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Illegal Migration Act 2023

A new law called *The Illegal Migration Act 2023* has recently come into force. The Act has brought about significant changes to the UK asylum and immigration system for people who arrive in the UK on or after 20 July 2023. We are in the process of updating the Toolkit to reflect these developments. For now, please be aware that some of the information in the Toolkit may be out-of-date for people who arrived in the UK after that date. To stay up to date with any changes to the Toolkit, please sign up to our newsletter.

Applying to Stay in the UK Because You Have Children

If you are applying for the right to remain in the UK and you have a child or children, in many cases your child will be part of your application as a dependant. If your application is successful, they will usually get leave to remain in line with yours.

There are also situations, however, when you are not eligible for immigration status in your own right, but your child has or could have the right to remain. In these situations, you may be able to apply for the right to remain in the UK because you are their parent.

This page looks at applying to stay in the UK as the parent of a child who may have the right to remain. For these applications, your child must be under 18 at the date of the application, and living in the UK.

This page will cover the following topics:

- Child with British citizenship
- Is your child British?
- Seven years in the UK
- Right to family/private life
- The best interests of the child
- Evidence
- Evidence of your relationship with child
- Evidence of life in the UK
- Evidence it would be unreasonable to leave the UK
- Making the application
- Suitability requirements
- Application fee
- Health surcharge
- Fee waiver

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If your application is refused
If your application is successful

This page does **not** cover:

If your child has Indefinite Leave to Remain (rather than British citizenship, for example) you are not able to apply for leave to remain on this basis if you are already in the UK. You are able to apply for leave to enter the UK on this basis, but this page does not look at those types of applications. See our page on Visas here.

If you are in a relationship with the child's other parent/carer and they have British citizenship or Indefinite Leave to Remain, the applications explained on this page do not apply to you: you need to look at the information on applying to stay as a spouse/partner. See our page on Family Members here.

A child with British Citizenship

If you have a child who has British citizenship, you may be able to apply for the right to remain in the UK under part of the immigration rules. These rules are known as "Appendix FM". FM is short for "Family Members".

To apply under these rules, you need to be able to show that you have **sole parental responsibility for your child** or **direct access** (in person) to your child. Sole parental responsibility means that only you have authority and control over your child's upbringing. If you cannot show sole parental responsibility, you must show that you have direct access to them. Direct access means **in-person contact**, and can either be as agreed with the parent/carer that your child normally lives with, or access ordered by a family court in the UK.

You also need to be able to show that you are taking, and intend to continue to take, an **active role** in your child's upbringing. See the section on evidence below for how you might show this.

If your child normally lives with their other parent, that parent must have British citizenship or be "**settled**" in the UK for you to apply under these rules. This is likely to be the case anyway, for your child to have obtained British citizenship (see below).

The rules also say that you must be able to provide for the child (and any other family you have). This means you must be able to house you, your child and other family adequately, and provide for them without needing access to public funds (such as benefits). Accommodation will not be considered adequate if it is overcrowded, or if it goes against public health regulations.

There are other criteria you must meet, such as having a good level of English. You may be exempt (this means you will not have to do it) from the English language requirement if you

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are aged 65 and over, if you have a relevant disability, or there are other exceptional circumstances. You can read the full rules here under the 'Exceptional Circumstances' section, where it says 'English Language Requirement'.

If you are the parent of a British citizen child, but you do not meet the requirements of the immigration rules, you may be able to make an application outside of the immigration rules on the basis of your human rights. See the section on this below.

If you are in a relationship with the child's other parent/carer and they have British citizenship or Indefinite Leave to Remain, you need to look at the information on applying to stay as a partner. Read our Toolkit page on bringing an adult member of your family to stay with you in the UK below to find out more: <https://righttoremain.org.uk/toolkit/family/>

Is your child British?

A child may be British by birth.

A child might be a British citizen if they were born in the UK on or after 1 July 2006 to a parent who is British or who had settled status. If the child was born in the UK before 1 July 2006, to a British or settled mother, or a British or settled father who was married to the mother (or later marries the mother), they might also be British.

A child may also be British by descent. That means they were born outside of the UK, but one or both parents are British citizens. In these circumstances, the child will need to have been registered as a British citizen (this is the equivalent of naturalisation for adults). This can be done by applying for a passport.

If you are making an application on the basis of your child being a British citizen, you will need to provide evidence of their citizenship. This UK government website: <https://www.gov.uk/check-british-citizenship> is useful for checking if you are or your child is a British citizen. There are also useful resources on understanding children's rights to British citizenship on the website of the Project for the Registration of Children as British Citizens (PRCBC) here: <https://prcbc.org/>

Seven Years in the UK

You may be able to apply on the basis of being the parent of a child who has been in the UK for seven years. You may hear this being referred to as the seven years route.

Until 2008, the Home Office had a seven-year policy for children, under which a child who had spent seven years in the UK generally would not be removed unless there were other significant factors to consider, such as the child's parent having a serious criminal conviction.

Although that policy no longer exists, the "seven years" factor is still considered in family cases and can be found in the Appendix FM immigration rules.

The criteria for these applications are:

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- that the child is under 18 years old and is in the UK
- that the child has lived in the UK for at least seven years immediately prior to the application (not counting any time in prison); and
- it would be unreasonable to expect the child to leave the UK.
- As with applications based on your child being British (see section above), you need to show that you have sole parental responsibility for your child or direct access (in person) to your child, and that you are taking, and intend to continue to take, an active role in your child's upbringing.

If a non-British child has not lived in the UK for seven years prior to the application, they do not meet these criteria. However, you may still be able to argue that their "best interests" are not being considered (see section below) and/or their "Article 8 rights" to family/private life would be disproportionately breached if you and they were not allowed to stay in the UK.

Family/Private Life

If your child is not British and hasn't lived in the UK for seven years, you may be able to make an application to stay based on your **right to family life** (though this is more difficult).

This application would be based on a human rights argument: you and your child's right to family and/or private life in the UK. This right is known as an Article 8 right, because it comes from Article 8 of the European Convention on Human Rights, which is part of UK law through the Human Rights Act. You can learn more about this on the Human Rights page of this Toolkit.

The Home Office's general position is that the immigration rules cover all of the UK's obligations under human rights law, and so any Article 8 family/private life case that could be successful would meet the requirements of the immigration rules. For example, if you have a British child or your child has lived in the UK for seven years.

However, the fixed immigration rules criteria cannot possibly cover all possible cases, and the courts have since ruled that if a case does not meet the requirements of the immigration rules, **Article 8 arguments should be considered outside of the rules**.

You would need to try and demonstrate that you/your child being required to leave the UK would be a "disproportionate" breach of your right to family/private life in the UK.

Sometimes, the Home Office will say the breach is proportionate (or even that there will not be a breach) because you can maintain a relationship with your child through Skype, email and occasional visits.

You will need to show the strength of you and your child's connection to the UK, and why your family/private life cannot be maintained if you are removed from the UK. How would your removal from the UK damage your child? What impact would it have on their life? Read the section below on evidence for more information.

Factors that count against you in these arguments are things like poor immigration history and criminal convictions.

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Best interests of the child

In applications based on children in the UK, you may hear the term “**best interests of the child**” being used. This is also known as “Section 55”, because it comes from Section 55 of the 2009 Borders, Citizenship and Immigration Act. It means that the Home Office is required by law to make sure that decisions concerning children safeguard and promote the welfare of children. The Home Office will always say that it has considered the best interests of the children, but may go on to refuse an application. It might be a useful phrase to know if you are trying to explain why your application should be granted (to the Home Office, or – if you are appealing a refusal – to a judge).

Evidence

You will need to show the Home Office that you meet all the criteria of the application you are making.

If your child is a British citizen, you will need to provide proof of this. This could include a British passport or birth certificate. If you are applying on the basis that your child has been in the UK for seven years, you will need to show this clearly with documents and proof of their time here.

Applications can be refused if you do not speak English, or if you are not financially independent. If you do speak English and are financially independent, make sure to provide evidence of this in your application.

Evidence of your relationship with your child

With any application based on the rights of your child, you will need to prove that they are your child.

You will need to explain what **relationship** you have with the child – are they your biological child, adopted child, or step-child? Or are you their legal guardian or other primary carer?

You need to show that you have an **active** role in your child’s upbringing and that you plan to continue to do so in the future. The Home Office suggests that evidence of this might include letters:

- from your child’s school confirming you take them to school or go to parent evenings
- from the dentist confirming you take them to appointments
- from other parents confirming how much contact you have with your child.
- You will need to include proof of identity for the writers of the letters.
-

You will need to demonstrate a **genuine and subsisting (this means ongoing) relationship** with your child. Is your supporting role for your child purely financial, or do you provide emotional and other support? It may help to get supporting letters/statements to prove how you support your child, and how your child’s needs are being met by you (for example, statements from other family members, social workers, teachers or other

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appropriate professionals). This will be particularly relevant if your child has special behavioural, emotional or learning needs. How long have you been supporting your child? If it has only been for a short period, this may be used to say you do not have a “subsisting” relationship with your child.

To demonstrate **sole parental responsibility**, the Home Office guidance says this would include evidence of decisions and/or actions being taken regarding the upbringing of your child under your sole direction, without the input of the other parent or any other person; that you are responsible for your child’s welfare and for what happens to them in key areas of their child’s life, and that others do not share this responsibility for your child. Responsibility might mean that you take the decisions regarding your child’s education, health and medical treatment, religion, residence, holidays etc.

If your child normally lives with their other parent, and that parent is a British citizen or has indefinite leave to remain in the UK, you will need to provide proof of this. The Home Office guidance says this would be: a British passport; or a foreign passport with a biometric residence permit which shows you have “Indefinite Leave to Remain”; or a letter from the Home Office confirming that you are settled in the UK. You also need to provide evidence that your child resides with the British citizen or settled parent. To show that you have **direct access** to your child, if you don’t have sole responsibility for them and they don’t live with you, you could provide a letter or formal statement from your child’s other parent/carers; or a residence order or contact order granted by a court in the UK if applicable.

Evidence of your life in the UK

It will be helpful to demonstrate the life your child has established in the UK, even if your child is a British citizen, because if there are strong factors in favour of removal of a parent, the Home Office may argue these outweigh the needs of the British citizen child. Have you got extended family in the UK that your child is dependent on? Are there other support needs that can only be, or can better be, met in the UK?

Evidence it would be unreasonable to leave the UK

If you are applying because your child has been in the UK for seven years or more, you need to demonstrate it would not be reasonable to expect your child to leave the UK. If your child has particular needs, make sure you provide evidence of this. If these are particularly severe, you should seek evidence from specialists, particularly if they have been providing services/support for your child. This might be a doctor, educational psychologist or psychiatrist, or other medical, mental health or educational professional. Would these needs be made worse if your child were to live outside of the UK? Is there a lack of appropriate support in the country the Home Office are suggesting you could move to? You will need to try and provide evidence of this.

Whether it would be reasonable for a child to leave the UK and integrate into another country will depend on the individual, family and country circumstances. Factors might include whether you or your child is a citizen of the country and so able to enjoy the full rights of being a citizen in that country; whether you and/or your child has lived or visited the country before for significant periods of time – not just a few weeks’ holiday; whether you or your child has existing family or social ties with the country; whether your child has attended school in that country. Are there differences in quality of education, health and other public

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services and social or economic opportunities that mean the best interests of your child would be significantly affected?

ACTION SECTION

Even if you have a lawyer helping you with your application, you will need to provide evidence to support your application.

If you are making the application without a lawyer, you will need to provide evidence that shows you and your child meet the criteria. Your friends and community may be able to help with this.

Here are some things you might need to gather:

Proof of citizenship

Evidence that shows your relationship with your child

Supporting evidence from doctors, teachers, neighbours

Letters from professionals about your child's best interests

Financial evidence which shows you can provide for your child

Evidence of your English language ability

This is not a complete list, and there could be other things it is necessary to provide in your case!

Making the application

You need to make the application online. You can find the online application on the Home Office website [here](#).

Applications based on having children in the UK are generally **not** eligible for **legal aid** (in England and Wales).

It is possible to apply for exceptional legal aid funding, if you can show that your human rights would be breached if you are not able to get legal aid advice.

Suitability requirements

As with many immigration applications, there are also "suitability" requirements, meaning that criminal convictions, "bad character", poor immigration history or unpaid NHS debts could mean your application is refused.

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The immigration rules say that you will be refused on the grounds of “suitability” if the Home Secretary has said that your exclusion from the UK is for the “public good”, or if you are subject to a deportation order. The rules also say you will be refused if you have:

- (a) been convicted of an offence for which you have been sentenced to a period of imprisonment of at least 4 years; or
- (b) been convicted of an offence for which you have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or
- (c) been convicted of an offence for which you have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

The immigration rules say that, “Where this paragraph applies, unless refusal would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors.”

Application fee

There is a fee for the application. To find out how much you will need to pay for yourself and any dependants, read the latest Home Office guidance on UK immigration and nationality fees.

Immigration Health Surcharge

You will need to pay the health surcharge as well as the application fee, unless you fall into one of the exempt categories or can prove you are destitute and entitled to a fee waiver. Read more about the immigration health surcharge and how to pay it on the government website [here](#).

Fee waiver

You can apply to have the application fee waived. This means that if your application is successful, you won't have to pay the fee.

You are eligible for a fee waiver if:

- You cannot afford the fee
- You are destitute
- You are at risk of being destitute – and you would become destitute by paying the fee
- Your income is not enough to meet your child's additional needs

The Home Office definition of being destitute is if you and/or your dependants do not have adequate accommodation or any means of obtaining it (whether or not your other essential

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living needs are met); or you have adequate accommodation or the means of obtaining it, but cannot meet your other essential living needs.

The Home Office will assess whether you have no or very limited disposable income:

- Could you pay the fee now?
- If not, could you realistically afford to save money for the fee so that you could apply within 12 months (if it were reasonable to delay your application for this length of time)?
- Could you borrow money from family or friends?
- Is there any prospect of your financial circumstances changing within the next 12 months?

You will need to show that you can't pay the fee and couldn't save the money for the fee in order to be eligible for a fee waiver.

It is essential that you provide evidence of your inability to pay the fee. See our page on financial evidence for a fee waiver application here: <https://righttoremain.org.uk/toolkit/10-year-route-to-indefinite-leave-to-remain/#financialevidence>

Evidence might include:

- Information about and proof of your accommodation (or lack of it). Who provides the accommodation? If you do not pay for it, who does? Provide proof of this.
- If you have some income you will need to show how much this is. If you have a job, provide payslips or documents that show income over a period of time, like a P45 or P60. You will need to show that this income is not enough to meet you and your dependants' essential living needs and pay the application fees.
- If you are receiving asylum support, or support from the Local Authority, the Home Office position is that, by being in receipt of these kinds of support, you are not destitute. Therefore you will need to show that paying the fees would make you destitute. Do you have any money left over from this support once your essential living needs are met? We know this sounds like a ridiculous question as the support amounts are so low, but you need to prove this. What do you spend the money on? Provide proof of utility bills; food bills; essential travel costs; bank statements if you have them.
- If you are being supported by friends/the community/a charity, provide proof of this. What/how much are they giving you? Could they give you more? How long will this support continue?
- If you are street homeless, can someone provide statements to prove this? Were you previously evicted from a property and if so, do you have a copy of the eviction notice? Do you have records of interaction with any homeless charities?

The Home Office may carry out financial and residential enquiries when deciding on your fee waiver application. Be careful about submitting false information for your fee waiver application. This will not just affect your application for a fee waiver, but also your application to stay in the UK.

To apply for a fee waiver, you need to apply online. You can read the Home Office's policy on fee waivers here: <https://assets.publishing.service.gov.uk/government/uploads/system/>

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[uploads/attachment_data/file/1067553/Fee_waiver_Human_Rights-Based_and_other_specified_applications.pdf](#)

ACTION SECTION

The fee waiver form can be quite difficult to fill out. If you do not have a lawyer, your friends or community may be able to help you with this. They should not give advice on what to write in your answers as this could be considered legal advice. Only qualified legal advisors are permitted to give legal advice.

Read about the evidence needed for proving your destitution in the section above. People you know may be able to help with gathering (and maybe providing) the essential evidence to help your application be successful.

If a fee waiver is refused, your community could help raise the money for the application fee and/or the health surcharge. Some people have successfully raised immigration fees through online fundraisers.

If your application is refused

If your application for leave to remain on the basis of a child in the UK is refused, you may have a right of appeal. Read more on the Appeals page of the Toolkit.

The Home Office may say, however, that they consider your human rights claim to be “clearly unfounded” and “**certify**” your claim. **Certifying a claim means you do not have the right to appeal the refusal in the UK.**

If you are subject to deportation after a criminal sentence and you make an application to stay based on your child, the Home Office may certify your application unless you can show that “serious and irreversible harm” would occur if you had to appeal outside of the UK. Read more on the Deportation page of the Toolkit.

If you do not have the right to appeal the refusal, you may wish to consider a judicial review. Read more on the Judicial Reviews page of the Toolkit.

If you have the right to appeal, it’s important that people who may have provided witness statements for your application – about your child, your relationship with your child, and your life together in the UK – attend the hearing. They may be asked to give evidence. If you had a lot of witness statements, they may not all need to attend. If you have a lawyer representing you, they will give you advice about this. Evidence from witnesses who are unwilling to attend the appeal hearing – or are seen to be, even if they simply cannot attend the hearing – will generally be taken less seriously.

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If your application is successful

If you are successful in your application, **you will receive leave to remain in the UK for 2.5 years.**

This is renewable, and you will be able to apply for Indefinite Leave to Remain (ILR) after a certain number of these 2.5 year periods – see the Family Members page of the Toolkit for more information.

The Home Office may apply a “no recourse to public funds” (NRPF) restriction on your leave to remain, meaning you cannot access welfare benefits and housing support. If you are destitute or there are compelling reasons relating to the welfare of a child why this should not be applied to you, you need to tell the Home Office and provide evidence. You can find guides to requesting that the “no recourse to public funds” restriction is lifted here: <https://www.project17.org.uk/resources/immigration-and-change-of-conditions/>