

Justice Together Initiative Briefing on the Legal Needs of Afghans in the UK

1. Overview of the different routes to the UK from Afghanistan

1.1. ARAP. The Afghan Relocations and Assistance Policy (ARAP) is for any current or former locally employed staff in Afghanistan who are assessed to be under serious threat to life and are offered relocation to the UK regardless of their employment, status, rank or role, or length of time served. Alongside this is the ex-gratia redundancy and resettlement scheme, which will run until November 2022. It caters for people who worked directly for HMG on 1 May 2006 and had served for more than 12 months. The scheme now includes Afghans dismissed from service for minor administrative offences; ensuring that interpreters who supported the UK military as contractors will be eligible for relocation under ARAP and allowing people to apply for relocation under either scheme from outside Afghanistan. They will be granted Indefinite Leave to Enter or Remain [ILE/R], giving them an unlimited right to remain in the UK. However, ARAP is confined only to those who were locally employed staff of the UK government in Afghanistan, of which there are a limited number.

1.2. Afghan Citizens' Resettlement Scheme. The Home Office published a policy statement on 13.9.21. It is intended for: *"a. those who have assisted the UK efforts in Afghanistan and stood up for values such as democracy, women's rights and freedom of speech, rule of law (for example, judges, women's rights activists, academics, journalists); and b. vulnerable people, including women and girls at risk, and members of minority groups at risk (including ethnic and religious minorities and LGBT)."*¹ No further details are available as to how an application can be made except that it is intended that they be processed in the region either by UNHCR or NGOs and "international partners." The policy states that they will be granted ILE/R and 20,000 people will be admitted under this scheme.

1.3. Entry clearance application for family reunion under the Immigration Rules: to join family members already in the UK for family reunion eg. elderly dependent relatives previously residing as part of the extended family unit but not considered to be part of the nuclear family. Currently applications would need to be made from outside Afghanistan however as no operative British Embassy.

1.4. Entry clearance/extension applications to study or work in the UK. There is a cohort of 35 Chevening scholars who are funded to undertake a 1 year masters degree in the UK. Most should already have been evacuated. It is unclear whether or not they will be granted ILE/R. There may be other student applicants and highly qualified migrants but they will need to apply from outside Afghanistan.

1.5. Overland across Europe and unlawful entry to the UK –likely asylum claimants (the Home Office have stated that unlawful entrants are not eligible under ACRS).

1.1. and 1.2. will not generally require legal advice, unless eg the person is refused on the grounds of good character. 1.3, 1.4. and 1.5. would require specialist immigration advice.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/101713/3/210912_Afghan_policy_statement_.pdf .

2. An estimate of the number of Afghans using the routes outlined

Route/scheme	Number of Afghans arriving/arrived in UK via route/scheme
ARAP	5000 (already arrived Red Cross)
ACRS	20,000 , including those already evacuated (Red Cross statistics) which also includes 500 other humanitarian evacuations with leave to remain for 6 months.
Family reunion applications from extended family members	5000 (estimate)
Students	500 (estimate) It is expensive to study in the UK and any application would have to be made from outside the country
Workers	500 (estimate) The Points Based System in its current form will permit only highly qualified workers and the education system in Afghanistan has been badly impacted over the last two decades.
Applications from those seeking to enter the UK unlawfully	2000 – 5000 (estimate) Many of whom are already elsewhere in Europe eg. in Greece or in Turkey, would include mainly young men including unaccompanied minors.
Those who have already entered the UK and claimed asylum but whose claims were unsuccessful	2000 – 5000 (estimate) They may now wish to make a fresh claim for asylum based on the regime change in Afghanistan. It would include many formerly unaccompanied minors who were granted discretionary leave until their 17 th birthday but then refused further leave upon reaching adulthood.
People who have already claimed asylum in the UK	3,064 current asylum applications by Afghan nationals waiting for an initial decision, and 149 waiting for further review at the end of June 2021. Decision making on asylum applications has been “paused” and refusals will be reviewed prior to any appeal hearing.

3. An overview of the different legal needs of Afghans

In summary at least 10,000 people may be seeking specialist immigration advice over the next 2 years and at a rough estimate there is only capacity on the part of legal aid firms to represent at best a quarter of this number. Thus there will be a substantial gap between need and the ability to meet this need. There is no legal aid available for entry clearance or family reunion applications. Applications could be made to the LAA for ECF (Exceptional Case Funding) to cover the legal costs but this is time consuming and unattractive to legal aid providers. In terms of people arriving spontaneously and deemed to be unlawful, the government is actively discouraging small boat and other unlawful arrivals with draconian provisions contained in the Immigration Bill which would result in a lesser form of leave being granted. If the Bill is passed as expected, they will require representation and there will be challenges in the Courts of a decision to discriminate against them on the basis of their means of arrival.