

Country factsheet UK

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
n.a.		n.a.	

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	5,545	2,685	125	22,695	31,045	8,355	26.9
Zimbabwe	2,365	420	10	5,475	8,265	2,790	33.8
Afghanistan	220	1,225	10	2,080	3,535	1,455	41.2
Eritrea	870	70	0	935	1,875	945	50.4
Somalia	535	80	10	670	1,295	625	48.3
Iran	290	155	15	2,000	2,460	460	18.7

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For a more detailed understanding of the data, the reader is invited to consult national statistics at: <http://rds.homeoffice.gov.uk/rds/whatsnew1.html>.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available. Islamic Republic of Iran.

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: [Eurostat](#), Data extracted on 07 September 2010.

2. Background Information

Asylum legislation¹

[Nationality, Immigration and Asylum Act 2002](#)
[Asylum \(Procedures\) Regulations 2007 \(SI 3187/2007\)](#)
[Immigration Rules HC 395](#) (last updated in April 2010)
[Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#)

Asylum authorities

First instance authority

[UK Border Agency](#), Home Office

Second instance authority

[First-tier Tribunal \(Immigration and Asylum Chamber\)](#)

3. Duty to inform asylum seekers

The Secretary of State shall inform asylum applicants in a language they may reasonably be supposed to understand and within a reasonable time after their claim for asylum has been recorded of the procedure to be followed, their rights and obligations during the procedure, and the possible consequences of non-compliance and non-co-operation. They shall be informed of the likely timeframe for consideration of the application (Paragraph 357A, Immigration Rules HC 395). The Secretary of State shall inform asylum applicants within a reasonable time not exceeding fifteen days after their claim for asylum has been recorded of the benefits and services that they may be eligible to receive, as well as of non-governmental organisations and persons that provide legal assistance to asylum applicants and which may be able to help asylum applicants or provide information on available benefits and services (Paragraph 358, Immigration Rules HC 395).

In August 2010, the UK Border Agency provided the following information to the FRA as regards written information materials.

Written information materials	Information leaflet translated into 16 languages.
Provided when?	When screening the application.
Provided by whom?	The Screening Officer.
Has an evaluation of information tools been carried out?	Yes. The leaflet is circulated to internal and external colleagues for comments and feedback and recommendations carefully considered for implementation of the next update.

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

4. Effective Remedy

Type of procedures

Upon completion of the initial screening process, the applicant may be routed into: (i) the detained fast-track procedure; (ii) to a regional asylum team at the UK Border Agency for substantive consideration of the asylum claim, or (iii) through Third Country procedures (admissibility procedures), conducted by separate units within the determining authority. The detained fast-track procedure is used for claims that appear to be ones that may be decided quickly. Applicants are interviewed and served with a decision within five days of their arrival. If new or additional information comes to light suggesting that the fast-track procedure is not suitable, the asylum seeker may be transferred to the normal procedure.

Third country cases are dealt with by the Third Country Unit, which is also responsible for considering asylum claims that come under the Dublin system. Once the Secretary of State is satisfied that the asylum seeker comes from a safe third country, he/she will normally decline to examine the asylum application substantively and issue a certificate as appropriate (Paragraph 345, Immigration Rules HC 395).²

Duty to state reasons for rejection and procedure to appeal

Written notice of decisions on applications for asylum shall be given in reasonable time to the asylum seeker in a language that he/she may reasonably be supposed to understand. In case of a negative decision, the reasons in fact and law shall be stated in the decision, and information provided in writing on how to challenge the decision (Paragraphs 333 and 336, Immigration Rules HC 395).

Time limits for appeal

Under the general right of appeal, a person may appeal against an immigration decision, such as the refusal of leave to enter the territory, refusal of entry clearance or a decision to make a deportation order (Section 82, NIAA 2002). Although section 83 of the NIAA 2002 entitles the asylum seeker to lodge an appeal against the rejection of his asylum claim, no statutory in-country right of appeal exists in the following cases:

- for an applicant whose asylum or human rights-based claim is certified as ‘clearly unfounded’ on the basis that it is without substance, or the applicant is entitled to reside in a safe country of origin (Section 94, NIAA 2002); there is only an out-of-country right of appeal;
- for applicants removed on safe third country grounds, save that an in-country right of appeal is available where the applicant claims that removal to a state, not subject to the Dublin II Regulation, would breach human rights and this claim has not been certified as unfounded (Section 33 and Schedule 3, [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#);

² The information on the type of procedures has been taken from the report by the Intergovernmental consultations on migration, asylum and refugees (IGC), *Asylum Procedures, Report on Policies and Practices in IGC Participating States*, May 2009, pp. 366 - 372.

- against a negative decision on an asylum claim, where the applicant is to be deported on national security grounds, save in cases which raise human rights issues (Section 97(2), (3), NAI 2002);
- in case of subsequent applications, which could have been raised earlier or in a previous appeal (Section 96(1) – (2), NIAA 2002), unless these amount to a fresh claim according to paragraph 353 of the Immigration Rules.

However, in all the above-mentioned cases, the asylum seeker may seek judicial review of the decision to the higher courts, namely the High Court in England and Wales or the Court of Session in Scotland or the High Court of Northern Ireland ([Immigration Directorate Instructions](#), last updated on 25 September 2008, Chapter 27, Section 2).

An appeal by a person who is in the country must be lodged not later than 10 days after he/she is served with the notice of the decision. A five days time limit applies for a detained person under the Immigration Acts. Appeals by a person who is not entitled to a statutory in-country appeal by reason of a provision of the NIAA 2002 can be lodged from outside the country not later than 28 days after departure from the country if the person was in the UK when the decision was made (Section 7, [Asylum and Immigration Tribunal \(Procedure\) Rules 2005](#)). Under the fast track procedure, the asylum seeker must lodge an appeal not later than two days after the day on which he/she is served with notice of the immigration decision (Section 8(1), [Asylum and Immigration Tribunal \(Fast Track Procedure\) Rules 2005](#)).

In Dublin cases, once another country has accepted responsibility, Third Country Unit will certify the asylum claim under Schedule 3 of the Asylum and Immigration (Treatment of Claimants etc.) 2004 Act. The statutory right of appeal for transfers (Part 2 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004) is non-suspensive unless a human rights challenge to removal (not based on onward removal in breach of Article 3 of the ECHR) is not certified as ‘clearly unfounded’. Such appeals must be lodged with the First-tier Tribunal within 28 days of the person’s departure from the territory. If the human rights challenge to removal is not certified as ‘clearly unfounded’, there is an in-country right of appeal and the appeal must be lodged with the Tribunal no later than 10 days after the person is served with the notice of decision (five days if the person is in detention).³

Type of procedure	Time limits	Right to remain
Regular procedure (in-country appeal)	10 days	Automatic suspensive effect.
Regular procedure (detained cases)	5 days	Automatic suspensive effect.
Fast-track procedure	2 days	Automatic suspensive effect.
Non-suspensive appeal procedure	-	No suspensive effect. Only out-of country appeal possible, if submitted within 28 days after departure.
Dublin procedure	28 days	No suspensive effect.

Right to remain in the country during appeal

Until an asylum application has been determined by the Secretary of State or the Secretary of State has issued a certificate on safe countries (under the [Asylum and Immigration \(Treatment](#)

³ The information has been taken from the report by the Intergovernmental consultations on migration, asylum and refugees (IGC), *Asylum Procedures, Report on Policies and Practices in IGC Participating States*, May 2009, pp. 366 - 372.

[of Claimants, etc.\) Act 2004](#)) no action will be taken to require the departure of the asylum applicant from the territory (Paragraph 329 of the Immigration Rules HC 395).

If the asylum seeker is ordered to leave to a safe country of origin (Section 94(4) of the NIAA 2002) or on the basis of other non-suspensive appeal procedure, he/she is removable notwithstanding that any further appeal has not yet been determined (Section 94(9), NIAA 2002). There is no statutory provision allowing for an applicant to request suspensive effect in these cases. The applicant can only challenge the removal or expulsion order under common law. Judicial review would not have suspensive effect unless an injunction is sought.

Legal Aid

Applicants for asylum shall be allowed an effective opportunity to consult, at their own expense or at public expense in accordance with provision made for this by the Legal Services Commission or otherwise, a person who is authorised under Part V of the Immigration and Asylum Act 1999 to give immigration advice (Paragraph 333B, Immigration Rules HC 395). Legal Aid on a question of English law is available to anyone who satisfies the means and merits test. The Legal Services Commission administers the legal aid system in accordance with the [Access to Justice Act 1999](#). At the appeal stage, in addition to qualifying financially, an appellant must also show that the merits of the case justify granting public funding.

Language assistance

Where a person who has made an asylum or a human rights claim appeals under section 82 and/or 83 of the NIAA 2002 and is entitled to the services of an interpreter for the purposes of bringing the appeal (by virtue of Rules made by the Lord Chancellor under section 106 of the NIAA 2002), the Secretary of State shall defray the costs of providing the interpreter (Section 5, Asylum (Procedures) Regulations 2007).

Hearing

Every appeal must be considered by the Tribunal at a hearing with several exceptions listed in Section 15(1) and (2) of the [Asylum and Immigration Tribunal \(Procedure\) Rules 2005](#) (such as, for example, in cases of appeals against decisions ordering the expulsion or removal of the person on the grounds of national security or other grounds of public good, appeals treated as finally determined, etc.) The Tribunal must consider the appeal at the hearing, similarly, under the fast track procedure with several exceptions listed in Section 13 of the [Asylum and Immigration Tribunal \(Fast Track Procedure\) Rules 2005](#).