

Refugee Council

Policy briefing



SUPPORTING AND
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REFUGEES

The 'Dublin' Regulation and family unity

February 2020

The Regulation

European Union Regulation 604/2013, commonly known as Dublin III, establishes a method for deciding which country amongst the signatories (all EU member states plus four non EU signatories to the regulationⁱ) should process a claim for asylum.

The first time such an agreement was made was through the Dublin Convention in 1997. This was replaced in 2003 by the Dublin II regulation, as part of endeavours by the European Union to establish a common European asylum system. The Refugee Council was critical of this regulation, on the basis that its focus was on transferring asylum seekers from one member state to another and placed much more responsibility on those member states at Europe's borders. There was little attention to family unity.

The Dublin III regulation (EU No 604/2013)ⁱⁱ applies to asylum applications made on or after 1st January 2014, recasting EC No 343/2003 (Dublin II). It contains many more opportunities for family members to request that they are transferred to other Member States (or countries that are signatories to the regulation) in order to be together and have their asylum claims dealt with by the same authorities. The preamble paragraphs 13-16 confirm that this regulation should be applied in line with the best interests of the child and with respect for family life, in accordance with international instrumentsⁱⁱⁱ.

There are other key differences between the Dublin II and Dublin III regulations, which are not covered in this note. They include the right to a personal interview for those subject to transfer under the regulation, an appeal mechanism and protection from automatic detention simply on the grounds of being subject to the regulation.

In addition, a standardised information leaflet has been drafted by the European Commission and provided to each signatory state. Article 4 of the regulation requires all signatory states to provide information to asylum applicants about the regulation and what it means for that applicant. It includes information about the possibility of reuniting with family members. A specific information leaflet should be given to unaccompanied minors.

Articles 6 and 8 deal with children (minors)^{iv} who are unaccompanied in a signatory state
Articles 9, 10 and 11 deal with family members

Article 16 deals with dependant persons

Article 17 deals with any other humanitarian reason why a signatory state should voluntarily depart from the criteria determining which signatory state should examine an application, i.e. a discretionary clause.

Unaccompanied minors (Articles 6 and 8)

- Children should have a representative (e.g. guardian/legal rep/social worker) to represent and/or assist them and ensure that his or her best interests are taken into account in the Dublin process.
- The signatory state where the child lodges an asylum claim shall try to identify family members (parents or legal guardian), siblings and relatives (aunts, uncles, grandparents) legally present in other signatory states and subject to it being in the child's best interests, will transfer responsibility for the child's asylum claim to the signatory state responsible for the asylum claim of those family members.
- If family members, siblings and relatives are found in different signatory states, the child's best interests determines to which country the child should be transferred.
- The child is not transferred for any other reason, even if he or she has made an asylum application in another country.

Family members (Articles 9, 10 and 11)

- Asylum seekers who have family members who have already received international protection in another signatory state can be transferred to join those family members and have their asylum claim determined by that signatory state. Families do not have to have formed prior to leaving the country of origin.
- Asylum seekers with family members in other signatory states who have claimed asylum and not yet received an initial decision, can be transferred to where the family members reside and have their asylum claim determined by the same authority. Family in this Article has to have been formed prior to leaving the country of origin.
- Family members are defined as spouse (or unmarried partner where domestic legislation affords them equal treatment) and unmarried minor children (regardless of whether born in or out of wedlock or adopted under national law).

Requests under these Articles must be made in writing. There is no duty on the signatory state to trace, as there is with unaccompanied minors.

Dependant persons (Article 16)

- In addition to the obligations relating to close family members outlined above, the regulation allows for other family members who may be dependant on wider family due to illness, pregnancy, a new-born child, severe disability or old age to be reunited with family who can care for them. Family members for this Article include siblings, parents and children, regardless of age.
- Usually the dependant person will move to where their family member is legally present, unless the dependant's health prevents them from travelling. In this situation there is no obligation for a signatory country to facilitate families to reunite under this Article.

Requests must be made in writing by applicants.

Discretionary clauses (Article 17)

Any signatory state can choose to examine an asylum application even when the regulation would ascribe responsibility to another signatory state.

- A signatory state can request another signatory state to take responsibility for the asylum claim of an applicant based on family links not covered in other Articles or on cultural and/or humanitarian grounds.
- There is no obligation on a signatory state to respond positively to such requests.

The applicants must give written consent to transfer under this Article.

Current guidance from the Home Office

In November 2017 The Home Office published guidance for UKVI officials in dealing with cases under Dublin III.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/65666/dublin-III-regulation-v1_0.pdf

This includes reference to the information leaflet mentioned above which is issued to all asylum applicants as soon as their application is made, in order to inform those who may benefit from the family related elements of the Dublin III regulation.

Statistics

The table below shows the number of arrivals in the UK under Dublin III in each of the past three years under the various Articles. Those Articles not covered have very small numbers.

Year	Total	Article 8	Articles 9 to 11	Article 17	Article 18
2017	461	92	203	42	101
2018	1,215	159	869	25	134
2019	714	164	365	59	111

Article 8 deals with unaccompanied children, Articles 9 to 11 with family members, Article 17 is a discretionary clause. Article 18 covers people who have made an asylum claim in one Dublin state, and then submit a claim in another; the responsibility then lies with the first state a claim was made in.

The countries from which the largest numbers of arrivals have occurred during this three year period are Greece, France, Denmark and Sweden, accounting together for 80% of all arrivals. There have been changes from year to year for individual countries; for example, of 1,142 arrivals from Greece over the three years 946 were in 2018.

The statistics also show the number of requests made to the UK. The numbers are much larger than the number of arrivals. In 2016 there were 1,905, in 2017 there were 2,137 and in 2018 there were 1,940. The largest numbers of requests in 2017 and 2018 were made under Articles 9 and 18.

The table below shows the number of returns from the UK in each of the past three years.

Year	Total	Article 13	Article 18
2017	314	40	264
2018	209	21	183
2019	263	54	203

The pattern is very different from arrivals. The vast majority of returns are under Articles 13 and 18. Article 13 covers people who have been in one Dublin state without making an asylum claim and have then moved to another state and put in a claim. The first state they were in is responsible for taking charge of the application.

As with arrivals, the number of requests for returns are considerably larger than the actual number of returns. There were 4,239 requests made by the UK in 2016, 5,712 in 2017, and 5,510 in 2018.

Over the three years, the countries to which the largest numbers of returns from the UK have taken place are Germany and Italy. Germany was highest in 2016 and 2017, however in 2018 the largest numbers of returns from the UK were to France.

The full detailed statistics can be found at:

<https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2019>

Notes:

ⁱ ⁱ References to EU Member States in relation to this regulation include the non EU Member States that are signatories to the regulation i.e. Norway, Iceland, Liechtenstein and Switzerland

ⁱⁱ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

ⁱⁱⁱ UN Convention on the Rights of the Child, Charter of Fundamental Rights of the EU, European Convention for the Protection of Human Rights and Fundamental Freedoms.

^{iv} As the regulation refers to minors, thereafter this note follows this terminology to describe children

About the Refugee Council

The Refugee Council is one of the leading organisations in the UK working with asylum seekers and refugees. We give help and support to asylum seekers and refugees, and also work with them to ensure their needs and concerns are addressed by decision-makers.