



Home Office

# Inadmissibility: safe third country cases

Version 5.0

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# About this guidance

This guidance details paragraphs 345A-D of the Immigration Rules.

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

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

## Contacts

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

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

## Publication

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

- version **5.0**
- published for Home Office staff on **31 December 2020**

## Changes from last version of this guidance

Changes:

- new Immigration Rules to come into effect at the end of the transition period at 11:00pm on 31 December 2020 following the UK's exit from the European Union on 01 January 2020
- processes updated throughout to reflect new rules

### Related content

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# Introduction

## Audience and purpose of instruction

This instruction is primarily for the attention of officers working in the Third Country Unit (TCU), which is the only unit permitted to make the inadmissibility decisions described in this instruction.

This instruction is also for the attention of:

- officers in UK Visas and Immigration, Border Force and Immigration Enforcement, with responsibility for registering asylum claims (registration, also referred to as asylum screening, includes the full range of activities undertaken at the point an individual claims asylum – the asylum screening interview is just one part of this task)
- officers in the National Asylum Allocation Unit and to a lesser degree the Detention Gatekeeper, who are responsible for allocating confirmed or potential inadmissibility cases to TCU
- asylum caseworkers and other officers involved in immigration functions who may encounter asylum claims suitable for referring for possible inadmissibility action should also be aware of this instruction and apply the relevant parts

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

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

## Background

The UK is committed to providing protection to those who need it, in accordance with its international obligations. Those who fear persecution should claim asylum and stay in the first safe country they reach and not put their lives at risk by making unnecessary and dangerous onward journeys to the UK. Illegal migration from safe countries undermines our efforts to help those most in need. Controlled resettlement via safe and legal routes is the best way to protect refugees and disrupt the organised crime groups that exploit migrants and refugees.

New Immigration Rules to better support these important principles came into effect at 23.00 on 31 December 2020. In broad terms, the Rules allow an inadmissibility decision to be taken on the basis of a person's earlier presence in or connection to a safe third country, even if that particular country will not immediately agree to the person's return. More significantly, if someone is inadmissible, the new provisions permit their removal to any safe third country that will take them (not just the specific country or countries through which they travelled or have a connection).

The Rules do not allow human rights claims to be treated as inadmissible. Any human rights grounds raised by the claimant must be substantively considered. However, where appropriate, such claims may be certified such as to make any appeals exercisable only from outside the UK and on limited grounds.

## Casework Information Database (CID)

The Home Office is transitioning its electronic immigration data records to the new Atlas system. References in this instruction to actions involving current systems, including CID, will over time be updated to refer to Atlas.

## Related instructions

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

- Country information and guidance
- Screening and routing
- Asylum interviews
- Assessing credibility and refugee status
- Nationality: disputed, unknown and other cases
- Humanitarian protection
- Family leave
- Discretionary leave
- Further submissions
- Rights of appeal
- Ceasing asylum support
- Judicial review

### Related content

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

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

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

Our statutory duty to children includes the need to demonstrate:

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

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

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

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

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

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# Registration, allocation and referral of the asylum claim

## Registration and screening of all asylum claims

Screening officers (by which it is meant those officers responsible for the broad range of tasks associated with the registration of an asylum claim) must register every asylum claim, according to the guidance Screening and routing, even for cases where an inadmissible decision may appear to be appropriate.

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

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

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

A proper account of the claimant's immigration history must always be taken to fully understand the chronology and detail of how the person came to the UK, with appropriate follow-up questions where necessary to address any gaps or possible ambiguities in the account. If screening contingency measures are in place (see Screening and routing guidance) officers should consider whether further checks or additional information may need to be gathered to apply this inadmissibility process.

## Referring cases to NAAU

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

Other than in the case of UASC or EU nationals, where it is suspected that the claimant may have spent time in or have a connection to a safe third country, the referral must summarise the evidence supporting that suspicion, and outline the

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

The referral is not a decision and is not subject to legal evidence thresholds or standards of proof; it is simply about highlighting the existence of evidence that a person may have been in or have a connection to a safe third country.

Operational feedback from NAAU and TCU about priorities and evidence viability may be issued over time to provide feedback as to what is most valuable to inadmissibility and returns decisions.

## Casework referrals

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

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

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

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# NAAU sift and referral

## Exclude from inadmissibility action

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

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

## Assess initial suitability for inadmissibility action

As with the referral to NAAU ([Referring cases to NAAU](#)), the initial suitability assessment is not a decision and is not subject to legal evidence thresholds or standards of proof. It is about reviewing available information regarding new asylum claims, identifying which cases may be appropriate for inadmissibility action. If an asylum case appears to meet the requirements of [Immigration Rules 345A and 345B](#), NAAU must refer the case to TCU, for more detailed consideration, and where appropriate, decision.

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

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

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

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

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

## Suitable for DAC or NSA processes

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

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

## Refer to TCU

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

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# TCU initial considerations

## Prioritisation

On receipt of case referrals from NAAU (or any other unit), TCU may prioritise and select cases for entry to inadmissibility processes according to considerations such as operational capacity, the strength of the evidence supporting the inadmissibility contention and the realistic prospects of the case being accepted for removal within 6 months of the registration of the claim (as well as the realistic prospects of the person being removed, because of their particular circumstances).

This prioritisation may be administered solely within TCU, or TCU may advise NAAU and other operational areas to apply prioritisation earlier in the process.

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# Notice of intent

If after reviewing the evidence available, TCU consider that case appears to satisfy paragraphs 345A and 345B of the Immigration Rules, a “notice of intent” must be issued to the claimant.

Neither this consideration nor the notice of intent constitute a formal decision. It is simply an information letter to the claimant, to inform them how their claim is currently being managed. If following the issue of the “notice of intent” any additional safe country the claimant is thought to have been present in or had a connection to is identified, the “notice of intent” should be re-issued to the claimant referencing this additional country or countries.

The wording of the notice of intent must be as follows, in a Home Office template letter:

“NOTICE OF INTENT – THIS IS NOT A DECISION LETTER

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

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

If your claim is treated as inadmissible, we will not ask you about your reasons for claiming asylum or make a decision on your protection claim. We will attempt to remove you to either the [named safe country/countries] in which you were present or have a connection, or any other safe country that will receive you.

At present, no decision has been made on this matter. We are still reviewing the evidence available to us. As part of this consideration we may make enquiries with safe countries to verify evidence or to ask if, in principle, they would admit you.

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

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

Yours sincerely...”

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# TCU further enquiries and decision preparation

## Further enquiries

TCU must review cases and where relevant, undertake further checks, to obtain additional information to support decisions, for instance:

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

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

## Decision in principle

After all further enquiries have been concluded, TCU must thoroughly review what is known about the case and consider whether it meets the requirements of paragraphs 345A to 345B.

Where it does not, it must be returned to NAAU to allocate appropriately for substantive casework to proceed.

Where it does meet the requirements, no decision must be made before return agreements are obtained (see [Return agreement](#)).

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# Return agreement

## Return agreements and the 'long-stop'

If TCU determine that a case meets the criteria set out in paragraphs 345A to 345B of the Immigration Rules, attempts must be made to promptly secure a safe third country's agreement to admit the person.

Return may be arranged through a general returns agreement/arrangement with a particular country, or by case-by-case agreements based on individual referrals by TCU.

The country of removal may be a safe third country in which the person was present before claiming asylum in the UK, one with which they have some other connection, or any other safe third country that will accept them. Where there are multiple possible safe countries of return and individual referrals are to be made, they should generally be done simultaneously rather than sequentially, to avoid unnecessary delay in securing agreement for the claimant's return.

## No reasonable prospect of removal and the 6 month 'long-stop'

An asylum claim must be admitted to the asylum system for substantive consideration if in the claimant's particular case, it is clear that there is no reasonable prospect of removal within a reasonable timescale (for instance, if all possible countries of return have emphatically refused to agree to the person's return).

The agreement by a third country to accept a person's return must be obtained no later than 6 months from the date the person claimed asylum. If there is no such agreement, the person's claim must be admitted for substantive consideration. This timescale may be extended only if removal is still a reasonable prospect and there are clear mitigating factors to justify the extension. Potential scenarios that would be considered as reasonable justification for extension:

Scenario 1: Following a referral into the National Referral Mechanism, until the consideration of whether or not the person is a victim of modern slavery has been completed, the 6 month clock will effectively be paused.

Scenario 2: If for example, information is provided of presence in or connection to a safe country during an asylum interview, agreement by a third country to accept a person's return must be obtained no later than 6 months from the date this evidence came to light.

## Returns

If a third country has agreed to admit an inadmissible claimant, the removal should be processed without undue delay. The process after the third country's agreement is not subject to the long-stop or other rigid timescales, but caseworkers should aim

to conclude the removal as promptly as possible and bearing in mind what is reasonable in all the circumstances.

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# Inadmissibility timescales

## Timescales and related considerations

### Decision timescales

There is no strict deadline by which an inadmissibility decision must be made after an individual claims asylum, but in practical terms, a time limit of just over 6 months will apply. This time limit applies because if a case has not been accepted for return by a third country within six months of the person's asylum claim being registered, the case must be admitted for substantive consideration. (See [No reasonable prospect of removal and the 6 month 'long-stop'](#).)

Even without this limitation, it is important that inadmissibility decisions be made as promptly as they can be - the longer a person spends time in the UK, the less likely it is that a third country will accept responsibility for an individual.

### Asylum claims made before January 2021

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

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# Decision consideration

## Immigration Rules and standard of proof decisions

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

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

### Example

If it is believed that a claimant passed through Belgium before arriving in the UK and claiming asylum, a decision under paragraph 345A(iii)(b) may be appropriate. Such a decision would need to show that it was more likely than not that the claimant had been in that particular country and could reasonably have been expected to have made an application for protection there but did not (for example that there were no exceptional circumstances preventing such an application). The decision would also need to show that the country is safe for that particular individual.

Scenario 1: A passer-by in Kent seeing the claimant arriving in a small boat from an easterly direction would not, by itself, meet the standard of proof required under paragraph 345A(iii)(b).

Scenario 2: An admission from the claimant that they had spent a couple of weeks in Brussels staying with friends whilst trying to find an agent to bring them illegally to the UK would likely constitute evidence that they had been in that particular country and could reasonably have been expected to have applied for asylum there (absent any factors to the contrary). The decision would also need to show that the country is safe for that particular individual.

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

protection there. The decision would also need to show that the country is safe for that particular individual.

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# Decision implementation

If an asylum claimant fits the criteria at paragraph [345A of the Immigration Rules](#) to the required standard of proof and their claim has not otherwise been admitted or suitable for EU inadmissibility action (see [TCU sift and prioritisation](#)), and if return to a third country has been agreed, their case should be treated as inadmissible.

If an asylum claim is treated as inadmissible, consideration must also be given to certifying the claim under one of the provisions of [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#). This certification will make an appeal right (where that appeal is brought in reliance on an asylum claim) exercisable only from outside of the UK and limit the grounds upon which such an appeal can be brought. Schedule 3 contains similar provisions allowing human rights decisions to be certified, making appeal rights exercisable only from abroad and on limited grounds.

Human rights claims may be raised, either before or after the asylum claim has been treated as inadmissible. Such claims cannot be treated as inadmissible, and must be fully considered. See [Human rights claims decision process](#).

## Asylum inadmissibility decisions

All decisions:

- use template IS.226 to set out and notify the asylum inadmissibility decision
- on the basis of all that is known about the claimant's immigration history and personal circumstances, specify clearly which part of Immigration Rule 345A applies to the claimant:
  - i) the applicant has been recognised as a refugee in a safe third country and can still avail themselves of that protection; or
  - ii) the applicant otherwise enjoys sufficient protection in a safe third country, including benefiting from the principle of non-refoulement; or
  - iii) the applicant could enjoy sufficient protection in a safe third country, including benefiting from the principle of non-refoulement because:
    - (a) they have already made an application for protection in that country; or
    - (b) they could have made an application for protection to that country but did not do so and there were no exceptional circumstances preventing such an application being made; or
    - (c) they have a connection to that country, such that it would be reasonable for them to go there to obtain protection.
- ensure that the decision letter fully and clearly explains the evidence supporting the relevant part of Immigration Rule 345A (for instance, the letter might state that the Home Office is treating the asylum claim as inadmissible under paragraph 345A(i) of the Immigration Rules because 'the applicant has been recognised as a refugee in a safe third country and can still avail themselves of that protection', that the country in question is Italy, and evidence in support of

that decision is a copy of the person's refugee status document from that country and written confirmation from the relevant country that the grant is still valid)

- address any oral or written representations from the claimant about why inadmissibility processes should not apply and address any submissions received from the claimant following the Notice of Intent.
- name the country to which it is proposed to remove the individual detail the admissibility of the claimant to the country (for instance, by reference to case-by-case admissibility, or bilateral or multilateral agreements which will in practice be effective in securing admission)
- address the risk of removing the claimant to the third country, setting out the conditions of safety in that country as far as they are likely to affect the claimant as a third country national, including the protection against refoulement
- if the safe third country is listed in Part 2 of Schedule 3 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004, certify the asylum claim under (paragraph 5(1) and 5(3))
- if the first country of asylum or safe third country is any other country not listed in Part 2 of Schedule 3 to the 2004 Act, certify the asylum claim under [Part 5 of Schedule 3](#) (paragraph 17) by certifying that it is proposed to remove the individual to the named country, that the individual is not a citizen there, and that in the view of the Secretary of State, based upon the information available and clearly set out, they will not face a breach of their Refugee Convention rights upon removal there, including not being refouled
- serve the decision to the claimant, or their legal representative if applicable
- update CID to record the asylum case type and decision as 'Third Country Case – Definite (Non-Dublin)'
- update CID to record the case outcome of 'Third Country – Action Accepted'
- note CID, asking support caseworkers to review asylum support eligibility, in view of the inadmissibility decision, any certificates issued and the individual's particular circumstances
- consider any further representations received between the service of decision and any in-country appeal (that is, any letters or other documentation relating to the claim or its handling, not to be confused with the formal process of [further submissions](#) considered under Immigration Rule 353), to establish whether inadmissibility action and certification of the decisions remains appropriate
- if the individual has lodged an in-country appeal but the decision is unaffected by the further representations, respond to the claimant to acknowledge receipt of the representations, but explain that the decision is to be maintained
- if new evidence comes to light during any in-country appeal process such that the initial decision needs to be reconsidered, if there is a realistic prospect that the decision will be different, presenting officers must refer to and apply the Withdrawing decisions and conceding appeals guidance
- if the decision will change because of the further representations, respond to the claimant (or legal representatives) to acknowledge receipt of the representations and to explain what has changed in respect of the decision

## Human rights claims decisions

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

All decisions:

- fully consider any human rights claim made implicitly or explicitly
- where appropriate, grant leave according to the specifics of the claim and grounds advanced (see all relevant guidance, but in particular: Humanitarian protection, [Family leave](#) and Discretionary leave)
- if it is right to refuse any human rights claim, use template ICD.1100 to record and notify the decision, according to the steps below
- ensure that the decision fully and clearly explains the evidence considered and the reasons for the decision that has been made

Asylum inadmissibility decisions already made or being made in respect of removal to a country listed in Part 2 of Schedule 3 of the Asylum and Immigration (Treatment of Claimants, Etc.) Act 2004:

- unless not clearly unfounded, certify any human rights claim that relates to the risk of refoulement from the proposed country of removal under [Part 2 of Schedule 3](#) (paragraph 5(1) and 5(3)), by certifying that the country of proposed removal is one of the countries listed in [Part 2 of Schedule 3](#) and certifying that the individual is not a citizen of that country
- consider and address any human rights claim made other than on the basis of refoulement (for instance, allegations about the risk of inhuman or degrading treatment under Article 3 owing to the living conditions in the country of removal, or a family life claim under Article 8)
- if the human rights claim made other than on the basis of refoulement from the country of proposed removal is to be refused, if appropriate, certify the claim as clearly unfounded under [Part 2 of Schedule 3](#) (paragraph 5(4)), unless an assessment of the individual facts of the case shows that the claim is not clearly unfounded

If the safe third country is any other country not listed in Part 2 of Schedule 3 to the 2004 Act:

- address the human rights claim, including any protection issues regarding the country of removal and the risk of refoulement with specific reference to objective information regarding the conditions of removal
- address any other relevant grounds
- if the totality of the human rights claim is clearly unfounded, certify it accordingly, using [Part 5 of Schedule 3](#) (paragraph 19(c))

All decisions:

- update CID Notes to record the human rights decision

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# Post-decision

## Appeals

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

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

## Further submissions

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

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

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

## Judicial review

The decisions to declare an asylum claim as inadmissible, to remove an appeal right (in the case of asylum inadmissibility decision certificates) or make an appeal right exercisable only from abroad (in the case of a human rights claim certified as clearly unfounded), may be challenged in the UK only through judicial review.

A judicial review lodged in these circumstances is likely to have suspensive effect, which means that the individual must not be removed from the UK until the proceedings have concluded.

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

## Related content

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# Background resource: summary

## **Registration (also referred to as the asylum screening process)**

Establish, where possible, whether claimants have spent time in or have a connection to safe third countries. Eurodac is not available for new cases since 31 December 2020, so there is more reliance on questioning claimants and recording physical and other evidence to establish immigration history and identify any safe countries in which claimants have spent time or with which they have a connection.

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

## **Casework referrals**

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

## **NAAU sift**

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

## **TCU sift**

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

## **TCU consideration, returns requests and decision stage**

Issue notice of intent.

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

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

## **Removal**

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

## **Related content**

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

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

## Immigration Rules 345A-D

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

345A. An asylum application may be treated as inadmissible and not substantively considered if the Secretary of State determines that:

- (i) the applicant has been recognised as a refugee in a safe third country and they can still avail themselves of that protection; or
- (ii) the applicant otherwise enjoys sufficient protection in a safe third country, including benefiting from the principle of non-refoulement; or
- (iii) the applicant could enjoy sufficient protection in a safe third country, including benefiting from the principle of non-refoulement because:
  - (a) they have already made an application for protection to that country; or
  - (b) they could have made an application for protection to that country but did not do so and there were no exceptional circumstances preventing such an application being made, or
  - (c) they have a connection to that country, such that it would be reasonable for them to go there to obtain protection.

345B. A country is a safe third country for a particular applicant, if:

- (i) the applicant's life and liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion in that country;
- (ii) the principle of non-refoulement will be respected in that country in accordance with the Refugee Convention;
- (iii) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in that country; and
- (iv) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention in that country.

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

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

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

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

**Related content**

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# Background resource: certification

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

If treating an asylum claim as inadmissible, the appeal rights should be certified under the relevant provisions, to make the appeal right exercisable only from outside of the UK.

A human rights claim cannot be ruled as inadmissible. If, after proper consideration a human rights claim is to be refused, consideration must also be given to whether that claim is clearly unfounded, and to certify it as such in the written decision letter.

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

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

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

The decision to remove an individual to a listed state of which they are not a citizen on these grounds of safety **may** be certified under Part 2 of Schedule 3 (paragraph 5(1)). This certificate applies to any appeal made on the basis that removal to the state would breach the UK's obligations under the Refugee Convention or that removal would breach the Human Rights Act 1998 because of the possibility of refoulement from that state. The certificate makes any such appeal exercisable only from outside of the UK, and on very limited grounds.

A human rights claim on grounds other than a risk of refoulement from the state of proposed removal (for example, based on family life under Article 8 or risk of harm under Article 3 on removal to the country) **must** be certified under paragraph 5(4) as clearly unfounded, unless it is not clearly unfounded. Again, any appeal would be exercisable only from outside of the UK and on very limited grounds.

## Croatia and Liechtenstein

Part 2 of Schedule 3 cannot be applied to inadmissibility decisions if the proposed removal is to Croatia or Liechtenstein. In such cases, any certification of the asylum and human rights claims would need to be made, if appropriate, according to the case-by-case certification provisions in [Part 5 of Schedule 3](#).

## Inadmissibility decisions involving all other safe third countries

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

The decision to remove an individual to a specified state of which they are not a national or citizen on this ground of safety **may** be certified under Part 5 of Schedule 3 (paragraph 17), taking account of the particular facts of the case and provided the general safety of the country in question (including non-refoulement) for third-country nationals can be evidenced by reference to credible objective information. This certificate applies to any appeal made on the basis that removal to the state would breach the UK's obligations under the Refugee Convention.

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

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

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