

Dublin regulations: a “safe third country”

Not everyone has the right for their asylum claim to be heard in the UK.

If you are an adult and you claim asylum in the UK, and the Home Office proves that you have travelled through a safe country on your journey to the UK, they may “transfer” your case and say that you have to return to that safe country (the “third country”) to have your asylum claim heard.

They are called “third” countries because they are not the UK and not your country of origin/residence.

In practice, the Dublin Regulations are usually enforced for people who have travelled through countries that are European Economic Area (EEA) member states plus Switzerland, as removal back to those member states is allowed under a European agreement called the Dublin Regulations. There have been several versions of the Dublin Regulations, and the ones currently in use are called Dublin III (three).

If the Home Office can prove that you have travelled through another EEA country, they are likely to refuse to consider your asylum claim in the UK. They may attempt to transfer your case to the country that they can prove you travelled through and where you could have claimed asylum. If the transfer request is accepted by that country, the UK will remove you to that country without looking at your asylum claim at all.

It is usually at your screening interview that the Home Office will attempt to identify if your asylum claim is their responsibility or not. The Home Office will check your fingerprints against the Eurodac European-wide database of fingerprints. If your fingerprints show up as being registered in another EEA country where you could have claimed asylum or did claim asylum, the Home Office will attempt to remove you to that country.

The Eurodac database is the most common way of identifying that someone's asylum claim falls under the Dublin regulations, but the Home Office may also use other means such as visas/permits and other official documents issued by another EEA state.

You are legally obliged to allow the Home Office to fingerprint you. If your fingerprints aren't clear (including if you have deliberately damaged them), the Home Office have a policy of scheduling routine appointments to check your fingers until the fingerprints are clear enough for use.

Detention in Dublin cases

The Dublin III regulations state that people should not be detained solely because they are being put through the Dublin regulations transfer process, and they should only be detained if there is a “significant risk of absconding”. The UK Home Office determines that most people are at risk of absconding, so detains most people whose case falls under the Dublin regulations.

Although there is no general time-limit on the period someone can be detained in the UK, if you are being detained because your case is in the Dublin process, the maximum time you can be detained is six weeks.

Humanitarian clause

Article 16 of the Dublin III regulations states that if an asylum-seeker has family ties in a particular EEA state, and because of a particular vulnerability is dependent on that family tie, those individuals should be kept or brought together. The UK interprets this family tie very narrowly, and says this only applies to a spouse, parents or children in the UK (though this may be the subject of legal challenge).

Forced removal under Dublin Regulations

You should not be removed under the Dublin Regulations if you have been outside of the EEA for **three months** before coming to the UK.

For example, as an Iranian asylum seeker, you may have spent some time in Germany then returned (either voluntary or you were returned by force) to Iran for six months where you faced further persecution. If you then came to the UK straight from Iran, you should not be removed to Germany under the Dublin Regulations.

This “breaking the chain” - being registered in the EEA but then returning/being returned to your country of origin before coming to the UK - is the most common reason that the UK's attempts to transfer cases under Dublin fail.

Transfer request deadlines

- In a *take charge case* (where the Home Office have identified you have travelled through another EEA state but have not identified that you have claimed asylum there), they have only **three months from when you claim asylum in the UK to make a transfer request under the Dublin Regulations on your case.**
- In a *take back case* (where the Home Office have identified that you have claimed asylum in another EEA state), the transfer request must be made within **two months of matching your fingerprint** on the European-wide database, a 'Eurodac hit'.
- If you are **detained** during the Dublin procedure, the UK has only **one month** in

which to make the transfer request.

Receiving country's response deadlines

- If you have only claimed asylum in the UK but the Home Office believe you travelled through another country in which you could have claimed asylum, that country has **two months** to respond to the transfer request. If the country does not respond within two months, it has taken responsibility for your case.
- If the Home Office have evidence **you claimed asylum in another EEA country**, that country has **one month** to respond to the transfer request, or two weeks if the transfer request is based on a Eurodac fingerprint request. If the country does not respond within these deadlines, it has taken responsibility for your case.
- In either of these situations, if you are **detained** during the Dublin procedure, the other country has just **two weeks** to respond to the request.

Transfer/removal deadlines

- If the other country accepts responsibility (or fails to reject responsibility) for your case, the UK has **six months** in which to remove you to that country. The six month countdown starts from when the other country accepts responsibility for your case; or if you challenge the decision, for example through a judicial review, six months from when the court rules you can be sent to that country. This time limit may be extended up to a maximum of one year if the transfer could not be carried out because you are imprisoned (following a criminal conviction as opposed to detained under immigration powers) or up to a maximum of eighteen months if the Home Office deems that you have 'absconded' (have not complied with reporting requirements or bail conditions etc).
- If you are **detained**, the UK has just **six weeks** to remove you. The six week countdown starts from when the other country accepts responsibility for your case; or if you challenge the decision, for example through a judicial review, six weeks from when the court rules you can be sent to that country.

There may be other circumstances where your removal should not come under the Dublin Regulations. You should discuss these with a lawyer and make sure that the Home Office have correctly informed the third country/Dublin office (in the country to which they are trying to remove you) of these circumstances.

Unaccompanied minors

If you can prove you are under 18 and in the UK without your family, the Home Office cannot remove you under the Dublin Regulations even if you have already claimed asylum in another EEA country, if you can show that staying in the UK would be in your best

interests. This is following a 2013 European Court of Justice ruling.

Challenges to Dublin removals to certain countries

Conditions for asylum seekers (such as no legal representation, no interpretation, detention and destitution) in some other European countries are also very bad and it may be that in future removals are also prohibited to these countries.

The courts have found that conditions in Greece for asylum seekers are so bad that they breach Article 3 of the European Convention on Human Rights. This means that conditions are so bad they amount to inhuman or degrading treatment. Because of this, **the UK cannot remove any asylum seeker to Greece under the Dublin regulations.**

Lawyers have established that conditions for some particularly vulnerable asylum seekers in Italy would breach Article 3 conditions. There are also challenges to removals to countries such as Hungary, Bulgaria, Cyprus and Malta.

There is no blanket ban on Dublin removals to any EEA country apart from Greece. If the Home Office are attempting to remove you to an EEA country where you think your human rights would be breached, you need to challenge the removal on this basis.

Challenging a Dublin removal

If you think your human rights would be breached by removal under the Dublin Regulations, you need to try and speak to a lawyer about proving this.

Although the Dublin III regulations allows for an appeal right to decisions to transfer your asylum claim, in practice the UK Home Office certifies these claims and the legal option for challenging a Dublin removal is likely to be a judicial review.

Using Dublin to come to the UK

In theory, it is possible for some people who have travelled to Europe to use the Dublin III regulations to request their asylum claim be heard in the UK. In January 2016, lawyers working with NGOs successfully brought a legal challenge where the British courts agreed that four people living in the refugee camp at Calais could have their asylum cases heard in the UK instead of France. Three of these people were children, and one was a vulnerable adult. They were allowed to come to the UK to claim asylum because they could prove that they had family in the UK. At the time of writing, the UK government intends to appeal this decision, and we do not know if it will be successful.

To qualify for this route, you must be able to prove that you have a parent or child or husband or wife in the UK. If you do, it is possible that you can apply to have your asylum claim transferred from another European country to the UK. Please note there is no guarantee you will be able to do this. You will almost certainly need a lawyer to help you, and you will need to apply for asylum in the other European country first. One UK

organisation is working with lawyers to try and bring more people to the UK in this way. Find out more here: <http://safepassage.org.uk/refugees/> It is important to note that even if you were successful by this route, you would still need to apply and go through the whole UK asylum process.

Next section: *Asylum Substantive Interview*