



Home Office

# Inadmissibility: safe third country cases

Version 9.0

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# About this guidance

This guidance details the circumstances in which asylum and humanitarian protection claims may be treated as inadmissible on safe third country grounds, and the processes for taking such action.

This guidance does not apply to asylum claimants who are subject to inadmissibility under paragraphs 326E-F of the Immigration Rules in force before 28 June 2022 or section 80A of the Nationality, Immigration and Asylum Act 2002.

## 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 **9.0**
- published for Home Office staff on **15 August 2024**

## Changes from last version of this guidance

Changes:

- content added to clarify how the inadmissibility process operates in the context of age disputes
- new inbox address for casework referrals for inadmissibility consideration
- references regarding the commencement of the Illegal Migration Act 2023 (IMA) have been removed due to the decision to remove the retrospective effect of the IMA
- references removed to inadmissibility removals to Rwanda under the Migration and Economic Development Partnership and to the [Safety of Rwanda \(Asylum and Immigration\) Act 2024](#)

### Related content

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# Introduction

## Audience

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

- officers in any group or directorate who may be partly or wholly responsible for registering asylum claims, conducting asylum screening, and any other related encounter and registration activities
- officers in the National Asylum Allocation Unit (NAAU) and the Detention Gatekeeper (DGK), responsible for allocating cases to TCU and other processes
- asylum caseworkers and other officers involved in immigration functions who may encounter asylum claims which may be suitable for inadmissibility action, who should also be aware of this guidance and apply the relevant parts

## Purpose

This guidance addresses processes for handling, considering and actioning safe third country inadmissibility decisions under [sections 80B-C of the Nationality, Immigration and Asylum Act 2002 \(NIAA 2002\)](#) or [paragraphs 345A-D of the Immigration Rules as in force before 28 June 2022 \(for claims made before that date\)](#).

It also addresses certificates issued from 28 June 2022 under [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (2004 Act) in respect of decisions to treat safe third countries as safe and removing appeal rights in those decisions, including where human rights claims are assessed to be clearly unfounded. See [Application of the relevant legislation](#).

## Limits to the scope of this guidance

**This guidance must not be applied to claimants who are subject to inadmissibility processes under [section 80A of the NIAA 2002](#) (or, for any claimants whose claim was made before 28 June 2022, inadmissibility processes under [paragraphs 326E-F of the Immigration Rules in force at that time](#)).**

For further information see EU and EEA asylum claims.

## Casework Information Database (CID) and Atlas

The Home Office is transitioning its electronic immigration records from CID to the Atlas system. References to CID actions in published guidance will over time be updated to refer to Atlas. Where detailed Atlas-specific advice is not available in this guidance, 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.

## Key terms

References to 'third country' in this guidance should be read as references to a 'third State', in line with [sections 80B-C of the NIAA 2002](#) and [Schedule 3 to the 2004 Act](#).

'Relevant decision framework' refers to the provisions under which an inadmissibility decision must be made, according to the date of the asylum claim (see [Legislation](#)).

'Asylum screening' and similar terms are activities undertaken in registering asylum claims. An 'asylum screening interview' (or 'initial contact and asylum registration questionnaire') is usually completed as part of this, but there may be other interviews and questionnaires in which the required registration information can be obtained.

## Further reading

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

- Asylum screening and routing
- Assessing age
- Children's asylum claims
- Victims of modern slavery and [Report modern slavery](#)
- Clearly unfounded claims: certification under section 94
- Country information and guidance
- Assessing credibility and refugee status
- Considering human rights claims.
- Medical claims under Articles 3 and 8 of the ECHR
- Appendix FM and 276ADE (family members and private life)
- Discretionary leave
- Asylum support
- Family returns process
- Further submissions
- Judicial reviews, injunctions and applications to the ECtHR
- Disclosure and confidentiality of information in asylum claims
- Operating mandate: UK Visas and Immigration

### Related content

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# Background

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

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

In broad terms, asylum claims may be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed asylum, or could reasonably be expected to have done so (or, for claims made before 28 June 2022, where exceptional circumstances didn't prevent such a claim), provided there is a reasonable prospect of removing them in a reasonable time to a safe third country.

## **Related content**

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# Application of this guidance 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 guidance 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
- timely processing of asylum applications
- 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 guidance.** 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 guidance Children's asylum claims.

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

## Disputed age

The Assessing age guidance sets out all of the relevant considerations in respect of age dispute cases.

If a person's claim to be a child is disputed by the Home Office but they are treated as a child whilst further consideration is given to the issue of their age by their local authority, they must not be entered into the inadmissibility process. This further consideration of age may include an age assessment under section 50 or 51 of the Nationality and Borders Act 2022 (2022 Act) conducted by either the local authority or National Age Assessment Board. However, if the person is later assessed to be an adult and the Home Office accepts the decision for immigration purposes, they may at that time be considered for inadmissibility action. See [General suitability](#) and [Casework referrals](#).

If a person's physical appearance and demeanour very strongly suggests they are significantly over 18 years of age and there is little or no supporting evidence for their claimed age, they must be treated as an adult in accordance with the Assessing Age guidance, and they may therefore be considered for inadmissibility action. Even where a person is treated as an adult on this basis, it does not prevent them from asking their local authority for an age assessment.

If a person treated as an adult under the significantly over 18 policy maintains they are a child and is subsequently taken into local authority care pending an age assessment under section 50 or 51 (or the local authority has confirmed in writing to the Home Office that it intends to do so), inadmissibility action must be paused until the age assessment has been concluded and the Home Office has reviewed its decision on age for immigration purposes, taking into account the outcome of that assessment. That means that during the pause, an inadmissibility declaration must not be made, or if it has, the person must not be removed. Inadmissibility action may proceed only if the person is confirmed to be an adult.

#### **Related content**

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# Relevant legislation

## Application of the relevant legislation

The legislative framework applicable to the decisions and certificates in a claim is determined by the date of the asylum claim, the date of a person's connection to a safe third country, and the date any certificate is issued (see [Inadmissibility decisions](#), below).

## Transitional arrangements relevant to the date of claim

Under transitional arrangements, for the purpose of determining which inadmissibility decision framework applies, individuals who sought to register an asylum claim before 28 June 2022 but were provided with an appointment to attend a designated place to register their asylum application on or after 28 June 2022 will be considered to have 'made an asylum claim' before that 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 did not attend their appointment, but on or after 28 June 2022 wishes to register a claim, they will not be considered to have 'made an asylum claim' before that 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 or explain of the said circumstances and apply for a new appointment and (c) they provided the Home Office, as soon as reasonably practicable, evidence to demonstrate their inability to attend the scheduled appointment.

## Legislation

### Inadmissibility decisions

#### Asylum claims made on or after 28 June 2022

Asylum claims made on or after 28 June 2022 may be liable to inadmissibility decisions under the decision framework set out in [section 80B](#) and [section 80C of the Nationality, Immigration and Asylum Act 2002](#) (NIAA 2002) and [paragraph 327F of the Immigration Rules](#) (paragraph 327F).

Sections 80B and 80C of the NIAA 2002 provide for a person's asylum claim to be declared inadmissible if they have a specified connection (under section 80C) to a third country which is assessed as safe according to specified criteria (section 80B(4)). The consequence of such a declaration is that the Home Office is not required to consider the asylum claim in respect of the person's country of origin.

Section 80B(4) defines a third country as being safe for a claimant if:

- (a) the claimant's life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion,
- (b) the State is one from which a person will not be sent to another State—
  - (i) otherwise than in accordance with the Refugee Convention, or
  - (ii) in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment),and
- (c) a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State.

Section 80C defines connections a claimant must have with a safe country before inadmissibility can apply (a claimant must have one of these connections):

- (1) Condition 1 is that the claimant—
  - (a) has been recognised as a refugee in the safe third State, and
  - (b) remains able to access protection in accordance with the Refugee Convention in that State.
- (2) Condition 2 is that the claimant—
  - (a) has otherwise been granted protection in a safe third State as a result of which the claimant would not be sent from the safe third State to another State—
    - (i) otherwise than in accordance with the Refugee Convention, or
    - (ii) in contravention of their rights under Article 3 of the Human Rights Convention, and
  - (b) remains able to access that protection in that State.
- (3) Condition 3 is that the claimant has made a relevant claim to the safe third State and the claim—
  - (a) has not yet been determined, or
  - (b) has been refused.
- (4) Condition 4 is that—
  - (a) the claimant was previously present in, and eligible to make a relevant claim to, the safe third State,
  - (b) it would have been reasonable to expect them to make such a claim, and
  - (c) they failed to do so.
- (5) Condition 5 is that, in the claimant's particular circumstances, it would have been reasonable to expect them to have made a relevant claim to the safe third State (instead of making a claim in the United Kingdom).

Where an inadmissibility declaration is made on an asylum claim under sections 80B and 80C, paragraph 327F of the Immigration Rules treats as inadmissible any humanitarian protection claim made on the same facts ([paragraphs 327EA and 327EB of the Immigration Rules](#) define humanitarian protection claims and how they must be made in order to be recorded as valid).

Inadmissibility declarations under section 80B-C of the NIAA 2002 (and the treatment of any associated humanitarian protection claim as inadmissible under paragraph 327F), are not decisions to refuse protection or human rights claims, and so these declarations confer no rights of appeal under section 82 of the NIAA 2002.

Inadmissibility declarations under section 80B-C of the NIAA 2002 do not apply to human rights claims. However, human rights claims made in respect of removal to a safe third country must always be properly considered, and where appropriate, certified (see [Safety in the removal country and certifications](#)).

## Asylum claims made before 28 June 2022

Asylum claims made before 28 June 2022 may be liable to inadmissibility action under [paragraphs 345A-B of the archived Immigration Rules](#). These provisions may in principle be applied to older claims, made before the amended paragraphs 345A-B of the Immigration Rules came into effect (23.00 on 31 December 2020). Such a decision is unlikely to be appropriate if the person would not have been eligible to receive a similar decision under the previous Immigration Rules, or if the progress of their claim through the asylum system has already been substantially delayed compared to average decision timescales. (See also [Timescales](#).)

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.

As with the NIAA 2002 framework, inadmissibility decisions under the Immigration Rules do not confer appeal rights. They also do not apply to any human rights claims. Human rights claims made in respect of removal from the UK to a safe third country must always be properly considered, and where appropriate, certified.

## Certificates

If an asylum claim is declared inadmissible, certification under the relevant part of [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (the 2004 Act) must be considered.

Schedule 3 was amended by the [Nationality and Borders Act 2022](#) (NABA 2022), and any certificate issued on or after 28 June 2022 must be in line with those amendments. Any Schedule 3 certificates that were properly issued before 28 June 2022, according to [the version of Schedule 3 applicable at that time](#), will continue to be valid after that date.

Schedule 3 to the 2004 Act concerns decisions involving removals to safe third countries, statutory presumptions in respect of those countries (see below), and the removal of appeal rights in relation to asylum and human rights claims made in such cases (or the removal of an in-country appeal right for certified human rights claims for pre-28 June 2022 claims).

Where a Schedule 3 provision requires consideration of whether claims are clearly unfounded, that term must be understood and applied as set out in the guidance *Clearly unfounded claims: certification under section 94* (although the wider guidance regarding section 94 does not apply to Schedule 3 considerations).

## Listed safe countries

As of 28 June 2022, Part 2 of Schedule 3 to the 2004 Act lists 31 European countries (all 27 European Union countries, as well as Iceland, Norway, Switzerland and Liechtenstein), to which some statutory presumptions apply in respect of people who are not nationals of those countries.

An **irrebuttable statutory presumption** requires that these countries must be treated as places where a person's life and liberty would not be threatened for one of the reasons in the [1951 Refugee Convention](#) (race, religion, nationality, membership of a particular social group or political opinion), and as places from which a person would not be removed in contravention of the 1951 Refugee Convention. **Because this presumption is irrebuttable, it applies without the particular facts needing to be considered on a case-by-case basis.**

If an inadmissibility decision is certified to state both that a person will be removed to one of the listed countries and that they are not a national of that country, the



certificate (under paragraph 5(1) of Schedule 3 to the 2004 Act) will remove appeal rights based on any claim that removal to that country would breach the UK's obligations under the Refugee Convention.

A **rebuttable statutory presumption** also applies to these countries, which must, unless a claimant can demonstrate otherwise, be treated as places where a person's rights under Article 3 of the [European Convention on Human Rights](#) (ECHR) would not be breached and from where they would not be removed in contravention of the ECHR. **Because this presumption is rebuttable, any factual challenge to the presumption must be considered on a case-by-case basis.**

Where removal is to one of the listed safe countries, and a certificate has been issued under paragraph 5(1) of Schedule 3 to the 2004 Act, paragraph 5(4) requires that any human rights claim in respect of removal from the UK to the country of removal **must** be certified as clearly unfounded, unless the decision-maker is satisfied the claim is not clearly unfounded. As of 28 June 2022, a clearly unfounded certification has the effect of removing appeal rights in respect of the decision.

### Case-by-case assessment of safe countries

Part 5 of Schedule 3 to the 2004 Act also contains provisions relating to removal to safe third countries (applicable only to countries not listed in part 2 of Schedule 3). **These provisions do not establish statutory presumptions, and may be applied only on a case-by-case basis, following a detailed consideration of the facts.**

If an inadmissibility decision is certified under paragraph 17 of Schedule 3 to the 2004 Act to state that a person will be removed to a named safe country where they are neither a national or citizen, where in the opinion of the decision maker, their life or liberty would not be threatened for one of the reasons in the 1951 Refugee Convention and from where they would not be removed in contravention of the Refugee Convention, the certificate will remove appeal rights reliant on any claim that removal would breach the UK's obligations under the Refugee Convention.

If the decision-maker considers that a human rights claim in respect of removal from the UK to the third country is clearly unfounded, they **may** certify the claim as clearly unfounded under paragraph 19(c) of Schedule 3, with the effect of removing appeal rights in respect of the decision.

### Removal timescales after inadmissibility decisions

[Paragraph 345D of the Immigration Rules](#) states:

When an application has been treated as inadmissible and the Secretary of State believes removal to a safe third country within a reasonable period of time is unlikely, the applicant will be admitted for consideration of the claim in the UK.

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# Asylum screening

## Registration and screening of all asylum claims

All asylum claims must be properly registered, including where inadmissibility action may appear to be appropriate.

All officers involved in initial encounter and asylum registration must be alert to verbal or documentary evidence of a claimant's earlier presence in or connections to a safe third country, as it may be relevant to an inadmissibility decision. It may also be relevant to considerations in a substantive asylum decision, such as credibility.

In particular, officers should check for biometric evidence, which may identify previous encounters with a claimant in the UK or overseas, for instance, a visa match, an earlier removal, or if the claimant has been fingerprinted by Border Force officers attempting to enter or apprehended in juxtaposed control areas in France.

Other evidence may include (but is not limited to): historic Eurodac matches (see [Sift and allocate to Third Country Unit \(TCU\) or other processes](#) and [Further enquiries](#) for further information on use of historic Eurodac evidence), Heavy Goods Vehicle (HGV) or vehicle tracking data, passports, legal papers, employment letters, bank statements, business cards, invoices, receipts and other similar documents.

A proper account of a claimant's immigration history must always be taken as part of the screening process, to fully understand the chronology and detail of how the person came to the UK, including the circumstances of their departure from their country of origin, their reasons for leaving apparently safe countries and, where relevant, the opportunity they had to claim asylum there and any reasons given for not doing so. Appropriate follow-up questions must be asked where necessary to address any gaps or ambiguities in the account – without this, an otherwise appropriate inadmissibility decision may be put in doubt or may be made more vulnerable to challenge.

If screening contingency measures are in place (see Asylum screening and routing guidance), officers should consider whether further checks or additional information may need to be gathered to support the identification of cases and application of the third country inadmissibility process.

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# Refer potential inadmissibility cases

Where a person has claimed asylum and it appears from the information available that they may be suitable for safe third country inadmissibility action, in line with [General suitability](#), below, their case must be referred to the National Asylum Allocation Unit (NAAU) or the Third Country Unit (TCU), for possible inadmissibility action to be considered further.

A safe third country referral is not a decision; it simply highlights that there is evidence that a claimant may have been in or have a connection to a safe third country, to prompt and assist further consideration.

## General suitability

For the purpose of referral and allocation ahead of formal inadmissibility action, a case is likely to be suitable for inadmissibility action if it is known or suspected that the claimant has been granted protection in, was otherwise present in or has another connection to a safe third country.

**Some cases are not suitable for third country inadmissibility action** and must be referred for alternative processing once identified. Other examples may apply, but the main ones, drawn from other parts of this guidance, are summarised here:

- claims made by people liable to inadmissibility processes under s.80A of the NIAA 2002 (or for claims made before 28 June 2022, under paragraphs 326E-F of the Immigration Rules as applicable at that time), although if such action is not possible, the case may be referred and considered for third country inadmissibility – see EU and EEA asylum claims for further information
- claims made by Unaccompanied Asylum-Seeking Children (UASC) as a matter of policy are presently treated as not suitable for third country inadmissibility action, and must therefore be allocated to asylum casework teams for substantive consideration (see [Application of this guidance in respect of children and those with children](#))
- claims made by individuals whose age is doubted but who are being treated as children under the Assessing age guidance must be allocated for substantive consideration (although if an age assessment subsequently finds the claimant to have been an adult at a time when they could have been in scope for safe third country inadmissibility action, they may be referred back to TCU for further consideration for inadmissibility, as [Casework referrals](#) - see also [Disputed age](#))

## Referral for inadmissibility consideration

### Detained cases

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

## Asylum screening referrals

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

The referral for potential inadmissibility action must summarise the evidence supporting a connection with a safe third country and location of the evidence. For example: “claimant said she spent 6 months in Italy before coming to UK via France – see screening interview”, or “claimant submitted documents including French rail tickets and receipts, both suggesting recent presence in France – scanned to Atlas; originals attached to hard file”.

## Casework referrals

Provided a substantive asylum decision has not been made, caseworkers may refer cases to be considered for inadmissibility action at any time, including where the claimant has been substantively interviewed (indeed, it may only be disclosures at interview which reveal the claimant’s status or presence in a third country). In general, cases are most likely to be suitable for inadmissibility action close to the time of arrival in the UK, but older cases may be suitable, depending on the facts.

A referral must not be made on the basis of evidence which has already been considered by NAAU or TCU, although if there is additional evidence capable of impacting the suitability consideration, such a referral may be appropriate.

Casework referrals must be made directly to the TCU inadmissibility inbox, summarising the relevant evidence, as outlined above.

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# Sift and allocate to Third Country Unit (TCU) or other processes

If a case appears to meet the general requirements for third country inadmissibility action (see [General suitability](#) for an overview), the National Asylum Allocation Unit (NAAU) must refer the case to the Third Country Unit (TCU) for more detailed consideration of whether to proceed with inadmissibility.

The initial suitability assessment informing this referral is not a decision and is not subject to legal evidence thresholds or standards of proof. It is a review of asylum claims and the evidence available, to identify cases which may be appropriate for inadmissibility action.

The safe third 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 European Economic Area countries (Iceland, Liechtenstein and Norway) and Switzerland may also be identified. Countries such as the United States of America, Canada, Australia and New Zealand may also be identified as countries of recent presence or connection. Other countries appearing to be safe for the particular claimant must also not be overlooked.

Key sources of information are likely to be obtained at the time of first contact and asylum registration (see [Registration and screening of all asylum claims](#)) and 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 or another person acting in an official capacity
- documents or other physical evidence submitted by or found on the claimant
- the claimant's responses in an interview (for instance, the screening interview, a supplementary screening interview, or substantive asylum interview)
- fingerprint evidence showing the claimant to have spent time in a safe third country (for instance, evidence from Biometric data-sharing process matches 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 to request the individual's return in the event of a confirmed connection)

## Decide whether to progress a case in the inadmissibility process or substantively

If in a case initially assessed as suitable for inadmissibility action, the claimant appears to stand a greater chance of being promptly removed if their claim is substantively considered and refused, rather than pursuing inadmissibility action, 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](#) (NIAA 2002), or where the person is suitable for the Detained Asylum Casework framework (DAC). See Clearly unfounded claims: certification under section 94 and Detained Asylum Casework (DAC) – asylum process.

## Prioritisation

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

Prioritisation may be administered via NAAU, or by TCU on receipt of cases.

## Refer to TCU

Subject to any agreed prioritisation requirements, NAAU must refer to TCU all cases which appear to be appropriate for third country inadmissibility action. The referral must summarise the reasons and evidence for the referral.

All other asylum claims must be allocated for substantive consideration according to normal procedures.

### Related content

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# Initial case actions

## Notice of intent

The Third Country Unit (TCU) must review all referrals received. If a case does not appear suitable for inadmissibility action, it must be returned to the referring unit.

If TCU considers that a case appears to satisfy the relevant decision framework, a “notice of intent” must be issued to the claimant. The notice is not a formal decision – it is a letter to inform a claimant how their asylum claim is being managed, inviting representations regarding all matters which may be relevant to an inadmissibility declaration, removal from the UK and the country or countries of possible removal.

If after the notice is issued a further safe country or countries are identified (whether countries with which a claimant has a connection or others to which they might be removed), the notice should be reissued, referencing the additional countries.

## Representation timescales and extensions

The notice of intent gives standard timescales within which a claimant may make representations (7 days for those who are detained; 14 days for others), and sets out that claimants may request extensions to these timescales. The notice is clear that at the end of this period, including any extension, an inadmissibility decision may be made, based on the information available to the Home Office at that time.

The grant of an extension is not necessarily an exceptional event: each request for an extension must be carefully considered on a case-by-case basis, taking account of the stated need for the extension and the particular circumstances of the claimant and their case, and the overriding principle of fairness.

If an extension is given, the terms of the extension must be clearly communicated to the claimant in writing. If an extension request is rejected, the claimant must also be notified of the rejection, although this notification can be communicated within the inadmissibility declaration rather than in a separate letter, if the declaration will be issued promptly.

## Further enquiries

After issuing a notice of intent, TCU must review the evidence available and undertake any further checks that are relevant, to obtain additional information to support decisions.

For example, if historic Eurodac match evidence indicates a person’s presence in a safe third country, it must not be used in direct support of an inadmissibility or refusal decision. However, the match evidence may be checked with the relevant country’s authorities, which may confirm details which support the decision and removal.

Similarly, if a claimant holds a refugee status document or other document showing a third country has granted some form of leave or status, depending on the specifics and the claimant's evidence, it may be necessary to enquire with the issuing authority about what the person's status will be if they return to that country.

When making enquiries with safe third countries, it will usually be appropriate to ask for agreement to the person's removal, in the event inadmissibility action is pursued.

Any enquiries with safe third countries must be in line with the policy guidance on Disclosure and confidentiality of information in asylum claims.

## Discretion to treat or declare a claim as inadmissible

The decision to declare an asylum claim inadmissible is discretionary (that is, the Secretary of State has the power to take such action, but is not under a duty to do so). Caseworkers must therefore consider not only whether a case satisfies the relevant decision framework and an inadmissibility decision **could** be made in principle, but also whether such a decision **should** be made, in light of any factors known or representations made by the claimant which weigh or are alleged to weigh against such action.

The relevant factors will vary according to the specifics of the case. They may be unique issues which are not addressed elsewhere, or they may be matters which are also addressed in other parts of case management in wider considerations around policy, practicalities or in related decisions.

For example:

- if there is evidence before making a decision that the Home Office is not likely to be able to remove the person within a reasonable timescale, it will not be appropriate to proceed with inadmissibility action on the asylum claim (see [Removal agreements and timescales](#))
- if it is concluded that the person would otherwise have a successful HR claim which will result in their being granted leave to remain in the UK, it will not usually be appropriate to take inadmissibility action on the asylum claim
- there may be other compelling factors in an individual's case which mean it is inappropriate to proceed with inadmissibility action on the asylum claim

If it is determined that inadmissibility action is possible and appropriate, the decision letter must set out the reasons for that conclusion, addressing all of the factors known and raised in the case. Where applicable, this consideration may refer to and rely on other parts of the decision letter which address the issues in question.

If it is determined that inadmissibility action, though possible according to the relevant rules, is not appropriate in the full circumstances of the individual's case, caseworkers may exercise their discretion and route the claim for substantive consideration, according to normal procedures.

### Related content

[Contents](#)

# Decisions: overview

## Authority

Inadmissibility decisions on safe third country grounds may be made only by caseworkers in the Third Country Unit (TCU), or other officers or units specifically authorised by TCU to make such decisions.

## Decisions – summary

Each inadmissibility decision letter must, as a minimum, set out clearly and with reasoning and reference to evidence, the following key points:

- the safe third country with which the person is believed to have a relevant connection
- why it would have been reasonable to expect the person to claim asylum in a safe third country (if the person was present in or has another connection to a country in which it would have been reasonable to expect them to have claimed asylum – this should refer to the language in the relevant decision framework)
- why the country of connection would be regarded as safe in the context of the individual's particular circumstances (this may, where relevant, include reference to the safe third countries listed in [paragraph 2 of Part 2 of Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(2004 Act\)](#), and the presumptions in the part, and it may include consideration of European Convention on Human Rights (ECHR) issues, or reference to consideration of those issues if they are addressed fully elsewhere in the decision)
- the factors known or representations made by the claimant relevant to the exercise of discretion on whether to proceed to declare the claim inadmissible, and with reference to each point, why inadmissibility is nonetheless considered appropriate
- the safe third country to which removal is proposed (if it is different from the country of connection)
- why the third country of removal is regarded as safe, in the context of the individual's particular circumstances, including addressing any ECHR claims regarding serious harm (again, where relevant, this must include reference to the safe third countries listed in [paragraph 2 of Schedule 3 to the 2004 Act](#) and any presumptions which must be applied)
- why removal would be appropriate in the context of any other ECHR claims the person has raised
- certificates applicable to the country of removal for Refugee Convention purposes
- certificates or appeal rights applicable to any ECHR claims made



## Evidence

TCU caseworkers must take into account all available evidence and relevant facts relating to a particular claimant. This must always include all factors which might count in the claimant's favour. What is available will vary from case to case, but may include documents from hard file, the Case Information Database (CID), Atlas, biometrics, eyewitness accounts, closed-circuit television (CCTV), file minutes, screening interview responses, responses from claimants to Notices of Intent and any other statements they submit seeking to explain their behaviour, needs or other relevant circumstances.

If the person's factual account, or any other part of their evidence or behaviour indicates that they may be a victim of modern slavery and they have not already been referred to the National Referral Mechanism (NRM), caseworkers must consider such action, subject to the person consenting. See Victims of modern slavery and [Report modern slavery](#).

## Credibility

The credibility of a person's evidence (for example, a person's claimed immigration history and the reasons they give for not claiming asylum in a safe third country) must be carefully considered.

The Assessing credibility and refugee status guidance is aimed primarily at substantive asylum decision-making, and some parts are specific to that consideration and task, including references to standard of proof, the preliminary information questionnaire, substantive interviews, and [section 8\(4\) of the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country). The guidance does however contain useful information that can be applied more broadly and is relevant to establishing the facts in claimant evidence in inadmissibility decisions.

Keeping in mind the specific context of inadmissibility decision-making, the facts to be determined and the opportunities available to claimants to respond to questions and present evidence (and keeping in mind [Standard of proof](#), below), particular attention must be paid to the following parts of the guidance:

- structured approach to credibility assessment
- underlying factors
- the effect of trauma on memory and disclosure
- the impact of lies on credibility
- sufficiency of detail and specificity (noting that there will not normally be an asylum interview in inadmissibility cases, which may limit the opportunity a person has to provide detail)
- internal consistency
- modern slavery factors
- external consistency
- country of origin information



- considering medical evidence
- plausibility
- benefit of the doubt

## Standard of proof

The considerations in an inadmissibility and removal decision involve a number of decisions in which facts must be determined for different purposes and risk assessed accordingly. Different approaches to the standard of proof in these decision areas are required, according to the particular issue being considered.

## Material facts – connection to safe third country

The standard of proof applicable to determining the material facts establishing the applicant's connection with a safe third country (under [section 80C of the Nationality, Immigration and Asylum Act 2002](#) (NIAA 2002) for claims made since 28 June 2022, or for claims made before that date, under [paragraph 345B of the Immigration Rules as in force at that time](#)) is the balance of probabilities.

## Refugee Convention rights, ECHR protection rights and other ECHR claims under Article 3

The standard of proof applicable to determining the risk to claimants in questions involving Refugee Convention rights, ECHR protection and other ECHR Article 3 rights (including establishing the safety of a third country of connection or removal under [section 80B\(4\) NIAA 2002](#) for claims made since 28 June 2022, or for claims made before that time, [paragraph 345B of the Immigration Rules as in force at that time](#)) is whether the matters in question are reasonably likely to be true. This is also expressed as whether there is a 'real risk' of the person's rights being breached, and is a lower standard of proof to the balance of probabilities.

## General

This guidance does not change the standard of proof applicable to other types of claim or application. For further advice, please review the guidance for the relevant claim or policy area.

## Other claims

Other claims or applications may be raised by individuals who are subject to the inadmissibility process, for example, claims under Article 3 of the ECHR relating to protection in the country of removal, or to health or destitution risk in the country of removal, or claims raised under Article 8 of the ECHR in respect of private and family life in the UK. All such claims must be considered before any removal.

See in particular the guidance Considering human rights claims.

If wider claims have resulted or will result in a grant of leave in a case, inadmissibility action should usually be discontinued if the result is or would be that the individual

cannot be removed from the UK within a reasonable period. In such instances, the case should be referred to the National Asylum Allocation Unit (NAAU) to admit and route the case for substantive consideration.

## Appeal rights

If a decision is to be made which would confer appeal rights and those appeal rights would not be certified, consideration should be given to whether to continue with inadmissibility action, in view of the likely timescales applicable to any appeal being determined, the conditions attached to any removal agreement in the case, and the delay in the person being able to progress their asylum claim. This consideration must be made on the particular facts of the case, including the basis of the inadmissibility decision and whether the person already has protection in another country.

### Related content

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# Decisions: consideration and implementation

As set out in [Application of the relevant legislation](#), asylum claims made on or after 28 June 2022 may be considered for third country inadmissibility action under [section 80-C of the Nationality, Immigration and Asylum Act 2002](#) (NIAA 2002).

Asylum claims made before 28 June 2022 may also be considered for third country inadmissibility action, but only according to the decision framework set out in [paragraphs 345A-B of the archived Immigration Rules](#).

Despite the 2 frameworks having different drafting, different requirements according to the date of the asylum claim, and specific differences between s.80C(4) and (5) and paragraph 345A(iii)(b) (see [Two-stage test of reasonableness](#), below), they are very similar in their substance and cover the same case types, in terms of what constitutes a safe third country and the ways in which a person may have a relevant connection to such a country, and so this guidance addresses decision-making under both frameworks.

The table below outlines how provisions in the 2 decision frameworks correspond (see also [Legislation](#)):

Archived Immigration Rules	NIAA 2002
Paragraph 345A(i)	Section 80C(1)
Paragraph 345A(ii)	Section 80C(2)
Paragraph 345A(iii)(a)	Section 80C(3)
Paragraph 345A(iii)(b)	Section 80C(4)
Paragraph 345A(iii)(c)	Section 80C(5)
Paragraph 345B(i)	Section 80B(4)(a)
Paragraph 345B(ii)	Section 80B(4)(b)(i)
Paragraph 345B(iii)	Section 80B(4)(b)(ii)
Paragraph 345B(iv)	Section 80B(4)(c)

## Review evidence

Where a consideration of the evidence and facts suggests the claimant was present in or has a connection to a safe third country, in line with sections 80B and 80C of the NIAA 2002 (or in line with paragraphs 345A-B as the case may be), detailed consideration must be given to an inadmissibility decision.

If at any stage it is determined that there is insufficient evidence of earlier presence in or connection to a safe country, or it is clear that inadmissibility action would not be appropriate for any reason, this must be noted clearly (Casework Information Database (CID), Atlas, paper file where held), and the case must be referred to the National Asylum Allocation Unit (NAAU) to route for substantive consideration, or

referred directly to other units for substantive consideration if such prioritisation has already been agreed.

## Decision consideration

### Safe third country connection

A person must have one of the connections to a safe third country specified in sections 80C(1) to (5) of the NIAA 2002 (or paragraphs 345A(i)-(iii) of the archived Immigration Rules, for pre-28 June 2022 claims) for an inadmissibility decision to be possible.

Where there is a connection (and where the wider facts support an inadmissibility decision, in line with the considerations set out in this guidance), the written decision must first clearly address the specific connection and the appropriateness of applying it in the particular claimant's circumstances, by setting out:

- the connection asserted by the Home Office (for example, 's.80C(1) – the claimant has been recognised as a refugee in the safe third country and remains able to access protection there in line with the Refugee Convention')
- the evidence supporting the asserted connection (for example, setting out the person's claimed immigration history from their country of origin, including their presence in Italy and France)
- any evidence weighing against the connection applying, according to the requirements of the particular connection type (for example, for a s.80C(4) case, any explanation provided by the claimant why they did not claim asylum in any of the safe countries to which they have been linked)

### 'Reasonable to expect [the claimant] to make [such] a claim'

The connections set out in sections 80C(1) to (3) of the NIAA 2002 (and paragraphs 345A(i)-345(iii)(a)) concern **those who have claimed asylum or otherwise have protection in a safe third country**.

The connections set out at section 80C(4) and (5) (and 345A(iii)(b) of the archived Immigration Rules for pre-28 June 2022 claims) are about **claimants who did not claim asylum in a safe third country in which they were present or with which they have a connection** (see [Legislation](#)). Claims involving this connection require particular handling, set out below.

The s.80C(4) and (5) connections apply only in cases where **it would have been reasonable to expect [the person] to have made a relevant claim** in the safe third country. The paragraph 345A(iii)(b) connections are worded differently to s.80C(4)(b), and apply only where the person **could have made an application for asylum to that [safe third] country but did not do so and there were no exceptional circumstances preventing such an application being made**.

In practice there is likely to be little difference between the 2 provisions when applied to relevant facts but decision makers must have in mind the correct provision when applying the 2 stage test, and must refer to the correct provision in their decisions.

If there are general issues which as a matter of fact would have prevented access to the asylum process (for instance, systemic failings in a country's asylum system, consideration of which may be similar or the same as whether the country has an effective asylum system, as set out in [Safety in the country of connection](#), below), the criteria in conditions s.80C(4) and (5) will not be met, regardless of other considerations, and inadmissibility action on the basis of those conditions will not be appropriate.

## Two-stage test of reasonableness (or exceptional circumstances)

In the absence of any general issues which would prevent a person from accessing the asylum system in a safe third country, the 'reasonable to expect the person to have made a relevant claim' criteria must be considered according to a two-stage test, taking full account of the person's evidence and the wider evidence in the case, addressing (1) credibility and (2) reasonableness.

### Stage 1

Caseworkers must assess (in line with [Standard of proof](#)) whether the explanation the claimant asserts for not claiming asylum in the safe third country is a true account of their reasons for not claiming asylum - this is about what the person believed, rather than whether that belief was sound.

This will involve assessing the credibility of the person's explanation, considering factors such as the internal consistency of their account, and the external consistency with any objective evidence that might be available and relevant.

For example, common reasons people might give for not claiming asylum in a safe third country are that they were afraid of particular individuals or groups; that they were physically constrained or controlled; or they were physically or psychologically impaired. The facts to be determined in these examples are, respectively, whether the person was genuinely afraid; whether they were constrained as described; and whether they were at the time physically or psychologically impaired, as claimed.

If the explanation the claimant asserts as their reason for failing to claim asylum is accepted, caseworkers must go on to consider the second stage of the test.

### Stage 2

Where stage one of the test finds the person's factual account of their reasons for not claiming asylum in a safe third country to be true (assessed in line with [Standard of proof](#)), caseworkers must then assess whether it would nonetheless have been reasonable to expect the person to have claimed asylum in the safe third country (or, for pre-28 June 2022 claims, whether there were exceptional circumstances preventing an asylum claim being made).

For example, if it is accepted that a person believed they could not claim asylum in a safe third country because they were constrained from doing so, that account must be carefully considered in the full context of the person's departure from their country of origin, their intentions at that time, the stages of their journey, the suspected motivations of those alleged to have constrained them, and the circumstances of their departure from the safe third country to the United Kingdom.

### **Article 3 of the European Convention on Human Rights (ECHR)**

Neither sections 80B-C of the NIAA 2002 nor paragraphs 345A-B have an explicit requirement to consider whether a claimant was at risk of their rights under Article 3 of the ECHR being breached in the third country of connection. (This is distinct from the requirement, as set out directly below, that the third country of connection must be a place from which a claimant would not be removed to another country in breach of their rights under Article 3; it is also distinct from the consideration due to any breach of rights under Article 3 that the claimant may allege in respect of the country of removal, as set out in [Safety in the removal country and certifications](#).)

However, an Article 3 risk in the country of connection itself is highly relevant to the question of whether it would have been reasonable to expect the claimant to claim asylum in the third country, or whether there were exceptional circumstances preventing them from claiming asylum there. If there is a risk that a claimant's rights under Article 3 of the ECHR would have been breached in the country of connection (assessed (in line with [Standard of proof](#)), it will not be reasonable to expect them to have claimed asylum there. Inadmissibility action will not be appropriate in such cases. Such risk must be considered in line with any rebuttable presumption of safety which may apply in respect of the country of connection (see directly below).

### **Safety in the country of connection**

[Section 80B\(4\) of the NIAA 2002](#) (or paragraph 345B of the archived Immigration Rules as the case may be) sets out the criteria that must be met for a country to be regarded as a safe third country for inadmissibility.

The safety of a country of connection must be considered according to any statutory presumptions of safety, in line with relevant country information and any other available evidence (and in line with [Standard of proof](#)).

There is an irrebuttable statutory presumption, under [Part 2 of Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (the 2004 Act), to treat the countries it lists as places where a person's life and liberty would not be threatened for a Refugee Convention reason and from which they would not be removed to another country, other than in accordance with the Refugee Convention. **Because this presumption is irrebuttable, it is not a matter which needs to be established by consideration of the facts on a case-by-case basis.**

There is also a rebuttable statutory presumption under Part 2 of Schedule 3 to the 2004 Act to treat the same listed countries as places to which a person can be removed, without their rights under Article 3 of the European Convention on Human Rights (ECHR) being contravened and places from which they would not be



removed in breach of their ECHR rights. **As this presumption is rebuttable, any factual challenge of the presumption must be considered on a case-by-case basis (this contrasts with the irrebuttable presumption, as set out in the paragraph above).**

[The Republic of Croatia and the Principality of Liechtenstein were added to Part 2 of Schedule 3 only on 28 June 2022, and as such, the requirement to treat them as safe countries of connection does not apply for claimants whose connection with them ended before that date.]

For countries not listed in Part 2 of Schedule 3 (or not listed at the time of the person's connection), detailed consideration of safety in the country of connection according to a person's Refugee Convention rights will be required, looking at any evidence submitted and the country information already available to the Home Office.

Unsupported claims by a claimant that their rights would have been breached in the third country, including allegations that they would have been removed from there to a place in breach of their Refugee Convention and Article 3 ECHR rights, are likely to be adequately addressed by summary reference to the country being a signatory to both conventions, and the lack of credible evidence to show such a risk (which must be assessed in line with [Standard of proof](#)). More detailed representations will require more detailed consideration and demonstration of that consideration in the written decision.

A further but essential part of establishing that a third country would have been safe for a person is that the possibility exists for a person to apply to be recognised as a refugee and where appropriate, receive protection in accordance with the Refugee Convention. If the claimant states that it was not possible for them to apply for asylum in the third country, any evidence and representations to that effect must be reviewed alongside country information. Caseworkers must identify whether the country is signatory to the Refugee Convention or purports to operate a system in accordance with it, and decide whether, on the basis of all the evidence available, it operates it in practice, to an effective level. (This must be established in line with [Standard of proof](#)).

## Safety in the removal country and certifications

The safety of the country of removal must be established in line with [Standard of proof](#), the relevant provisions of section 80B(4) of the NIAA 2002 (or the archived Immigration Rules paragraph 345B), and the requirements and any applicable presumptions set out in Part 2 or Part 5 of Schedule 3 to the 2004 Act, according to the particular claims and decision being made, and the version of Schedule 3 applicable at the time of consideration (for certificates made on or after 28 June 2022, the current published version of Schedule 3 should be applied – for further information see [Application of the relevant legislation](#)).

Where appropriate and according to the guidance below, the relevant certificates in Schedule 3 should be applied, to remove appeal rights associated with the removal decision and any claims that the removal would contravene the claimant's rights

under the ECHR and the Refugee Convention. Where a certification provision requires consideration of whether claims are clearly unfounded, that term must be understood in line with the meaning set out in the guidance Clearly unfounded claims: certification under section 94. If representations regarding ECHR rights are made and refused, but the refusal is not certified, it will attract an in-country right of appeal.

In practice the s.80B(4) criteria (or paragraph 345B criteria) overlap in part with the requirements in Schedule 3, and in cases where the country of connection and country of removal are the same, the consideration for the latter will address almost all of the former, and duplication can be avoided by signposting the relevant considerations and criteria.

### Country of removal is listed in Part 2 of Schedule 3

Section 80B(4) of the NIAA 2002 (equivalent to paragraphs 345B(i) and (ii) of the archived Immigration Rules, for pre-28 June 2022 claims) sets out:

- (4) For the purposes of this section, a State is a “safe third State” in relation to a claimant if—
- (a) the claimant’s life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion,
  - (b) the State is one from which a person will not be sent to another State—
    - (i) otherwise than in accordance with the Refugee Convention

[Paragraph 3\(2\) of Schedule 3 to the 2004 Act](#) requires a listed third country of removal to be treated as a place where the person’s life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion, or from which a person will not be sent to another State in contravention of the Refugee Convention.

Therefore, if the country of removal is listed in paragraph 2 of Schedule 3, section 80B(4)(a) and (b)(i) (or Immigration Rules paragraphs 345B(i) and (ii), as the case may be) will be met, without the need for further consideration.

Under section 80B(4)(c) (or archived Immigration Rule paragraph 345B(iv)), a country will be safe only if an individual can apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention there. The assessment of this point must take account of relevant country information and any evidence and representations. See [Standard of proof](#).

Under paragraph 3(1A) of Part 2 of Schedule 3, unless the claimant demonstrates otherwise, a country listed in Part 2 must be treated as a place to where a person can be removed without their rights under ECHR Article 3 being contravened, and a place from which they would not be removed to another country in contravention of their ECHR rights.

If a claimant claims or makes representations that their rights under the ECHR as described in paragraph 3(1A) would be contravened if removed to a particular listed



country (including onward refoulement in breach of Article 3), those representations must be carefully considered. If it is concluded that there is a risk that removal to the country would lead to the claimant's ECHR rights as described being contravened (assessed in line with [Standard of proof](#)), it will not be appropriate to consider removal to that country). In such circumstances, it will be appropriate to consider removal to any further safe third countries which may have been identified, or to discontinue inadmissibility action.

The consideration of the risk of a person being onward refouled in breach of their Article 3 rights, under paragraph 3(1A) of Schedule 3 to the 2004 Act, addresses the consideration of the same issues under section 80B(4)(b)(ii) of the NIAA 2002 (or archived Immigration Rules paragraph 345B(iii)).

### Refugee Convention and ECHR certification

If it is certified under paragraph 5(1) of Part 2 of Schedule 3 that a person will be removed to a listed safe country and that they are not a national of that country, the person may not appeal in reliance on a claim that removal to the country would breach the Refugee Convention.

Since 28 June 2022, once the Secretary of State has issued a certificate under paragraph 5(1), a person may not bring an appeal in reliance on a human rights claim if the Secretary of State certifies under paragraph 5(4) that the human rights claim is clearly unfounded. Under paragraph 5(4), an ECHR claim **must** be certified as clearly unfounded unless it is not clearly unfounded.

Any claim relating to Article 3 may include allegations of a risk of serious harm in the country of removal, destitution or medical claims (see [Standard of proof](#)).

Other ECHR claims, for instance, under Article 8 relating to family and private life, must be considered according to the relevant guidance. See in particular Appendix FM and 276ADE (family members and private life).

If any HR claim is refused but not certified, the person must be notified of their appeal rights in the inadmissibility declaration decision letter.

### Country of removal is not listed in Part 2 of Schedule 3

#### Refugee Convention and ECHR certification

Under paragraph 17 of Part 5 of Schedule 3 to the 2004 Act, a certificate may be applied to a person who has made an asylum claim if it certifies that the person will be removed to a country where they are not a national or citizen, if it is a country assessed to be one where the person's life and liberty are not threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion and a place from where they would not be refouled in contravention of their Refugee Convention rights.

The effect of this certificate is that a person may not appeal in reliance on an asylum claim which asserts that to remove the person to the specified country would breach the United Kingdom's obligations under the Refugee Convention.

If it is considered that the country of removal is safe on the above criteria, the safe third country criteria at sections 80B(4)(a) and (b)(i) of the NIAA 2002 (or archived Immigration Rules, paragraphs 345B(i) and (ii) as the case may be) will be met; sections 80B(4)(b)(ii) and 80B(4)(c) (or archived Immigration Rule paragraphs 345B(iii) and 345B(iv) respectively) will not be addressed by this consideration, and will need to be addressed separately.

Under section 80B(4)(c), a country will be safe only if an individual can apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention there. The assessment of this point must take account of relevant country information and any evidence and representations. See [Standard of proof](#).

### ECHR claims and certification

Under section 80B(4)(b)(ii) (or for claims treated as having been made before 28 June 2022, archived Immigration Rule paragraph 345B(iii)), a country will be safe only if an individual will not be at risk of onward refoulement from that place in breach of Article 3 (see [Standard of proof](#)). This matter must be considered regardless of whether an individual has made representations on this point.

If an individual has made representations that can be considered an ECHR claim, including any claim that they might be removed to an unsafe state in breach of these rights, and if a certificate has been issued under paragraph 17 (see above), the ECHR claim may be certified under paragraph 19(c) of Part 5, if the claim is assessed to be clearly unfounded. The effect of this certificate is that the claimant may not bring an appeal in reliance on a human rights claim.

The consideration for this certificate must include any claim relating to Article 3. As with paragraph 5(4) certificates, this may include allegations of a risk of serious harm in the country of removal, destitution or medical claims, and claims that onward removal from the third country to another may breach the person's ECHR rights.

If a claimant makes representations regarding risk of onward refoulement in breach of Article 3, proper consideration of those representations under paragraph 19(c) of Schedule 3 to the 2004 Act will cover consideration of the same issue required under section 80B(4)(b)(ii).

If it is concluded that there is a risk that removal to the country (assessed in line with [Standard of proof](#)) would lead to the claimant's ECHR rights as described being contravened, it will not be appropriate to consider removal to that country. In such circumstances, it will be appropriate to consider removal to any further safe third countries which may have been identified, or to discontinue inadmissibility action (keeping in mind that the inadmissibility decision is discretionary) and refer the case to the National Asylum Allocation Unit to allocate to a casework team.

Paragraph 19(c) may also be used to certify other ECHR claims where appropriate, for instance, clearly unfounded claims relating to Article 8 family life. Any such decisions must be considered according to the relevant criteria and guidance for the particular claim, with the reasons for any such decision clearly set out.

As set out above for decisions involving countries listed in Part 2 of Schedule 3, if any HR claim is refused but not certified, the person must be notified of their appeal rights in the inadmissibility declaration decision letter.

## **Decision service and onward action**

Once a decision has been prepared and any wider claims addressed, it should usually be held until the safe third country of removal has confirmed it will accept the person (this is a general position – see [Removal agreements and timescales](#)). At that time it will usually be appropriate to serve the inadmissibility decision and any other decisions made at the same time, along with a formal removal decision.

### **Related content**

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# Removal agreements and timescales

## Removal agreements

Where an inadmissibility declaration under the relevant decision framework appears appropriate, the Third Country Unit (TCU) must seek the agreement of a safe third country to admit the person. The country of removal may be one in which the person was present before claiming asylum in the UK, one with which they have some other connection, or any other safe third country that will accept them.

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

It will usually be appropriate to obtain agreement for a person's removal to a safe third country before a formal inadmissibility decision is made in their case. This approach ensures that only those who are most likely to be removed will receive a decision, thereby managing expectations and decision-making resources. It also enables the inadmissibility decision to be served with the removal decision, thereby mitigating the risk of further delay and cost which might otherwise be seen by sequential legal challenges of each decision.

This approach is not a requirement, and there may be instances where it is appropriate to make a decision ahead of obtaining removal agreement. For example, if a claimant has already been granted refugee status or similar protection in a safe third country, if it is clear that they are still able to access that protection (according to the requirements of the relevant decision framework), and if they possess or could reasonably be expected to obtain travel documentation to return to the relevant third country, an inadmissibility decision may be appropriate without first having secured removal agreement.

## Timescales

There are no rigid timescales within which third countries must agree to admit a person before removal. However, the inadmissibility process must not create a lengthy 'limbo' position, where a pending decision or delays in removal after a decision mean that a claimant cannot advance their asylum claim either in the UK or in a safe third country. If, taking into account all the circumstances, it is not possible to make an inadmissibility decision or effect removal following an inadmissibility decision within a reasonable period, inadmissibility action must be discontinued, and the person's claim must be substantively considered.

As a general guideline, it is expected that in most cases, a safe third country will agree to admit a person within 6 months of the claim being recorded, enabling removal soon after, subject to concluding legal challenges or other removal barriers.

There will be some cases where a reasonable timescale may be shorter than 6 months, because there are not realistic prospects of effecting removal within a reasonable timescale. For example:

- where there is no prospect of removal, because all possible countries of removal have emphatically refused to accept the person
- where there is a very low prospect of removal within a reasonable timescale, because the countries of removal refuse to engage in any discussions around admitting the person

In other cases, what is reasonable may be longer than 6 months. For example:

- if early inadmissibility processing has been delayed, because a claimant's presence in or connection to a safe country was not disclosed or clearly evidenced at the time the asylum claim was made and registered, but instead is disclosed at a later time, for instance, during an asylum interview
- if a person whose age is initially disputed is treated as a child and therefore not progressed in the inadmissibility process, but is later assessed to be an adult
- where third countries have actively engaged with the Home Office in discussions around admitting a person (or people), but where through no fault of the Home Office, progress towards agreement has been delayed
- where a claimant is referred into the National Referral Mechanism, it will be usually be appropriate to pause inadmissibility action until the consideration of whether or not the person is a victim of modern slavery has been completed

## Post-decision timescales

After a formal inadmissibility decision has been made in respect of a claimant, they must be removed to the safe third country within a reasonable period, in line with the requirements of paragraph 345D of the Immigration Rules (or paragraph 345D(i) of the archived Immigration Rules).

What is reasonable will depend upon the particular facts of each case, including any matters which may delay removal, such as outstanding legal proceedings, late claims and uncooperative behaviour.

A person who has been granted protection in a third country and who can continue to access that protection, and who has or who can obtain a travel document for return to there will be expected to do so. They will not be in 'limbo', unable to either further pursue their asylum claim in UK or seek protection elsewhere, and so the reasonable period before removal is likely to be significantly longer than in other cases.

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# Post-decision

## Discretion to admit the asylum claim for consideration after it has been declared inadmissible

Once an inadmissibility declaration has been made on a claim, the decision framework allows for discretion to be exercised, for inadmissibility action to be discontinued and for the case to be routed for substantive consideration.

Careful consideration must therefore be given to any change in circumstances arising after the decision which may change the appropriateness of inadmissibility action in the claimant's particular circumstances. This may include (but is not limited to) representations made by the claimant or their legal representative.

For claims made before 28 June 2022 and treated as inadmissible under [paragraphs 345A-B of the archived Immigration Rules](#), paragraph 345D(ii) states:

- (when...) “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”.

For claims made or treated as made on or after 28 June 2022 and treated as inadmissible under [sections 80B-C of the Nationality, Immigration and Asylum Act 2002](#), section 80B(7)(a) of that legislation states:

- “An asylum claim that has been declared inadmissible under subsection (1) may nevertheless be considered under the immigration rules... if the Secretary of State determines that there are exceptional circumstances in the particular case that mean the claim should be considered...”

If it is determined under one of these provisions that a claim should be considered substantively, the reasons for that conclusion must be recorded in CID or Atlas as appropriate, and the case must be routed for consideration according to normal procedures.

## Further submissions

The further submissions process does not apply to asylum inadmissibility decisions or to associated inadmissibility decisions on humanitarian protection claims. This is because inadmissibility decisions themselves are not decisions on the asylum claim in the person's country of origin – they are decisions that the UK is not responsible for substantively considering the claim. Consequently, whilst a person may make representations against an inadmissibility decision, those representations would not engage the further submissions policy (but they would nonetheless need to be carefully considered).

If a person is removed from the UK as a consequence of an inadmissibility decision but returns, any further attempt by them to claim asylum in respect of their country of origin must be treated as a new asylum claim, not as further submissions. In such cases, the claim may be considered again for inadmissibility action.

## Further submissions on human rights refusals

As has been set out, if a person alleges or claims that their ECHR rights will be breached if they are removed from the UK to a safe third country, for instance, because they would be at risk of serious harm in or being refouled from the third country, or that their removal from the UK would breach their private or family life rights, those claims must be fully considered, according to the relevant guidance, rules and in line with [Standard of proof](#). This consideration must be within the inadmissibility decision letter if the ECHR claims were made prior to the inadmissibility decision.

If such claims have previously been made and refused, and the appeal rights have either been certified or exhausted (or have lapsed), all subsequent representations received would be in the scope of the Further submissions policy, and must be considered accordingly.

## Judicial review

An inadmissibility declaration on an asylum claim (and any associated humanitarian protection claim) may be challenged only through judicial review.

The same applies to any decision to remove appeal rights (in the case of certificates issued under [Schedule 3 to the Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#)) and a decision to remove a person from the UK.

To determine whether a judicial review has suspensive effect (which means that the individual must not be removed from the UK until the proceedings have concluded) the judicial review must be referred to OSCU or Litigation Operations, as appropriate, to consider in line with guidance Judicial reviews, injunctions and applications to the European Court of Human Rights: in relation to enforcement of immigration removal and deportation.

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