



Home Office

# Dublin III Regulation

Version 4.0

Transferring asylum claimants into and out of the UK where responsibility for examining an asylum claim lies with the UK or with another EU Member State or Associated State.

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# About this guidance

This guidance tells you about the operation of the [Dublin Regulation](#) when determining the State responsible for examining an asylum claim and then either transferring an asylum claimant from the UK to another European State (for the purpose of the guidance, referred hereafter as a Dublin State or Dublin States) or accepting that the claimant should have his or her claim examined in the UK.

The instruction provides you with guidance on the Dublin III Regulation's rules for referral, consideration of responsibility and the transfer process to the responsible State. It also tells you about our policy when making a request to another Dublin State or when another Dublin State makes a formal request to the UK to take responsibility for an asylum claimant who is in that State under the terms of the Dublin III Regulation.

## Contacts

If you have any questions about the guidance and your line manager 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 **14 August 2020**

## Changes from last version of this guidance

- Updated guidance on Article 13.2 of Dublin Regulations.
- Updated guidance on working with local authorities.
- Updated information on timescales under Dublin Regulations

### Related content

[Contents](#)

# Introduction

## Purpose of instruction

This guidance explains how you identify and process potential claims for transfer out of the UK to another State to which the Dublin III Regulation applies.

It also explains the processes involved when a request is made by another State for the UK to accept responsibility for considering an asylum claim under the Dublin III Regulation.

## Background

The [Dublin Regulation \(EU\) No.604/2013](#) ('Dublin III') is EU legislation that establishes the criteria and mechanisms for determining which single State is responsible for examining an application for international protection (an asylum claim). It aims to prevent both 'asylum shopping', where an individual moves between States to seek the most attractive regime of protection, and the phenomenon of 'refugees in orbit' where no single State permits access to an asylum procedure. It reflects the principle that those seeking international protection should seek asylum in the first safe country they reach.

Lodging an asylum claim at the earliest opportunity upon arrival in the territory of the Dublin States enables an individual to provide information to the asylum authorities in that first State on family ties to other Dublin State(s). This information may be relevant to the determination of responsibility for examining the asylum claim.

In order to identify a single State that is responsible for examining the asylum claim, the Dublin III Regulation uses a number of specific criteria listed in descending order of importance to identify the responsible State, enabling the transfer of an asylum applicant once responsibility has been accepted. Where no responsible Dublin State can be designated on the basis of the criteria in the Dublin III Regulation the first State in which the asylum claim is lodged shall be responsible.

The Dublin III Regulation is consistent with the principle of family unity in accordance with the European Convention for the Protection of Human Rights, the Charter of Fundamental Rights and the best interests of the child. The provisions on family unity and the best interests of the child are primary considerations which may result in the State responsible for examining the asylum claim being the State where an asylum claimant's family members or relatives, as defined in the Dublin III Regulation, are legally present or resident (depending on the circumstances of the case). The determination of responsibility for examining an asylum claim based on family links does not anticipate the outcome of the examination of the claim, only that the merits of that claim will be examined by the responsible Dublin State.

The criteria determining responsibility also reflect the basic principle that the State which played the greatest part in the applicant's presence in the area to which the

Dublin III Regulation applies should normally be responsible for examining his or her asylum claim.

The Dublin III Regulation gives Dublin States discretion to derogate from the responsibility criteria. It does so through the 'discretionary clauses', which permit a Dublin State to examine an asylum claim lodged with it, or when asked to do so by another Dublin State, even if such examination is not its responsibility under the Regulation's responsibility criteria. A Dublin State may ask another Dublin State to accept responsibility for an asylum claim to bring together family relations on humanitarian grounds based in particular on family or cultural considerations in cases where the strict application of the Regulation would keep them apart.

The Dublin III Regulation provides in Article 3(2) that where it is impossible to transfer an applicant (claimant) to the State primarily designated as responsible for determining the claim for asylum because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that State, resulting in a risk of inhuman or degrading treatment, the determining State shall continue to examine the criteria in order to establish whether another State can be designated as responsible. If no other State is responsible the Dublin State which is carrying out the determination process ('the determining State') shall become the responsible State. This provision reflects case law from the Court of Justice of the European Union (CJEU) in [NS and others C-411/10](#) (21 December 2011) regarding the earlier Dublin II Regulation (EC) No. 343/2003.

The operation of the Dublin III Regulation is supported by the Eurodac fingerprint system that allows fingerprints to be transmitted, stored and cross-checked. The Eurodac system, including the fingerprint database, is governed by the [Eurodac II Regulation \(EU\) No.603/2013](#) on the establishment of Eurodac for the comparison of fingerprints.

Eurodac provides results on a 'hit' (match) or 'no hit' (no match) basis to see whether someone has already lodged an asylum claim in a Dublin State or if they have first entered into territory, covered by the Dublin and Eurodac Regulations, illegally in a Dublin State and then moved on to another Dublin State to claim asylum.

## Policy intention

The policy intention is to deliver a fair and effective Dublin III Regulation transfer process both into and out of the UK, which supports the principles enshrined within the Dublin III Regulation by:

- applying its criteria and mechanisms so that an asylum claim is examined by a single responsible State
- reinforcing the principle that asylum seekers should claim in the first safe country and as soon as they enter the territory of the Dublin States
- ensuring fair, objective criteria are applied in the determination of responsibility for examining asylum claims
- ensuring consideration of the principles of family unity in respect of determining the Dublin State responsible for examining an asylum claim

- ensuring respect for family life and the best interest of a child are a primary consideration when applying the Dublin III Regulation
- respecting the existence of a relationship of dependency between an applicant and his or her child, sibling or parent (or vice versa) on account of the applicant's pregnancy, a new born child, serious illness, severe disability or old age
- allowing for derogation from the responsibility criteria, on humanitarian grounds, in order to bring together family relations and examine a claim for international protection, even if such examination is not the responsibility under the binding criteria laid down in the Dublin III Regulation
- ensuring that the fundamental human rights of those who are subject to the Dublin III Regulation procedures are not breached
- ensuring cases are dealt with as expeditiously as possible, particularly in cases involving unaccompanied children

## Application in respect of children

[Section 55 of the Borders, Citizenship and Immigration Act 2009](#) requires the Secretary of State to make arrangements for ensuring that immigration, asylum and nationality functions are discharged having regard to the need to safeguard and promote the welfare of children who are in the UK.

Although section 55 does not apply to children outside the UK the statutory guidance, [Every Child Matters: Change for Children](#), clarifies the approach to be taken by requiring staff to take into account the spirit of the duty and to abide by any international or local agreements that are in place. The application of the spirit of the duty means that when a claim or request has been received that requires a response you must be alert to any indications that the child may be in need of assistance, support or protection from harm that may be best provided by the authorities in the country where the child is present. If this is the case and wherever possible the normal providers of relevant services to children in that country should be informed where there are safeguarding or welfare needs that require attention.

The requirement to abide by any international or local agreements in place means just that. When considering a 'take charge' request under the Dublin III Regulation, the presumption must be that those making the request are doing so having taken into account the safety and welfare needs, and well-being in the form of best interests of the child who is the subject of the request. However, acting in a way that takes account of these interests is a shared responsibility at this point and you must carefully consider all of the information and evidence provided as to how a child will be affected by a decision and this must be addressed when assessing whether an applicant meets the criteria in the Dublin III Regulation. In addition, you must demonstrate that all relevant information and evidence provided about the best interests of a child, such as a sibling or other relative, in the UK have been considered. This is required as a particular obligation under section 55 as well as by the more general provisions of the Dublin III Regulation. You must carefully assess the quality of any evidence provided. Original documentary evidence from official or independent sources must be given more weight in the decision-making process than unsubstantiated statements about a child's best interests.

For more information on the key principles to take into account, see:

- Section 55 Children's Duty Guidance
- [Every Child Matters: Change for Children](#)
- [United Nations Convention on the Rights of the Child](#)
- [Victims of human trafficking – guidance for frontline staff](#) (where appropriate)
- Family Tracing Guidance
- Processing children's asylum claims

## Training for Home Office staff dealing with children

The Home Office takes its responsibility towards children very seriously. All staff dealing with asylum claims from children must have completed the following training:

- Keeping Children Safe – e-learning
- Keeping Children Safe and asylum claim specific (for staff required to interview children)

### Related content

[Contents](#)

# Relevant legislation and legal framework

This page tells you about the relevant legislation and legal framework.

## Refugee Convention

The [1951 United Nations Convention relating to the Status of Refugees](#) and the [1967 Protocol](#) (the 'Refugee Convention') are the primary sources of the framework for international refugee protection.

## The Dublin III Regulation

The Dublin Regulation (EU) No.604/2013 is an EU Regulation that determines the State responsible for deciding an asylum claim lodged in an EU Member State, Iceland, Norway, Switzerland or Liechtenstein.

The current Dublin III Regulation was adopted in June 2013 as Regulation (EU) No.604/2013 and is known as the Dublin III Regulation or 'Dublin III'. This reflects that it is the third version of the rules to determine a single responsible State that has been agreed and implemented by European States since 1990 (when the original instrument known as the Dublin Convention was agreed). Additional rules on the practical implementation of the Dublin III Regulation are set out in [Commission Implementing Regulation \(EC\) No 1560/2003](#), as amended by [Commission Implementing Regulation \(EU\) No. 118/2014](#). Subject to transitional provisions, the Dublin III Regulation has applied to asylum claims and requests made between Dublin States from 1 January 2014.

If you encounter a **legacy case** where responsibility was determined and transfer to another State agreed with reference to the terms of the earlier Dublin II Regulation, for example the individual absconded before transfer or transfer was prevented by a suspensive legal challenge, the case should be continued under the terms of Dublin II. You must establish the case history, in particular any information on the whereabouts of the applicant and their personal circumstances, and then seek immediate advice from senior caseworkers in the Third Country Unit (TCU) within UK Immigration Enforcement (IE).

## The Dublin States

In addition to the UK, the Dublin III Regulation applies to the Member States of the European Union: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

It also applies to the 'Associated States' who have concluded agreements with the EU to apply its terms: Iceland, Norway, Switzerland and Liechtenstein.

Any national of a Dublin State who claims asylum in another participating Dublin State **cannot** be considered under the arrangements to determine responsibility for examining the claim set out in the Dublin III Regulation.

Similarly, fingerprints of Dublin State nationals must not be sent to the Eurodac fingerprint database (see below on [Eurodac](#)). If it appears that this has happened in error because of the notification of a 'hit' from the Eurodac database for a national of one of the Dublin States (EU Member States or Associated States) then **you must immediately refer the papers** to a senior caseworker in the TCU and the Immigration Fingerprint Bureau (IFB), with a request that the IFB seek deletion of Eurodac data records transmitted by the UK in compliance with data protection provisions in the [Eurodac II Regulation \(EU\) No.603/2013](#).

## 'DubliNet' System

As set out in [Implementing Regulation 1560/2003](#) amended by [Implementing Regulation 118/2014](#) all requests between the Dublin States concerning the determination of responsibility under the Dublin III Regulation must be submitted on one of the standard forms annexed to the Implementing Regulation using 'DubliNet'. DubliNet is a secure electronic transmission system that links the different national units responsible for implementing the Dublin III Regulation.

## The Eurodac Regulation/Eurodac fingerprint database

Eurodac is the pan-European fingerprint database of asylum claimants and defined categories of third country nationals who have entered the EU illegally and are of at least 14 years of age. The following are the categories under which fingerprints are transmitted to Eurodac for the purpose of storage and/or comparison in the Eurodac database, as defined by the [Eurodac II Regulation \(EU\) No.603/2013](#):

- applicants for international protection (asylum claimants) – Eurodac transmission 'Category 1':
  - the storage and comparison of this data assists with identifying if an individual has claimed asylum, been granted asylum or was previously an illegal entrant in another Dublin State
- persons apprehended in connection with the irregular crossing of an external border – Eurodac transmission 'Category 2':
  - this data is stored for future comparison checks when a new transmission is made in the asylum applicant category)
- persons found illegally in a Dublin State – Eurodac transmission 'Category 3':
  - the transmission of this data assists with identifying if an individual has claimed asylum in another Dublin State as transmissions are compared against stored data for asylum claimants

**The UK remains bound to both the Dublin III Regulation and the Eurodac Regulation during the Transition Period, until 31 December 2020.**

## The United Nations Convention on the Rights of the Child

The [United Nations Convention on the Rights of the Child](#) (UNCRC) is an international treaty which sets out the rights of children. The UK signed the convention on 19 April 1990 and it came into force on 15 January 1992.

## Charter of Fundamental Rights of the European Union

Article 24 of the [Charter](#) concerns children. It reads:

‘Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.’

## European Convention on Human Rights

Not all Dublin State human rights obligations are explicitly covered by the responsibility criteria set out in the Dublin III Regulation, but these broader human rights obligations must still be taken into account when applying the Dublin III Regulation. The [European Convention on Human Rights](#) (ECHR) provides the framework for ensuring the rights and fundamental freedoms of individuals in European signatory states.

## Domestic legislation

TCU within IE considers whether or not to certify asylum claims with reference to [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#).

The provisions in Schedule 3 to the 2004 Act deal with situations where a person can be removed to a safe third country without substantive consideration of his or her asylum claim in the UK. These provisions are also applied by TCU in cases that are **not** in the scope of the Dublin III Regulation's procedure, for example, with the aim of preventing secondary movements ('asylum shopping') if the person in the UK who has claimed asylum has already been recognised to be a beneficiary of protection. In such cases TCU will look to see if removal to the State that granted protection is viable in line with paragraph 345A(i) of the Immigration Rules ([Immigration Rules part 11: asylum](#)).

In considering whether an asylum claimant can be removed to a third country, obligations under the Refugee Convention and the Human Rights Act 1998 are relevant.

A safe third country is one of which the person is not a national or citizen and is:

- a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion
- a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention
- a place from which a person will not be sent to another State in contravention of his ECHR rights

If the above conditions are met, then a 'safe third country' decision is made. This is referred to as the 'safe third country' or 'asylum' certification.

An applicant may challenge his or her removal on the basis that it would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with his rights protected by the ECHR.

There is a graduated approach taken towards the consideration of human rights claims against removal within Schedule 3 to the 2004 Act. For Dublin III Regulation cases the provisions in either Part 2 or Part 5 of Schedule 3 are relevant.

If removal is to one of the States listed at Part 2, those States are considered to be ones that would not remove a person in contravention of the Refugee Convention or the European Convention on Human Rights and where a person would not be at risk of persecution. Where Part 2 applies any other human rights challenge to removal will be certified as 'clearly unfounded' unless the Secretary of State for the Home Department is satisfied that the claim is not (clearly unfounded). Such challenges could, for example, be based on Article 3 ECHR (the person claims that reception conditions in the country concerned are such that he or she would face inhuman or degrading treatment there) or on Article 8 grounds (that removal from the UK would unlawfully interfere with his or her private or family life in the UK). This certificate is referred to as the 'human rights' or 'clearly unfounded' certificate.

If a Dublin removal is to a Dublin State not listed at Part 2 (Croatia or Liechtenstein) the provisions in Part 5 are relevant. Part 5 provides for case-by-case consideration of both Refugee Convention and human rights challenges to removal to see whether they could be certified for a particular individual. Cases where either Croatia or Liechtenstein is the responsible Dublin State must be discussed with a senior caseworker in TCU.

Paragraph 345E of the Immigration Rules provides that the Secretary of State for the Home Department shall decline to substantively consider an asylum claim if the applicant is transferable to another country in accordance with the Dublin III Regulation ([Immigration Rules part 11: asylum](#)).

## **Related content**

[Contents](#)

# Dublin III process

## Definitions

Definitions within the Dublin Regulation are set out in Article 2 of the Dublin III Regulation (EU). The important definitions which are used throughout the rest of this guidance can be found below. This is not an exhaustive list and full details are set out in the Dublin III Regulation:

- **‘application for international protection’** means an application for international protection as defined in Article 2(h) of [Directive 2011/95/EU](#):
  - although the UK does not participate in this Directive, the UK is bound by [Qualification Directive 2004/83/EC](#); our national definition of a claim for asylum is consistent with this provision and interchangeable in the context of the definitions below
- **‘applicant’** means a third-country national or a stateless person who has made an application (a claim) for international protection in respect of which a final decision has not yet been taken
- **‘family members’** means, insofar as the family already existed in the country of origin, the following members of the applicant’s family who are present on the territory of the Dublin States (although in cases where a family member is a beneficiary of international protection, Article 9 of the Dublin Regulation negates the requirement that the family was previously formed in the country of origin):
  - the spouse of the applicant or his or her unmarried partner in a stable relationship, where the law or practice of the Dublin State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals
  - the minor children of couples referred to in the first indent, or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law
  - when the applicant is a child (minor) and unmarried, the father, mother or another adult responsible for the applicant, whether by law or by the practice of the Dublin State where the adult is present
  - when the beneficiary of international protection is a child (minor) and unmarried, the father, mother or another adult responsible for him or her whether by law or by the practice of the Dublin State where the beneficiary is present
- **‘relative’** means the applicant’s adult aunt or uncle or grandparent who is present in the territory of a Dublin State, regardless of whether the applicant was born in or out of wedlock or adopted as defined under national law
- **‘minor’** (child) means a third-country national or a stateless person below the age of 18 years at the time of the asylum claim.
- **‘unaccompanied minor’** (unaccompanied child) means a child who arrives on the territory of the Dublin States, unaccompanied by an adult responsible for him or her, whether by law or by the practice of the Dublin State concerned, and for as long as he or she is not effectively taken into the care of such an

adult; it includes a child who is left unaccompanied after he or she has entered the territory of Dublin States

## Criteria and mechanisms for determining responsibility

The Dublin process includes transfers into and out of the UK. Other Dublin States can request the UK takes responsibility for asylum claimants in the same way as we can make requests to them with reference to the Dublin III Regulation. In terms of formal requests to acknowledge (accept) responsibility there are 2 types of request:

- **'take charge'** requests relate to the premise that a **first application** (claim) has been lodged, so the responsible Dublin State is to be determined in accordance with the criteria in the Dublin III Regulation.
- **'take back'** requests involve cases where the applicant has lodged an application (claim) in one Dublin State and has moved on to another Dublin State where he or she has lodged a further application or is present illegally, without making a further application. The notion of 'take back' implies that an applicant has previously been known as an asylum applicant in another Dublin State and so his or her application can be **'taken back'** into the asylum system there.

The general principles and the criteria for determining responsibility are set out below:

**Article 3** of the Regulation sets out that where no Dublin State can be designated on the basis of the criteria listed in the Dublin III Regulation, the first Dublin State in which the claim for international protection was lodged shall be responsible for examining it.

**Article 6** provides **guarantees for minors (children)** that the best interests of the child should be a primary consideration in all stages of the procedure to determine the Dublin State responsible for examining a claim for international protection. The Dublin States shall as soon as possible take appropriate steps to identify family members and may call for the assistance of international or other relevant organisations and may facilitate the child's access to tracing services of such organisations.

## Chapter III of the Regulation

Articles 7 to 15 set out the criteria for determining the Dublin State responsible for examining the asylum claim. Article 7 introduces the Chapter, the criteria should be considered in hierarchical order from Article 8 to 15.

### **Article 7 – Hierarchy of criteria**

The criteria for determining the Dublin State responsible shall be applied in the order in which the articles are set out in Chapter III of the Dublin III Regulation. The Dublin State responsible shall be determined on the basis of the situation obtaining when the applicant first lodged his or her claim for international protection with a Dublin State.

### **Article 8 – Minors (Children)**

As per Article 8(1), if the applicant is an unaccompanied child the responsible Dublin State shall be that where a qualifying family member (insofar as the family existed in the country of origin, the mother, father or another adult responsible by the law or practice of the Dublin State where the adult is present – as per Article 2(g)) or sibling is legally present, provided that is in the best interests of the child.

As stated under Article 8(2), where another relative (adult aunt, uncle or grandparent – as per Article 2(h)) is legally present and **where it can be established that the relative can take care** of the child and best interests are protected, then the Dublin State where the relative is present shall be responsible.

Otherwise the responsible Dublin State is that where the child has lodged his or her claim for asylum, provided that this is in his or her best interests.

The term 'legally present' contained within Article 8 is **not** defined in the Dublin III Regulation. However, it has a larger scope than 'legally resident'. A residence document is defined in Article 2(l) of the Dublin III Regulation as:

'Any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit'.

'Legally present' in the UK includes, in addition to all persons holding a residence document (as above), any other person allowed to stay in the UK as an applicant for asylum (including a person under a Dublin procedure to determine responsibility for examining his or her claim), a person holding a valid visa, leave to enter or remain or a person awaiting a decision to vary existing leave to enter or remain. It does **not** include persons without valid leave to enter or remain who are making representations against their removal, including persons who have exhausted their statutory appeal rights in the UK or persons who are in the UK on 'temporary admission' or immigration bail.

For the purposes of Article 8 concerning unaccompanied asylum-seeking children, a British Citizen is 'legally present'.

### **Article 9 – Family members who are beneficiaries of international protection**

If the applicant has a family member who has been allowed to reside as a beneficiary of international protection in a particular Dublin State (regardless of whether they are post-flight family members), then that Dublin State is responsible for examining the asylum claim, provided that the persons concerned consent in writing. The definition of 'beneficiaries of international protection' includes British

citizens who were formally individuals recognised as refugees who have since obtained citizenship.

#### **Article 10 – Family members who are applicants for international protection**

If the applicant has (pre-flight) family members who are also applicants for international protection whose asylum claims have not been subject to a first decision then the Dublin State responsible for examining those claims will be responsible, provided that the persons concerned consent in writing.

#### **Article 11 – Family procedure**

Where several family members submit asylum claims and strict application of the criteria would lead to different Dublin States being responsible for different family members, resulting in the splitting of a group, the responsible State shall be that otherwise responsible for the largest number of family members or failing that the one responsible for the oldest applicant.

#### **Article 12 – Issue of residence document or visa**

The responsible State shall be that which issued a residence document (such as leave to enter or remain under the UK's immigration law) or a visa. There are additional rules in the Article concerning the situations where the applicant is in possession of more than one valid residence document or visa and those where residence documents or visas have recently expired.

#### **Article 13 – Entry and/or stay**

Article 13(1) sets out the responsible State shall be that where the applicant made his or her first illegal entry into the territory of a Dublin State across an external border, provided the asylum claim is made within 12 months of the date of that illegal entry.

In circumstances where Dublin States have tolerated mass crossings of their borders, such as was seen during the migration crisis in 2015, the individuals conducting the crossings are not considered to have been issued a visa or to have entered lawfully.

In *Jafari C-646/16* the court found that the lodging of an appeal against a transfer decision has no effect on the running of the period of 12 months following the irregular border crossing (Article 13(1) DRIII), but that the period of 6 months to carry out the transfer does not start to run until a final decision on an appeal with suspensive effect has been reached, including when the national court requests a preliminary ruling from the CJEU.

Article 13(2) sets out that where a State cannot or can no longer be held responsible on the basis of Article 13(1), the responsible State is that where the individual has entered the territories of the Dublin States irregularly (or the circumstances of entry cannot be established) and it can be shown that the applicant has been living in the State for at least 5 consecutive months ('tolerated illegal presence'). If the applicant has been living for periods of time in several Member States, each of at least 5 months, the Member State where the applicant has been living most recently shall be responsible. Where the applicant has been living for a cumulative period of 5 months across several Member States the criteria in Article 13(2) will not be met.

Such cases may be identified either by a self-declaration from the individual during their screening interview or where an assessment of the facts in the round (including the credibility of the individual's account) leads a caseworker to believe, on the balance of probabilities, that the individual has spent at least 5 months in a single Dublin State.

Some individuals will 'self-declare' an immigration history which brings them within the scope of Article 13.2. Such cases should always be considered for referral via a TCR to the appropriate Dublin State.

For all other cases, caseworkers should assess the facts in the round, including any and all evidence available (see section '[Evidence](#)') and the credibility of the account given during the screening interview (using the criteria in the next section), to consider whether there are reasons to find that the individual is likely to have spent at least 5 months in a Dublin State (contrary to their own account of their journey to the UK.) Where there is reason to make such a finding and conclude that the individual has provided an incomplete or inaccurate account, consideration needs to be given to whether a take charge request (TCR) should be made.

## Guidance for TCU Caseworkers

It is essential that the applicant's full Immigration History is accurately recorded at screening. Where an individual fails to provide full details of their journey, section 3 will apply

**All cases without EURODAC** hits should be carefully reviewed and considered by TCU caseworkers in order to assess whether or not it is appropriate to make a take charge request based on Article 13.2 (or on any other basis in the Dublin Regulation, as provided for in the Dublin III guidance in general).

An initial assessment needs to be made on the suitability of a case for transfer, based on the age of the applicant, medical conditions, family links and a broader assessment of vulnerability.

The assessment of an applicant's credibility is based on a three-stage process:

1. Is there evidence of the individual circumventing immigration control whilst in one (or more) Dublin States, and showing wilful disregard for the asylum procedures available in those States? A lack of a EURODAC hit provides some prima facie evidence of this but needs to be considered alongside the broader immigration history of the applicant, the account of his or her travel route and any mention of having been fingerprinted en-route. An assessment must be made on whether it is reasonable to consider that the failure to engage with the asylum system of another Dublin State, when presented with the opportunity to do, damages the applicant's credibility. This may differ from case to case and will depend on other information available in the round.
2. Is there a clear lack of detail or knowledge about their journey to the UK, and the time it took? Caseworkers should have regard to the particulars of each

individual case and the account given but are asked to make an assessment of the plausibility of the information presented. Has the applicant presented a reasonable amount of detail regarding their immigration history, and how they entered the UK?

3. Are there large gaps/incoherency in the applicant's Immigration History?  
Caseworkers should assess the credibility and coherency of the immigration history and travel route. Where there are clear gaps or time-lags that are unaccounted for, caseworkers should consider whether the information presented is credible in the light of other information available.

Caseworkers should make an overall assessment of the credibility of the information before them in an individual case and look to make a TCR citing Article 13.2 only where they feel they are satisfied on the balance of probabilities that the individual has spent at least 5 months in a single Dublin state.

## Example wording

Below is some suggested wording that caseworkers can use when drafting TCRs. Caseworkers should ensure that when used, these are fully tailored to address the facts of the individual cases:

- Regarding his/her claims about his/her whereabouts prior to arriving in the UK, it is notable that **[to be expanded as relevant e.g. the applicant claims not to know which country he/she was in at any given time; he/she is specific about some aspects of his/her journey e.g. to Turkey, but vague thereafter]**. The account of his/her journey in terms of duration and location(s) **[insert if relevant e.g. "and not knowing the costs of the arrangements"]** lacks credibility.
- The applicant was apprehended in connection with entering the UK illegally having attempted to circumvent the UK's immigration controls after a clandestine departure from [Insert country].
- There is no evidence that the applicant sought asylum elsewhere in the EU or the Associated States participating in the Dublin Regulation demonstrating a complete disregard for the immigration controls of other countries, in addition to those in the UK. The applicant's conduct demonstrates a lack of candour.
- Taking the above elements into consideration, the applicant's claimed account of his/her travel history cannot, on balance, be relied upon as credible in terms of its duration or locations. On that basis, noting his/her arrival from [Insert country] and in the absence of any evidence to the contrary, we consider it likely that the applicant has been in the Dublin State for at least 5 months. Given that [he/she] arrived from [Insert country], we request that [Insert country] accept responsibility for examining his/her asylum claim with reference to Article 13.2.

## Article 14 – Visa waived entry

If a person enters a Dublin State where there is no need for him or her to hold a visa ('visa waived entry') then that State is responsible for examining the claim for protection.

#### **Article 15 – Application in an international transit area of an airport**

If a person makes a claim in the international transit area of an airport of a Dublin State, that State shall be responsible for examining the claim for protection.

## **Chapter IV of the Regulation**

This chapter contains provisions on dependent persons and discretionary clauses.

#### **Article 16 – Dependent persons**

Where an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Dublin States or vice versa, States shall normally keep or bring together the parties. This must be for at least one of the following reasons:

- on account of pregnancy
- a new-born child
- serious illness
- severe disability
- old age

You must also be satisfied that the family ties existed in the country of origin, that the other person is able to take care of the dependent person, and the parties give their consent in writing. Note: the nature and extent of the illness or disability is qualified so that it is a serious illness or a severe disability.

#### **Article 17 – Discretionary clauses**

**Article 17(1)** is known as the 'sovereignty clause'. It permits a Dublin State to decide to examine a claim for international protection lodged with it even if it is not responsible for any other reason laid down in the Dublin III Regulation. In other words, this provision concerns a situation where, for example, a claimant is in the UK and has lodged a claim here and, although another Dublin State is responsible for examining the claim, there are exceptional compassionate circumstances, such as individual human rights considerations, that justify the exercise of discretion to examine the asylum claim in the UK.

The Court of Justice of the European Union (CJEU) has provided guidance on this provision in the case [C-578/16 PPU CK and others](#). The Court considered that a transfer in itself can entail a real risk of inhuman or degrading treatment (within the meaning of Article 4 Charter of Fundamental Rights of the European Union), notably in circumstances where the transfer of an asylum claimant with a particularly serious mental or physical condition leads to the applicant's health significantly deteriorating. Therefore, the authorities of a transferring State must take into account objective factors, such as medical certificates, which are capable of demonstrating the particular seriousness of a person's illness and the significant and irreversible

consequences that a transfer may result for that person. The transferring authorities must eliminate any serious doubt as to the impact of the transfer on the health of the person concerned by ensuring that the asylum claimant is accompanied during the actual transfer by the appropriate medical staff who have the necessary equipment, resources and/or medicines, to prevent any aggravation of his or her condition or any act of violence towards himself or others. The transferring and receiving Dublin States must also ensure that the asylum claimant receives care upon arrival in the responsible State.

The Court added that, if necessary, the transferring State should delay the transfer for as long as the claimant's health condition does not allow such a transfer. The requesting State may choose to examine the request itself by making use of the provision in Article 17(1) of the Dublin III Regulation, but that provision cannot be interpreted to mean that there is an obligation for the State to exercise discretion. If the state of health of the claimant does not, however, allow the State to make the transfer within the permitted six-month period, the normal rules in Article 29 of the Dublin III Regulation apply and the responsible State is relieved of its obligations to examine the claim and so responsibility is transferred to the requesting State.

**Article 17(2)** also concerns the exercise of discretion, but in different circumstances. It makes specific reference to the situation where either a Dublin State carrying out the procedure to determine responsibility or the responsible Dublin State itself may, at any time before a first decision on the substance of the protection claim is made, request another Dublin State to bring together any family relations on humanitarian grounds based in particular on family or cultural considerations. For this reason this provision is sometimes known as the 'humanitarian clause' (compared to the 'sovereignty clause', above).

Article 17(2) states:

“The requested Member State shall carry out any necessary checks to examine the humanitarian grounds cited, and shall reply to the requesting Member State within two months of receipt of the request using the ‘DubliNet’ electronic communication network set up under Article 18 of Regulation (EC) No 1560/2003. A reply refusing the request shall state the reasons on which the refusal is based.

Where the requested Member State accepts the request, responsibility for examining the application shall be transferred to it.

Unlike TCRs lodged under other articles, requests made under Article 17(2) are not subject to the default acceptance provisions of Article 22 (7). This is due to the discretionary nature of the article which expressly recognises that the state to whom the request has been made is not otherwise responsible.

Unlike the terms ‘family member’ and ‘relative’, the term ‘relations’ is not defined in the Dublin III Regulation. The reference to family and cultural considerations in Article 17(2) allows Dublin States to exercise their discretion to bring together individuals who are part of an extended family group recognised in other cultures. The persons concerned must consent in writing.

In all Article 17 cases – either the sovereignty clause in 17(1) or the humanitarian clause in 17(2) - the evidence submitted with the request to exercise discretion must be coherent, verifiable and detailed. Situations in which it would be appropriate to exercise discretion to examine the claim(s) in the UK when the UK is not otherwise responsible will be rare and on an exceptional basis. Any decisions to exercise discretion must be agreed by a manager (minimum SEO).

## Identifying a child's family ties and information exchange between Dublin States

To ensure best interests of children and family unity are considered, the Dublin State determining responsibility shall take appropriate action as soon as possible to identify family members, siblings or relatives of the child on the territory of other Dublin States. You should consider information provided by the child or another credible source who is familiar with the child's situation.

Dublin States shall make full use of the standardised exchange of relevant information between the Dublin States pursuant to Article 6(5) of the Dublin Regulation and Article 12(4) of the [Implementing Regulation](#) in order to identify family members, siblings or relatives of the unaccompanied child, present on the territory of the Dublin States, establish the existence of proven family links and assess the capacity of a relative to take care of the unaccompanied child, including where family members, siblings or relatives of the unaccompanied child stay in more than one Dublin State.

Dublin States are required to use any information available to them (this may include, for example, official databases or other records) in an attempt to identify family relations and establish the existence of proven family links of a child where sufficient information is provided to enable them to be identified. Dublin States may, where reasonable and practical to do so, also involve international or other relevant organisations and may facilitate the child's access to their tracing services where the exact whereabouts of family members may be uncertain.

In order to successfully identify a child's family ties, it is essential that, at the earliest opportunity, the child should be made aware of this provision and encouraged to provide as much detail as possible of the whereabouts of any family members known to him or her so that efforts to identify and possibly unite the child with them may be undertaken quickly. Dublin States should have in place mechanisms and standard procedures for the enquiries and information exchange that may be required in order to identify the unaccompanied child's family ties, because these will need to be completed as quickly as possible. Whilst it is acknowledged that the requirement on Dublin States is to make efforts to identify the family member in question, it will not always be possible to find them (Article 6(4)).

When the unaccompanied child has family members, siblings or relatives present in another Dublin State or States, the Dublin State where the unaccompanied child is present shall cooperate with the relevant Dublin State or States, to determine the most appropriate person to whom the child is to be entrusted, and in particular to establish the:

- strength of the family links between the child and the different persons identified on the territories of the Dublin States
- capacity and availability of the persons concerned to take care of the child
- best interests of the child in each case

According to Article 8(5) of the Dublin III Regulation, the Commission is empowered to adopt delegated acts concerning the identification of family members, siblings or relatives of the unaccompanied child and the criteria for establishing the existence of proven family links. It has not done so at the time of publishing this version of the guidance.

For further guidance on tracing family members of unaccompanied children who have claimed asylum please see the Family Tracing Guidance.

## Evidence

In order for a request to be made to another Dublin State to acknowledge responsibility one of the following is required:

- statements or documents suggesting that an applicant's family member (spouse or child, or in the case of an unaccompanied child his or her mother, father, another adult legally responsible for him or her, sibling, adult aunt or uncle or grandparent) may be legally resident in another Dublin State
- a [Eurodac](#) 'hit' (matched fingerprints) showing that the applicant's fingerprints have previously been taken by another State, transmitted and stored in the database - for example, because the person has claimed asylum there or has been apprehended in connection with crossing the external border of the EU, Iceland, Norway, Switzerland and Liechtenstein
- other evidence or documents (for example tickets, invoices, receipts, travel itineraries, business cards or other relevant evidence) suggesting that illegal entry into the Dublin territory took place across the external border of a Dublin State or of an earlier asylum claim, such as documentation issued by authorities in another Dublin State or an international organisation such as UNHCR
- documentary evidence, passports or statements that a visa or residence permit has been issued by another Dublin State or that a person has been living illegally in a Dublin State for a continuous period of at least 5 months. If an individual has spent 5 months or more in several Dublin states (5 months or more in each separate state), then a request to the state that they were present in most recently should be made.

### Related content

[Contents](#)

# Dublin process: requests to transfer out of the UK to another Dublin State

This page tells you about requests to transfer out of the UK to another Dublin state.

The Dublin Regulation lays down a hierarchy of **responsibility criteria** (Article 7). The Dublin State where the claim for asylum is first lodged sends a request to the Dublin State it deems responsible according to the criteria (unless it establishes that it is itself responsible: Article 3(2)). Upon acceptance, whether that is given actively by the requested State or is by default (see below), the requested State becomes responsible for examining that claim.

When an asylum claim has been lodged in the UK and there is evidence to suggest that another Dublin State may be responsible for examining it under the Dublin III Regulation, the National Asylum Allocation Unit (NAAU) will refer the case to the Third-country Unit (TCU). TCU will consider the application of the Dublin III Regulation. TCU considers whether or not the Secretary of State for the Home Department should decline to examine the asylum claim substantively and so issue a 'safe third country' or 'asylum' certificate under [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#). Certification of an asylum claim on this basis is appropriate if another Dublin State is responsible for examining the asylum claim under the Dublin III Regulation.

## Case law on the suspension of transfers

**Greece:** Dublin removals to Greece were suspended by all Dublin States since 2011 as a result of rulings from the European Court of Human Rights (ECtHR) in the case [MSS vs Belgium and Greece](#) and the Court of Justice of the European Union (CJEU) in [NS and others C-411/10](#).

In December 2016 the European Commission issued a non-binding Recommendation to the Member States concerning a process towards the gradual resumption of the Dublin transfers to Greece. The resumption of transfers should not be applied retroactively and would only concern asylum applicants who entered Greece irregularly from 15 March 2017 onwards or for whom Greece is responsible from 15 March 2017 under other Dublin criteria, for example where Greece had issued a visa after that date.

The Recommendation included the conditions that applicants should only be transferred if the Greek authorities give individual assurances in each case that the asylum applicant will be hosted in appropriate reception centres in Greece and treated in accordance with the standards set out in EU asylum law. The Commission also indicated that, for the time being, the transfer of vulnerable migrants (especially unaccompanied children) back to Greece is not recommended. Notwithstanding this recommendation, transfers from the UK to Greece remain suspended pending clarification of the position regarding the nature of individual assurances and any developing case law in the event that other Dublin States gradually resume transfers.

The situation remains under review. Any case where Greece appears to be the responsible Dublin State or where there is evidence that an applicant for asylum in the UK has already been recognised as a beneficiary of international protection in Greece must be discussed with a senior caseworker, who may then wish to seek further advice from Asylum Policy on the latest position.

**Hungary:** in August 2016 in the case of [Ibrahimi and Abasi vs The Secretary of State for the Home Department](#), the High Court held that Dublin III Regulation transfers from the UK to Hungary were unlawful. At the date of the judgment the Court found that having considered the available evidence regarding the asylum system in Hungary, the applicants would be at risk of refoulement from Hungary to Serbia (and beyond). The judgment noted that the relevant evidence may change the assessment of risk in the future: Dublin transfers from the UK to Hungary remain suspended, with the situation remaining under review. Any case where Hungary appears to be the responsible Dublin State or where there is evidence that an applicant for asylum in the UK has been recognised as a beneficiary of international protection in Hungary must be discussed with a senior caseworker, who may then wish to seek further advice from Asylum Policy.

**General Principles:** In **Jawo C-163/17** the CJEU ruled that, according to its [case law](#), an asylum applicant may not be transferred under the Dublin III Regulation to the Dublin State responsible for processing their application, if the living conditions would expose them to a situation of extreme material poverty amounting to inhuman or degrading treatment within the meaning of Article 4 CFR. In this regard, the Court held that the threshold was only met where such deficiencies, in light of all the circumstances of the individual case, attained a particularly high level of severity beyond a high degree of insecurity or a significant degradation of living conditions. The latter finding is also supported by the [jurisprudence](#) of the European Court of Human Rights. Correspondingly, national courts had the obligation to examine, on the basis of information that is objective, reliable, specific and properly updated and having regard to the standard of protection of fundamental rights guaranteed by EU law, whether there was a real risk for the applicant to find himself in such situation of extreme material poverty.

With regard to the extension of the time limit for transfer, the Court noted, *inter alia*, that an applicant 'absconds' when they deliberately evade the reach of the national authorities responsible for carrying out the transfer. This may be presumed when the applicant has left the accommodation allocated to them without informing the competent authorities, provided that they have been informed of this obligation. However, under such circumstances the applicant retains the possibility to demonstrate that there were valid reasons for not informing the authorities of his absence and that he did not have the intention to evade the reach of those authorities.

## Information leaflets

As specified in Article 4 of the Dublin III Regulation, an asylum claimant must receive, at the beginning of their asylum procedure, timely and adequate information on the Dublin procedure itself. This is for the individual's understanding of his or her situation and for the effective function of the Dublin system by the Dublin States. The

standard text of the leaflets is set out in [Implementing Regulation 118/2014](#) and [UK Dublin leaflets](#) are published. The information is to be provided in a language that the claimant understands or is reasonably supposed to understand. Where necessary for the proper understanding of the claimant the information shall also be given orally. In cases of doubt as to whether the claimant understands the language used caseworkers should consult a senior caseworker in TCU.

## Criteria and evidence when making a request to another State

If not already being considered by TCU, new cases that meet at least one of the [criteria](#) and are supported by at least one piece of [evidence](#) set out in the Dublin III Regulation and Commission Implementing Regulation (see below) must be referred to the NAAU Intake team for initial consideration regarding possible referral to TCU. If a potential Dublin case is identified, you must refer it immediately to the NAAU intake team, as the Dublin III Regulation provides strict time limits within which requests must be made to other Dublin States.

Article 22 of the Dublin III Regulation provides that 2 lists shall be established to set out the relevant elements of proof and circumstantial evidence (including detailed statements) to be used by Dublin States when considering whether to make requests to take responsibility. The 2 lists can be found in Annex II of the [Implementing Regulation 118/2014](#).

If a case does not fall to be referred for action under the Dublin process, the asylum claim must be handled according to mainstream asylum procedures. However, caseworkers should be alert to cases in which TCU have an interest and follow any directions given. For example, in cases where the claimant declares an immigration history in other Dublin States that has not previously been referred for possible TCU interest, such as a claim to have been in a Dublin State with a visa or with a residence permit or to have been illegally present for 5 months or more in the territory of Dublin States must be referred to TCU within 3 months of the claim being registered. See section: [Information sharing requests](#).

## Personal interview

Article 5 of the Dublin III Regulation requires that after lodging a claim in a Dublin State, an asylum applicant must have a personal interview in order to facilitate the process of determining the responsible State. It may be omitted if a) the applicant has absconded or b) having received information about the Dublin III Regulation, including the possibility and purpose of a personal interview, the applicant has already provided the information relevant to determine the State responsible and the applicant is given the opportunity to present all further information which is relevant to correctly determine the State responsible before a decision is taken to transfer. The Asylum Screening Interview (or Welfare Interview for children) incorporates the necessary elements of the personal interview.

Children will be provided a Statement of Evidence Form to complete (with the assistance of their legal representative if they have one) which asks about their

journey to the UK and family members in the European Union, including whether they may have family in the UK. Where no asylum claim has been lodged, or the 'claim' is to be taken as a further submission and TCU action may be appropriate then a TCU travel history interview must be completed.

Relevant information that should be considered includes all family details in the UK and in other Dublin States, the travel routes taken en route to the UK (including any claims to have entered the 'Dublin area' and then left it again), and any previous asylum claims. These details are important in assessing whether or not to make a request to another State with reference to the Dublin III Regulation. This is because the obligations to accept the transfer of an applicant cease where the Dublin State responsible under the Dublin III Regulation can establish that the person has left the territory of the Dublin States for a period of at least 3 months, unless the applicant is in possession of a valid residence document issued by the Dublin State responsible (Article 19 refers). Any asylum claim lodged after this period of absence shall be regarded as a new claim giving rise to a new procedure for determining the new Dublin State responsible. Although the burden of proof is on the responsible Dublin State to establish the departure from the territory, it is important to establish any claims made by an applicant to have left the collective territory of the Dublin States, the circumstances of the claimed departure, and to obtain any evidence to support the claim to have departed.

## Unaccompanied children

Unaccompanied children may lodge an asylum claim in one Dublin State when they have family in another Dublin State. In such cases the Dublin III Regulation provides that the State responsible for examining the asylum claim will be that where the family member, sibling or relative (as defined in the Dublin III Regulation) is legally present, provided this is in the best interests of the child (and that in cases involving relatives, that the relative is able to take care of the child). The purpose of the transfer is for the asylum claim to be examined on its merits and does not anticipate the outcome of the consideration of the asylum claim or permission to remain in that State.

In 2013 the Court of Justice of the European Union (CJEU) ruled in [MA and others v Secretary of State for the Home Department C-648/11](#) that where an unaccompanied child with no family members legally present in the territory of a Dublin State has lodged an asylum claim in more than one Dublin State, the Dublin III Regulation should be interpreted so that responsible State is the State in which the most recent claim for asylum is lodged and this is in the best interests of the child. Although there is provision for the transfer of unaccompanied children this is only appropriate in family related circumstances where the bringing together of the child with his or her family member, sibling or relative is considered to be in the best interests of the child. Any case where there is evidence that it may be in the best interests of an unaccompanied asylum-seeking child to request that another Dublin State accept responsibility for examining his or her asylum claim on family grounds must be discussed with a senior caseworker in TCU, who may then wish to seek further advice from Asylum Policy.

## Age dispute cases

The Home Office handling of age dispute cases is determined by policy set out in Assessing Age, which you must fully review before handling a potential age dispute case. Age assessments conducted by a local authority in the UK must be Merton and further case law compliant, in line with [R \(on the application of B\) v Merton LBC \[2003\] EWHC 1689](#). For further guidance on working with local authorities in respect of age assessments please see Age assessment joint working guidance.

## Potential victims of trafficking

Where there are considerations relating to a potential victims of modern slavery and issues relates to the Dublin III Regulation please see the competent authority and frontline staff guidance for more information on handling those cases.

## Detention

UK law provides broad powers to detain in an immigration context. Immigration detention is only lawful where it is based on one of the statutory powers to detain and where it accords with the limitations set out by domestic and ECHR case law and with stated detention policy.

Recital 20 of the Dublin III Regulation refers to the underlying principle that a person should not be held in detention for the sole reason that he or she is seeking international protection. Article 28 of the Dublin III Regulation also provides that Dublin States shall not hold a person in detention for the sole reason that he or she is subject to the procedure established in the Dublin III Regulation. When there is a **significant risk of absconding** Dublin States may, however, detain the person concerned in order to secure transfer procedures in accordance with this Regulation, on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively.

It will only be appropriate to detain an individual in order to secure transfer to another Dublin State when they present a **'significant risk of absconding'**. On 15 March 2017 the Court of Justice of the European Union (CJEU) stated in the case [C-528/15 Al Chodor](#) that the existence of case law confirming consistent administrative practice by national authorities regarding criteria on a 'significant risk of absconding' was not sufficient to meet Article 28. The Court ruled that the objective criteria to define a 'risk of absconding' must be established in a binding provision of national law.

When considering whether or not to detain an individual in order to secure transfer under Dublin, the provisions in the [Transfer for Determination of an Application for International Protection \(Detention\) \(Significant Risk of Absconding Criteria\) Regulations 2017](#) must be applied.

[Section 60 of the Immigration Act 2016](#) has limited the detention of pregnant women who are being returned (or deported) to a normal maximum of 72 hours, though this can be extended to an absolute maximum of one week with Ministerial authorisation.

For further guidance on detention please see [Chapter 55 of the Enforcement Instructions and Guidance](#).

## Calculating the detention period

In all cases, but in particular where an individual is detained, steps to secure the transfer must be made as quickly as possible. Article 28 sets out that detention shall be for as short a period as possible and shall be for no longer than the time reasonably necessary to fulfil the required administrative procedures with due diligence until the transfer under this Regulation is carried out.

There are strict timescales **where a person is in detention**. Where a person is detained from the start of the Dublin procedure, a take charge or take back request must be made within one month of the application being lodged. An urgent reply should be requested in all such cases. When an urgent reply is requested, it must be given by the other Dublin State within two weeks of receipt of the request. Failure to reply within the two-week period shall be tantamount to accepting the request and entails the obligation to take charge or take back the person, including the obligation to provide for proper arrangements for arrival.

Where a person is **already detained** at **either** of the following events:

- the time that the request is accepted, whether implicitly or explicitly
- if the person lodges a challenge to the transfer decision, then the point at which that challenge no longer has suspensive effect

the transfer of that person shall be carried out as soon as practically possible, and at the latest **within 6 weeks** of that event (each event may be the 'Relevant Date').

The time is calculated from the 'Relevant Date' in the same way as other Dublin time limits (Article 42 of the Dublin III Regulation explains how to calculate time limits in the Regulation).

When the requesting Dublin State fails to comply with the deadlines for submitting a take charge or take back request or where the transfer does not take place within the period of 6 weeks referred to above, the person must be released.

Time spent in detention before the 'Relevant Date', such as when a request is ongoing with another State or is awaiting a reply, does **not** count towards the 6 week period. Equally, if a person is detained for a period following the acceptance by the receiving State of the transfer request, and subsequently seeks appeal or review of that decision, the period of time spent in detention prior to the conclusion of the appeal or review does **not** count towards the 6 week period.

If the person is detained at the point at which their challenge no longer has suspensive effect, but is released shortly afterwards (for example following a successful application for bail), any previous period of detention does **not** have to be added when the person is detained again, so the 6 week period re-starts. This position follows the CJEU's judgment in the case of [C-60/16 Khir Amayry](#) (September 2017).

**Where a person is not detained upon either of the Relevant Dates**, the 6 week period is not relevant. However, removal should take place as quickly as possible, and, where a person is detained after a request has been accepted and any challenge is no longer suspensive, any detention should be for a period less than 2 months.

#### **Related content**

[Contents](#)

# Making a request to another Dublin State

This page tells you about making a request to another Dublin state.

## Considering whether to make a request to take responsibility for examining a claim

### Information sharing requests

**Article 34** of the Dublin III Regulation provides a mechanism for information sharing between the Dublin States, **in particular to make a preliminary check whether there is a criterion that is likely to determine another State's responsibility for examining the asylum claim.** Such requests are made and submitted through DubliNet using Annex V of [Implementing Regulation 118/2014](#). This is a useful option in cases where there is only limited circumstantial evidence that another Dublin State is responsible for examining a claim. For example, an information sharing request may result in additional information from the requested State that means that it is possible to make a formal request to take responsibility for an applicant.

Each State shall communicate to any other such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

- determining the Dublin State responsible
- examining the application (claim)
- implementing any obligation under the Dublin III Regulation

Full details of the information that can be exchanged are set out in Article 34 of the Regulation and also below:

- personal details of the applicant, his or her family members, relatives or any other family relations, including full names, former names, nicknames or pseudonyms, nationality, date and place of birth
- identity or travel documents, including visas
- other information necessary for establishing the identity of the applicant, including fingerprints (processed in accordance with the Eurodac Regulation)
- places of residence and travel routes
- the place where the claim was lodged
- the date on which any previous claim was lodged, the date on which the present claim was lodged, the stage reached in the proceedings and any decision taken

Article 34 requests must not, however, be made without some indication of the basis upon which potential responsibility might be determined. This is to prevent Dublin States making excessive numbers of purely speculative requests to each other. A

request for information must state the reasons why it is being made with reference to relevant information on the ways and means by which applicants enter the territories of the Dublin States, the specific and verifiable statements made by the applicant. Article 34(4) of the Dublin III Regulation gives further details.

Article 34(5) sets out the obligations on a Dublin State when replying to an information request, including the obligation to reply within 5 weeks: if a reply is delayed then reasons for the delay must be given.

Although not relevant to the determination of responsibility for examining an asylum claim Article 34 also provides that where it is necessary for the examination of the substance of an asylum claim the responsible State can ask another Dublin State for information about a previous asylum claim lodged with it. The applicant must give their consent in writing to the exchange of this information. Further details are given in Article 34(3) of the Dublin III Regulation. A refusal to give consent may be read by a caseworker to undermine a claimant's credibility.

### **Family tracing: special provisions for unaccompanied children**

Article 6 of the Dublin III Regulation concerning guarantees for minors (children) provides that for the purposes of applying the provisions relating to responsibility for examining an asylum claim the Dublin State where the unaccompanied child has lodged his or her claim shall take appropriate action to identify family members, siblings or relatives on the territory of the Dublin States. The Commission Implementing Regulation includes a specific form for this purpose. The aim of the standardised information exchange related to unaccompanied children is, in line with the child's best interest as a primary consideration, to identify the child's family members, siblings or relatives present on the territory of the Dublin States, establish the existence of proven family links between them, to assess the capacity of a relative to take care of the child and where relevant, determine the most appropriate person to whom the child is to be entrusted.

Requests and replies must be made on the standard form at Annex VII of [Implementing Regulation 118/2014](#).

See also the instruction: Family Tracing Guidance.

### **Making a formal request to another State to take responsibility**

There are two ways in which a formal request can be made to another Dublin State to take responsibility for the consideration of an asylum claim lodged in the UK: to take charge or to take back. These are set out in detail below.

The Dublin III Regulation contains strict time limits for taking action as set out in Articles 21, 23 and 24. It is essential that you adhere to these, as failure to do so will result in the UK becoming responsible for the consideration of a case by default, even where that responsibility should lie with another Dublin State based on the application of the criteria in the Dublin III Regulation.

## Take charge request

**Article 21** of the Dublin III Regulation concerns the procedure for submitting a take charge request when a claim for asylum has been lodged in the UK. A take charge request must be made as quickly as possible and:

- in any event it must be made within 3 months of the date on which the application for asylum was lodged in the UK and, if based on evidence of a fingerprint match ('hit') from Eurodac, then within 2 months of receiving the Eurodac fingerprint 'hit'
- **if an applicant is detained then the period for submitting a request shall not exceed 1 month from the lodging of the claim** (Article 28(3) of the Dublin III Regulation)

The Court of Justice of the European Union has ruled on the timeframes for making requests, including those based on Eurodac evidence in the case of [Mengesteab C-670/16](#) (July 2017).

**Note:** The discretionary provisions in Article 17(2) of the Dublin III Regulation permit the Dublin State carrying out the process of determining the responsible Dublin State or the responsible State at any time before a first decision on the substance of an asylum claim is taken to request another Dublin State to take charge of an applicant in order to bring together any family relations on humanitarian grounds based in particular on family or cultural considerations. If a caseworker encounters a case where the normal time limit for making a formal request to another Dublin State has expired, including where the case is being considered substantively in the UK, TCU may use this provision in cases concerning family ties to another Dublin State; the case should be referred immediately to a senior caseworker in TCU to consider the facts of the individual case.

Take charge requests should be submitted through DubliNet using Annex I of [Implementing Regulation 118/2014](#). The proof and circumstantial evidence which need to accompany a take charge request is listed in Annex II. Further information on how to make a take charge request including the use of standard forms can be found in Article 21 of the Dublin III Regulation and also in [Commission Implementing Regulation \(EC\) No. 1560/2003](#) as amended and supplemented by [Implementing Regulation 118/2014](#). **Caseworkers must be familiar with the lists on the relevant elements of proof and circumstantial evidence.**

It is important to note that when making a request to take charge, **Article 21(2) of the Dublin III Regulation allows a Dublin State to ask for an urgent reply.** The request for urgency must state the reasons for the request and the period within which an urgent reply is expected, which shall be at least one week. Further details on the circumstances when a request for urgency on the part of the requested State is appropriate are in Article 21(2), that is where the asylum claim was lodged after:

- leave to enter or remain was refused
- an arrest for an unlawful stay
- the service or execution of a removal decision/order

## Take back request

**Article 23** of Dublin III concerns the procedure for submitting a take back request when a new asylum claim has been lodged in the UK. A take back request must be made as quickly as possible and in any event:

- if based on evidence of a fingerprint match ('hit') from Eurodac **within 2 months of receiving the fingerprint 'hit'**
- if based on evidence other than that from Eurodac it shall be made **within 3 months of the date on which the claim for asylum was lodged** in the UK
- **if an applicant is detained then the period for submitting a request shall not exceed 1 month from the lodging of the claim** (Article 28(3) of Dublin III)

Take back requests should be submitted through DubliNet using Annex III of [Implementing Regulation 118/2014](#). Further information on how to make a take back request including the use of standard forms can be found in Article 23 of the Dublin III Regulation and also in [Implementing Regulation 1560/2003](#) as amended and supplemented by [Implementing Regulation 118/2014](#).

**Article 24** concerns the procedure when no new claim for asylum has been lodged in the UK but there is evidence that one has been lodged in another State, for example where a Eurodac fingerprint match resulting from a transmission made to Eurodac for a person found illegally present in the UK which matches with fingerprint data stored in Eurodac because of a previous claim for asylum in another State. The same deadlines apply for making requests as set out above in relation to Article 23. Article 24(4) of the Dublin III Regulation provides an alternative mechanism for Dublin States that are also bound by the Directive on Returns 2008/115/EC. **The UK does not participate in this Directive and so is unable to choose the alternative mechanism outlined in Article 24(4) of the Dublin III Regulation.**

## Receiving a reply to a formal request

In the same way as it sets out time limits for making requests to another Dublin State, the Dublin III Regulation also contains provisions on deadlines for replies to requests. The time limits are different depending on the situation.

The time limits for **replies to requests to take charge** are set out in Article 22 of the Dublin III Regulation. A reply must be given within 2 months of the receipt of the request, but there are exceptions in the following situations:

- when the requesting Dublin State has pleaded urgency (Article 21(1) of the Dublin III Regulation refers), the requested Dublin State must make every effort to comply with that request for urgency:
  - if in exceptional circumstances it is not possible to do so because the examination of the request is particularly complex, the requested State may give its reply after the time limit requested, but in any event within 1 month of receiving the request

- if an applicant is detained then the period for replying to a request is within 2 weeks of receipt (Article 28(3) of Dublin III)

The time limits for **replies to requests to take back** are set out in Article 25 of the Dublin III Regulation. A reply must be given as quickly as possible, and no later than one of the following:

- one month from the date on which the request was received
- 2 weeks from the date on which the request was received if the request to take back was based on evidence from the Eurodac database
- if an applicant is detained then the period for replying to a request is within 2 weeks of receipt (Article 28(3) of the Dublin III Regulation)

If the requested State **fails to reply within the time limits** set out in the Dublin III Regulation, the Regulation provides that this failure is tantamount to accepting the request and shall entail the obligation to take charge or take back of the person, including the obligation to provide for proper arrangements for arrival. Further information on the provisions that concern 'acceptance by default' can be found in Articles 22(7) and 25(2) of the [Dublin III Regulation](#).

## Unaccompanied children - special provisions for replies

Article 12(2) of the [Implementing Regulation 1560/2003](#) as amended by [Implementing Regulation 118/2014](#) provides that in the case of **replying** to a take charge request that concerns unaccompanied children, any time limits in the Regulation that are not respected shall not necessarily be an obstacle to continuing the procedure for determining the responsible State or carrying out a transfer. Further information on deadlines when replying to take charge requests made to the UK can be found [later in this guidance](#).

Note: the normal time limits apply for **making** a take charge request with reference to Article 8 of the Dublin III Regulation, there is no provision in the Implementing Regulation to extend this time limit.

Further information about responses to requests can be found in Articles 5 and 6 of [Implementing Regulation 1560/2003](#) as amended by [Implementing Regulation 118/2014](#). The best interests of a child must be a primary consideration in all procedures relating to children when applying the Dublin III Regulation.

## Rejected requests

In the event of a **negative reply** to a take charge or take back request, it is open to the requesting State to challenge the refusal if it feels that the refusal was based on a misappraisal, or when it has additional evidence to put forward, by asking that its formal request be re-examined. The CJEU in X and X C-47/17, C-48/17 confirmed that this must be done within 3 weeks of the receipt of the negative reply. The requested Dublin State shall strive to reply to a re-examination request within 2 weeks.

However, in X and X the CJEU also ruled that if a reply to the request for re-examination is not received within 2 weeks that process ends and the requesting Dublin State retains responsibility, unless it is possible to make a new request to take back or take charge within the time limits in Dublin III. A rejected request can only trigger one re-examination procedure, it is not possible to call for repeated re-examinations in the same procedure. Only a new request to take charge or take back, if rejected, would attract the possibility of a new re-examination request (of that new rejection). In cases involving the humanitarian provisions in Article 17(2) of Dublin III a request can be made at any time before a first decision is made on the substance of the asylum claim.

## Accepted requests – making the transfer

Where the requested Dublin State accepts responsibility for consideration of the applicant's case, certification of the case under the relevant provisions of [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) must take place. This will include the consideration of any claims or allegations that removal from the UK and / or treatment in the responsible State in question would amount to an interference with the applicant's human rights under the terms of the European Convention on Human Rights (ECHR). It is essential that all matters raised should be fully answered with reference to relevant case law. If a human rights claim or allegation against removal is considered to be 'clearly unfounded' and therefore rejected, the removal decision from the UK will not attract an in-country statutory right of appeal – see Schedule 3 to the 2004 Act (as above). This means that the effective remedy against the removal decision is in the form of a judicial review against either, or both the third country and 'clearly unfounded' certification or certifications. Any representations which may have been received on behalf of the applicant must be answered before the case is certified.

The Dublin III Regulation contains provisions concerning the transfer of applicants once responsibility has been accepted. This includes time limits within which the transfer must take place. Article 29 of the Dublin III Regulation provides that the transfer shall be carried out after consultation between the Dublin States concerned as soon as practically possible but either:

- within 6 months of the acceptance of the request to take charge or take back
- within 6 months of the final decision on an appeal or review that has suspensive effect (the applicant cannot be removed or transferred until that procedure has been completed)

Where the transfer does not take place within the 6 month deadline, responsibility is transferred to the requesting State. But the deadline can be extended up to a maximum of:

- one year if the transfer cannot take place due to imprisonment of the person
- 18 months if the person concerned absconds

Following the CJEU in Shiri C-201/16, when a Dublin transfer does not take place within the six-month time limit prescribed in the Dublin III Regulation, responsibility

for examining the application for international protection is automatically shifted to the Dublin State that requested the Dublin transfer. Moreover, the Court extended the scope of the right to an effective remedy provided in the Dublin III Regulation, specifying that an applicant for international protection can challenge a Dublin transfer before a national court by invoking the expiry of the prescribed six-month time limit.

If the applicant does not hold travel documents the transfer can take place quickly without the need to obtain other forms of travel documentation by using the laissez passer referred to in Article 29 of the Dublin III Regulation. A copy of the standard laissez passer can be found at Annex IV of [Implementing Regulation 118/2014](#).

More information on the provisions on transfer, including the exchange of relevant information before a transfer is carried out (including health data) can be found in Articles 29-32 of the Dublin III Regulation and also in Chapter III and the annexes of [Implementing Regulation 1560/2003](#) as amended by [Implementing Regulation 118/2014](#).

#### **Related content**

[Contents](#)

# Applicants who return to the requesting state following transfer

The carrying out of a transfer does not, in itself, definitively establish the responsibility of the Dublin State to which the person concerned has been transferred.

Following the CJEU in Hasan C-360/17 a Dublin State, to which an applicant has returned after being transferred, is not allowed to transfer that person anew to the (originally) requested Dublin State without respecting a take back procedure. In those circumstances, a new take back request must be submitted within the periods prescribed in Article 24(2) of the Dublin III Regulation, which begins to run from the time the requesting Dublin State becomes aware of the presence of the person concerned on its territory.

## **Related content**

[Contents](#)

# Dublin process: requests for transfer into the UK

This section explains the process **when an asylum claim has been lodged in another Dublin State** and there is evidence to suggest that the UK may be responsible for taking charge of the applicant to examine his or her claim under the Dublin III Regulation or where the UK is being asked to take back a person who has previously lodged an asylum claim in the UK.

## Considering requests from other Dublin States

### Receiving a request

Another Dublin State will submit a request for consideration of responsibility of an asylum claim to the UK authorities in the same way as the UK makes requests to other Dublin States. These cases are considered by the European Intake Unit (EIU) in UKVI.

As set out in Articles 1 and 2 of the [Implementing Regulation 1560/2003](#) as amended by [Implementing Regulation 118/2014](#), all formal requests to take responsibility based on grounds in the Dublin III Regulation must be submitted on the relevant standard forms using the DubliNet communications system. The requests that are received in the UK must respect the same terms of the Dublin III Regulation and the related Implementing Regulations that apply to UK requests to other Dublin States.

### Information sharing requests

Other Dublin States may request further information in order to make a preliminary check whether there is a criterion that is likely to determine another State's responsibility for examining the asylum claim. Article 34 of the Dublin III Regulation provides a mechanism for information sharing between the Dublin States. Each State shall communicate to any other such personal data concerning the applicant as is appropriate, relevant and non-excessive for:

- determining the Dublin State responsible
- examining the claim for asylum
- implementing any obligation under the Dublin III Regulation

Full details of the information that can be exchanged are set out in Article 34 of the Regulation.

### Family tracing: special provisions for unaccompanied children

As explained [earlier in this guidance](#), the Dublin State where the unaccompanied child has lodged his or her claim shall take appropriate action to identify family members, siblings or relatives on the territory of the Dublin States. A request may be received from another Dublin State seeking to establish if there are family ties to

persons in the UK. Requests and replies must be made on the standard form at Annex VII of [Implementing Regulation 118/2014](#).

## Criteria and evidence when considering a request from another Dublin State

Cases must meet at least one of the [criteria](#) for a request to be accepted. The request should include a copy of all available evidence (including circumstantial evidence) to show the UK is the State responsible for examining an asylum claim.

Article 22 of the Regulation provides that 2 lists shall be established to set out the relevant elements of proof and circumstantial evidence (including detailed statements) to be used by Dublin States when considering whether to make requests to take responsibility. The 2 lists can be found in Annex II of the [Implementing Regulation 118/2014](#). **Caseworkers must be familiar with the lists on the relevant elements of proof and circumstantial evidence.**

Formal requests for the UK to take ownership of an asylum claim can be made on the basis of a number of Articles contained in the Dublin III Regulation. An asylum claim must have been formally lodged in the requesting Dublin State before the UK can consider the request under Dublin. [Articles 8, 9, 10, 11 and 16](#) of the Dublin III Regulation contain specific provisions on family unity and dependency, including cases that concern unaccompanied children with family members in another Dublin State.

## Mandatory checks

Security checks must be conducted on the applicant and the family member(s) or relative(s) in the UK on receipt of all formal requests.

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### Requests involving children

As per Article 8(1), if the applicant is an unaccompanied child, the responsible Dublin State shall be that where a qualifying family member (insofar as the family existed in the country of origin, the mother, father or another adult responsible by the law or practice of the Dublin State where the adult is present – as per Article 2(g)) or sibling is legally present provided that is in the best interests of the child. For Article 8(1) cases, where the family member or sibling cannot accommodate the child, the UK has an obligation to accept the take charge request, provided it is in the best interests of the child and all other criteria and requirements are met.

As stated under Article 8(2), where another relative (adult aunt, uncle or grandparent – as per Article 2(h)) is legally present and **where it can be established that the relative can take care** of the child and it is in the best interests of the child, then the Dublin State where the relative is present shall be responsible. Article 8(2) presents an additional requirement (compared to 8(1)) on being able to demonstrate they can 'take care' of the child. In order to accept the take charge request, there must be evidence the UK based qualifying relatives(s) are able to accommodate and support the child. Such evidence should be provided by the UK based relatives to the EIU and Local Authorities.

Both Articles 8(1) and 8(2) require the transfer to be in the best interests of the child. The best interests of the child must always be a primary consideration when applying

the Regulation in family unity cases. When assessing a child's best interests, Dublin States should cooperate with each other taking due account of factors such as family reunification possibilities, the child's well-being and social development, safety and security considerations and the views of the child in accordance with their age and maturity, and background.

The European Intake Unit (EIU) will work with the local authority in which the family member, sibling or relative of the child is residing.

An initial notification to the local authority should be sent as soon as possible following the receipt of the TCR. It should specify whether the application has been made under Article 8(1) or Article 8(2) and should invite the local authority to provide any information that they hold that will allow a decision to be taken on the family link. The initial notification should also relay any information held by EIU which may be relevant to any safeguarding considerations.

If the family link is established, the EIU will then ask the relevant authority to undertake a full safeguarding assessment of the family member which will inform a recommendation to the EIU as to whether the request should be accepted or rejected. The local authority should be provided with information held by the EIU which may be relevant to any safeguarding considerations.

All decisions on whether to accept a request to take charge of a child's asylum application (and so accept the transfer of a child to the UK) will be the responsibility of the Home Office. These decisions will, however, be informed by the assessment and recommendations provided by local authorities and the best interests of the child must be a primary consideration at all stages of the process.

Both Article 6 and Article 8 of the Dublin III Regulation provides further information on guarantees for minors (children) in the Dublin procedure: caseworkers must be familiar with these articles.

In addition, Article 12 of [Implementing Regulation 1560/2003](#) as amended by [Implementing Regulation 118/2014](#) provides further guidance on the application of the provisions on unaccompanied children, including that if the duration of procedures for placing a child leads to a failure to observe the time limits set in Article 22(1) and 22(6) (on replying to a request to take charge) and Article 29(2) (on modalities and time limits for transfer) of the Dublin III Regulation, this shall not necessarily be an obstacle to continuing the procedure for determining the responsible State or carrying out a transfer.

In cases involving a take charge request based on Article 8 of Dublin III where the 2-month period from the receipt of the TCR is drawing to an end and despite having made reasonable and timely enquiries it has not been possible to establish with sufficient confidence: (a) whether or not the family link exists and/or (b) whether it would be in the child's best interests to have the asylum claim considered in the UK, the formal rejection of TCRs before the end of the 2-month period is necessary to prevent default acceptances of TCRs.

At the end of the two-month period where enquiries have not produced sufficient evidence in relation to the family link and/or best interests, and if enquiries remain ongoing at the point of rejection of the TCR, then this should be stated alongside the reasons given for rejecting the TCR. The requesting State should also be reminded of its ability to make a re-examination request within the next 3 weeks

A TCR should not be rejected solely to enable arrangements with the local authority for accommodation to be completed. In these circumstances the TCR should be accepted and these arrangements concluded as soon as possible thereafter.

All reasonable endeavours must be made to conclude necessary enquiries prior to the expiration of the two-month deadline. Accurate records should be kept detailing progress on consideration of the TCR throughout the process for audit purposes.

Correspondence may be entered into with the requesting state updating on progress or in relation to other matters requiring co-operation, however it is not possible to delay or defer deadlines under the Regulations by the issuance of 'holding' letters.

### Unaccompanied children: working with local authorities and or social services

For all cases, you must keep accurate records of what information is relayed, who is spoken to, when and by whom. Article 12 of the [Implementing Regulation 1560/2003](#), as amended by [Implementing Regulation 118/2014](#) refers to the role of authorities responsible for the protection of children having full knowledge of the facts to consider the ability of the adult or adults concerned to take charge of the child in a way which serves their best interests.

Article 12 also acknowledges that there may be cases where family members, siblings, or relatives stay in more than one Dublin State, in which case the State in which the child is present must cooperate with the State(s) concerned to determine:

- the strength of the family links between the child and the different persons identified across the Dublin States
- the capacity and availability of the persons concerned to take care of the child
- the best interests of the child in each case

Once the request from another Dublin State to take charge of an asylum-seeking child has been accepted by the UK, on the basis that the UK is responsible for examining the child's asylum claim under the Dublin III Regulation. the transfer shall be carried out after consultation with the Dublin state concerned. In circumstances where the UK has accepted the TCR by default, the requesting member state is responsible for initiating the transfer.

The UKVI role is to facilitate the arrival of the child into the UK with the sending Dublin State. Local authorities will provide additional information and advice on the wellbeing of the child if they are transferred to the UK.

## Best interests of the child and section 55 consideration

Section 55 of the [Borders, Citizenship and Immigration Act 2009](#) places a statutory safeguarding duty on the Home Secretary, who is required to make arrangements:

‘To ensure 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’

In respect of the Dublin III Regulation, the section 55 obligation applies only where a child is physically present in the UK. It is for the requesting State to be satisfied that the request they are making is in keeping with the child’s best interests.

Full guidance on the UK legislation can be found in part 1, paragraph 1.4 of the [Every Child Matters: Change for Children](#). This provides further guidance on the extent to which the spirit of the duty should be applied to children who are overseas.

When considering a request to transfer an unaccompanied child to the UK under the Dublin III Regulation, you must adhere to the spirit of the section 55 duty and careful consideration must be given to their safeguarding and welfare needs in assessing their best interests. You must work with local statutory child safeguarding agencies in the UK in order to develop arrangements that protect children and reduce the risk of trafficking and exploitation.

The re-establishment of family links would normally be regarded as being in accordance with the section 55 duty, but this may not always be the case. Whilst a non-exhaustive list, the re-establishment of family links would not be in accordance with section 55, for example, if it is identified that:

- the safety of the child or their family will be jeopardised
- the child has a well founded fear of relevant family members
- the relevant family members are the alleged actors of persecution within the claim for asylum which has not yet been finally determined
- the child is a recognised or potential victim of trafficking in which the family were knowingly complicit
- the child has shown to have been previously exploited or abused or neglected by their family, or claims to have been previously exploited or abused or neglected by their family and this has not been conclusively discounted

It is important that you demonstrate and record how you have considered a child’s best interests in line with the section 55 duty. All aspects of this consideration must always be clearly recorded both on the case file and on CID.

## Sponsorship undertaking in cases involving unaccompanied children (Article 8 of the Dublin III Regulation)

A sponsorship undertaking form must be sent to their family member or relative in the UK and representative (where notification is given) as soon as a transfer request is received. Seven days must be given to complete and return the form. If it is not returned within this time limit you must pursue return by telephone, if a number is available, or by a sending a further letter requesting a response.

Whilst not a legal requirement of either the Dublin III Regulation or Implementing Regulation, the sponsorship undertaking form will require the family to state clearly whether they are willing and able to receive the child. It will bring to the attention of the UK family member or relative, their obligations and responsibilities, and it will provide them the opportunity to raise any issues or questions about their obligations or responsibilities prior to a child's arrival.

### Confirming the status of the family member, sibling or relative

Under Article 8 of the Dublin III Regulation you must be satisfied when considering a transfer request that the parties are related as claimed and that the claimant's family member, sibling or relative is legally present in the UK. Where the subject of the request is an unaccompanied child in addition to the family member, sibling or relative's legal status in the UK having been confirmed, the transfer must also be in the child's best interests.

The term 'legally present' contained within Article 8 is **not** defined in the Dublin III Regulation. However, it has a larger scope than 'legally resident'. A 'residence document' is defined in Article 2(l) of Dublin III as:

'Any authorisation issued by the authorities of a Member State authorising a third-country national or a stateless person to stay on its territory, including the documents substantiating the authorisation to remain on the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorisations issued during the period required to determine the Member State responsible as established in this Regulation or during the examination of an application for international protection or an application for a residence permit.'

'Legally present' in the UK includes, in addition to all persons holding a residence document (as above), any other person allowed to stay in the UK as an applicant for asylum (including a person under a Dublin procedure to determine responsibility for examining his or her claim), a person holding a valid visa, leave to enter or remain or a person awaiting a decision to vary existing leave to enter or remain. It does **not** include persons without valid leave to enter or remain who are making representations against their removal, including persons who have exhausted their statutory appeal rights in the UK or persons who are in the UK on 'temporary admission' or immigration bail.

For the purposes of Article 8 of the Dublin III Regulation concerning unaccompanied asylum-seeking children a British Citizen is 'legally present'.

## Age assessment

UK practice is not to conduct age assessment on cases before they are transferred to the UK as the child is not within our jurisdiction. Article 31 of the Dublin III Regulation sets out that an age assessment of the applicant may be provided to the Dublin State responsible in order to provide the necessary information and safeguard the rights and needs of the person to be transferred. If the Dublin State making the request to the UK in which the applicant is present has conducted an age assessment in accordance with its national law, policy and procedures, this would be beneficial, allowing the assessed age to be used for indicative purposes on arrival.

Once the child has been transferred to the UK they are allocated to a regional asylum team who will process the case. If the child is subsequently found to be an adult, the regional asylum team will undertake action to notify relevant parties. Likewise, if an adult is found to be a child the regional asylum team will take action to ensure the appropriate support is provided to that child.

## Other family cases

Whilst Article 8 of the Dublin III Regulation deals specifically with unaccompanied children, a formal request to transfer an applicant may be also made on Article 9 grounds if a family member has been allowed to remain in a Dublin State (for example, as a beneficiary of international protection - granted refugee status or Humanitarian Protection in the UK). A transfer request may also be made under Article 10 if the family member is an asylum applicant whose asylum claim has not yet been the subject of a first decision on the substance of the claim.

## Dependency and discretionary provisions

Provisions on family dependency and discretionary provisions may also apply, as set out in Articles 16 and 17 of the Dublin III Regulation.

Where it is established that a situation of **dependency** exists between an applicant, their child, sibling or parent, Dublin States shall normally keep or bring together the parties as expressed in Article 16. Article 16 explicitly states that the dependency must be on account of pregnancy, new born child, serious illness, or old age. The person in the UK must be **legally resident** which means that they must have valid leave to enter or remain (this is in contrast to the term 'legally present' in Article 8 of the Dublin III Regulation, which includes an asylum applicant awaiting a decision on his or her claim).

Article 16 further states the family tie must have existed in the country of origin and exercise of the Article is subject to the condition that the child, sibling, or parent is able to take care of the dependent person or vice versa. In these cases, the persons concerned must express their consent to reunion in writing. When applying Article 16 evidence of family ties and dependency must be raised before a Dublin State has accepted responsibility following a take charge or take back request and before a

first instance decision has been made on the applicant's claim for international protection.

[Article 17](#) is a discretionary clause which sits outside of Chapter III of the hierarchy criteria. It allows a Dublin State to exercise discretion and examine an asylum claim even if it is not its responsibility under the criteria laid out in the Dublin III Regulation. Article 17(2) is relevant to family unity cases where an applicant for asylum is in another Dublin State (a formal asylum claim must have been lodged) and there are family relations in the UK. Article 17(2) can only be applied if all persons give their consent and a formal request by the Dublin State in which the applicant is present/the responsible State, must be made before a first decision on the claim for asylum is taken.

Article 17(2) provides that a Dublin State may (at any time before a first decision regarding the substance is taken) request another to take charge of an applicant in order to bring together any family relations on humanitarian grounds. Written consent is required from the persons concerned in Article 17(2) as part of the request.

Where an Article 17(2) request is received from another Dublin State, caseworkers should consider whether there are any exceptional circumstances or compassionate factors which may justify the UK exercising discretion and accepting responsibility for the claim, notwithstanding that the UK is not bound to do so under the Dublin III Regulation. There may be exceptional circumstances raised by the evidence submitted with the request from the other Dublin State which would result in unjustifiably harsh consequences for the applicant or their family relations. It is for the requesting Dublin State to demonstrate what the exceptional circumstances or compassionate factors are in their case: the evidence submitted with the request to exercise discretion must be coherent, verifiable and detailed in line with the Dublin III Regulation's general provisions on evidence.

Each request must be decided on its individual merits. However, situations in which it would be appropriate to exercise discretion will be rare and on an exceptional basis. In considering whether or not to exercise discretion caseworkers should act consistently with the Immigration Rules and policies on family members, for example the Immigration Rules Appendix FM – Family Members.

Caseworkers must discuss with a senior caseworker any case where the exercise of discretion under Article 17(2) may be appropriate **before** accepting a request.

## Confirming the relationship

Annex II of [Implementing Regulation 118/2014](#) specifies the elements of proof and circumstantial evidence that the requesting State should submit to support the transfer an asylum claim on the basis of family unity provisions contained in the Dublin III Regulation.

Proof for the purpose of determining the presence of a family member, sibling relative or relation in the UK of an unaccompanied child is defined in the Implementing Regulation as:

- written confirmation of the information by the other Dublin State
- extracts from registers
- residence permits issued to the family member
- evidence that the persons are related, if available
- failing this, and if necessary a DNA, or blood test

As above, **it is not essential for DNA evidence to be provided** ([DNA Policy Guidance 16 March 2020](#)), as within the list annexed to the Implementing Regulation the issue of DNA evidence is mentioned in the context of it being necessary only in the absence of other satisfactory evidence to establish the existence of proven family links that are referred to elsewhere in Articles 11 and 12 of Implementing Regulation (EC) No 1560/2003 as amended by (EU) No.118/2014.

The onus is on the applicant and their qualifying family member, sibling, relative or relations in line with the relevant provisions in the Dublin III Regulation (Articles 8-11, 16 and 17(2) [Dublin Regulation \(EU\) No.604/2013](#)) in the UK to prove their relationship and satisfy you that they are related as claimed. Although not expected to provide DNA evidence (as above), an applicant and their UK family may wish to submit a DNA test at their own expense from an organisation that is International Organization for Standardisation (ISO) accredited in order for it to be accepted as having evidential weight. Please refer to the “DNA Collection Standards” section of the DNA Policy Guidance ([DNA Policy Guidance 16 March 2020](#)).

In addition to elements of proof, circumstantial evidence or indicative evidence may also be submitted with a transfer request, such as:

- verifiable information from the applicant:
  - any documents an applicant wishes to rely upon should be provided in English, or accompanied by English translations
  - the onus is on the requesting Dublin State to provide translations of documents in languages other than English that it wants to include within its request (the EIU may exceptionally seek a translation itself if it considers this appropriate in a particular case, but this should not be the general practice)
- statements from the family members concerned
- statements or information from the authorities with responsibility for the child in the requesting Dublin State
- reports or confirmation of the information by an international organisation such as UNHCR, International Committee of the Red Cross or Save the Children

For further information on evidence required to support a formal request to transfer on family unity grounds other than Article 8, refer to Annex II of [Implementing Regulation 118/2014](#).

As above, in any case where the request is based on family unity grounds you must be satisfied that the applicant and family member, sibling, relative or relations in the UK are related as claimed if the UK is to accept a request to acknowledge responsibility for examining an asylum claim lodged in another State. The applicant and their UK-based qualifying family member, sibling or relation should provide sufficient evidence to prove their relationship and satisfy you that they are related as

claimed. You must consider whether, on the 'balance of probabilities' (the civil law standard), there is sufficient information to accept that the parties are related as claimed. In other words, you must decide whether, after looking at all the evidence, it is more likely than not that the applicant and the person in the UK are related as claimed.

If the person in the UK is an asylum seeker, refugee, a British citizen having previously been granted asylum, or has been granted leave in any other capacity, the Home Office file must be obtained and you must consider any family information it contains. This must be cross-referenced against the evidence submitted in support of the transfer request to identify and help determine whether or not you are satisfied that the relationship is as claimed.

You must, having considered the evidence submitted by the requesting State (proof or circumstantial evidence, as above, including information provided on standard forms which aim to establish the proven family link and the dependency link between the applicant and his or her child, sibling or parent, as well as to establish the capacity of the person concerned to take care of the dependent person), information contained in Home Office records and evidence submitted by the person in the UK, be satisfied that the parties are related as claimed.

You must be mindful of the difficulties that people may face in providing documentary evidence of their relationship. Those fleeing conflict zones or dangerous situations may not have time to collect supporting documents and may not realise they may be required. However, depending on the circumstances and country of origin it may well be possible for documents to be sent by post, faxed or emailed.

## Information disclosure

The sharing of sensitive personal data must comply with one of the conditions set out in Schedule 3 to the [Data Protection Act 2018](#)

For further guidance please see the fact sheet on processing personal data

## Timescales for replying to a formal request

This page tells you about the timescales for replying to a formal request to take back or take charge of an asylum claim

The same [timescales](#) apply to the UK to respond to requests to take back or take charge as apply to Dublin States responding to requests from the UK. Information on the [timescales](#) is set out earlier in this guidance.

**Note:** If EIU fails to reply to a formal request within the time limits set out in the Dublin III Regulation, the Regulation provides that this failure is tantamount to accepting the request and shall entail the obligation to take charge or take back of the person, including the obligation to provide for proper arrangements for arrival. Further information on the provisions that concern 'acceptance by default' can be found in Articles 22(7) and 25(2) of the [Dublin III Regulation](#). As noted earlier in this

guidance unlike TCRs lodged under other articles, requests made under Article 17(2) are not subject to the default acceptance provisions of Article 22 (7). This is due to the discretionary nature of the article which expressly recognises that the state to whom the request has been made is not otherwise responsible.

The only other exception to this rule is when considering a request to take charge of an unaccompanied child made with reference to Article 8 of Dublin III, as set out earlier in this guidance (for example on [timescales](#)). Article 12(2) of the Implementing Regulations states that the duration of procedures for placing a minor child may lead to a failure to observe the time limits set out in the Dublin Regulations, however, a failure to observe the time limits should not necessarily be an obstacle to continuing the procedure for determining the state responsible or carrying out a transfer.

## Implementing the decision

### Refusing the formal request

If, having carried out the necessary checks and considered the evidence, it is not established that the UK is the State responsible for examining the asylum claim a negative reply must be sent to the requesting State through '[DubliNet](#)' explaining the full reasons for refusal.

The Dublin III Regulation is intended to enable responsibility for an asylum claim to be determined swiftly within set timeframes. In some cases, where a caseworker forms a preliminary view that the TCR should be refused they may, depending on the nature of the proposed reasons for refusal and the time remaining within the Dublin timeframes, consider it appropriate to notify the claimed family member(s) of the proposed reasons for refusal so as to give them an opportunity to respond. Caseworkers are encouraged to provide this opportunity, if time allows and it is reasonable to do so. In deciding whether to afford such an opportunity, it may be relevant to consider the extent to which family member(s) have already been given the opportunity to be involved in the process and the cause for any delay in the decision making process. Due to the strict Dublin III timeframes, caseworkers should require a response within a maximum of 7 days. It should also be made clear that only new evidence not already submitted should be provided. Case workers should also keep a record of any consideration given to notifying the claimed family member(s) in this way.

If the requesting State believes the refusal is based on a misappraisal, or has additional evidence to put forward, it may ask for the request to be re-examined under Article 5 of Implementing Regulation 1560/2003. A request must be made within 3 weeks of receipt of the refusal to accept transfer. Upon receipt of a reconsideration request, reasonable endeavours should be made to respond within 2 weeks. If it is not possible to respond within two weeks despite reasonable endeavours then the requesting State is responsible for considering the asylum claim, subject to the requesting State making a subsequent fresh request for example under Article 17(2) of the Dublin III Regulation to bring together family relations. Any such fresh request should be based on all the material available

(including the material provided with any previous requests) and consideration given to whether an unaccompanied child who has not yet received a decision on their claim for asylum should be accepted for transfer to the United Kingdom on best interests grounds.

Where best interests enquiries are still ongoing at the end of the 2-week period for responding to a re-examination request, consideration should be given to reminding the requesting State, in the response to the re-examination request, of its ability to make a fresh request under Article 17(2) in future should a decision on the applicant's asylum claim still be outstanding.

## Accepting the formal request

If having carried out the necessary checks and considered the supporting evidence, including an assessment of the best interests of a child in Article 8 of Dublin III Regulation cases, it is accepted that the UK is the responsible State for examining the asylum claim you must formally notify the requesting State through '[DubliNet](#)'. You must specify which Article the request has been accepted under.

## Implementing the transfer

Article 29 of the Dublin III Regulation sets out that, if necessary, the applicant shall be supplied with a laissez passer by the requesting State to facilitate travel. The laissez passer is a temporary travel document used for the purpose of the Dublin III Regulation which means that if the individual does not hold travel documents the transfer can take place quickly without the need to obtain other forms of travel documentation. A copy of the standard laissez passer is annexed to [Implementing Regulation 118/2014](#).

Once the requesting State has been formally notified of the decision to accept their request and the transfer details have been agreed, you must notify Border Force of the date, time and location of arrival so as to ensure that the transfer can be smoothly implemented.

Once the applicant arrives in the UK, Border Force and in-country processes, such as fingerprinting, will commence and the case must be routed into the asylum process in accordance with normal procedures for examining asylum claims in the UK. Where a substantive decision has been previously taken on the asylum claim in the UK, or the claim was withdrawn after a substantive decision was made in the UK, the case will be subject to the further submission process.

For further guidance please see the instruction on further submissions.

**In cases involving the transfer of unaccompanied children into the UK** you must also inform the claimant's UK representative, if they have one, or the applicant's UK family and social services about the arrival and confirm with the applicant's UK family that they will meet the child on arrival. The child's asylum claim should be registered at the first available opportunity at the port of entry by an immigration officer. This should include a welfare interview on arrival (or screening

interview if the claimant has turned 18 during the Dublin process) and the recording of biometric information. If it is not possible to register the asylum claim at the port of entry you must arrange an appointment with the Asylum Intake Unit (AIU) immediately. The case must be reviewed to ensure the claimant has attended the welfare interview. If they have not, enquiries must be made into why they have not attended.

**Related content**

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