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Safe Third Country (Dublin) Returns

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The Dublin Regulations set out circumstances in which an asylum-seeker may be returned from one European Union country to another European Union country. This information sheet provides information about this, including two recent court judgments – one concerning returns to Greece, the other concerning the return of children.

Dublin Regulations

These have been updated since they were first introduced. The original regulations were generally known as ‘the Dublin Convention’. What has replaced them is sometimes referred to as ‘Dublin II’ (in this information sheet, for simplicity, the term ‘the Dublin Regulations’ is used). There are now two relevant regulations:

- Council Regulation (EC) No. 343/2003 of 18 February 2003 (Determining Responsibility for Asylum Applications)
- Regulation (EC) No. 1560/2003 of 2 September 2003 (Detailed Rules for Determining Responsibility for Asylum Applications)

The first of these sets out how it is to be decided which European Union country is responsible for the asylum claim. The second sets out additional details as to the way in which this is to happen in practice.

The general position under the Dublin Regulations is that the European Union country where an asylum-seeker first makes an asylum claim is the responsible country unless one of the other criteria in the regulations shows another European Union country to be responsible (e.g. because it is shown that the asylum-seeker first entered the European Union by irregularly crossing the border into that other country). However, a European Union country to which the asylum-seeker has moved and claimed asylum is permitted to take responsibility for the asylum claim if it wishes. The Dublin Regulations apply to both adult and child asylum-seekers. In certain circumstances, where an asylum-seeker has a family member in an European Union country, that country may be responsible for the asylum claim. In relation to separated child asylum seekers, there is a requirement to consider whether relocating the child to a European Union country where he or she has a family member would be in the child’s best interests. If so, that is the country responsible for the asylum claim.

UK law and UK Border Agency practice

When a person claims asylum in the UK, he or she is fingerprinted. These fingerprints are checked with a database shared by the other countries of the European Union to see whether the person has claimed asylum or otherwise been registered in one of the other European Union countries. This is one way by which the UK Border Agency seeks to identify asylum-seekers who may be returned to another European Union country under the Dublin Regulations.

The UK has long made use of the Dublin Regulations to return asylum-seekers to other European Union countries instead of considering their asylum claims in the UK. The Immigration and Asylum Act 1999 included a provision to permit removal in these circumstances. The provision stated that European Union countries were to be regarded as places from which a person would not be removed in breach of the 1951 Refugee Convention. This provision was extended by the Nationality, Immigration and Asylum Act 2002 and further by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. These provisions have been relied upon by the UK Border Agency to seek to exclude the UK courts from considering whether the conditions in another European Union country, to which it is intended to remove an asylum-seeker, would breach the asylum-seeker's human rights or rights under the 1951 Refugee Convention.

In 2007, the Immigration and Nationality Directorate (what is now the UK Border Agency) introduced a policy so that separated child asylum-seekers could be removed to another European Union country under the Dublin Regulations without any notice of the removal being given to the child or his or her lawyer prior to the removal. This policy was (with other similar policies about removal without any notice) found to be unlawful and withdrawn in 2010 – see the August and February 2010 “Removals and Judicial Review” information sheets at <http://tinyurl.com/6ww3qn2> and <http://tinyurl.com/847iyun>

Two recent judgments

In *NS & Ors v Secretary of State for the Home Department* [2011] EUECJ C-411/10 & 493/10, the Court of Justice of the European Union considered challenges to the removal of six asylum-seekers to Greece. In *R (MA & Ors) v Secretary of State for the Home Department* [2011] EWCA Civ 1446, the Court of Appeal considered challenges to the removal of two separated child asylum-seekers to Italy and another to the Netherlands.

Further information about these two judgments is given under separate heading below.

NS & Ors v Secretary of State for the Home Department

In this case, the UK Border Agency argued that since Greece was a European Union country, and bound both by European Union laws on the treatment of asylum-seekers and their asylum claims and the European Convention on Human Rights, nothing more needed to be considered for the UK to lawfully return the asylum-seekers under the Dublin Regulations (provided the Regulations were properly applied). The Court of Justice of the European Union rejected this argument. European Union law does not permit any conclusive presumption that an European Union country meets or would meet its obligations under European Union law. There must be an opportunity to challenge any such presumption. Thus, UK law cannot restrict the UK courts from considering the conditions in another European Union country where it is alleged that the removal of an asylum-seeker to that country would breach his or her human rights or rights under the 1951 Refugee Convention (or the European Union Directives designed to create common minimum standards throughout the European Union as to how these rights should be protected).

R (MA & Ors) v Secretary of State for the Home Department

In this case, the Court of Appeal decided to ask the Court of Justice of the European Union a question about how the Dublin Regulations were to work in relation to the removal of separated child asylum-seekers to other European Union countries. The Court of Appeal was concerned as to how under the Dublin Regulations the best interests of a separated child asylum seeker are to be considered when he or she does not have a family member in any European Union country. One possibility is that rather than delay the child's asylum claim by seeking to return the child to another European Union country, the UK Border may be required to deal with the child's asylum claim unless it would be in the best interests of the child to be returned to another European Union country.