

## Chapter 28 – Index

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### 28. The Dublin Regulation

The Dublin Regulation EC No. 343/2003 is a binding measure of European Community law to determine which State should be responsible for examining an application for asylum made within the EU territory. The provisions of the “Dublin II” Regulation were implemented on 1 September 2003 and replaced those of the Dublin Convention. Since 15 January 2003 Dublin operations have been supported by evidence from the fingerprint database established by the Eurodac Regulation EC No. 2725/2000

The Dublin arrangements are operated by all EU Member States (see below),

Austria	Belgium	Cyprus	Czech Republic	Denmark
Estonia	Finland	France	Germany	Greece
Hungary	Ireland	Italy	Latvia	Lithuania
Luxembourg	Malta	The Netherlands	Poland	Portugal
Slovakia	Slovenia	Spain	Sweden	United Kingdom

Additionally in 2001 Norway and Iceland signed an Agreement (“parallel Dublin”) with the European Community which enables them to operate the same Dublin principles, including the Dublin II and Eurodac Regulations

#### 28.1. The Dublin Criteria

The basic criteria for determining which state should bear the responsibility for an asylum applicant are (in descending order of priority):

- ♦ The state where an unaccompanied minor has a family member who is legally present. Where there is no family member the state where the application is lodged is responsible;

- ◆ The state where the applicant has an immediate family member who has been recognised as a refugee. (The family member must be a spouse, a minor child or the parent of a minor child);
- ◆ The state where the applicant has a family member with an outstanding asylum application;
- ◆ The state which has granted the applicant a residence permit (including leave to enter or remain but not including temporary admission or release), the residence permit may have expired for up to 2 years;
- ◆ the state which granted the applicant a visa (the visa may have expired for up to six months);
- ◆ the state where ,on the basis of proof or circumstantial evidence, it can be established that the applicant first entered the EU illegally within a 12 month period of the irregular crossing taking place;
- ◆ the state where, on the basis of proof or circumstantial evidence, it can be established that the applicant has been previously living for a period of at least five months;
- ◆ the state in which the applicant first entered the EU lawfully, except where the applicant is **not** a visa national for the state that granted entry to the EU territory and **not** a visa national for the state in which asylum is claimed;
- ◆ the state where the application was made in the transit area of an airport;
- ◆ the state where the applicant has previously made an asylum application;
- ◆ the state where the majority of several family members claim asylum, failing this the state with the eldest family member will be responsible;
- ◆ A Member State may accept responsibility on humanitarian grounds based on cultural and family considerations in particular.
  
- ◆ If any criterion applies to more than one state, seek advice from the Third Country Unit (TCU).

## **28.2. Time Limits on transfer requests in Third Country cases.**

The Regulation sets out time limits that must be met for a transfer request to be successful:

- ◆ A formal application asking another Member State to accept a claimant on the basis of a request to “take charge” of an individual who has not previously lodged an asylum claim must take place within 3 months from the date that the asylum application is first lodged;

The Regulation requires the potential receiving state to respond within:

- ◆ 2 months of the date of the formal application to “take charge” (Article 17(1) of Dublin II).
- ◆ 1 month of the date of a formal application of a request to “take back” where there has been a previous claim for asylum reduced to 2 weeks where the fact that an application for asylum was made in the other Member State is identified by a EURODAC “hit” (Article 20(1)b of Dublin II)

Failure to respond within the time limit is tantamount to accepting the claim;

- ◆ the transfer of the applicant can take place up to six months of the state's acceptance of responsibility however early removal is preferable. The 6 month period can only be extended in limited circumstances:
- ◆ Up to a **maximum of 1 year** if the transfer could not take place because of the imprisonment of the asylum seeker.
- ◆ up to a maximum of 18 months if the asylum seeker absconds
- ◆ Within 6 months of the decision of an appeal or review where there is suspensive effect.
- ◆ If transfer (removal) does not take place within the prescribed time limits then the UK will be responsible for the applicant and it will no longer be possible to effect the removal under the terms of the Dublin Regulation.

### 28.3. Procedures – Third country action

The following procedures apply only to **illegal entry and administrative removal cases**. If a "Dublin" affected **deportation case** is identified, contact the TCU or EPU for guidance.

- ◆ decide if there is any basis for third country action;

(If there is no basis for third country action, follow the asylum interview procedures.

## Enforcement Instructions and Guidance

- ◆ if there is a basis for third country action, decide if there is any evidence to link a claimant to a "Dublin" state (e.g. Eurodac "hit", family ties, denunciatory information, other documentary evidence);
- ◆ if the evidence is based on a Eurodac "hit", a Travel History Interview should immediately be conducted and faxed to TCU. This interview should provide a continuous travel history for the subject from the time they were first fingerprinted in an EU member state. The interview should contain specific details such as addresses in order to prove the subject has not left the EU territory.

(If there is no evidence, follow the procedures for completing a screening interview and referring to TCU.)

- ◆ If there is evidence to link a claimant to a "Dublin" state, complete a Screening Interview using evidence gathered **screening interviews must be clearly endorsed with the date of interview. Only detained cases should be sent by fax. N.B. fingerprints must be sent to IFB on a daily basis.**
- ◆ refer to a CIO and/or TCU to decide whether the evidence available meets one of the criteria outlined in 28.1 (if in doubt, consult TCU);
- ◆ If so, complete a screening interview and send to TCU. In all cases, you must provide TCU with **clear** copies of the evidence on which the formal request is based. (If detained, send copies by fax and hard copy). If the subject is pregnant, you must inform TCU as soon as this is known.
- ◆ if not, but there is enough material evidence of presence in another identifiable Dublin state to warrant further enquiries by TCU, complete screening interview and send to TCU. TCU will make enquiries (Article 21) with the "Dublin" state; endorse the file "Concurrent Third Country action" to alert colleagues in the relevant casework section to this aspect of the case.
- ◆ issue SEF (Self-completion) or complete SEF (Interview) but issue claimant with preamble informing him that third country action at a later date may be pursued (follow guidelines at 23.1 and 23.2;
- ◆ (where completed) send SEF (Interview) to ACU (follow instructions at 23.2);

## Enforcement Instructions and Guidance

- ◆ Send fingerprints to IFB as soon as possible so that they can be checked against the EURODAC database. (If the applicant has not claimed asylum in the UK, but is still returnable under Dublin, fingerprints should be taken on the IFB1 form and sent to IFB with a covering note);
- ◆ await result of TCU's enquiries;
- ◆ if no other "Dublin" State has a trace of the person, continue to treat substantively;
- ◆ if another state has a trace of the person giving rise to its obligations under the Dublin mechanisms;
- ◆ the case will be considered on third country grounds and TCU will contact the other "Dublin" state requesting transfer of the claimant;
- ◆ await TCU response; they will issue a certificate backed by a letter from the receiving state confirming acceptance under "Dublin" and fax them and the TCR to the LEO;
- ◆ if the interview to serve the Third Country refusal cannot be set within 7 days of receipt of the refusal letter from TCU, advise TCU by fax of the date of interview;
- ◆ If the applicant cannot be located complete an absconder report, notify TCU. TCU will then advise the Member State responsible that the applicant has absconded.
- ◆ where the applicant is located, obtain authority to remove;
- ◆ prepare a Dublin *laissez-passer* [IS20] (even where a passport is held);
- ◆ set removal directions allowing at least 3 working days or as per the instruction provided by TCU accompanying the TCC (even in detained cases) for the other state to be notified (no removals to take place at weekends or on public holidays);
- ◆ if removal is via a second port, endorse the "Special Features" section to show that the person is a Third Country removal and that any failure to comply with removal directions must be referred to TCU immediately by the departure port;

- ◆ fax a copy of the removal directions and Dublin *laissez-passer* to TCU immediately;
- ◆ TCU will convey the removal directions to the third country;
- ◆ inform the applicant of his removal directions using the appropriate form IS151a (Part 1) and serve the TCC and the IS 87 (Non UK) appeal form; these must be served in person and explained in a language that the applicant understands;
- ◆ **(non-POISE locations only)** in all cases where a third country refusal letter is served, a copy of the first page of the letter **clearly annotated with the date served/posted** must be faxed to the Data Entry Unit within 24 hours (see 21.16.1);
- ◆ If there are any objections to removal from the "Dublin" state, TCU will inform the LEO. Removal directions should then be amended and TCU informed of the amended directions;
- ◆ if there are no objections to the removal directions, the subject should be removed with:
  - ◆ passport or TD (if held);
  - ◆ Dublin *laissez-passer*;
  - ◆ acceptance letter from receiving state;
- ◆ when the person has been removed, inform TCU and update CID; if removal is via a second port, the departure port must notify TCU by telephone within 24 hours and confirm it by fax;
- ◆ If the person is not removed e.g. pending JR or absconder action, inform TCU (before the flight is due to arrive in the third country) who will notify the receiving state. JR proceedings should normally be instituted within 3 working days of the applicant being notified of the proposal to return him to another Member State. Removal directions are not normally deferred, unless directed by a Court;
- ◆ If the applicant cannot be located, his refusal notice can be retained on file until he is located. The Regulation provides for the absconder to be returned under "Dublin" up to 12 months

later; **when an applicant fails to leave, notify TCU immediately.** If he is located later, TCU must be notified immediately for guidance.

\*for an illegal entrant who entered in breach of a deportation order.