

Refugee Council

Policy briefing



SUPPORTING AND
EMPOWERING
REFUGEES

The 'Dublin' Regulation and family unity

November 2015

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.

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Proposals from the UN High Commissioner for Refugees

In March 2015 UNHCR issued proposals to address arrivals of asylum seekers, refugees and migrants by sea to Europe, addressed primarily to the European Union^v. Noting that the review of the regulation by the European Commission in 2016 is timely, UNHCR makes several recommendations relating to full implementation of Dublin III. It proposes 'proactive and efficient use' of the regulation's articles relating to family unity, unaccompanied minors and dependants (numbers 8-11 and 16) and 'proactive and flexible use' of the discretionary clauses, in particular article 17^{vi}.

In addition to promoting solidarity amongst European members states and support for those bearing the greatest responsibility to provide protection, the proposals aim to reduce the number of dangerous journeys undertaken by those seeking to reunite with loved ones.

Current guidance from the Home Office

The guidance for UKVI officials in dealing with these cases has not been updated since the Dublin III regulation. They make no reference to Dublin III so obviously do not reflect the family related clauses nor the other new rights afforded through this iteration of the regulation.

<https://www.gov.uk/government/publications/safe-third-country-cases-to-consider-asylum-application-process>

<https://www.gov.uk/government/publications/third-country-cases-instruction-for-referring-and-handling>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/265184/oeachapter28.pdf

It is therefore difficult to assess whether or not the information leaflet mentioned above 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.

Refugee Council recommendations

The Home Office must update the guidance issued to its caseworkers and published on the gov.uk website, to reflect the Dublin III regulation and in particular, the family related elements therein.

The UK government must establish a mechanism for assessing the best interests of a child whose family members, siblings or relatives reside in another signatory state, in order to fulfil the requirements of the regulation with regard to potential reunification under the Dublin regulation.

Given the current pressures in the asylum systems of other signatory states, the UK government should respond positively to the discretionary clauses in the regulation and only instigate requests on other signatory states for the purposes of family unity.

The UK, alongside other signatory countries, should advocate for sufficient resources to be available to those border countries where 'hotspots' have been established e.g. Greece and Italy, to ensure that asylum seekers with family members elsewhere in Europe can be identified and assisted through the Dublin regulation to reunite safely.

^{i i} References to EU Member States in relation to this regulation include the non EU Member States that are signatories 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

^v <http://www.refworld.org/docid/55016ba14.html>

^{vi} Ibid, section 2.2