Inadmissibility: EU grants of asylum, first country of asylum and safe third country concepts

Version 4.0

The case types addressed in this instruction are colloquially known as ‘third country cases’
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About this guidance

This guidance details Immigration Rules 345A-D relating to treating certain asylum claims as inadmissible, and the Home Office processes supporting those rules.

This guidance does not address Immigration Rule 345E, relating to inadmissibility under the Dublin III regulation. It also does not address Immigration Rules 326A-F, relating to the inadmissibility of asylum claims made by nationals of the European Union (EU). See Related instructions.

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 4.0
- published for Home Office staff on 01 October 2019

Changes from last version of this guidance

Changes:

- updated to reflect changes made to Immigration Rule 345A in effect from 1 October 2019:
  - discretion now explicitly a part of third country inadmissibility decision-making
  - whilst the UK remains part of the EU only, removal from the scope of Rule 345A(i) cases involving claimants who have been granted subsidiary protection in an EU Member State (thus bringing the Rules in line with EU case law)
  - updated drafting of Rule 345B, to clarify the scope of the Rule

Related content

Contents
Introduction

Audience and purpose of instruction

This instruction is aimed primarily at caseworkers in the Glasgow National Returns Command Third Country Unit (hereafter referred to simply as TCU), and officers in the UK Visas and Immigration Dublin Cessation Team. These caseworkers are the only officers who may make inadmissibility decisions on the cases described in this instruction. The references to TCU should also be read as applying to the Dublin Cessation Team for the purpose of this instruction.

This instruction is also aimed at those responsible for allocating confirmed or potential inadmissibility cases to TCU (those in asylum screening roles, the National Asylum Allocation Unit (NAAU), the Detention Gatekeeper, and asylum casework).

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

**The asylum inadmissibility provisions set out in this instruction do not apply to human rights claims.** Human rights claims must always be fully considered, even if those claims are raised in an asylum claim which will be or has already been treated as inadmissible.

**This instruction does not address Immigration Rule 345E,** where an individual is subject to transfer to another Member State under the Dublin III Regulation. For guidance on such cases, see the instruction Dublin III regulation.

**This instruction also does not address Immigration Rules 326A-F,** which in part relate to applying the inadmissibility concept to asylum claims made by EU nationals (claims from EEA and Swiss nationals will normally be presumed to be clearly unfounded rather than inadmissible). See the instruction EU/EEA asylum claims.

Background

The UK is committed to providing protection to those who need it, in accordance with its international obligations. Those who fear persecution should however claim asylum and stay in the first safe country they reach and not put their lives at risk by making unnecessary and dangerous onwards journeys to the UK. Illegal migration from safe countries undermines our 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.

This policy supports these principles in appropriate cases, by:
• treating asylum claims made in the UK as inadmissible if the claimants have suitable protection in another safe country from where they would not face refoulement (that is, the country would not force the claimant to return to another country where they would be at risk of harm or persecution)
• treating asylum claims made in the UK as inadmissible if the claimant has travelled through or has a connection to another safe country which is not their own, on the basis that the claimant has, or could have lodged their asylum claim there
• progressing to removal stage those who undertake illegal journeys and subvert immigration control, to demonstrate that such action will not lead to entry to, or settlement in, the UK

Related instructions

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

• Country information and guidance
• Screening and routing
• Asylum interviews
• Assessing credibility and refugee status
• Humanitarian protection
• Family leave
• Discretionary leave
• Further submissions
• Rights of appeal
• Ceasing asylum support
• Judicial review

Related content

Contents
Children

The best interests of the child

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK.

Officers must not carry out the actions set out in this instruction in respect of children or those with children without having due regard to the section 55 duty. The statutory guidance, Every child matters - change for children, sets out the key arrangements for safeguarding and promoting the welfare of children as well as key principles to be taken into account.

The statutory duty in respect of children includes the need to demonstrate that:

- children are treated fairly and sensitively
- the child’s best interests are made a primary (although not necessarily the only) consideration when making decisions affecting children
- children should have their applications dealt with in a timely and sensitive fashion as well as minimising any uncertainty which they may face
- those who might be at risk from harm are promptly identified

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

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 the instruction Withdrawing asylum claims (see in particular the section ‘Application of withdrawing asylum claims to children’), the guidance in the instruction Children's asylum claims, and insofar as they are relevant, the general principles regarding removals of children and family unity, as set out in the instruction Dublin III Regulation.

Related content

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Overview

Process overview

Inadmissibility decisions and appeal rights

If an asylum claim fully meets the criteria set out in Immigration Rules 345A to 346D (including readmission to the country being agreed in decisions under rules 345B and 345C), caseworkers may declare the claim inadmissible. Where a case is treated as inadmissible, the asylum claim will not proceed to be substantively considered in the UK asylum system.

Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 sets out provisions enabling inadmissibility decisions to be certified. Depending upon the decision being made, this certification will either completely remove the appeal right against the asylum inadmissibility decision, or make that appeal right exercisable only from outside of the UK. The certification of the inadmissibility decision is not a requirement, but the decision to decline to consider a claim would be undermined if an in-country appeal were to be given.

Human rights claims

Treating an asylum claim as inadmissible does not remove the need to address any human rights grounds.

Human rights grounds must be properly considered and addressed in every case, whether the grounds are raised before or after the asylum inadmissibility decision. If a decision is made to refuse any human rights claim, consideration must also be given to whether that claim is clearly unfounded, and if it is, to apply the relevant provisions of Schedule 3 to the 2004 Act to certify it as such in the written decision letter. This certification will make the human rights appeal exercisable only from abroad, and on limited grounds.

Removal

If the asylum inadmissibility decision and any human rights claim are certified, the claimant will not have any in-country appeal rights and can from that point be removed from the UK to the relevant country (subject to any judicial review challenge against the inadmissibility or certification decisions, upon which removal will usually be suspended). See the subsequent sections in this instruction, and particularly the process summaries at Decisions (asylum and human rights).

Asylum support

When a decision is made to treat an asylum claim as inadmissible, consideration must be given to discontinuing asylum support. Such action must only be taken if it is appropriate according to the particular facts of the case.
Discontinuation of support will not be appropriate in any case if:

- the individual has an unconcluded in-country right of appeal against the refusal of a human rights claim
- if the individual has an unconcluded suspensive judicial review challenge against the certification of their human rights claim under Article 3 or
- the individual cannot be removed for reasons outside their control and would be destitute without support)

See the Ceasing asylum support instruction.

**Timescales**

There are no deadlines applicable to inadmissibility action under Immigration Rules 345A to 345D (in contrast to Dublin Regulation cases, which operate to strict timescales). However, it is important that inadmissibility action is undertaken promptly in all appropriate cases, to maximise removal prospects - the longer it takes to action an inadmissibility decision, the less likely it is that a third country will accept responsibility for an individual.

Although there are no policy deadlines in respect of inadmissibility decisions, specific time limits may be applied by particular countries in respect of action to admit third country nationals. This reinforces the need for all officers to act promptly in all cases to identify, refer and process appropriate cases.

**Fair asylum procedures**

The asylum process rests on an overriding principle of fairness. As a general rule, caseworkers must apply reasonable flexibility in all of their considerations and actions when processing asylum claims whenever it is necessary to ensure fairness. For instance, if an individual has a disability or health issue which impedes their ability to promptly or fully make representations in respect of an inadmissibility decision, it may be appropriate for caseworkers to take the disability or health issue into account in the timing of the representations, or to respond to the claimant asking for additional information.

As each case is assessed on its individual merits, the appropriate flexibility response will be determined by the particular issues arising in each individual case.

See [Discretion](#).

**Related content**

[Contents](#)
Registration, allocation and referral of the asylum claim

Only caseworkers in TCU may take inadmissibility action on the cases addressed in this instruction. However, officers in other units will be responsible for receiving asylum claims, identifying confirmed or prospective inadmissibility cases and referring those cases to TCU for action.

Registration of all asylum claims

Screening officers must register all asylum claims, even if inadmissibility processes may or will be used in the case (see the Screening and routing instruction for more information about screening). Inadmissibility means that a case will not be admitted to the substantive asylum consideration process, not that the claim will not be registered.

Registration enables the claim to be acknowledged and recorded on Home Office systems. It also ensures that the claimant can access the services and support to which they are eligible whilst inadmissibility is considered. Registration also ensures that the UK is compliant with its obligations under EU Directives, and allows the transmission of fingerprints to the Eurodac system.

During the screening process, screening officers must be 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.

Screening officers must therefore check passports and visa records (where available) for travel history, as well as being mindful of any other documents provided by a claimant, which could include (but is not limited to) legal papers, employment letters, bank statements, business cards, invoices, receipts and other similar documents, which might provide evidence of time previously spent in another country or of significant connection to it, relevant to inadmissibility considerations.

National Asylum Allocation Unit allocation of cases

The National Asylum Allocation Unit (NAAU) must receive and allocate cases to casework teams according to normal procedures. However, if inadmissibility action appears highly likely (such as with a port claimant arriving with refugee status documentation from an EU country), NAAU must refer the case to TCU without delay to see if it has interest in the case. If NAAU officers are unsure if a case is a prospect for inadmissibility action, they should discuss the case with TCU officers.
Casework referral of cases

If a case is allocated as a substantive decision case but the asylum caseworker later suspects that inadmissibility action may be appropriate (after having reviewed this instruction), the caseworker must refer the case to the TCU inadmissibility inbox.

Inadmissibility action may be taken without substantively interviewing an asylum claimant, although if they have been interviewed, that does not preclude an inadmissibility decision. Indeed, in some instances, the suitability of a case for inadmissibility action may be identified only through interview evidence.

If a substantive asylum decision has been served, the claim cannot be treated as inadmissible. Such a case must proceed within the substantive asylum process.

Related content

Contents
Background: Immigration Rules

The Immigration Rules set out below and explained throughout this instruction apply only whilst the Dublin III Regulation applies to the United Kingdom. Where the Dublin III Regulation no longer applies to the United Kingdom, some different provisions in the Rules will come into effect and will be accompanied by revised guidance explaining their use.

The Immigration Rules set out circumstances in which asylum claims may be declared inadmissible for substantive consideration in the UK asylum system; these are because the claimant has been recognised as a refugee in, has travelled through or has a connection to another safe country (rules 345A(i), 345B and 345C, respectively).

Treating an asylum claim as inadmissible does not remove the need to properly consider any human rights grounds that are advanced, either before or after the asylum inadmissibility decision (for instance, under Article 3, in relation to the risk on removal from the UK, or under Article 8, in relation to other factors such as family or private life).

Rule 345A: introduction

Rule 345A enables claims meeting the conditions set out at 345A(i) to 345D to be declared inadmissible.

Rule 345A(i): EU grant cases

Asylum claims made in the UK by people who already enjoy refugee status in another EU Member State may be declared inadmissible.

Paragraph 345A of the Immigration Rules states:

“345A. Whilst the United Kingdom is a member of the European Union or otherwise remains subject to the Dublin Regulation, an asylum claim may be declared inadmissible and not substantively considered if the Secretary of State determines that one of the following conditions are met:

(i) another Member State has granted refugee status;”

Rule 345A(i) does not formally require the Member State of proposed removal to agree to admit the claimant. This contrasts with decisions under paragraphs 345B and 345C of the Immigration Rules, which explicitly require the claimant to be admissible to the third country. However, in practical terms, the requirement for readmission is implicit, because without it, the claimant could be both unable to obtain protection in the UK and also unable to re-avail themselves of protection in the Member State, which is an unacceptable position in which to put them.
A transfer under rule 345A(i) would take place outside of the Dublin Regulation, therefore the Dublin timescales do not apply.

Inadmissibility action under Rule 345A(i) cannot presently be taken in respect of those granted subsidiary protection in another EU Member State. The Rule can apply only to those claimants who have been granted refugee status by another Member State. This limitation arises because of the Court of Justice of the European Union’s judgment in March 2019 in the joined cases of C-297/17, C-318/17, C-319/17 and C-438/17, on the interpretation of Article 25(2)(a) of the 2005 Asylum Procedures Directive, from which paragraph 345 is derived.

Rule 345B: first country of asylum concept

The first country of asylum concept enables inadmissibility decisions to be made in respect of those who have already been recognised as refugees or given similar protection in third countries, or those who have applied for or have had the opportunity to apply for international protection in the first country of asylum and would enjoy sufficient protection in that country.

The first country of asylum concept under Immigration Rule 345B only applies to countries outside of the EU. If there is evidence of a previous presence in a Dublin Regulation Member State as an asylum seeker, legal presence (such as holding a visa or residence permit), irregular entry into the EU across an external border or a lengthy period of illegal stay, see the Dublin III Regulation instruction.

Rule 345B states:

"A country is a first country of asylum, for a particular applicant, if:

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

and

(iv) the applicant will be readmitted to that country."

The first country of asylum concept also applies to those granted a form of protection that is not refugee status but also includes the principal of non-refoulement - for example, humanitarian protection in the UK and its equivalent in EU states,
subsidiary protection; non-EU states (to which this rule applies) may apply equivalent types of protection under different names.

If the individual has not been granted protection, they may nonetheless be removable to the country provided the claimant will enjoy sufficiency of protection in that country. In general, it is expected that sufficiency of protection will be available if the country has an organised and functioning asylum system, if it could be expected to make a valid decision regarding protection status in reasonable timescales, and if it applies the principle of non-refoulement.

**Rule 345C: safe third country concept (and connectivity under rule 345D)**

The safe third country concept is about whether, based on an individual’s connection with a safe third country, it is reasonable to transfer them there. There is no requirement for the claimant to have travelled through the country on their way to the UK (although such a case might demonstrate a level of connectivity under rule 345D(i)). There may be more than one safe third country to be considered in a case.

The safe third country concept under Immigration Rule 345C only applies to countries outside of the EU. If there is evidence of presence as an asylum seeker in a Dublin Regulation Member State, action under the Dublin III Regulation may be possible.

Rule 345C states:

“A country [which cannot be an EU Member State] 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;

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;

v) there is a sufficient degree of connection between the person seeking asylum and that country on the basis of which it would be reasonable for them to go there; and

vi) the applicant will be admitted to that country.”

Protection and the principle of non-refoulement in accordance with the Refugee Convention means in accordance with the principles of the 1951 Refugee Convention, regardless of whether a country is a signatory to it.
Rule 345C relies on the concept of connectivity set out in rule 345D, which states:

“In order to determine whether it is reasonable for an individual to be removed to a safe third country in accordance with paragraph 345C(v), the Secretary of State may have regard to, but is not limited to:

i) any time the applicant has spent in the third country;
ii) any relationship with persons in the third country which may include:
   a. nationals of the third country;
   b. non-citizens who are habitually resident in the third country;
   c. family members seeking status in the third country;
iii) family lineage, regardless of whether close family are present in the third country; or
iv) any cultural or ethnic connections.”

These criteria are not exhaustive, and there may be other factors that demonstrate a level of connectivity (alone or in combination with other evidence and considerations), including employment connections, such as current employment or a confirmed job offer, having funds or owning property in a safe third country.

When considering a claimant’s time spent in a safe third country, it will be relevant to consider not only the duration of that residence, but also the basis on which the individual was there (for example, was the type of stay on a working visa, or as a family member) and other circumstances relevant to the stay.

Rule 345D(iv) refers to cultural or ethnic connections. Speaking a common language or being of the same ethnic group found in another country cannot in itself demonstrate a reasonable degree of connectivity there, but these factors, in conjunction with others, such as previous presence in a country or having family there, will strengthen a decision that removal to that country is reasonable.

If there is no connectivity with a country, it will not be reasonable to declare the asylum claim inadmissible under rule 345C. Where there is connectivity, it needs to be sufficient for rule 345D to apply (with the question of sufficiency determined according to the particular facts of the case).

Connectivity itself is only part of the safe third country concept – even if there is connectivity, the other requirements of rule 345C must also be satisfied.

Related content

Contents
Background: certification

Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 provides certification powers relevant both to decisions to treat an asylum claim as inadmissible and to the decision on a human rights claim.

If treating an asylum claim as inadmissible, the appeal rights should be certified under the relevant provisions, to make the appeal right exercisable only from outside of the UK. This is not a legal requirement, but the decision to decline to consider a claim would be undermined if an in-country appeal were to be given.

Any human rights grounds must be properly considered – a human rights claim cannot be ruled as inadmissible. If a decision is made to refuse a human rights claim, consideration must also be given to whether that claim is clearly unfounded, and to certify it as such in the written decision letter.

Claims determined to be inadmissible under Immigration Rule 345A(i) (EU grant cases)

Part 2 of Schedule 3 is relevant to decisions made under rule 345A(i) (although it has wider application outside of this instruction). It lists countries which must be treated as safe in the context of a person who will be removed to one of those countries, where they are not also a citizen. Safe in this part of the 2004 Act means that if 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 Human Rights Act 1998.

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 refoulement from that state. The certificate makes any such appeal exercisable only from outside of the UK, and on very limited grounds.

A human rights claim on grounds other than a risk of refoulement from the state of proposed removal (for example, based on family life under Article 8 or 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. Again, any appeal would be exercisable only from outside of the UK and on very limited grounds.
Croatia and Liechtenstein

Part 2 of Schedule 3 cannot be applied to inadmissibility decisions under rule 345A(i) if the proposed removal is to Croatia or Liechtenstein. This is because Croatia was not added to the Part 2 list after its accession to the EU and Liechtenstein was not added after it started to apply the terms of the Dublin Regulation to determine responsibility for examining asylum claims (Iceland, Norway and Switzerland, listed at Part 2 of Schedule 3 also apply the Dublin Regulation to determine responsibility for examining asylum claims). Consequently, 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.

Claims determined to be inadmissible under Immigration Rules 345B and 345C (first country of asylum cases and safe third country cases)

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 1951 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 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.

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.

Any appeal made from outside the UK in respect of a decision under Part 5 of Schedule 3 may be made only on very limited grounds.

Related content

Contents
Consideration: preliminary issues

Identifying the country for removal

Caseworkers must consider all reliable evidence available to ascertain the existence of a suitable country for inadmissibility action. This may be an EU or non-EU country, depending on the facts of the case and the particular inadmissibility rule being applied.

Evidence which may indicate a relevant association with an EU Member State, first country of asylum or safe third country includes (but is not limited to):

- information received directly from another country (including EU Member States)
- a refugee grant letter from a national authority/UNHCR
- documents issued by central or local government or official bodies (this may include identity cards, travel documents, visas or passport stamps, driving licences, police reports and summons)
- financial statements or receipts
- fingerprint matches from another country (for instance, through the biometric data-sharing process with the USA, Australia, Canada and New Zealand)
- letters from family in another country
- oral statements claiming to have status in, to have travelled through or to have another relevant association with another country

Eurodac

Whilst the UK remains subject to the Dublin III Regulation, the Eurodac database may also be used to identify individuals who have been fingerprinted in EU Member States.

Official – sensitive: Start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: End of section

When considering inadmissibility action, TCU caseworkers must establish the evidence required by the relevant country for admission of individuals in the situation of the claimant, who are neither nationals or citizens. If a piece of evidence is unlikely to carry weight with the prospective country of removal, it should not be given weight by caseworkers in the first instance.
It may be possible in some instances to contact countries for further information to confirm a claimed association. TCU caseworkers must consider whether such action is proportionate (which is to say possible, straightforward and likely to be material to the inadmissibility decision and removal).

TCU caseworkers must exercise great caution in making enquiries with any prospective country of removal (including countries generally regarded as safe, such as EU Member States), especially if the claimant fears persecution there, in which case information must not be disclosed to indicate either the fact of a UK asylum claim being made or its substance (see rule 339IA of the Immigration Rules for details).

**Admission to the Member State, first country of asylum or safe third country**

An explicit legal requirement of the first country of asylum (rule 345B) and safe third country concepts (rule 345C) is that the claimant will be admitted to the country.

Admission is also a practical requirement for inadmissibility decisions based on the claimant having protection in another Member State (345A(i)), since without admission being possible, the claimant will neither be able to access the UK asylum system nor their rights in the Member State in which they were granted protection.

Unless there are specific agreements in place with a country, removing a third country national there must be attempted on a case-by-case basis. Each case must be looked at on its own facts.

**Discretion**

Caseworkers have the discretion to accept the asylum claim and decide the claim substantively. A claim should only be considered substantively if there is evidence of exceptional compassionate circumstances, or there are other compelling reasons why inadmissibility action is not appropriate.

Any decision to exercise discretion and not take inadmissibility action in a case must be properly reasoned and documented by caseworkers in CID Notes.

**Related content**

[Contents](#)
Decisions (asylum and human rights)

The actions and considerations set out below must be applied in all asylum cases where it is decided to pursue inadmissibility action.

Human rights claims may also be raised, either before or after the asylum claim has been treated as inadmissible. They must, where raised, be properly considered, and only where appropriate, be rejected and certified as clearly unfounded.

Asylum claims

Caseworkers must, having read and understood the background in previous sections of this instruction, take the following actions:

All decisions:

- **do not** undertake inadmissibility action under rules 345A(i) to 345C if action is being taken, or is likely to be taken, under the Dublin III Regulation (Rule 345E)

- consider Immigration Rules 345A(i) to 345C to establish, on the basis of all information held about the claimant, whether it is appropriate to take an inadmissibility decision on the asylum claim, and if so, on what basis

- if a case would at face value be treated as inadmissible but there exist practical or discretionary factors such that accepting the claim for substantive consideration is appropriate, the reasons for that conclusion must be properly documented in CID Notes, and the case forwarded to the National Asylum Allocation Unit (NAAU) for allocation

- if proceeding with inadmissibility action, use template IS.226 to record and notify the asylum inadmissibility decision

- ensure that the decision letter fully and clearly explains the evidence considered and the reasons for the decision that has been made, according to the steps below

- name the country to which it is proposed to remove the individual

- specify which inadmissibility concept applies (345A(i) – Another Member State has granted asylum; 345B – First Country of Asylum; or 345C – Safe Third Country)

- set out the individual’s connection to the country of proposed removal, giving a detailed explanation of how the relevant requirements of the particular inadmissibility category apply
• if the inadmissibility concept is reliant in the case on protection having been granted elsewhere (all 345A(i) cases; some 345B cases), clearly specify whether the grant was of refugee status or some other sufficient protection

• in the case of rule 345C decisions, provide clear detail regarding the individual's connection to the safe third country in terms of the sufficient degree of connectivity requirements of rule 345D to determine whether it is reasonable for an individual to be removed, supported by appropriate evidence explaining the reasons why an inadmissibility decision has been made

• detail the admissibility of the claimant to the country (for instance, by reference to case-by-case admissibility, or bilateral or multilateral agreements which will in practice be effective in securing admission)

Rule 345A(i) decisions only:

• confirm the inadmissibility of the asylum decision

• certify the asylum claim under Part 2 of Schedule 3 (paragraph 5(1) and 5(3)), by certifying that the country of proposed removal is one of the countries listed in Part 2 of Schedule 3 and certifying that the individual is not a citizen of that country

Rule 345B and 345C decisions only (noting that the rules have different requirements and are not the same):

• address the risk of removing the claimant to the third country by referring to high quality objective information, clearly setting out the conditions of safety in that country as far as they are likely to affect the claimant as a third country national, including the protection against refoulement

• confirm the inadmissibility of the asylum decision

• 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

345C decisions only:

• set out the evidence demonstrating that 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

All decisions:
• obtain ‘second pair of eyes’ review and clearance for the decision by a technical specialist or senior caseworker (for 345B and 345C decisions, clearance must be at no less than SEO level)

• 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’

• consider whether to discontinue support in view of the decision, any certificates issued and the individual’s particular circumstances - see the Ceasing asylum support instruction

• consider any further representations received between the service of decision and any in-country appeal (that is, any letters or other documentation relating to the claim or its handling, not to be confused with the formal process of further submissions considered under Immigration Rule 353), to establish whether inadmissibility action and certification of the decisions remains appropriate

• if the individual has lodged an in-country appeal but the decision is unaffected by the further representations, respond to the claimant to acknowledge receipt of the representations, but explain that the decision is to be maintained

• if new evidence comes to light during any in-country appeal process such that the initial decision needs to be reconsidered, if there is a realistic prospect that the decision will be different, presenting officers must refer to and apply the Withdrawing decisions and conceding appeals guidance

• 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

Caseworkers must, having read and understood the background in previous sections of this instruction, take the following actions in respect of any human rights claim:

All decisions:

• fully consider any human rights claim made implicitly or explicitly

• where appropriate, grant leave according to the specifics of the claim and grounds advanced (see all relevant guidance, but in particular: Humanitarian protection, Family leave and Discretionary leave)

• if it is right to refuse any human rights claim, use template ICD.1100 to record and notify the decision, according to the steps below
• ensure that the decision fully and clearly explains the evidence considered and the reasons for the decision that has been made

Rule 345A(i) asylum inadmissibility decision already made or being made in respect of removal to the EU, Iceland, Norway or Switzerland:

• certify any human rights claim that relates to the risk of refoulement from the proposed country of removal under Part 2 of Schedule 3 (paragraph 5(1) and 5(3)), by certifying that the country of proposed removal is one of the countries listed in Part 2 of Schedule 3 and certifying that the individual is not a citizen of that country

• consider and address any human rights claim made other than on the basis of refoulement (for instance, allegations about the risk of inhuman or degrading treatment under Article 3 owing to the living conditions in the country of removal, or a family life claim under Article 8)

• if the human rights claim made other than on the basis of refoulement from the country of proposed removal is to be refused, if appropriate, certify the claim as clearly unfounded under Part 2 of Schedule 3 (paragraph 5(4)), unless an assessment of the individual facts of the case shows that the claim is not clearly unfounded

Rule 345B and 345C decision already made or being made in respect of removal to any other country:

• address the human rights claim, including any protection issues regarding the country of removal and the risk of refoulement with specific reference to objective information regarding the conditions of removal

• address any other relevant grounds

• if the totality of the human rights claim is clearly unfounded, certify it accordingly, using Part 5 of Schedule 3 (paragraph 19(c))

All decisions:

• update CID Notes to record the human rights decision

Related content
Contents
Post-decision

Appeals

Certification under Schedule 3 of an asylum inadmissibility decision will, depending upon the facts of the decision and certificate, either completely remove the appeal right in respect of the asylum decision, or make it exercisable only from outside the UK.

Human rights claim refusals will always carry a right of appeal. However, where those appeals are certified as clearly unfounded under the relevant provisions in Schedule 3, the appeals will be exercisable only from outside of the UK, and may be exercisable only on very restricted grounds. The specifics will depend upon the particular decision and certificates applied.

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.

Paragraph 353 of the Immigration Rules (on which the Further submissions guidance is based) is not applicable to representations made after an individual leaves the UK.

Judicial review

The decisions to declare an asylum claim as inadmissible, to remove an appeal right (in the case of asylum inadmissibility decision certificates) or make an appeal right exercisable only from abroad (in the case of a human rights claim 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.

For further information see the guidance on judicial review.

Related content
Case examples

Below are some examples of simple hypothetical casework scenarios to illustrate to caseworkers the circumstances in which inadmissibility decisions may and may not be appropriate.

These examples are not prescriptive and they are not exhaustive. They make general assumptions about some requirements of the Rules being satisfied and about there being few complications in the cases. In practice, there will be other situations where inadmissibility is appropriate, or where there are factors weighing against inadmissibility action.

It is vital that every live decision is examined carefully, according to the individual facts of the case and the full requirements of the Immigration Rules and this policy, to determine whether inadmissibility action and removal to another country is appropriate. This consideration and the evidence supporting it must be properly set out in each case.

Example 1

Scenario: information received from an EU Member State shows that an asylum claimant has already claimed asylum in that country and has been granted asylum there.

Inadmissibility action: on the information presented in the scenario, an asylum grant decision has been made in the Member State, and so the individual cannot be returned there under the Dublin Regulation. However, an inadmissibility decision under rule 345A(i) would appear to be appropriate.

The decision under 345A(i) does not require the Member State to agree to admit the claimant, but if there is no likelihood of admission, consideration should be given to the appropriateness of the inadmissibility decision.

Example 2

Scenario: biometric checks under the Biometric data-sharing process reveal that a claimant has been recognised as a refugee in a biometric data-sharing process partner country. A careful examination of up to date objective evidence shows the country to be safe and there to be no risk of refoulement for refugees.

Inadmissibility action: on the information presented in the scenario, it would be appropriate to regard the partner country as a first country of asylum, and consider an inadmissibility decision under rule 345B. However, an explicit condition of rule 345B is that the country must agree to admit the claimant. If there is such an acceptance, an inadmissibility decision can be made.

If inadmissibility action is not possible, full attention must nonetheless be paid to the identity and transaction details of the biometric match, as they may be valuable to decision making and – where a refusal is appropriate – to redocumentation.

**Example 3**

Scenario: a claimant is found to have a properly issued passport with a valid residence permit, and stamps showing repeated regular entry in recent years to a country (non-EU) which is not their country of origin. A careful examination of up to date objective evidence shows the country to be safe, to have an effective asylum system, and there to be no risk of refoulement for asylum claimants. The claimant has in their possession some bank statements which show them receiving income in the country from property investments.

Inadmissibility action: on the information presented in the scenario, the individual is familiar with the country, and has financial ties and financial means there. This appears to show a sufficient degree of connection between the individual and the country in terms of rule 345C(v) and 345D, and it would accordingly be reasonable for them to go there. Subject to the other requirements of rule 345C being satisfied (including the country agreeing to the claimant’s admission, and the claimant being safe in that country), an inadmissibility decision under rule 345C appears to be appropriate.

**Example 4**

Scenario: a claimant discloses that they have a minor child, with whom they have lived until recently separated. They have discovered that the child is now living in a third country (non-EU). Enquiries with the third country confirm that the child is there and has been recognised by the country as a refugee. The country confirms that it has no concerns regarding the claimant being an unsuitable parent or in any way a danger to the child, and is willing to admit the claimant and consider their asylum claim and any other claim relating to their child’s status in the country. A careful review of the country information shows the country to be safe, have an effective asylum system, and there to be no risk of refoulement to asylum claimants or refugees.

Inadmissibility action: on the information presented in the scenario, the individual has a connection with a safe third country. Although the individual has not spent time in the third country themselves, they have a strong connection to it through their relationship with their child, which appears to be extant. Reuniting the claimant and child appears to be in the interests of the child. The third country has agreed to admit them, and the evidence shows the country to be one which respects refugee rights, and so an inadmissibility decision under rule 345C (with sufficient connectivity under rule 345D) appears to be appropriate.

**Example 5**
Scenario: an asylum claimant from country X is of the same ethnicity and speaks the same language as the majority population of neighbouring country Y (non-EU). Country Y is shown by objective information to be safe, and has an effective, functioning asylum system, with no risk of refoulement for asylum claimants or refugees.

Inadmissibility action: on the information presented in the scenario, it would not be appropriate to treat this claim as inadmissible under rule 345C. Although the claimant has a connection with the safe third country in terms of their language and ethnicity, these factors alone are not sufficient under the terms of rule 345D such as to make it reasonable for the individual to return there, despite the country agreeing to admit the person.

Example 6

Scenario: an individual claims asylum at the Asylum Intake Unit. Their passport shows them to have travelled to the UK having been in another country (non-EU). When questioned during screening, the individual claims to have spent 2 weeks in the country trying to arrange their onward journey to the UK. The other country is shown by objective information to be safe, and has a functioning asylum system, with no risk of refoulement for asylum claimants generally. The decision maker is satisfied that the individual would enjoy sufficient protection were they to be readmitted. That country is approached by the Home Office, but does not agree to admit the claimant.

Inadmissibility action: on the information presented in the scenario, the case would appear to be a good prospect for an inadmissibility decision under Rule 345B. However, an explicit requirement of rule 345B (and 345C) is that the first country of asylum must agree to readmit the claimant. As there is no such agreement, an inadmissibility decision cannot be made under rule 345B.

Related content

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