Home Office

Inadmissibility: safe third country cases

Version 6.0

 Published for Home Office staff on 9 May 2022

Contents

About this guidance

This guidance details the processes applicable to the handling of third country inadmissibility processes, under paragraphs 345A-D of the Immigration Rules.

These Rules, which are about the handling of asylum claims under third country inadmissibility principles, are effective from 23.00 (UK time) on 31 December 2020, and fully replace the former paragraphs 345A-E.

This guidance does not address Immigration Rules 326A-F, relating to the inadmissibility of asylum claims made by nationals of the European Union (EU). See EU/EEA asylum claims and Related instructions.

For the purposes of this guidance, an “asylum claim” means an application for asylum as defined in Paragraph 327 of the Immigration Rules.

Contacts

If you have any questions about the guidance, and your line manager, technical specialist or senior caseworker cannot help you or you think that the guidance has factual errors then email the Asylum Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **6.0**
- published for Home Office staff on **9 May 2022**

Changes from last version of this guidance

Changes:

- updated throughout to reflect changes to processes, in light of the announcement of 14 April 2022 on the Migration and Economic Development Partnership with Rwanda

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Introduction

Audience and purpose of instruction

This instruction is primarily for the attention of officers working in the Third Country Unit (TCU). It is also for the attention of:

- officers in UK Visas and Immigration, Border Force and Immigration Enforcement, with responsibility for registering asylum claims (this includes the asylum screening interview and all related activities at the point of claim)
- officers in the National Asylum Allocation Unit and to a lesser degree the Detention Gatekeeper, who are responsible for allocating confirmed or potential inadmissibility cases to TCU
- asylum caseworkers and other officers involved in immigration functions who may encounter asylum claims suitable for referring for possible inadmissibility action should also be aware of this instruction and apply the relevant parts

The instruction explains the processes for handling asylum cases according to Paragraphs 345A-345D of the Immigration Rules, which in specified circumstances enable asylum claims to be treated as inadmissible to the UK asylum process.

This instruction does not address Immigration Rules 326A-F, which relate to applying the inadmissibility concept to asylum claims made by EU nationals. See the instruction EU/EEA asylum claims.

For the purposes of this instruction, an “asylum claim” is, as defined in paragraph 327 of the Immigration Rules, when an applicant:

a) makes a request to be recognised as a refugee under the Refugee Convention on the basis that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for them to be removed from or required to leave the United Kingdom, or

b) otherwise makes a request for international protection.

Background

The UK is committed to providing protection to those who need it, in accordance with its international obligations. Irregular migration and unnecessary secondary movements from those already in safe countries undermines efforts to help those most in need. Controlled resettlement via safe and legal routes is the best way to protect refugees and disrupt the organised crime groups that exploit migrants and refugees.

The inadmissibility process is intended to support the safety of asylum seekers, the integrity of the border and the fairness of the asylum system, by encouraging asylum seekers to claim asylum in the first safe country they reach and deterring them from making unnecessary and dangerous onward journeys to the UK.

In broad terms, the Rules allow asylum claims to be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed asylum or could reasonably be expected to have done, provided there are reasonable prospects they can be removed in a reasonable time to a safe country.

Additional to the inadmissibility policy, the UK has entered into the Migration and Economic Development Partnership (MEDP) with Rwanda. In this first stage of applying the policy, removals of individuals from the UK in accordance with the MEDP are intended to deter people from making dangerous journeys to the UK to claim asylum, which are facilitated by criminal smugglers, when they have already travelled through safe third countries. In particular, but not exclusively, this is aimed at deterring arrivals by small boats.

Asylum claims made before 23.00 on 31 December 2020

Updated Immigration Rules came into effect at 23.00 on 31 December 2020. The Rules may be applied to claimants who claimed asylum before this date. However, in broad terms, such a decision is unlikely to be appropriate if the claimant would not have been eligible to receive a similar decision under the previous rules, or if the person's progress through the asylum system has already been substantially delayed compared to average decision timescales.

Casework Information Database (CID)

The Home Office is transitioning its electronic immigration data records to the new Atlas system. References in this instruction to actions involving current systems, including CID, will over time be updated to refer to Atlas. During the transition, officers may need to record information in one system but not the other, or duplicate entries (or 'double-key') between systems. Where detailed Atlas-specific advice is not available in this instruction during this period, the Atlas learning materials available within the Metis system may provide the required information. Where officers are still unsure, they must seek advice from technical specialists or senior caseworkers.

Related instructions

This instruction **must** be read alongside the related lead instructions and resources, including but not limited to:

- Screening and routing
- Country information and guidance
- Disclosure and confidentiality of information in asylum claims
- Assessing credibility and refugee status
- Appendix FM family members
- Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR)
- Appendix FM family members
- Long residence

- Discretionary leave
- Further submissions
- Ceasing asylum support
- Judicial review

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Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 places a duty on the Secretary of State to make arrangements for ensuring that immigration, asylum, nationality and customs functions are discharged having regard to the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to the statutory guidance on Section 55, Every child matters: change for children, which sets out the key principles to take into account in all Home Office activities involving children.

Our statutory duty to children includes the need to demonstrate:

- fair treatment which meets the same standard a British child would receive
- the child's interests being made a primary, although not the only, consideration
- no discrimination of any kind
- that asylum applications are dealt with in a timely fashion
- identification of those that might be at risk from harm

Unaccompanied asylum-seeking children are not suitable for the inadmissibility processes set out in this instruction. However, a child may be invited to withdraw their asylum claim, if **all** the following conditions are met:

- a close family member of the child has been identified in a third country, and they are willing to take care of the child
- UK social services are content that the family member has the capacity to care for the child and is suitable to do so
- the child agrees to be reunited
- it is in the child's best interests to be reunited
- the country has agreed to admitting the child to join their family member

In all cases, any question of withdrawal must be fully in line with Withdrawing asylum claims (see in particular the section 'Application of withdrawing asylum claims to children') and the relevant guidance in the instruction Children's asylum claims.

Families (with children under 18) are subject to the guidance on family returns, which may support removals made on inadmissibility grounds.

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Asylum screening

Registration and screening of all asylum claims

The Asylum screening and routing instruction clearly sets out the requirement for all asylum claims to be registered, including cases where inadmissibility action may appear to be appropriate.

On 31 December 2020, the UK ended its participation in the Dublin III Regulation and therefore no longer accesses the Eurodac fingerprint database. Evidence of historic Eurodac matches may be useful in a small number of cases (see Sift, refer and allocate cases), but most inadmissibility cases will be identified through evidence collected during the asylum registration process.

It is vitally important therefore that during asylum registration, officers are alert to any evidence, verbal or documentary, of claimants having spent time in or having some other connection to another country, as it may be relevant to inadmissibility decisions. Such evidence may also be relevant to substantive decisions, in terms of credibility considerations under section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) 2004 Act. See the instruction Assessing credibility and refugee status.

In particular, officers should check for biometric evidence, which may identify previous encounters in the UK or overseas (for instance, a visa match or a former removal). Other relevant evidence may include (but is not limited to): file evidence of historic Eurodac matches, HGV or vehicle tracking data, passports, legal papers, employment letters, bank statements, business cards, invoices, receipts and other similar documents.

A proper account of the claimant's immigration history must always be taken to fully understand the chronology and detail of how the person came to the UK, including, where relevant, their reasons for leaving apparently safe countries and where relevant, the opportunity they had to claim protection in other safe countries. Appropriate follow-up questions must be asked where necessary to address any gaps or possible ambiguities in the account.

The screening interview record contains statements setting out that a claimant's information may be shared with other countries. In line with the Asylum screening and routing guidance, the statement must be read to the claimant, who must also receive a copy of the completed interview record.

If screening contingency measures are in place (see Asylum screening and routing guidance) officers should consider whether further checks or additional information may need to be gathered to apply this inadmissibility process.

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Refer cases to NAAU and TCU

Other than in the case of Unaccompanied Asylum Seeking Children (UASC) or EU nationals, where it is suspected that the claimant may have spent time in or have a connection to a safe third country, the case must be referred for third country inadmissibility action to be considered.

The referral is not a decision or subject to legal evidence thresholds or standards of proof; it simply highlights that there is some indication that a claimant may have been in or have a connection to a safe third country, to prompt and assist further consideration.

Detained cases

Where a person is detained at the time the referral is made, that must be clearly identified, to allow consideration to be prioritised, and thereby potentially enable overall time in detention to be minimised.

Asylum screening referrals

The Asylum screening and routing instruction (section ‘Referral to National Asylum Allocations Unit or Detention Gatekeeper’) sets out the requirement for all new asylum claims to be referred to the appropriate team.

The referral must summarise the evidence supporting the suspicion they may have been in or have a connection to a safe third country and outline the source and location of the evidence. For example, the referral might include a brief note to state: “claimant said she lived in Italy for 6 months before coming to UK via France – see screening interview record”, or “claimant submitted documents including French rail tickets and receipts, both suggesting recent presence in France – scanned to Atlas; originals attached to hard file.”

Casework referrals

Provided a substantive asylum decision has not been made, caseworkers may refer cases to be considered for inadmissibility action. Such referrals must be made directly to the TCU inadmissibility inbox, summarising the relevant evidence, as outlined in the section above.

Referrals may include cases that have been substantively interviewed (indeed, it may be claimant disclosures at interview that reveal their status or presence in a safe third country).

Referral must not be made on the basis of evidence likely to have already been available to and considered by NAAU or TCU.

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Sift, refer and allocate cases

Exclude from inadmissibility action

Some cases are not suitable for third country inadmissibility action and must be immediately referred for alternative action. The main cases are:

- UASC as a matter of policy are presently treated as not suitable for third country inadmissibility action – such cases must therefore be allocated for substantive consideration (this includes individuals whose age is doubted but who are being treated as children under the Assessing age instruction)
- EU nationals are liable to be treated as inadmissible under different provisions in the Immigration Rules, and so must not be progressed in third country processes - such cases must be referred back to the relevant screening unit or a casework team to progress, in line with the EU/EAA asylum claims instruction

Assess initial suitability for inadmissibility action

The initial suitability assessment is not a decision and is not subject to legal evidence thresholds or standards of proof. It is a review of new asylum claims and the evidence in electronic records and any paper file available, to identify cases which may be appropriate for inadmissibility action.

If an asylum case appears to meet the requirements of Immigration Rules 345A and 345B, NAAU must refer the case to TCU, for more detailed consideration, and where appropriate, decision.

The NAAU assessment must include a review of all available information (whether on CID, Atlas, other Home Office systems or any paper files if relevant and practicable) to establish the claimant's immigration history and determine whether they have spent time in or have a connection to a named safe third country.

The safe countries most likely to be identified in asylum claims will be the UK's near neighbours in the EU. Other EU Member States, the wider EEA countries (Iceland, Liechtenstein and Norway) and Switzerland may also be identified, as may countries such as the United States of America, Canada, Australia and New Zealand. Other countries satisfying the definition in the Rules must not be overlooked.

Key sources of information may include the following (this list is not exhaustive):

- observations by a Home Office officer or another person in an official capacity, relating to the person's method and place of entry to the UK and their known or probable place of embarkation
- physical or verbal evidence collected or recorded at the time of the claimant's first encounter
- documents or other physical evidence submitted by or found on the claimant

- the claimant's responses in the screening interview (or any other interview, for instance a supplementary interview to screening, or the substantive asylum interview)
- fingerprint evidence showing the claimant to have spent time in a safe third country (for instance, where such evidence is available through the Biometric data-sharing process with the USA, Australia and New Zealand, the bilateral fingerprint sharing process with the Republic of Ireland, or any similar process that might be undertaken with any other safe country)
- File evidence of historic Eurodac matches (the Eurodac system has not been directly accessible to the Home Office since 31 December 2020, but where Home Office systems record historic Eurodac matches that show a link to a safe third country, this information may be used for sifting purposes and to form the basis of an enquiry to relevant countries to check the accuracy of the match and request return)

Refer to TCU

NAAU must refer all cases appearing to meet Immigration Rules 345A and 345B to TCU, summarising the reasons and evidence for the referral. All other asylum cases must be allocated for substantive consideration according to normal procedures.

Suitability for DAC, NSA or inadmissibility consideration

If a case initially assessed as suitable for inadmissibility action appears to stand a greater chance of being promptly removed if substantively considered and refused, it will usually be appropriate for the case to be routed for substantive decision.

This situation is most likely to arise in cases where the person's country of origin is one listed in Section 94(4) of the Nationality, Immigration and Asylum Act 2002, or where the person is suitable for the Detained Asylum Casework framework. See Clearly unfounded claims: certification under section 94 and Detained Asylum Casework (DAC) – asylum process.

If a case assessed as suitable for inadmissibility action appears to stand a greater chance of being promptly removed if referred to Rwanda, (a country with which the UK has a Migration and Economic Development partnership (MEDP), rather than to the country to which they have a connection, TCU should consider referring the case to Rwanda. An asylum claimant may be eligible for removal to Rwanda if their claim is inadmissible under this policy and (a) that claimant's journey to the UK can be described as having been dangerous and (b) was made on or after 1 January 2022. A dangerous journey is one able or likely to cause harm or injury. For example, this would include those that travel via small boat, or clandestinely in lorries. Where there are multiple possible safe countries of removal, including Rwanda, and individual referrals are to be made, they should generally be done simultaneously rather than sequentially (see section: Removal agreements and the 'long-stop'). This is to avoid unnecessary delay in securing agreement for the claimant's removal and to minimise time in detention (if the claimant is detained).

Those progressed for consideration for relocation to Rwanda under the MEDP will be taken from both the detained and non-detained cohort and be identified in line with processing capacity. Priority will be given to those who arrived in the UK after 9 May 2022. Anyone under consideration for relocation to Rwanda, whether detained or non-detained will have this confirmed to them specifically in their Notice of Intent.

Decision makers must take into account country information of the potential country/countries to where removal may occur in deciding whether referral into a particular route is appropriate in the particular circumstances of that claimant.

Prioritisation

TCU may prioritise and select cases for entry to inadmissibility processes according to considerations such as operational capacity at a particular time, the strength of the evidence that would support an inadmissibility decision and the realistic prospects of an individual being removed within a reasonable time including consideration of their particular circumstances).

Prioritisation may be administered via NAAU, or by TCU directly once it receives cases.

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Initial case actions

Notice of intent

If after reviewing the evidence available, TCU consider that the case appears to satisfy paragraphs 345A and 345B of the Immigration Rules, a “notice of intent” must be issued to the claimant. If it does not appear suitable for inadmissibility action, it must be referred back to NAAU (or to the unit which referred it).

Neither this consideration nor the notice of intent constitutes a formal decision. It is an information letter to inform the claimant how their claim is currently being managed. If after the notice is issued any further safe country or countries are identified (whether a country with which a claimant has a connection or any other to which they might be removed), the notice should be re-issued, referencing the additional country or countries.

An example of the wording of the notice of intent is as follows, in a Home Office template letter:

“NOTICE OF INTENT – THIS IS NOT A DECISION LETTER

I am writing to inform you about how your protection claim is being managed.

We have evidence that before you claimed asylum in the United Kingdom, you were present in or had a connection to [name the safe country or countries]. This may have consequences for whether your claim is admitted to the UK asylum system.

We will review your particular circumstances and the evidence in your case, and consider whether it is reasonable to have expected you to have claimed protection in [country or countries] (or to have remained there if you had already claimed or been granted protection), and whether we should consider removing you there or elsewhere.

If your claim is declared inadmissible, we will not ask you about your reasons for claiming protection or make a decision on the facts of your protection claim.

We may, if inadmissibility action appears appropriate, make enquiries with one or more of the safe countries mentioned above to verify evidence or to ask if, in principle, they would admit you.

(Optional paragraph below, to be used only if case is in scope for possible removal to Rwanda; remove brackets if including paragraph:

We may also ask Rwanda, another country we consider to be safe, whether it would admit you, under the terms of the Migration and Economic Development Partnership between Rwanda and the UK.)

It is important that we conclude these enquiries promptly. If within a reasonable period we have not obtained agreement for your admission to a safe third country, your claim will be considered for substantive consideration in our asylum system.

If you wish to submit reasons not already notified to the Home Office why your protection claim should not be treated as inadmissible, or why you should not be required to leave the UK and be removed to the country or countries we may ask to admit you (as mentioned above), you should provide those reasons in writing within7 calendar days [for detained cases] *or* 14 calendar days [for non-detained cases] of the date of this letter. After this period ends, we may make an inadmissibility decision on your case, based on the evidence available to us at that time.

If we decide to treat your protection claim as inadmissible, we will write to you again with a formal decision letter, explaining the decision and its consequences for you.

Help and advice on returning to your country of origin

As stated above, no decision has been made in your case and you are not presently required to leave the United Kingdom. However, should you wish to withdraw your asylum claim and return to your country of origin, the Voluntary Returns Service can provide information and assistance.

The Voluntary Returns Service can discuss the status of your case and the next steps in your departure from the United Kingdom.

The VRS can provide practical support – from providing access to a passport or emergency travel document, purchasing your flight ticket or help arrange a complex return with reintegration support for those who are eligible. Please contact the VRS team to obtain practical support regarding your return.

Online: www.gov.uk/return-home-voluntarily/
Telephone: 0300 004 0202 (Monday – Friday between 09.00 and 17.00)

If you are dissatisfied with the service provided by this unit you can either raise these issues with your caseworker via the telephone number given at the top of this letter or make a written complaint. The written complaints procedure is explained on the UK Visas and Immigration pages of GOV.UK, the address of the relevant page is: https://www.gov.uk/government/organisations/uk-visas-and-immigration/about/complaints-procedure.

Yours sincerely…”

Further enquiries

After issuing a notice of intent, TCU must fully review the evidence available including any representations made by on or behalf of the claimant and where relevant, undertake any further checks, to obtain additional information to support decisions, for instance:

- if a claim appears suitable for inadmissibility action on the basis of a historic Eurodac match, that evidence must not be used in direct support of an inadmissibility or refusal decision; however, such evidence may be checked with the relevant country's authorities, and where applicable, the resulting response used to directly support the decision and removal
- if manual referral biometric or biographic data-sharing processes are developed with third countries, TCU should request checks, in line with the guidance for those processes, where a match is sufficiently likely to be made and be beneficial to inadmissibility action
- if an individual holds a refugee status document or other document showing a third country to have granted some form of leave or status, depending on the specifics of that document and the claimant's evidence about it, it may be necessary to enquire with the issuing authority about its validity if the person returns to that country
- if screening contingency measures are in place (see Asylum screening and routing guidance) officers should consider whether further checks or additional information may need to be gathered.

When making such enquiries, it may be sensible to ask at the same time if the third country would agree to the person's return.

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Decisions: Removal agreement

Removal agreements and the ‘long-stop’

If TCU determines that a case meets the criteria set out in paragraphs 345A to 345B of the Immigration Rules, attempts must be made to promptly secure a safe third country’s agreement to admit the person. The country of removal may be a safe third country in which the person was present before claiming asylum in the UK, one with which they have some other connection, or any other safe third country that will accept them.

Removal may be arranged through formal arrangements with a particular country, or by case-by-case agreements based on individual referrals by TCU. Where there are multiple possible safe countries of removal and individual referrals are to be made, they should generally be done simultaneously rather than sequentially, to avoid unnecessary delay in securing agreement for the claimant’s removal.

Decision timescales and removal prospects

Agreement to the individual’s removal to a safe third country (where necessary) will generally be secured within 6 months of the claim being recorded. However, there are circumstances which mean that 6 months will not be a reasonable period. In cases, for example, where there is no prospect of removal (for instance, if all possible countries of removal have emphatically refused to accept the person), then what is ‘reasonable’ may be shorter than 6 months. In some cases, what is reasonable may be longer. For example, in cases where the conditions in paragraph 345A(i), (ii) or (iii)(a) of the Immigration Rules are met, if a safe third country delays in responding to a removal request and the Secretary of State has taken reasonable further steps to obtain a response. Other potential scenarios that would be considered as reasonable justification for a period of longer than 6 months, depending on the circumstances, include but are not limited to:

Scenario 1: Following a referral into the National Referral Mechanism, until the consideration of whether or not the person is a victim of modern slavery has been completed.

Scenario 2: If a claimant’s presence in or connection to a safe country is not disclosed or clearly evidenced at the time the asylum claim is made and registered, but instead is disclosed at a later time, for instance, during an asylum interview.

There is no strict time period for making an inadmissibility decision. However, whilst the Immigration Rules do not require agreement to remove an individual to a safe third country before an inadmissibly decision is made, the inadmissibility decision and any removal decision may be better served at the same time (for operational efficiency and efficiency of litigation as both decisions can be challenged together). An example of a case which might warrant the making of an inadmissibility decision without a removal decision are those to which Immigration Rules 345A(i) and (ii) apply and where the individual has valid travel documents which mean they can

return to the relevant country to access that protection. In such circumstances you must be satisfied that the individual can still access the protection there e.g. Refugee status is still valid and has not been revoked.

Once an inadmissibility decision has been made, in accordance with Immigration Rules 345D, an individual who is to be removed, must be removed to the safe third country within a reasonable period. What is reasonable will depend upon the facts of each case, and it is relevant to consider matters which may delay removal, for example outstanding legal proceedings, late claims, and un-cooperative behaviour. A person who has been granted protection in another safe third country and who has travel documents will be expected to return to the safe third country. The reasonable period before removal is effected is likely to be significantly longer in such cases. This is because such individuals are not in 'limbo', unable to access the UK system or seek protection elsewhere.

If, taking into account all the circumstances, it is not possible to make an inadmissibility decision or effect removal following an inadmissibility decision within a reasonable period, inadmissibility action must be discontinued, and the person's claim must be admitted to the asylum process for substantive consideration.

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Decisions

Overview

Decisions to declare asylum claims inadmissible on safe third country grounds may only be made by caseworkers in or explicitly authorised by the Third Country Unit (TCU).

Decisions on claims relating to non-protection issues raised in asylum claims, during the consideration of inadmissibility action or at any other time, may be considered by TCU or by other units where appropriate.

A formal inadmissibility decision must not usually be made and served unless a relevant safe third country has agreed to the person's removal (see Decisions: Removal agreement). However, the consideration and preparation for such a decision may take place in anticipation of agreement and held in principle. If any circumstances have changed since this decision was prepared in principle, this should be reviewed before it is either implemented and served using the appropriate template letter, or discarded, depending on whether agreement is finally obtained and inadmissibility pursued.

Review evidence

Caseworkers must review all available evidence relating to the appropriateness of an inadmissibility decision for a particular claimant. The evidence available will vary from case to case, but may include documents from hard file, CID, Atlas, biometrics, eyewitness accounts, CCTV, file minutes, screening interview responses, responses to Notices of Intent and any other statements from the claimant explaining their behaviour, needs or other relevant circumstances.

If at any stage it is determined that there is insufficient evidence of earlier presence in or connection to a safe third State or it is clear that inadmissibility action would not be appropriate, this must be noted clearly (CID, Atlas, paper file where held), and the asylum claim must be referred to NAAU to route for substantive consideration. Where there appears to be evidence of earlier presence in or connection to a safe third State, in line with Immigration Rules 345A, detailed consideration must be given to an inadmissibility decision.

Decision consideration

Is there a relevant connection?

The Immigration Rules provide a framework within which a person claiming asylum in the UK may have their asylum claim declared as inadmissible because of their connection (set out at paragraph 345A) with a safe third country (defined at paragraph 345B).

When making an asylum inadmissibility decision under these rules, TCU caseworkers must be able to demonstrate that the criteria in the Immigration Rules are met. The standard of proof applicable to a decision in relation to whether a person is recognised as a refugee in, has travelled through, made an application to, could have made an application to or has a connection to any particular country is the balance of probabilities. This decision and the evidence it requires is wholly separate to the evidence a third country may require if asked to agree to admit a person.

Example

If it is believed that a claimant passed through Belgium before arriving in the UK and claiming asylum, a decision under paragraph 345A(iii)(b) may be appropriate. Such a decision would need to show that there were no exceptional circumstances why the claimant could not have made an application for protection in that particular country but did not.

Scenario 1: A passer-by in Kent seeing the claimant arriving in a small boat from an easterly direction would not, by itself, meet the standard of proof required under paragraph 345A(iii)(b). In of itself, this information from a passer-by would not reach the standard of proof to demonstrate that the claimant has travelled from or has a connection to a safe country where they could reasonably have been expected to make an application for protection.

Scenario 2: An admission from the claimant that they had spent a couple of weeks in Brussels staying with friends whilst trying to find an agent to bring them illegally to the UK would likely constitute evidence that they had been in that particular country. The decision would also need to consider whether the claimant has provided any exceptional circumstances as to what they could not have made an application for protection in that particular country

Scenario 3: Even without an admission, or even with a denial, material in the claimant's belongings such as receipts and tickets from Belgian shops, services and transport showing time and freedom of movement in Belgium would likely meet the standard of proof required under the Rule that they had been in that particular country and could reasonably have been expected to have applied for asylum there. However, this would need to be weighed against any other strong evidence that the receipts did not belong to the claimant and so did not connect them with Belgium, or that there were exceptional circumstances as to why the claimant could not have made an application for protection.

Is the country of connection safe?

Immigration Rule 345B sets out the criteria that must be met for a country to be regarded as a safe third country, for inadmissibility, as regards a particular applicant.

Caseworkers must consider against the circumstances of the particular applicant whether the third country with which the person has a connection is safe, according to the criteria in rule 345B, with reference to appropriate country information.

If the claimant makes specific allegations that the country is not safe because they would face persecution there, or because there is a risk they would have been removed from that country to a place where they would have been persecuted or where their Article 3 ECHR rights would be breached, those allegations must also be carefully considered.

The countries listed in Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are democratic countries which have a strong rule of law and well-established records of respecting human rights and adhering to international law. Unsupported claims by a claimant that their rights under the Refugee Convention and ECHR would be breached in such a country must be considered against the circumstances of the particular applicant, but are likely to be adequately addressed by summary reference to the country being a signatory to both conventions, and the lack of country information to show such a risk.

For other countries, or for Schedule 3 countries where the claimant supports their claims with country information, more detailed consideration may be required, looking at any evidence submitted and country information available to the Home Office (such as CPIT reports).

The standard of proof applicable to determining the risk that a person would face a risk of serious harm in a country of removal or refoulement from such a place, is whether there is a real risk or reasonable likelihood of the claimed treatment occurring.

If return/removal will be to a different country than the country of connection, is it also safe?

If the safe third country to which the person will be removed is not the country of connection, its safety according to Immigration Rule 345B must also be carefully considered, in line with the considerations and standard of proof set out above, including addressing any representations by the claimant about their safety there.

Only if the third country is considered safe for the individual will the requirements of Immigration Rules 345Bbe met.

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Decision implementation

If an asylum claimant fits any of the criteria at paragraph 345A of the Immigration Rules to the required standard of proof and their claim has not otherwise been admitted to the asylum system for substantive consideration, or is suitable for EU inadmissibility action (see Sift, refer and allocate cases), and if return to a third country been agreed, their case should be treated as inadmissible. There may be other circumstances in which an inadmissibility decision is appropriate and should be made, even if a safe third country has not promptly agreed to the person's removal; see Decisions: Removal agreement.

If a claimant makes detailed representations regarding a risk of serious harm or refoulement from the country of removal, they will need to be considered as part of the inadmissibility claim and as a human rights claim under Article 3 of the European Convention on Human Rights. In such cases where the issues overlap, they must be properly considered and decided consistently between decisions. It may be appropriate in such cases to delay the inadmissibility decision, to share decision-making with the Barrier Casework Team and to ensure that certificates under the relevant provisions of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are applied appropriately (See Background resource: certification).

Asylum inadmissibility decisions

In all decisions, notify the applicant of the inadmissibility decision, using the appropriate template letter, which sets out the key points to be addressed in making and explaining the decision, in line with the steps below:

- set out the person's place of origin or country of habitual residence, in which they claim they would face persecution or serious harm if they returned
- set out the notice or notices of intent that have been issued to the claimant, in date order
- itemise, with brief description, any representations and other evidence received from the claimant or their legal representative, including written statements setting out why in their circumstances inadmissibility should not be used or why they should not be removed to the country indicated in the notices of intent, country information relating to asylum and human rights in the country of connection, or in the country of removal (if it is different)
- on the basis of all that is known about the claimant's immigration history and personal circumstances, specify clearly which part of Immigration Rule 345A applies to the claimant:

    i) the applicant has been recognised as a refugee in a safe third country and can still avail themselves of that protection; or
    ii) the applicant otherwise enjoys sufficient protection in a safe third country, including benefiting from the principle of non-refoulement; or
    iii) the applicant could enjoy sufficient protection in a safe third country, including benefiting from the principle of non-refoulement because:

(a) they have already made an application for protection in that country; or
(b) they could have made an application for protection to that country but did not do so and there were no exceptional circumstances preventing such an application being made; or
(c) they have a connection to that country, such that it would be reasonable for them to go there to obtain protection.

- ensure that the decision letter fully and clearly explains the evidence supporting the relevant part of Immigration Rule 345A (for instance, the letter might state that the Home Office is treating the asylum claim as inadmissible under paragraph 345A(i) of the Immigration Rules because 'the applicant has been recognised as a refugee in a safe third country and can still avail themselves of that protection', that the country in question is Italy, and evidence in support of that decision is a copy of the person's refugee status document from that country and written confirmation from the relevant country that the grant is still valid)
- consider and address any oral or written representations from the claimant about why they did not claim asylum or - if they did claim or had already been granted asylum or protection - why they did not remain in the country of connection
- name the country to which it is proposed to remove the individual, summarising the conditions of safety in that country as far as they are likely to affect the claimant as a third country national and addressing any high level, generic concerns, including the country being signatory or otherwise complying with the 1951 Refugee Convention, and the effective protection it provides against refoulement
- if detailed representations regarding a serious risk of harm in the country of removal have been made, consider those issues as they will affect the claimant, in line with country information (note that this consideration may be shared by the Third Country Unit with colleagues in the Barrier Casework Team, who will address protection and non-protection human rights claims received)
- if the safe third country of removal is listed in Part 2 of Schedule 3 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004, certify the asylum claim under paragraph 5(1), and where relevant, apply any further certificate under paragraph 5(4) according to considerations undertaken by the Barrier Casework Team
- if the safe third country of removal is any other country not listed in Part 2 of Schedule 3 to the 2004 Act, certify the asylum claim under Part 5 of Schedule 3 (paragraph 17) by certifying that it is proposed to remove the individual to the named country, that the individual is not a citizen there, and that in the view of the Secretary of State, based upon the information available and clearly set out, they will not face a breach of their Refugee Convention rights upon removal there, including not being refouled; where relevant, apply any further certificate under paragraph 19(c) according to considerations undertaken by the Barrier Casework Team.
- serve the decision to the claimant, or their legal representative if applicable
- update CID to record the asylum case type and decision as 'Third Country Case – Definite (Non-Dublin)'

- update CID to record the case outcome of ‘Third Country – Action Accepted’
- note CID, asking support caseworkers to review asylum support eligibility, in view of the inadmissibility decision, any certificates issued and the individual’s particular circumstances
- if the decision will change because of the further representations, respond to the claimant (or legal representatives) to acknowledge receipt of the representations and to explain what has changed in respect of the decision

Human rights claims decisions

Non-protection based human rights claims (for example, Article 8 claims) may be raised, either before or after the asylum claim has been treated as inadmissible. Where such claims are properly made (according to appropriate application processes, or otherwise accepted), they cannot be treated as inadmissible, and must be fully considered by the Barrier Casework Team, according to the relevant guidance and Rules applicable to those claims and representations, including (but not limited to):

- Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR)
- Appendix FM family members
- Long residence

Where appropriate, in inadmissibility cases where the person will be removed to a safe third country, any human rights claim that has been refused should be certified according to the relevant provisions of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

- update CID Notes to record the human rights decision

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Post-decision

Appeals

Where the decision in respect of removal from the UK to a third country gives rise to an appeal right (this will depend on the claims made and decisions made), certification under Schedule 3 will remove or make any appeal rights arising arising, exercisable only from outside the UK on limited grounds.

Further submissions

The further submissions process does not apply to asylum inadmissibility decisions. This is because they are not decisions on the asylum claim itself – they are decisions that the UK is not responsible for substantively considering the claim.

Representations received in respect of the asylum inadmissibility decision should nonetheless be reviewed to establish whether the inadmissibility decision is still appropriate, and to consider in the context of **the human rights decision**.

All representations received on a certified human rights decision, or on a non-certified human rights decision after any in-country appeal rights have been exhausted (or lapsed) but before removal, must be considered according to the Further submissions guidance to establish whether the inadmissibility decision is still appropriate. Paragraph 353 of the Immigration Rules (on which the Further submissions guidance is based) is not applicable to representations made after an individual is outside the UK.

Judicial review

The decisions to declare an asylum claim as inadmissible, to remove an appeal right (in the case of certificates under Schedule 3 of the 2004 Act relating to claimed breaches of the Refugee Convention or claims of a breach of Article 6 of the Human Rights Act for onward refoulement in relation to Part 2 listed countries) or make an appeal right exercisable only from abroad (in the case of other human rights claim in relation to the safe third country of removal certified as clearly unfounded), may be challenged in the UK only through judicial review.

A judicial review lodged in these circumstances is likely to have suspensive effect, which means that the individual must not be removed from the UK until the proceedings have concluded in the Upper Tribunal or the High Court, as the case may be.

To determine whether a judicial review has suspensive effect, the judicial review must be referred to OSCU or Litigation Operations, as appropriate, to consider in accordance with the guidance on Judicial review.

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Background resource: process summary

Registration (also referred to as the asylum screening process)
Establish whether claimants have spent time in or have a connection to safe third countries. Rely in particular on questioning claimants and recording physical and other evidence to establish immigration history and identify any safe countries in which they have spent time or with which they have a connection.

Refer all fully registered cases to NAAU, summarising any evidence relating to third country presence or connection.

Casework referrals
Refer cases to NAAU, if they identify new information relating to a person's presence or connection to a safe third country.

NAAU sift
Consider whether cases appear to fit the inadmissibility criteria in the Immigration Rules. If not suitable for inadmissibility, allocate to substantive decision team; if suitable for inadmissibility, allocate to TCU.

TCU sift
Review all documents and evidence available and consider in detail whether cases are eligible for inadmissibility in principle. Refer back to NAAU if claimant is a UASC, an EU national, prioritisation applies, or if discretion is being exercised. If there may be better prospects of a prompt removal in the event of a substantive refusal decision, refer the case to NAAU, or to the DGK if the person is detained or suitable for detained asylum casework processing (there are likely to be few of these cases). All other cases taken forward for inadmissibility action by TCU.

TCU consideration, returns requests and decision stage
Issue notice of intent.

Seek removal agreement with the relevant third country or countries. If within six months of the date of claim a third country has not agreed to admit the person, the case must be referred to NAAU to be admitted for substantive consideration.

If a country agrees to admit the person, draft and serve the inadmissibility decision, setting out the key facts supporting inadmissibility action. If appropriate, certify the decision. Any HR grounds must be substantively considered and if refused, addressed in a written decision letter, certified as appropriate.

Removal
Arrange and progress the removal, considering enforcement measures where necessary.

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Background resource: paragraphs 327 345A to 345D of the Immigration Rules

Immigration Rule 327

Paragraph 327 of the Immigration Rules sets out the definition of an asylum applicant:

> 327. Under the Rules, an asylum applicant is a person who, in person and at a designated place of asylum claim, either:
>
> (a) makes a request to be recognised as a refugee under the Refugee Convention on the basis that it would be contrary to the United Kingdom's obligations under the Refugee Convention for them to be removed from or required to leave the United Kingdom, or
> (b) otherwise makes a request for international protection. "Application for asylum" shall be construed accordingly.

Immigration Rules 345A-D

Paragraphs 345A to 345D of the Immigration Rules set out the circumstances in which asylum claims may be declared inadmissible to the UK asylum system on the basis of earlier presence in or connection to a safe third country.

The Immigration Rules in respect of third country inadmissibility changed at 23.00 (UK time) on 31 December 2020. They state the following:

> 345A. An asylum application may be treated as inadmissible and not substantively considered if the Secretary of State determines that:
>
> (i) the applicant has been recognised as a refugee in a safe third country and they can still avail themselves of that protection; or
> (ii) the applicant otherwise enjoys sufficient protection in a safe third country, including benefiting from the principle of non-refoulement; or
> (iii) the applicant could enjoy sufficient protection in a safe third country, including benefiting from the principle of non-refoulement because:
> (a) they have already made an application for protection to that country; or
> (b) they could have made an application for protection to that country but did not do so and there were no exceptional circumstances preventing such an application being made, or
> (c) they have a connection to that country, such that it would be reasonable for them to go there to obtain protection.
>
> 345B. A country is a safe third country for a particular applicant, if:
> (i) the applicant's life and liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion in that country;

(ii) the principle of non-refoulement will be respected in that country in accordance with the Refugee Convention;
(iii) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in that country; and
(iv) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention in that country.

345C. When an application is treated as inadmissible, the Secretary of State will attempt to remove the applicant to the safe third country in which they were previously present or to which they have a connection, or to any other safe third country which may agree to their entry."

345D. When an application has been treated as inadmissible and either:

(i) removal to a safe third country within a reasonable period of time is unlikely; or
(ii) upon consideration of a claimant's particular circumstances the Secretary of State determines that removal to a safe third country is inappropriate

the Secretary of State will admit the applicant for consideration of the claim in the UK.

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Background resource: certification

Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 provides certification powers relevant both to decisions to remove following an inadmissible decision and to any decision on a human rights claim made in relation to safe third country of removal.

If treating an asylum claim as inadmissible, removal should be certified under the relevant provisionsThis will mean that any asylum claim or human rights claim made against the safe third country of removal will either have no right of appeal or an appeal will only be exercisable from outside the UK.

A non-protection based human rights claim cannot be ruled as inadmissible. If, after proper consideration a human rights claim is to be refused, consideration must also be given to whether that claim is clearly unfounded, and to certify it as such in accordance with section 94 of the 2002 Act.

Inadmissibility decisions where the third country is an EU state, Iceland, Norway or Switzerland

Part 2 of Schedule 3 (paragraph 3(2)) states that where a person is to be removed to a country of which they are not a citizen and that country is an EU state, Iceland, Norway or Switzerland, it must be treated as a safe country.

The countries are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden and Switzerland.

The decision to remove an individual to a listed state of which they are not a citizen on these grounds of safety may be certified under Part 2 of Schedule 3 (paragraph 5(1)). This certificate applies to any appeal made on the basis that removal to the state would breach the UK's obligations under the Refugee Convention or that removal would breach the Human Rights Act 1998 because of the possibility of onward refoulement from that state. By way of combined effect of paragraphs 5(3) and 6 of Schedule 3 of the 2004 Act the certificate means there is effectively no right of appeal against the decision.

A human rights claim against the country of removal on grounds other than a risk of refoulement from the state of proposed removal (for example, based risk of harm under Article 3 on removal to the country) **must** be certified under paragraph 5(4) as clearly unfounded, unless it is not clearly unfounded. Any appeal would be exercisable only from outside of the UK.

Croatia and Liechtenstein

Part 2 of Schedule 3 cannot be applied to inadmissibility decisions if the proposed removal is to Croatia or Liechtenstein. In such cases, any certification of the asylum

and human rights claims would need to be made, if appropriate, according to the case-by-case certification provisions in Part 5 of Schedule 3.

Inadmissibility decisions involving all other safe third countries

Part 5 of Schedule 3 provides for a state to be treated as safe on a case-by-case basis, in the context of a person who will be removed to that state, where they are not also a citizen. Safe in this part means that when removed to the state in question, the individual would not face a breach of their rights under the Refugee Convention or be removed from that state in breach of their rights under the Refugee Convention.

The decision to remove an individual to a specified state of which they are not a national or citizen on this ground of safety **may** be certified under Part 5 of Schedule 3 (paragraph 17), taking account of the particular facts of the case and provided the general safety of the country in question (including non-refoulement) for third-country nationals can be evidenced by reference to credible objective information. This certificate applies to any appeal made on the basis that removal to the state would breach the UK's obligations under the Refugee Convention. By combined effect of or paragraphs 19(b) and (d) of Schedule 3 of the 2004 Act the certification would effectively mean that no right of appeal could be brought.

A human rights claim **may** also be certified under Part 5 as clearly unfounded (paragraph 19(c)), if the facts support such a conclusion. Again, this would make the appeal exercisable only from outside of the UK.

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