Home Office

# EU / EEA asylum claims

**Version 5.0**

 **Published for Home Office staff on 24 July 2024**

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# About this guidance

This guidance tells you about the inadmissibility processes applicable to asylum claims made by nationals of European Union (EU) countries. It also sets out how asylum claims from nationals of the wider European Economic Area (EEA) and nationals of Switzerland should be considered.

## 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 **24 July 2024**

## Changes from last version of this guidance

Version 5 changes:

- reviewed and updated in respect of the reference to proceedings under Article 7 of the Treaty on European Union in respect of Poland, against which proceedings were discontinued in May 2024
- minor drafting changes

Version 4 changes:

- reformatted to GRaFT standard guidance template
- simplified to focus on core EU claims issues
- amendments to some references relating to EU membership
- changes throughout to reflect changes brought by the commencement of the Nationality and Borders Act 2022, including for new claims, a new inadmissibility decision framework in section 80A of the Nationality, Immigration and Asylum Act 2002 and paragraph 327F of the Immigration Rules

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# Introduction

## Audience and purpose of instruction

This instruction is for officers in Home Office roles responsible for registering protection claims (conducting the screening interview and related activities at the point of claim). It is also for officers responsible for managing and deciding protection claims.

**This instruction sets out when and how to treat asylum claims from European Union (EU) nationals as inadmissible, the consequence of which is that the claims will not proceed to be considered substantively**. It also explains how to approach asylum claims made by nationals of the non-EU European Economic Area states (EEA - Liechtenstein, Norway and Iceland) and Switzerland.

This instruction does not set out detailed considerations around wider case management, such as support, reporting, bail, detention or removal. Caseworkers must refer to the lead guidance in these areas where relevant.

**This instruction does not address the safe third country inadmissibility concept**, applicable to asylum claimants previously present in or with a significant connection to safe third countries. See Inadmissibility: safe third country cases.

## Further reading

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

- Screening and routing
- Assessing credibility and refugee status
- Country information and guidance
- Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR)
- Appendix FM family members
- Family life (as a partner or parent), private life and exceptional circumstances
- Discretionary leave
- Judicial review
- Operating mandate: UK Visas and Immigration

## Key terms

References in this instruction to ‘protection claim’ should be read in line with the meaning at section 82(2)(a) of the Nationality, Immigration and Asylum Act 2002. Where the term ‘asylum claim’ is used, it is used more narrowly, in reference to the asylum claim in focus of inadmissibility provisions set out in section 80A of the Nationality, Immigration and Asylum Act 2002 (noting that paragraph 327F of the Immigration Rules treats as inadmissible any humanitarian protection claim made on the same facts as the asylum claim – see Legislation).

## Casework Information Database (CID) and Atlas

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

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# Background

The EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, as set out in Article 2 of the Treaty of the EU, and EU member states are regarded as being safe countries of origin. As such, protection claims from EU nationals are presumed to be clearly unfounded. Notwithstanding that safety, if nationals from the EU do not wish to return to their own countries and do not have any other lawful basis on which they may choose to remain in the UK, they are free to depart and relocate to the EU, to member states other than their country of origin, in line with EU Treaty rights providing freedom of movement.

The EU inadmissibility process exists to uphold the integrity and fairness of the asylum system in this context, and to ensure that resources are focused on protection claims from those in genuine need of protection. Under the process, inadmissible claims are not substantively considered, and inadmissibility decisions are not appealable (although they may be challenged by judicial review).

**Asylum claims by EU nationals made on or after 19 November 2015 must be declared inadmissible unless exceptional circumstances apply.**

[Note: claims made before 19 November 2015 may be treated as inadmissible only if the claimant has not already been invited to attend a substantive interview and has not been provided with any other correspondence specific to their claim that could create a legitimate expectation that the claim would be considered substantively.]

If an asylum claim cannot be treated as inadmissible, it must be considered substantively. See EU asylum claims for substantive consideration.

## Article 7 of the Treaty of European Union

Article 7 of the Treaty of the EU is an important part of how the EU manages and maintains high standards of human rights in its member states. It provides a means for the EU to escalate concerns that there is a risk of a serious and persistent breach of the values in Article 2 of the Treaty. It allows the Council to suspend certain rights deriving from membership of the EU where a member state fails to address the concerns. To date, the EU has brought Article 7 proceedings only twice: in respect of Poland in 2017 and Hungary in 2018. In May 2024, the proceedings against Poland were closed; they remain open in respect of Hungary.

Claims made by nationals of Hungary **must not** presently be declared inadmissible on EU inadmissibility grounds. The only exception is if the claimants are also nationals of other EU countries to which inadmissibility may be applied.

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# Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to ensure that immigration, asylum and nationality functions are discharged in a way that safeguards and promotes the welfare of children in the UK. Officers must have regard to best interests when processing claims from children and those with children.

Asylum claims from European Union (EU) nationals involving children, whether claiming in their own right or as dependants on their parents, must be treated as inadmissible unless the exceptional circumstances criteria are met. EU countries are regarded as safe countries for children as well. A child's best interests are not a factor in assessing whether a fear of persecution is well founded. It is not in a child's best interests to pursue a claim through the full substantive asylum process if that claim is unfounded and bound to fail because they have no well-founded fear in their country of origin.

It is very unlikely that a decision to treat an asylum claim as inadmissible or as unfounded would adversely impact on a child where an EU national is lawfully in the UK with valid leave (whatever such leave might be), because there would be no requirement for the child, or their parents, to leave the UK whilst that leave was extant. However, if an EU national is for any reason subject to removal or deportation action, this will impact on the child. As such, the best interests of the child must be considered in the context of any human rights claims.

Best interests can be outweighed by the strong public interest in deporting those convicted of serious crimes, particularly given that the effect of that decision would not require the child to leave the EU. Caseworkers should refer to the Criminality guidance for Article 8 ECHR cases, which contains a section on best interests of a child.

All protection claims made by children, including those from EU nationals that are considered substantively, must be considered by caseworkers who have received specialist training on how to deal with asylum claims made by children.

For further information on the key principles to take into account, see: 'Every child matters: statutory guidance'.

See also Processing children's asylum claims.

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# Relevant legislation

## Application of the relevant legislation

The Nationality and Borders Act 2022 (2022 Act) introduced changes to how inadmissibility processes apply to European Union (EU) nationals.

Any asylum claims made before 28 June 2022 are subject to the decision framework at paragraphs 326E and 326F of the archived Immigration Rules. Any claims made on or after that date are subject to the new provisions, inserted by the 2022 Act into Section 80A of the Nationality, Immigration and Asylum Act 2002.

In practice, the substance of the considerations under each framework is the same, and the remainder of this guidance after this section is applicable to either framework. However, it is vitally important that the correct framework is applied and referenced in inadmissibility decisions.

### Transitional arrangements – date of claim

Under transitional arrangements, for the purpose of determining which EU inadmissibility decision framework applies, individuals who sought to register an asylum claim before the commencement date of 28 June 2022 but were provided with an appointment to attend a designated place to register their asylum application on or after 28 June will be considered to have 'made an asylum claim' before the commencement date, but only if they attend their scheduled appointment (or, in the event that it is cancelled or rescheduled by the Home Office, the rescheduled appointment).

However, if the individual does not attend their appointment, but later wishes to register a claim for asylum on or after commencement, they will not be considered to have 'made an asylum claim' before the commencement date, unless (a) there were circumstances beyond their control that made it impossible for them to attend the appointment scheduled for them, (b) they contacted the Home Office as soon as reasonably practicable to warn/explain of the said circumstances and apply for a new appointment and (c) they provided the Home Office, as soon as reasonably practicable, with evidence to demonstrate their inability to attend the scheduled appointment which they say they were unable to attend.

## Legislation

### Claims made on or after 28 June 2022

Asylum claims made by EU nationals on or after 28 June 2022 are subject to the inadmissibility decision framework in Section 80A of the Nationality, Immigration and Asylum Act 2002. Where an asylum claim is declared inadmissible under Section 80A, paragraph 327F of the Immigration Rules treats as inadmissible a humanitarian protection claim made on the same facts.

Section 80A **requires** that claims made by EU nationals be declared inadmissible, unless exceptional circumstances apply such that the claim should be considered.

A **non-exhaustive** list of exceptional circumstances is set out at section 80A(5):

> For the purposes of subsection (4) exceptional circumstances include where the member state of which the claimant is a national—
>
> (a) is derogating from any of its obligations under the Human Rights Convention, in accordance with Article 15 of the Convention;
>
> (b) is the subject of a proposal initiated in accordance with the procedure referred to in Article 7(1) of the Treaty on European Union and—
>
> (i) the proposal has yet to be determined by the Council of the European Union or (as the case may be) the European Council,
> (ii) the Council of the European Union has determined, in accordance with Article 7(1), that there is a clear risk of a serious breach by the member state of the values referred to in Article 2 of the Treaty, or
> (iii) the European Council has determined, in accordance with Article 7(2), the existence of a serious and persistent breach by the member state of the values referred to in Article 2 of the Treaty.

## Claims made before 28 June 2022

Protection claims made by EU nationals before 28 June 2022 (or treated as if they were made before that date, according to transitional arrangements) are subject to the inadmissibility decision framework for that period, in paragraphs 326E and 326F of the archived Immigration Rules:

> 326E. An EU asylum application will be declared inadmissible and will not be considered unless the requirement in paragraph 326F is met.
>
> 326F. An EU asylum application will only be admissible if the applicant satisfies the Secretary of State that there are exceptional circumstances which require the application to be admitted for full consideration. Exceptional circumstances may include in particular:
>
> (a) the Member State of which the applicant is a national has derogated from the European Convention on Human Rights in accordance with Article 15 of that Convention;
> (b) the procedure detailed in Article 7(1) of the Treaty on European Union has been initiated, and the Council or, where appropriate, the European Council, has yet to make a decision as required in respect of the Member State of which the applicant is a national; or
> (c) the Council has adopted a decision in accordance with Article 7(1) of the Treaty on European Union in respect of the Member State of which the applicant is a national, or the European Council has adopted a decision in

accordance with Article 7(2) of that Treaty in respect of the Member State of which the applicant is a national.

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# European case types

Caseworkers may see claims from the following types of European cases:

- nationals of European Union (EU) states
- nationals of European Economic Area (EEA) states that are **not** part of the EU
- nationals of Switzerland
- non-EU/EEA nationals resident in an EU state

## The European Union

The member states of the EU are:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Irish Republic
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden

**EU inadmissibility processes can only be applied to EU nationals.**

## The European Economic Area (EEA) and Switzerland

The EEA is made up of the member states of the EU, together with Liechtenstein, Norway and Iceland. Switzerland is neither an EU nor EEA member.

**The claims of those from the wider EEA or Switzerland are not suitable for processing under the EU inadmissibility process and must be considered substantively (unless safe third country inadmissibility action is appropriate).** If the protection claim of an EEA or Swiss national is considered substantively and refused, consideration must be given to the appropriateness of certifying the decision as clearly unfounded, according to the facts of the case. See Clearly unfounded claims: certification under section 94.

## Non-EU nationals resident in EU states

If a claimant applies for protection on the basis of persecution in an EU country but is **not** a national of that country (for example, an ethnic Russian entitled to reside in Latvia but not a Latvian national, or a non-EU family member of an EU national), the claim cannot be declared inadmissible on EU inadmissibility grounds. However, depending on the facts of the cases, it may be appropriate to treat such claims as inadmissible on safe third country grounds (see the instruction Clearly unfounded claims: certification under section 94).

Alternatively, if such claims are not suitable for inadmissibility and must be considered substantively, it may be appropriate to certify any refusal of the claim as clearly unfounded, again depending on the particular facts of the case. See Inadmissibility: safe third country cases for further guidance.

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# Declare asylum claims by European Union (EU) nationals inadmissible

## Asylum screening and registration

Adult EU nationals who claim asylum must be fully screened and their protection claims must be fully registered, according to the Screening and routing guidance. This includes full completion of the asylum screening interview, fingerprinting, and UKVI Operating Mandate checks. Children who claim asylum are not subject to the same process as adults - see Processing children's asylum claims.

## Declare the claim inadmissible at the earliest opportunity

**All asylum claims made on or after 19 November 2015 must be declared inadmissible, at the point of claim or at the earliest subsequent opportunity, unless exceptional circumstances apply**, in line with section 80A(5) of the Nationality, Immigration and Asylum Act 2002 (see Legislation).

Where exceptional circumstances are identified, the claim must be routed and substantively considered according to normal asylum procedures. See EU asylum claims for consideration.

If officers are unsure whether the issues raised are sufficiently exceptional to not proceed with inadmissibility action, consideration, they must refer to senior caseworkers in the first instance. Senior caseworkers may contact the Asylum Policy team if further advice is required.

### No representations or statements made

If the claimant does not set out any exceptional circumstances as to why their claim should be considered substantively, it must be declared inadmissible as soon as possible (which may be at the point of claim), using the template letter ASL.5052, with 'option 1' selected.

### Representations or statements made

If the claimant provides verbal or written reasons or representations asserting exceptional circumstances, whether at the time of the claim or any time after it has been declared inadmissible, they must be carefully considered.

Where representations are received at the point of claim but clearly do not identify any exceptional circumstances, screening officers may reject them. Where more detailed consideration is required, screening officers must immediately refer to senior caseworkers or equivalent in their area. If such support is not available or further assistance is required, the case must be referred to the Asylum Operations Chief Caseworker Team (ACCWT) who will consider the representations and – where

inadmissibility remains appropriate – provide a decision contribution, usually in time for same-day service, if the claimant is present.

If cases are routed to asylum decision-makers without inadmissibility having been considered, they must undertake the inadmissibility consideration as a priority.

If after appropriate consideration, the reasons and representations received do not engage the exceptional circumstances criteria, officers must declare the claim inadmissible, using letter ASL.5052, with 'option 2' selected. The letter must clearly set out that the evidence has been reviewed, and it must give clear reasons why the Home Office does not accept that there are any exceptional circumstances.

If an individual is declared inadmissible and at a later time seeks to submit representations asserting exceptional circumstances, that submission should in the first instance be made to the screening unit responsible for their claim, or (if applicable) to another unit which has since taken responsibility for the person's case, for instance, if enforcement action is underway. If the relevant unit is unable to consider the representations, the case should be referred to ACCWT, as above.

## Victims of Modern Slavery / Trafficking

EU nationals must be referred to the National Referral Mechanism if there are indicators that they may be a victim of modern slavery or trafficking. Unless exceptional circumstances require the case to be considered substantively, the asylum claim must still be declared inadmissible because victims could seek protection from the authorities in their country of origin, although they may qualify for leave to remain in the UK under the discretionary leave policy. See relevant guidance on Modern Slavery, in particular the guidance Report modern slavery as a first responder. See also the guidance on Discretionary leave.

## Vulnerable individuals

Vulnerable individuals must be referred to the appropriate safeguarding lead to determine the correct way to deliver the decision to treat the claim as inadmissible.

## Human rights

If an individual has permission to stay in the UK (or some other leave to remain or right to reside) and they will not be required to leave when an inadmissibility decision is made, caseworkers will not need to consider how removal might breach the person's human rights.

However, if an individual does not have permission to stay in the UK, before any action is taken to require them to leave the UK and return to their country of origin, consideration must be given to whether such action would breach their rights under the European Convention on Human Rights (ECHR). Any particularised asylum claim will necessarily carry an implied human rights claim on protection grounds (likely under Articles 2 and 3 of the ECHR), but consideration must be given to any

other evidence making or implying a claim, whether on protection grounds or non-protection grounds (for example, family life under Article 8).

If the person's human rights claim is refused, they must be informed of this in a written decision. This decision does not have to be set out in the same letter as the inadmissibility declaration, but where possible it should be, and in all cases the decision must be notified before any removal action.

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# Third country inadmissibility

If it is not appropriate to treat an EU national's asylum claim as inadmissible on EU inadmissibility grounds, consideration must be given to the appropriateness of third country inadmissibility processes, taking into account any connections the person may have to particular safe third countries as well as the person's right to exercise their EU Treaty rights in other EU states. See the guidance Inadmissibility: safe third country cases.

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# EU asylum claims for substantive consideration

All cases not suitable for inadmissibility on any basis must be considered substantively, in accordance with the published guidance applicable to all other asylum and human rights claims.

## Decide case on written evidence provided

Paragraph 339NA(viii) of the Immigration Rules states that an asylum interview may be omitted if the claimant is an European National (EU) national whose claim is being considered substantively in light of exceptional circumstances. Caseworkers may however interview an EU national if it is necessary to make a fair and robust decision. See the Asylum interviews guidance.

## Safe EU countries and certification

Someone whose protection claim is fully considered and refused will have a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002, unless the decision is certified on the basis the claim is clearly unfounded under Section 94 of that Act, which has the consequence of removing the right of appeal. See Clearly unfounded claims: certification under section 94.

If considering certification, particular regard must be given to the specific exceptional circumstances that led to the case not being suitable for inadmissibility action, as they may be relevant to whether the case can be treated as clearly unfounded.

## Grants of asylum or other leave to EU and European Economic Area (EEA) nationals

There is, in general, no risk of persecution in EU/EEA countries such that it would give rise to a need for international protection.

If the particular circumstances of a case appear to justify a grant of asylum, caseworkers must discuss the facts with a senior caseworker. If it is agreed that a grant of asylum is appropriate, it must be actioned, in line with published guidance on Assessing credibility and refugee status and Drafting, implementing and serving asylum decisions.

If the claimant qualifies for discretionary leave (DL) or leave on the basis of family or private life, or other compassionate or compelling grounds, leave should be granted in line with current policy under or outside the Immigration Rules.

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