum seekers with further submissions outstanding) made before the new rule came into effect, should be considered under the old Rule 360 (see [Section 5: Miscellaneous](#)). All applications made after the new rule came into effect must be considered in line with the new rule. All applications for permission to work from failed asylum seekers must be considered under the new rule.

2.5 Applications from asylum seekers with extant leave

When considering permission to work applications from asylum seekers, caseworkers must be aware of the individual's current immigration status. Where permission to work is issued to an individual with extant leave, it is not issued under [Paragraph 360 of the Immigration Rules](#). The permission to work must be subject to the conditions of their leave (for example, restricted to a certain number of hours for students), rather than subject to the restrictions of Rule 360 (for example, the Shortage Occupation List). This is regardless of whether the application is made before or after 9 September 2010, and the introduction of the new paragraph 360.

2.6 Shortage Occupation List (SoL)

If an asylum seeker or failed asylum seeker is granted permission to take employment (subject to the exceptions listed in the section on [Granting Permission to Take Employment](#)), this must be restricted to jobs on the [Shortage Occupation List](#) (SOL), published by the Home Office.

The Home Office will not review applicants' qualifications and experience when considering permission to work applications to determine whether they have the necessary skills to obtain employment in a shortage occupation. It is the responsibility of the applicant and a potential employer to ensure the job is one which is included on the list of shortage occupations published by the Home Office. Employers should consult Home Office guidance before employing a foreign national who is not settled in the United Kingdom to establish whether that person is entitled to work and whether there are any restrictions or conditions on the type of employment the person is entitled to take.

The Government sets the shortage occupation list following recommendations from the Migration Advisory Committee (MAC). The MAC was tasked to assess whether jobs are skilled, in shortage, and whether it is sensible to fill that shortage via migration from outside the European Economic Area.

[Back to Contents](#)

Section 3: Voluntary Activities

3.1 Voluntary Work

There is a distinction between voluntary work and volunteering. Volunteers are not workers for the purposes of the national minimum wage and do not qualify for it. Voluntary workers are still defined as workers, but they are exempt from being paid the national minimum wage, so they can give their time for free to charitable or public sector organisations. Key elements in establishing whether someone is a voluntary worker are whether there is an obligation on the individual to perform the work, and in return an obligation on the organisation to provide it; and whether the individual is rewarded for that work, through money or benefits in kind.

Voluntary work cannot be undertaken by asylum seekers or failed asylum seekers awaiting the outcome of an application for asylum or further submissions, unless they have been granted permission to work under [Paragraph 360 of the Immigration Rules](#). Further information is available on the Home Office website under [Preventing Illegal Working](#).

3.2 Volunteering

The legal distinction between an employee and a volunteer is complex given the differences between the types of voluntary work and volunteering activities that individuals can be involved in. The principal difference is that volunteering must not amount to unpaid work, or job substitution. In particular:

- ▶ there should be no payment, other than reasonable travel and meals expenditure actually incurred (not an allowance for the same);
- ▶ there should be no contractual obligations on the volunteer;
- ▶ the volunteer is helping a registered voluntary or charitable organisation (or organisation that raises funds for either);
- ▶ the volunteering is for a public sector organisation; and
- ▶ the volunteering is not a substitute for employment (i.e. fulfilling a role that a salaried worker would normally fulfil).

If in doubt about whether a specific opportunity constitutes voluntary work or volunteering activity, organisations should seek independent legal advice.

Whilst volunteering can be undertaken at any stage of the asylum process, such activities must not interfere with scheduled events such as a substantive asylum interview, regular reporting event or re-documentation interview. Such events will not be rescheduled to accommodate volunteering activities. Although it is accepted that volunteering contributes positively to the community it must not obstruct the asylum process or undermine the removal of those who do not need protection and have no entitlement to remain in the UK.

It is Home Office policy to support asylum seekers volunteering for charities or public sector organisations but it is the responsibility of any organisation considering recruiting volunteers to ensure that such activity does not constitute voluntary work or employment. The organisation should undertake all relevant safeguarding checks required. The personal details provided by the applicant as part of the immigration process, cannot be confirmed by the Home Office for use in any other context other than immigration matters.

[Back to Contents](#)

3.3 Enquiries from employers and voluntary organisations

Caseworkers must be aware that under no circumstances must they reply directly to enquiries by employers on a particular case without first seeking the permission of the applicant, as this may contravene the principles of the [Data Protection Act 1998](#).

Further advice for employers can be found on the [Employers and educational providers](#) page on the.

3.4 Travel costs

For information regarding travel costs for asylum seekers to travel to an ARC issuing site, see [22A.3 of the Enforcement Instruction and Guidance](#).

[Back to Contents](#)

Section 4: Processing applications for permission to work

4.1 Deciding the application for permission to work

In the Asylum Casework Teams

All requests for permission to work should be dealt with by caseworkers in the relevant team dealing with the applicant's asylum case as soon as possible after the request is made. If the request is made at a Reporting Centre, staff at the Reporting Centre should advise the applicant to contact the team dealing with the case. Any decision to grant permission to work must not, under any circumstances, be taken independently (i.e. not without a caseworker making a referral to a Senior Caseworker).

In the Complex Casework Directorate

A dedicated team will process applications for Permission to Work within the Older Live Cases Unit (OLCU). Applications for permission to work from individuals whose case is being dealt with by OLCU should be sent to:

Permission to Work Team
Customer Service Unit
9th Floor, Apollo House
36 Wellesley Road
Croydon
Surrey, CR9 3RR

4.2 Dependants

There is no provision within [Paragraph 360 of the Immigration Rules](#) to grant a dependant of an asylum seeker or further submissions these individuals permission to work.

4.3 Granting permission to work

Caseworkers should use stock letter ASL.4264 (see [Annex A](#)) and choose Option 1 when granting permission to work to asylum applicants or failed asylum seekers.

This informs the individual of the conditions of their permission to work, and advises them to contact Department for Work and Pensions (DWP) to be issued with a national insurance number. It also sets out the conditions of their permission to work, and advises them to contact the Central Events Booking Unit (CEBU) in order to have their Application Registration Card (ARC) amended to reflect their permission to work.

The ASL.4264 must be retained by applicants as proof of permission to work for DWP and future employers.

Caseworkers must update the case file and relevant Home Office records when granting permission to work. This will enable Reporting Centre staff and Croydon Contact Centre to

verify that permission to work is legitimate. The following wording should be used when updating Home Office records, depending on which basis permission to work is requested:

- ▶ Permission to work request received in [Name of Team] on [Date].
Permission to work granted on [Date].
- ▶ Permission to work restricted to the Shortage Occupation List (SOL)
- ▶ Permission to work granted on basis of: [further submissions outstanding for more than 12 months / asylum claim outstanding for more than 12 months / other – give detail (delete as applicable)].
- ▶ ASL.4264 sent/handed to the applicant/representative at [address] on [Date].
- ▶ Name of Caseworker
Name of Team
Tel (including external code)

The ASL.4264 Option 1 informs the individual that they are required to have their ARC amended and must provide employment details when available, in order that a review of their eligibility and level of asylum support (if any) can be conducted; failure to do so will result in the discontinuation of their support. Caseworkers must ensure that a review of support is conducted when employment details are received. See [Eligibility and Assessment of Asylum Support](#) for further guidance.

[Back to Contents](#)

4.4 Refusing permission to work

If refusing the asylum applicant or failed asylum seeker permission to work, caseworkers should use ASL.4264 and select Option 2.

Reasons for refusing permission to work might include the following:

- ▶ Asylum application or further submissions have not been outstanding for 12 months;
- ▶ The delay is entirely the result of the applicant's actions or inaction;
- ▶ The delay is partly the result of the applicant's actions or inaction and it is not appropriate to exercise discretion in the applicant's favour;
- ▶ Further submissions are not asylum based, but are based on Article 3 medical grounds, or Article 8 family grounds.

Caseworkers must update the case file and relevant Home Office databases when refusing permission to work. This will enable enforcement staff to verify that permission to work has not been granted. The following wording should be used when updating Home Office records, depending on which basis permission to work is being refused:

- ▶ Permission to work request received in [Name of Team] on [Date].
Permission to work refused on [Date].
- ▶ Permission to work refused on the basis of: [asylum application not outstanding 12 months or more / further subs not outstanding for 12 months or more / further subs not asylum-based / delay applicant's fault / other - give detail (delete as applicable)].
- ▶ ASL.4264 sent/handed to the applicant/representative at [address] on [Date].
- ▶ Name of Caseworker
Name of Team
Tel (including external code)

4.5 Revoking permission to work

Caseworkers must remember that if granted permission to work, this will come to an end:

- ▶ for asylum seekers: once the asylum application has been finally determined (that is, once appeal rights are exhausted); and
- ▶ for failed asylum seekers: once a negative decision has been taken on any further submissions or, in the event that appeal rights are granted, those appeals are exhausted.

Caseworkers should monitor their caseload and, once the asylum application has been finally determined, or the further submissions have been concluded, should clearly update Home Office records to reflect that the individual's permission to work has ceased.

The ARC will then need to be amended as soon as possible to reflect the fact the permission to work is once again prohibited.

4.6 Applications to extend permission to work from those with leave in the UK

Applicants granted limited leave which permits working legally, may enquire whether they can still work beyond the date on which their leave expires. This will depend on whether they applied for further leave to remain before their leave expired.

Caseworkers are reminded that this instruction does not provide guidance on handling requests for permission to take employment from those undergoing an active review at the age of 17 and a half, when granted Discretionary Leave (DL) under the Unaccompanied Asylum Seeking Children DL policy in place before 6th April 2013 or those granted under [Paragraphs 352ZC to 352ZF of the Immigration Rules](#) since 6th April 2013. See [Processing Applications from Children AI](#) for further details.

If an application for further leave was made in time and the type of leave granted did not prohibit work, the applicant is eligible to work under continuing 3C leave. Section 3C of the [Immigration Act 1971](#) (as amended) automatically extends the leave of a person who has made an application for further leave to remain during a period of extant leave, provided the applicant has existing leave to enter or remain at the time when the application is made. The applicant should be informed of this.

If, however, an application for further leave is made out-of-time then there is no continuing 3C leave and thus all conditions attached to that leave, including permission to work, cease from the date the leave expires. If the applicant has not lodged an application for further leave, or if the application was lodged after the leave expired, caseworkers should refuse permission to work unless [Paragraph 360 of the Immigration Rules](#) applies.

Where the applicant has the continuing right to work following an application for further leave to remain, caseworkers must use the letter ASL.4043 and select Option 1 – In time option. When the applicant does not have continuing permission to work, Case Owners should select Option 2 – Out of time option.

[Back to Contents](#)

Section 5: Miscellaneous

5.1 Paragraph 360 of the Immigration Rules from 5 February 2005 to 8 September 2010

Paragraphs 360 and 360A of the Immigration Rules, as extant 5 February 2005 to 8 September 2010, are below. These are for use in dealing with applications for permission to take employment received from asylum seekers (not failed asylum seekers who have made further submissions) before, but decided after, 9 September 2010.

Right to request permission to take up employment

Paragraph 360: An asylum applicant may apply to the Secretary of State for permission to take up employment which shall not include permission to become self employed or to engage in a business or professional activity if a decision at first instance has not been taken on the applicant's asylum application within one year of the date on which it was recorded. The Secretary of State shall only consider such an application if, in his opinion, any delay in reaching a decision at first instance cannot be attributed to the applicant.

Paragraph 360A: If an asylum applicant is granted permission to take up employment under rule 360 this shall only be until such time as his asylum application has been finally determined.

[Back to Contents](#)

Annex A: Template Letter

Text of response to permission to work request

This is the standard text for Template Letter ASL.4264 – Response to Request for Permission to Work. Caseworkers must use this template (available on DOC GEN) for all responses to requests for Permission to work, amending as necessary. Use **Option 1** for a grant and **Option 2** for a refusal.

Dear [salutation]

RE: Title Forenames Surname Nationality Date of Birth

Thank you for your enquiry/letter of [date] requesting permission to work.

[Select either **Option 1** or **Option 2**]

Option 1 – Granting permission to work

You have asked whether you/your client may take employment while your/his/her application for asylum is/further asylum-related representations are being considered. This letter is a grant of permission to work in principle pending you/your client obtaining the appropriate Application Registration Card (see paragraphs below).

Please note that employment is restricted to posts listed on the Migration Advisory Committee's (MAC) Shortage Occupation List (SOL). Information about the SOL can be found on the Home Office website: <https://www.gov.uk/visas-immigration>. This permission does not include permission to be self-employed or to engage in business or professional activity.

You/Your client will need to obtain a National Insurance Number from the Department for Work and Pensions shortly after taking work. Please note that this grant of permission to work will only last until such time as you/your client's application for asylum is finally decided/further asylum-related submissions are decided and may be revoked if you/your client is found to be working in breach of conditions, for example work not on the SOL.

If you/your client did not have current leave to enter or remain when you/he/she claimed asylum, this letter does not constitute a grant or further grant of leave to enter or remain in the United Kingdom. It has been issued solely to confirm permission to work. If you/your client had current leave to enter or remain when you/he/she claimed asylum, the conditions attached to your/his/her stay are varied accordingly.

If you have/your client has an Application Registration Card (ARC) then your/your client should contact the Central Events Booking Unit (CEBU) as soon as possible to make an appointment to amend the ARC to reflect your/his/her permission to work. Please note you should also contact CEBU to make an appointment if you do not have an ARC.

CEBU Contact Details:

CEBU

Department 8

The Capital
New Hall Place
Liverpool
L3 9PP

Telephone number: 0151 213 2174

Fax number: 0870 336 9382.

You/Your client's employer must separately verify your/his/her entitlement to work in the United Kingdom, or they risk incurring a civil penalty. Employers can use the Employment Checking Service and find further information on carrying out the appropriate document checks by consulting the Home Office website: www.gov.uk/uk-visas-immigration.

Please ensure that you do/your client does not apply for vacancies that are not on the SOL list. Employers are obliged to check you/your client's employment status with the Home Office and will therefore be aware of these restrictions before you are/your client is able to start employment. Please ensure that you show/your client shows this letter to any prospective employer to ensure that they are aware of the restrictions on your/your client's employment.

If you are/your client is receiving any Home Office support, please note that you are/your client is required to submit details of your/his/her employment when you/he starts/she starts work in order that a review of your/his/her entitlement to support can be conducted. Failure to provide the information requested could result in your/your client's support being terminated.

Please note that any earnings you receive/your client receives may reduce or remove your/your client's entitlement to support. Any changes to the level or entitlement to support will take effect from the date that your/your client's first wage is received. This could mean that the Home Office will ask you/your client to repay any overpaid support if you/your client continued to receive support whilst receiving earnings from employment.

[End of Option 1]

Option 2 – Refusing permission to work

You have asked whether you/your client may take employment while your/your client's application for asylum is/further asylum-related representations are/further non-asylum related submissions are being considered.

Your/Your client's request has been considered but I have to inform you that we are unable to grant you/him/her permission to work at this stage because you do not have an asylum claim outstanding for more than 12 months/ your client does not have an asylum claim outstanding for more than 12 months/you do not have asylum-related submissions outstanding for more than 12 months/your client does not have asylum-related submissions outstanding for more than 12 months/asylum-related submissions have been concluded/the delay in concluding your asylum claim can be attributed to you/the delay in concluding your clients asylum claim can be attributed to your client/the delay in concluding your asylum submissions can be attributed to you/the delay in concluding your client's asylum submissions can be attributed to your client.

Therefore you/your client may not take employment in the United Kingdom, nor may you/your client be self-employed or engage in business or professional activity.

[End of Option 2]

Yours sincerely/faithfully

Name

Team

Contact details

[Back to Contents](#)

Change Record

Version	Author(s)	Date	Change References
1.0	RB	21/02/2007	New web style implemented
2.0	SK	23/02/2009	Acknowledgement for Permission to work application
3.0	CC	14/01/2010	Failed Asylum Seekers litigation strategy
4.0	CC	28/07/2010	Supreme Court – ZO (Somalia)
5.0	CC	08/09/2010	Rule 360 change
5.1	CC	21/08/2012	CRD address change
6.0	OPRU	01/01/2014	Volunteering and new branding

[Back to Contents](#)