

## Ensuring protection for Ukrainians in the United Kingdom

### 1. Recommendations

- a) UNHCR recommends that the United Kingdom implement a 3-year leave to remain route for:
  - Ukrainians who on 24 February 2022 had legal status in the United Kingdom
  - Ukrainians who were in the United Kingdom on the 24 February, but without legal status due to overstaying a previous visa.

The above individuals should be allowed to apply for leave to remain on the same terms as the leave granted to people admitted under the Ukraine Family Scheme, namely, leave to remain for three years, with the right to work and access to public funds and services.

- b) UNHCR recommends that family reunion rights be extended to all Ukrainians in the United Kingdom on 24 February 2022.

### 2. Background

In response to the conflict in Ukraine the UK Government has announced some concessions for Ukrainians in the United Kingdom. They are however limited in scope:

- a) **Ukrainian Family Scheme:** Ukrainians in the United Kingdom may apply to the Ukrainian family scheme if they have a UK based family member who is either a British national, someone settled in the United Kingdom, or has been granted permission to stay in the United Kingdom under the EUSS scheme, as a refugee, or under the Humanitarian Protection rules. As a requirement of this scheme, the individual wishing to apply must have been ordinarily resident in Ukraine prior to 01 January 2022.
- b) **In-country visa switching:** Other Ukrainians in the United Kingdom may apply for permission to stay on an existing immigration route, but only if they meet all the requirements of that route and pay all the normal fees and charges. The only concession in this case is that where the rules would normally require a person to leave the United Kingdom and apply from their home country, they may now apply in-country.
- c) **Ukrainians on seasonal worker visas and with short-term visas as pork butchers and HGV drivers:** These visa holders will have their visas automatically extended until the end of 2022, but all of the terms and conditions of those visas will continue to apply, including continuing to work for the same sponsor.

Many Ukrainians already in the United Kingdom will not be able achieve security of status despite the above concessions. These will include, for example:

- a) Students who have had to interrupt their studies or cannot complete them, for example due to a collapse in family finances. They will not be eligible for a graduate visa, leaving them and their dependants out of status.
- b) Skilled workers whose employment contracts have come to an end and who cannot immediately find another sponsor, as well as their dependants;

- c) Partners whose relationships have broken down for reasons other than domestic violence, or who do not qualify for or cannot provide sufficient evidence to obtain leave to remain under the Domestic Violence rules;
- d) Dependants of Ukrainian citizens who have decided to return to Ukraine to take part in the conflict or care for dependants who are unable to flee;
- e) Visitors who do not have the qualifications necessary to find sponsored employment or take up a course of study, including the family members of Ukrainians living lawfully in the UK, but with limited leave to remain;
- f) People on short-term work visas, including pork butchers, HGV drivers, and agricultural workers who are no longer needed by their employers, or who cannot continue in the work, perhaps due to exploitation or to the physical and personal demands of what are often very difficult jobs and in isolated locations;
- g) People who would qualify for leave on a managed migration route but cannot afford the application fees.

This is not intended as an exhaustive list, but as an indication of some of the clear protection gaps in the current concessions.

### 3. Detailed Proposal

#### a) **Three-year leave to remain:**

As the situation in Ukraine is volatile and may remain uncertain for some time to come, UNHCR does not consider that returns to Ukraine are possible at this time. This view is shared by the UK Government. As outlined above, considerable numbers of Ukrainians in the UK have not been included in the recently announced concessions, potentially leaving them without appropriate legal status and protection in the UK.

UNHCR notes with increasing concern reports of Ukrainian agricultural workers who have left exploitative working conditions and are now living and working in the United Kingdom without leave. These individuals are unable to go home but also unable to secure protection in the UK.

For the reasons set out above, we urge the UK Government to act swiftly and allow Ukrainians who on 24 February 2022 had legal status in the United Kingdom or had overstayed a previous visa to apply for leave on the same terms as the leave granted to people admitted under the Ukraine Family Scheme, namely, leave to remain for three years, with the right to work and access to public funds and services.

We would urge, however, that the application form and process be made significantly simpler, to avoid further delay and unnecessary demands on Home Office resources. We note in this regard that the majority of Ukrainians in the United Kingdom will have entered on a valid visa and already been subject to any necessary security checks. We would also urge that the grounds for refusal be brought in line with the grounds for exclusion under the Refugee Convention, rather than modelled on those for managed migration routes, reflecting the humanitarian context and purpose.

Some Ukrainians on existing visas may not require an alternative form of leave at this time but may do so in the future if their circumstances change, for example if their current visa expires or if they are no longer able to meet the conditions. Therefore, the opportunity to apply for this status should remain available for as long as Ukrainians are unable to return home, and not be time-limited.

**b) Family reunion rights be extended to all Ukrainians in the United Kingdom on 24 February 2022**

In addition, in recognition of the essential importance of family unity, especially for those forcibly displaced by conflict, taking into account that it is normally in the best interests of children to be reunited with their parents, and in a spirit of international cooperation and responsibility sharing, we would urge that family reunion rights be extended to all Ukrainians in the United Kingdom on 24 February 2022. At present, many Ukrainians living in the United Kingdom are unable to offer shelter to their family members. UNHCR is aware, for example, of seasonal agricultural workers who left their children behind, thinking they would only be separated for a few months, and now have no route to be reunited with them.

**4. Other considerations**

**a) Option to claim Asylum**

Although those who wish to claim asylum should be supported to do so, this should not be promoted as the preferred route. As recognised by the European Union in the design of the Temporary Protection Directive, asylum systems can become quickly overwhelmed in situations of mass influx or where large numbers of individuals within a country find themselves suddenly unable to return home. Group protection in these circumstances has the benefit of providing immediate assurance to those who cannot return home and avoids unnecessary strain on an asylum system.

Considering the UK context, UNHCR would advise that requiring Ukrainians to go through the asylum process should not be necessary for several reasons:

- a) Many Ukrainians may not yet wish to claim asylum, hoping to be able to return home as soon as the conflict is over;
- b) Some may need to continue to work to support family and friends displaced, injured or bereaved as a result of the conflict, and will feel forced to work without permission rather than rely on subsistence-level asylum support payments;
- c) At the end of 2021, there were 81,978 cases (relating to 100,564 people) awaiting an initial decision, of which over 35,000 had been pending for more than a year. Such delays not only have the potential to undermine asylum-seekers' mental and physical health and impede their integration; they are also placing considerable demands on systems of support and accommodation, including not only the National Asylum Support Service, but also local authorities and civil society; UNHCR has been made aware of Ukrainians who have contacted the Home Office to claim asylum in the last month and been told that it will take at least 20 weeks to register their claim;
- d) It would also be a waste of limited Home Office staff resources to expect claims for protection from residents of Ukraine to be decided on a case-by-case basis at a time when their protection needs are obvious. However, an accelerated, "light touch" refugee status determination process would be not only inefficient – requiring an individualized determination of facts that are, generally, not in dispute – but also unfairly divert resources from asylum-seekers from other countries whose claims are already pending.

**b) Homes for Ukraine**

In UNHCR's view, inclusion on the Homes for Ukraine scheme is not an appropriate substitute for a grant of leave for those already in the UK. In the first place, many such Ukrainians will have homes, jobs, and community connections already. Granting them a secure status with permission to work would allow them to draw on these existing resources and, where possible, remain self-sufficient and independent. Given the overwhelming demand for accommodation and support for Ukrainian refugees throughout the region, moreover, the Homes for Ukraine is a positive step towards international cooperation and responsibility sharing, which could be reduced somewhat if places were allocated to people already in the United Kingdom.

**c) Ukrainians who have entered the UK without a visa**

There will be some Ukrainians in the United Kingdom whose protection needs will require separate consideration, such as those who entered clandestinely, whose identity and nationality has not been established, or who may have arrived without a visa after 24 February 2022. Given that such individuals also cannot return home, it is important that active consideration be given to how to regularise their status.

UNHCR advocates for access to asylum for all refugees, regardless of mode of arrival. The Convention does not require refugees to claim asylum in the first safe country they reach or make it illegal to seek asylum if a claimant has passed through another safe country. While asylum-seekers do not have an unlimited right to choose their country of asylum, some might have very legitimate reasons to seek protection in a specific country, including where they might have family links. Readmission should only be sought where access to asylum is assured and proper reception conditions available.

**UNHCR United Kingdom**

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