

FURTHER SUBMISSIONS

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Introduction

Purpose of Instruction

This Asylum Instruction sets out the policy, processes and procedures to be followed when considering further submissions.

The operational instructions in this guidance apply to both adults and children.

This guidance applies to case owners in both the asylum teams in the regions and the Case Resolution Directorate. This instruction provides guidance to both on:

- Applying Paragraph 353 of the Immigration Rules; and
- Certifying claims under section 96 of the Nationality, Immigration and Asylum Act 2002.

For the purpose of simplicity, the generic terms he, him and his will be used for all officers and applicants regardless of their gender.

The main aim of this guidance is to provide step-by-step guidance on how to deal with further submissions in practice.

Use of Terms

Within this instruction, the term:

“**Case Owner**” refers to case owners or caseworkers within the Regional Asylum Teams, Detained Fast-Track (DFT), Criminal Casework Directorate (CCD), or the Case Resolution Directorate (CRD).

“**Senior Caseworker**” applies to SEO Senior Caseworkers within the regional teams or DFT and to Technical Specialists and SEO Senior Caseworkers within CRD.

“**Applicant**”, “**individual**”, “**person**” and “**subject**” are all interchangeable terms referring to the asylum seeker.

Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

Definition

A further submission refers to a situation where an applicant has had an initial asylum and/or human rights claim refused, or has withdrawn such a claim, or had such a claim treated as withdrawn under paragraph 333C of the Immigration Rules, and has exhausted all appeal rights in relation to that claim. Following this, the applicant provides additional information which may or may not be different from the information provided previously. It does not refer to individuals included on initial claims as dependants who subsequently claim asylum and/or human rights in their own right. The tool for handling further submissions is Paragraph 353 of the Immigration Rules.

Submitting further submissions

Application proforma

Failed asylum seekers and their legal representatives are encouraged to submit further submissions using the application proforma, which can be found at Annex B and on the UK Border Agency website. Case Owners are reminded that further submissions received in the form of a letter rather than on the application proforma must still be considered, provided they are submitted following the relevant processes outlined below.

Cases being managed by the Case Resolution Directorate

With effect from 14 October 2009, any failed asylum seeker whose case is being managed by the Case Resolution Directorate (CRD) is required to submit their further submissions by appointment and in person at the Liverpool Further Submissions Unit (FSU).

Failed asylum seekers being managed within CRD must make an appointment in order to submit their further submissions. The FSU cannot accommodate individuals walking in without a pre-arranged appointment. To make an appointment to submit further submissions, individuals should call the FSU on the following number:

0151 237 0980

When an appointment has been booked, staff at the FSU should send written confirmation of the appointment to the individual, including the address of the FSU and a blank further submissions application proforma.

When attending an appointment at the FSU, individuals are requested to bring with them:

- A completed Further Submissions application proforma or letter detailing the additional information the failed asylum seeker would like the UK Border Agency to consider
- Supporting Documents (including, where available, Reasons for Refusal Letter, appeal determination, documents in support of the further submissions. NB All documentary evidence to be considered in support of the further submissions must be submitted at the further submissions appointment. If all the documents are not available, UK Border Agency staff should not give an extension, but should request that the individual makes a further appointment. If the individual is unwilling to do so the consideration will be made on the documents submitted)
- Application Registration Card (if still in possession of this)

- Passport (of main applicant and any dependants in the UK, where owned and not held by the UK Border Agency)
- Police Registration Certificates (if held)
- Other Identity documents (if held)
- 4 unseparated passport-sized photographs (of main applicant and any dependants)
- Evidence of accommodation (if not provided by the UK Border Agency)
- Any other relevant documents

Cases being managed by Asylum Teams in the Regions

With effect from 14 October 2009, any failed asylum seeker whose case is being managed by a regional asylum team is required to submit their further submissions in person at a reporting centre specified by the UK Border Agency in the region responsible for their case, either via an appointment at their reporting centre or at their regular reporting event.

If the individual regularly reports somewhere other than a reporting centre, for example a police station, then they must attend an event arranged with UKBA at a designated reporting centre in order to submit any further submissions.

Each region operates a distinct process. If a failed asylum seeker wishes to submit further submissions in person, they should contact their Case Owner in order to find out what steps to take. Further information on regional processes can be found on the UKBA website.

Depending on frequency of reporting, individuals are encouraged, where possible, to submit their further submissions as part of their regular reporting regime. Where that is not possible, individuals can request an appointment. It will be rare that reporting centres operate without an appointment system.

When attending a Reporting Centre to submit further submissions, individuals are requested to bring with them:

- A completed Further Submissions application proforma or letter detailing the additional information the failed asylum seeker would like the UK Border Agency to consider
- Supporting Documents (including, where available, Reasons for Refusal Letter, appeal determination, documents in support of the further submissions. NB All documentary evidence to be considered in support of the further submissions must be submitted at the reporting event or the further submissions appointment. If all the documents are not available, UK Border Agency staff should not give an extension, but should request that the individual makes a further appointment. If the

- Application Registration Card (if still in possession of this)
- Passport (of main applicant and any dependants in the UK, where owned and not held by the UK Border Agency)
- Police Registration Certificates (if held)
- Other Identity documents (if held)
- 4 unseparated passport-sized photographs (of main applicant and any dependants)
- Evidence of accommodation (if not provided by the UK Border Agency)
- Any other relevant documents

UK Border Agency will not require principal applicants to bring dependants, including those who will be children, with them to the appointment to lodge an application in person.

When the further submissions are received, the Caseowner should record these on CID, see [Making a decision under Paragraph 353](#) for the process.

Further Submissions made at port

Where an individual returns from abroad and wishes to raise issues relating to a previous asylum or human rights claim, they are able to do so in person at their port of entry to the UK.

Exceptional Cases

Inability to travel

Failed asylum seekers who fulfil the following criteria can submit written further submissions by post:

- ✓ those who have a disability or severe illness and are physically unable to travel
- ✓ those who are imprisoned or in detention and unable to make their application in person

It should be noted that satisfactory medical evidence must be provided to substantiate postal further submissions where the applicant claims to have a disability or severe illness and is physically unable to travel to FSU Liverpool or their designated reporting centre.

Ongoing Judicial Review or other litigation

Where there is an ongoing Judicial Review or ongoing litigation of another kind, further submissions should be accepted by post. This will enable the member of UK Border Agency staff managing the JR/litigation to also consider the further submissions as part of the overall case management. If in doubt, Case Owners should contact their Judicial Review Team.

Removal Directions have been set or the individual has been accepted on a charter flight

Where Removal Directions (RDs) have been set, or a failed asylum seeker has been accepted on a charter flight, and the failed asylum seeker wishes to make further submissions, they should immediately contact their Case Owner who will advise them on what action to take. It will usually be appropriate for the Case Owner to obtain the further submissions by fax and contact the Operational Support and Certification Unit (OSCU) who will consider the further submissions on the Case Owner's behalf, where appropriate.

For further information see [Chapter 29 - Repeat Asylum Claims](#) of the Enforcement Instructions and Guidance.

Individual comes to light through enforcement action

Where a failed asylum seeker who has been picked up as a result of enforcement action indicates that they wish to submit further submissions, they should not normally be released to follow the CRD or regional 'in person' process. Their further submissions can be submitted in person to the UK Border Agency enforcement staff, who should follow [Chapter 29 - Repeat Asylum Claims](#) of the Enforcement Instructions and Guidance.

Further submissions made before 13 October (CRD & regional)

In order for postal further submissions to be valid they **must** have been received on or before 13 October 2009. Further submissions submitted by post received on or before these dates, or with a post mark date from Royal Mail of 12 October 2009 or before, should be accepted as valid further submissions. Where the date of the postal further submissions precedes these dates but was not postmarked by Royal Mail until on or after these dates, further submissions should be rejected.

Action to take when further submissions are submitted by post

If an individual submits further submissions to the UK Border Agency by post following the 13 October 2009, and they do not fit one of the exceptional

criteria outlined above, Case Owners should refuse to accept these submissions. The standard letter to use when refusing to accept further submissions made by post, ASL.4093, can be found on Doc. Gen in the Miscellaneous and Acknowledgements folder. The further submissions should be returned to sender (either the legal representative or the failed asylum seeker) with the original letter. No copy should be retained on the Home Office file however CID notes should be updated.

Paragraph 353 of the Immigration Rules

Paragraph 353 of the Immigration Rules sets out how to deal with further submissions. It states:

“When a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) has not already been considered; and**
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.**

This paragraph does not apply to claims made overseas.”

Two-Stage Process

Paragraph 353 requires that a two stage process be applied when further submissions are received:

- **Stage One** – consider whether to grant leave.
- **Stage Two** – decide whether the further submissions amount to a fresh claim.

If stage one results in a grant of leave, the case owner does not need to proceed to stage two.

Paragraph 353 requires this two stage test to be applied sequentially on all occasions. In other words, the case owner must always decide whether the newly submitted material taken together with the old material warrants a grant of leave before carrying out any further actions. Only if the case owner decides not to grant further leave to the applicant does it become necessary to decide whether there is a fresh claim.

In cases where there is no need to make a further immigration decision (as defined in section 82 of the Nationality, Immigration and Asylum Act 2002), the purpose of paragraph 353 is to provide a mechanism whereby case owners decide whether or not the rejection of further submissions warrants another right of appeal. As a matter of policy case owners will make a further

immigration decision thereby generating a further right of appeal (which will be exercisable in-county) if there is a fresh claim, but will not do so if there is no fresh claim.

Making a decision under Paragraph 353

As mentioned in [Paragraph 353 of the Immigration Rules](#), a two-stage process is used for applying paragraph 353.

Consider whether leave should be granted

In all cases where further submissions are received, the first stage is to decide whether or not to grant leave to the applicant. The case owner must consider all available evidence when deciding whether the applicant qualifies for leave. This will include all information put forward by the applicant, but also information such as new country information or a new policy. Case owners must also act upon the findings in any final appeal determination which override conclusions expressed in the original reasons for refusal letter. For information on granting leave, see Asylum Instructions [Refugee Leave](#), [Humanitarian Protection](#) and [Discretionary Leave](#).

If a case owner decides to grant leave to an applicant, he should act as follows: -

- Follow instruction on minute sheet ASL.2898 Asylum Claim – Grant of Leave to Enter or Remain.
- Ensure that CID is updated.

The decision should be served in person or by recorded or special delivery post, in line with local practices.

If the individual is in receipt of support, Case Owners should consider whether discontinuation is appropriate.

Inviting applicant to interview

Case owners may be uncertain whether to grant leave to an applicant on the basis of the information provided. In this event, it may be appropriate to invite the applicant to attend an interview.

If a case owner decides that it would be appropriate to invite an applicant who has lodged further submissions to an interview, he should act as follows: -

- Forward one copy of ASL.0062 (Invitation to Asylum Interview) to the applicant and one copy to the legal representative where appropriate. One copy should be retained on the applicant's file.
- If the applicant fails to attend the interview, the submissions should be decided on the basis of the information on the papers.
- If the applicant does attend, the case owner should ensure that CID is updated

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Conducting the interview

Where an applicant was interviewed in relation to their initial asylum claim, the Case owner should inform the applicant that the purpose of the interview is to establish whether the new information justifies a grant of leave, and therefore the applicant is not required to repeat details of their initial claim. However, where information relating to the initial application is material to the new information that has been provided, the case owner should allow the applicant to expand upon this information.

Where an applicant has not previously been interviewed in relation to his asylum and/or human rights claim, the case owner should treat this as an initial interview and ensure that the applicant is questioned about both his

initial claim and further submissions where the information provided in both is different.

Regardless of whether or not an interview has previously been conducted, the case owner should adhere to the guidelines set out in [Conducting the asylum interview](#).

Case owners should use Interview Record ASL.1123.

Decide whether further submissions constitute a fresh claim for asylum

If the case owner decides that it would not be appropriate to grant leave, the second stage is to determine whether the further submissions constitute a fresh claim for asylum. This is important because the applicant will only be entitled to an in-country Right of Appeal if it is accepted that there is a fresh claim. Paragraph 353 states that submissions will amount to a fresh claim if they are “significantly different” from the material that has already been considered. Submissions will only be significantly different if the content:

- has not already been considered; and
- taken together with the previously considered material, creates a realistic prospect of success.

The first limb of the test - Has the material already been considered?

If material has been considered by UK Border Agency or at appeal, it will have been considered already for the purposes of paragraph 353 and there will be no fresh claim. In these cases, it is important for the case owner to apply paragraph 353 and establish that there is no fresh claim because the material has been considered before and therefore the first limb of the test is not satisfied. It is not sufficient to say simply that the material has already been considered and that leave is therefore not being granted. The fact that something has been considered previously does not mean that paragraph 353 should not be applied. It instead means that the test in paragraph 353 will not be satisfied when applied.

If the material has previously been considered, it is not necessary for case owners to proceed to [The second limb of the test – does the material create a realistic prospect of success?](#)

The second limb of the test – does the material create a realistic prospect of success?

If the material put forward in the further submissions has not previously been considered, the case owner should then decide whether the new information, taken together with the material previously considered, raises a realistic prospect of success.

Case owners should note that the threshold with regard to a “realistic prospect of success” is a low one. The Court of Appeal has described the test as “somewhat modest”.

The test is described as somewhat modest for three reasons. First, the question is whether there is a realistic prospect of success in an application before an immigration judge, but not more than that. Second, the immigration judge himself does not have to reach a position of certainty, but only to think that there is a real risk of the applicant being persecuted on return. Finally, since asylum is in issue, the consideration of all the decision-makers, the Secretary of State, the immigration judge and the court, must be informed by the anxious scrutiny of the material.

Case owners should broadly interpret success to mean ‘being allowed to stay’. For example, an applicant who raises asylum issues in further submissions will have a fresh claim if there is a realistic prospect of an immigration judge deciding that he should be granted leave on humanitarian protection grounds.

It is inadvisable to suggest that there is no realistic prospect of success solely on the basis that an applicant has demonstrated poor credibility in the past. An applicant may have been untruthful in the past but be telling the truth now, at the further submissions stage. That said, credibility should be taken into account where appropriate in assessing whether there is a realistic prospect of success, but this is simply the same exercise as would be undertaken in assessing an initial claim. For further information, see [Assessing Credibility in Asylum and Human Rights Claims](#).

For example, both a case owner and an immigration judge might consider that an applicant’s account of torture has been fabricated. However, the applicant might later submit expert reports which conclude that, based on physical evidence, the applicant has been tortured in the past. As the reports would be based on physical evidence and not merely the applicant’s account, earlier findings on the applicant’s credibility would not be relevant. Were the reports to be based simply on what the applicant told the doctors, past credibility findings would become relevant.

Material should never be discounted entirely on the basis that the applicant could or should have raised it earlier. However, in assessing whether there is a realistic prospect of success, case owners may treat material with circumspection if it is raised late and could have been raised sooner. This is of particular relevance to submissions that are raised at the point of removal. For further information, see [Assessing Credibility in Asylum and Human Rights Claims](#).

Where the further submissions consist wholly or partly of documentary evidence, case owners must consider all available material when deciding

whether or not there is a realistic prospect of success. The question of whether any particular document can be relied on to support the applicant's case must be considered in light of all the evidence. The issue is not, in most cases, whether any particular document is a forgery; it is whether, in light of all the evidence considered as a whole, there is a realistic prospect of success.

If an applicant challenges the decision that his further submissions do not amount to a fresh claim by lodging a Judicial Review, the Court will ask whether this decision was reasonable. The decision will only be reasonable if the case owner has very carefully considered whether there is a realistic prospect that the submissions will, when taken together with all the previously considered material, lead an immigration judge to decide that the applicant should be allowed to stay in the United Kingdom.

In addition, the case owner must have considered the low threshold which applies, given proper weight to issues such as credibility and the timing of the submissions and considered all the evidence in the round.

The case owner must very carefully consider whether there is a realistic prospect that the submissions will lead an immigration judge to decide that the applicant should be allowed to stay in the UK when taken together with all the previously considered material. If the case owner considers that this test is met, the submissions must be refused as a fresh claim for asylum. If this test is not met, the case owner should reject the submissions as further representations, meaning that no new immigration decision has been made.

Further submissions are refused as a fresh claim for asylum

Where a case owner decides to refuse further submissions as a fresh claim for asylum, he should act as follows: -

- Follow instructions on minute sheet ASL.2899 – Asylum Claim (Refuse Outright).
- Decide whether the fresh claim should be certified under section 96 of the Nationality, Immigration and Asylum Act 2002. If so, see [When is Section 96 Certification an Option?](#) If not, see the bullet point below.
- Ensure that CID is updated

The decision should be served in person or by recorded delivery post, in line with local practices.

If the individual is in receipt of support, Case Owners should consider whether discontinuation is appropriate.

Further submissions are rejected as further representations

Where a case owner decides to reject further submissions as further representations, he should act as follows:

- Follow instructions on minute sheet ACD.2843 – Further Representations.
- Draft the response using the further submissions response proforma, found on Doc. Gen
- Ensure that the decision to reject as further representations is considered by a second pair of eyes where appropriate.
- Ensure that CID is updated

The decision should be served in person or by recorded delivery post, in line with local practices.

If the individual is in receipt of support, Case Owners should consider whether discontinuation is appropriate.

Criteria for applying Paragraph 353

Earlier Asylum and/or Human Rights claim

Paragraph 353 can only be applied where there has been an earlier human rights or asylum claim which has been refused or withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. Where an applicant has not previously lodged an asylum and/or human rights claim, or has submitted additional information relating to an initial claim before the initial decision has been made (unless the initial claim was withdrawn or treated as withdrawn under paragraph 333C), the case owner should not apply Paragraph 353.

In addition, the case owner needs to ensure that the applicant has raised asylum and/or human rights issues by means of a claim to UK Border Agency. For example, Paragraph 353 cannot be applied in cases where asylum and/or human rights grounds have been raised for the first time in grounds of appeal.

No Appeal Pending against refusal of previous Asylum/Human Rights Claim

In addition, paragraph 353 can only be applied where there is no appeal pending against the refusal of the earlier claim. If there is an appeal pending, the applicant should, where possible, raise all relevant matters in the context of that appeal. If there is no appeal pending, either because the applicant never brought an appeal or because the appeal has been dismissed, withdrawn, abandoned or has lapsed, the case owner should apply paragraph 353.

New material raised before appeal hearing

Where an applicant raises new material after a decision has been made on his asylum and/or human rights claim but before his appeal is heard, Paragraph 353 should not be applied. The applicant should raise this material in the context of his appeal. However, if it has not been possible to raise this material during the course of his appeal for any reason, the case owner should consider it after the conclusion of the appeal and apply paragraph 353.

Applicant decides not to appeal against initial claim

If an applicant chooses not to appeal against the refusal of an initial asylum and/or human rights claim, it would be appropriate to apply Paragraph 353 to any further material raised.

Applicant's initial appeal dismissed

Many applicants who lodge further submissions will have had their initial asylum claims refused and their appeals dismissed. They will now be Appeal Rights Exhausted. Case owners should apply paragraph 353 to any further submissions that have been raised.

Further submissions raise issues under ECHR and/or Refugee Convention relating to removal

Paragraph 353 can only be applied where the further submissions raise issues under the ECHR and/or the Refugee Convention relating to removal. Although “further submissions” are not defined in paragraph 353, given that the purpose of the paragraph is to provide a mechanism for deciding whether a fresh claim has been made (i.e. a fresh “human rights claim” or fresh “asylum claim”, as those terms are defined in section 113 of the Nationality, Immigration and Asylum Act 2002), it must only be applied where the further submissions raise asylum and/or human rights issues relating to removal. If the person is not alleging that removal will breach either Convention, but is instead making some other kind of human rights argument, it is not appropriate to apply paragraph 353.

Implied Human Rights Claim

Some applicants may delay removal on the grounds of implied human rights claims, in particular under Article 3 and Article 8 of the ECHR. It is not necessary for the applicant to have made explicit reference to the ECHR for further submissions to have been raised on these grounds. If such an applicant has previously been refused asylum and leave under the ECHR and appeal rights relating to that claim are exhausted, it would be appropriate to apply paragraph 353 in respect of the human rights issue.

Section 4 Support

It may be difficult to remove some applicants who are Appeal Rights Exhausted (ARE) in relation to their initial asylum and/or human rights claims. Some may then apply for support under section 4 of the Immigration and Asylum Act 1999 on the grounds that a refusal to provide support would amount to a breach of their human rights under the ECHR. Case owners should not apply paragraph 353 to the application for section 4 support as the human rights issues do not relate to the applicant’s removal. The issue relating to section 4 should instead be handled without reference to paragraph 353. For further information on whether such an applicant is entitled to support under section 4, see [Section 4 Support](#).

Withdrawn asylum applications

From 7 April 2008, paragraph 353 of the Immigration Rules may be applied to further submissions made after an original asylum claim has been withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. In such cases, it is likely that any further submissions will meet the threshold to succeed at the first limb of the test, as the content is unlikely to have been

considered previously. It is not certain, however, that the submissions will meet the threshold to succeed at the second limb of the test, in other words, that when taken together with the previously considered material, the content of the submissions create a realistic prospect of success in front of an Immigration Judge, notwithstanding the rejection of those submissions.

For further information on withdrawn applications and paragraph 333C, see the AI [Withdrawal of Applications](#).

No connection between initial claim and further submissions

Whether or not there is any connection between an applicant's initial claim for asylum and/or human rights and the further submissions does not impact on whether paragraph 353 should be applied to the latter. Even where they are entirely unrelated, paragraph 353 should still be applied where the conditions laid out in [Earlier Asylum and/or Human Rights claim](#), [No Appeal Pending against refusal of previous Asylum/Human Rights Claim](#) and [Further Submissions raise issues under ECHR and/or Refugee Convention relating to removal](#) are met. For example, an applicant may claim asylum due to a fear of persecution on the ground of religion which is refused and subsequently dismissed at appeal. He may subsequently make an Article 8 human rights claim. Despite the clear differences between the initial claim and further submissions, the case owner should still apply paragraph 353.

Initial asylum and/or human rights claim has been certified under section 94 of the Nationality, Immigration and Asylum Act 2002

Following the House of Lord's judgment in *ZT (Kosovo)*, paragraph 353 must be applied to unsuccessful further submissions where the initial claim(s) has/have been certified as clearly unfounded under section 94 of the NIA Act 2002. This is a change from the former process for dealing with further submissions in section 94 cases, where a specific section 94 procedure applied. For further information on handling NSA cases, see [Certification under Section 94 of the NIA Act 2002](#).

When Paragraph 353 should not be applied

This section sets out scenarios where it would be inappropriate to apply paragraph 353 of the Immigration Rules. There are some special cases where, notwithstanding that the points made in [Criteria for Applying Paragraph 353](#) are satisfied, paragraph 353 should exceptionally not be applied when handling further submissions.

Pre- 2 October 2000 cases

Where an applicant lodged an asylum claim and this was refused by way of an appealable decision made before 2 October 2000 and where no further decision has been made since that date which gave him the opportunity to appeal on human rights grounds, paragraph 353 should not be applied to any human rights submissions he then goes onto make. This only applies to human rights submissions and applies even where the appeal itself took place after 2 October 2000. However, even if these conditions are satisfied paragraph 353 should always be applied if either or both of the following conditions apply:

- The human rights issue was considered and rejected in the context of the ECHR at the asylum appeal against the pre 2 October 2000 decision, or
- there was a basic finding of fact made at that appeal which means that any claim based on those facts is likely to fail. For example, the applicant may have maintained a history or nationality which has been found to be false and would therefore not be entitled to another appeal relying on the same false information. However, if no such finding was made at appeal, the case owner should not apply paragraph 353 to the submissions.

These cases are sometimes referred to as *Pardeepan* cases after a decision of the Immigration Appeal Tribunal.

Applicants refused asylum but granted leave for more than one year on another basis before making human rights submissions

Where an applicant is refused asylum but is granted leave in excess of one year for some other reason, he will have a right of appeal (under section 83 of the Nationality, Immigration and Asylum Act 2002) against the asylum refusal. However, due to the fact that he has been granted leave on another basis, he

will not have been able to appeal on human rights grounds. Therefore, case owners should not apply paragraph 353 to any human rights submissions lodged after the refusal of the asylum claim.

Applicant refused asylum but granted leave for one year or less on another basis. Further submissions have been considered before and raise a realistic prospect of success

Where an applicant is refused asylum but is granted leave for one year or less for some other reason, he will not have a right of appeal against the asylum refusal. Therefore, the case owner should not apply paragraph 353 to any submissions lodged by the applicant after the expiry of his leave which would fail the paragraph 353 test solely on the ground that the content has been considered previously. It would not be appropriate to apply paragraph 353 if it is also considered that the submissions raise a realistic prospect of success. If the further submissions do not create a realistic prospect of success, however, paragraph 353 should be applied as normal (whether or not the content has been considered before). For further information, see [What does the test in Paragraph 353 mean?](#)

Applicant is asking UK Border Agency for discretion to afford a further right of appeal aside from paragraph 353, on the grounds of fairness

Case owners should note that they have a discretion, aside from paragraph 353, to generate a further right of appeal in cases where to deny a right of appeal would be unfair. These cases are sometimes referred to as Kazmi cases after a decision of the Immigration and Asylum Tribunal (AIT). Where it is clear that an applicant is solely asking for a further right of appeal on fairness grounds, the case owner should address that issue without reference to paragraph 353.

For example, an applicant may lodge an appeal against a refused asylum claim but fail to attend the hearing. He may then claim that neither he nor his representatives were informed of the correct date of the hearing and that he was unable to attend for this reason. The applicant may then request a further right of appeal on the grounds that it was unfair that his earlier appeal was dismissed without him having the opportunity to attend and give evidence. In this situation, it would not be appropriate for the case owner to apply paragraph 353. The case owner should instead consider whether or not discretion to generate a further right of appeal on fairness grounds should be exercised.

A further immigration decision will give rise to a right of appeal regardless of whether or not there is a fresh asylum or human rights claim

The Court of Appeal found in the case of *BA (Nigeria)* that in cases where a further immigration decision is required after further submissions on human rights or asylum grounds have been made, regardless of whether those further submissions amount to a fresh claim for asylum under paragraph 353, section 92(4)(a) of the Nationality, Immigration and Asylum Act 2002 will be engaged and the individual will be entitled to a further in-country right of appeal. Consequently, paragraph 353 should not be applied in these cases. This is a change to the former process, where paragraph 353 would be applied to all further submissions except those where the immigration decision would give rise to an in-country right of appeal regardless of whether or not the applicant has made an asylum or human rights claim. For further information, see below and [section 92 of the Nationality, Immigration and Asylum Act 2002](#).

Applicants who have left and subsequently returned to the United Kingdom

Some applicants will have been refused leave in relation to their initial asylum and/or human rights claims before leaving the United Kingdom. If such an applicant subsequently returns and attempts to raise asylum and/or human rights issues again, if those submissions are unsuccessful the applicant will be refused leave to enter. This is an immigration decision under section 82 of the Nationality, Immigration and Asylum Act and therefore attracts a right of appeal. Following the Court of Appeal judgment in *BA (Nigeria)*, paragraph 353 should not be applied in such cases, as section 92(4)(a) of the Nationality, Immigration and Asylum Act 2002 will be engaged regardless of whether the submissions meet the test in paragraph 353, and as a result the appeal will be in-country. This is a change to the former process in which case owners were advised to apply paragraph 353 if these submissions were unsuccessful.

Under previous procedures, the importance of applying paragraph 353 in these cases was that if there was either no fresh asylum or fresh human rights claim, then the right of appeal would have been out-of-country rather than in-country provided that the conditions set out in [No Appeal Pending against refusal of previous Asylum/Human Rights claim](#) apply.

Claims lodged overseas

Case owners should note that paragraph 353 does not apply to claims made overseas. For example, if an applicant has been removed from the United Kingdom and then attempts to submit a new asylum and/or human rights claim from another country, paragraph 353 should not be applied. The applicant would not be entitled to an in-country Right of Appeal against this decision as section 92(4)(a) of the Nationality, Immigration and Asylum Act

2002 only applies if the person has made an asylum or human rights claim in the UK.

When is Section 96 Certification an Option?

Section 96 of the Nationality, Immigration and Asylum Act 2002 (as amended) allows UK Border Agency to certify a right of appeal in certain circumstances. The result of certification is that an appeal may not be brought either in-country or out-of-country. However, as with a decision not to treat further submissions as a fresh claim under paragraph 353, a decision to certify under section 96 can be challenged by judicial review.

Case owners should note that if the further submissions are **not** being refused as a fresh claim for asylum, certification action is not possible. This is because there is no point in certifying under section 96 if there is no right of appeal to certify, and it is not appropriate to certify if the right of appeal is only exercisable out-of-country.

In cases where there is no need to make another immigration decision there will only be a right of appeal if there is a fresh claim. This is because a further right of appeal will be generated in these cases as a matter of policy. In cases where a further immigration decision will have to be made (and the decision is not one which normally attracts an in-country right of appeal), it is only if there is a fresh claim that the right of appeal will be exercisable in-country. Section 96 is intended to prevent people raising matters at the last minute to frustrate removal. That being the case, if there is no in-country right of appeal then there will be no bar to removal, and it will not be appropriate to certify under section 96.

In effect, section 96 certification can be seen as **stage three** in the process of handling further submissions. The three stages can be summarised as follows: -

- **Stage One** – consider whether to grant leave.
If (and only if) the decision is not to grant leave move onto:
- **Stage Two** – decide whether the further submissions amount to a fresh claim.
If (and only if) the decision is that there is a fresh claim move onto:
- **Stage Three** – consider whether to certify under section 96.

In all cases of further submissions paragraph 353 should be applied before section 96 is considered. A decision letter dealing with further submissions should never purport to certify under section 96 without first applying paragraph 353 and concluding that there is a fresh claim. Case owners cannot pursue certification action under section 96 if they have decided that there is no fresh claim on applying paragraph 353.

In cases where paragraph 353 should exceptionally not be applied when handling further submissions, section 96 certification is not appropriate except where a further immigration decision will have to be made and that decision will give rise to an in-country right of appeal regardless of whether or not there is a fresh asylum or human rights claim. In those cases, certification under section 96 is possible. For further information on where case owners should not apply paragraph 353, see [When Paragraph 353 should not be applied](#).

Case owners can pursue certification action under either section 96(1) or section 96(2) of the Nationality, Immigration and Asylum Act 2002. Section 96(1) deals with earlier rights of appeal, whilst section 96(2) deals with One-Stop Notices.

Section 96(1) – Earlier Appeals

Section 96(1) states the following: -

“An appeal under section 82(1) against an immigration decision (‘the new decision’) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies –

- (a) that the person was notified of a right of appeal under that section against another immigration decision (‘the old decision’) (whether or not an appeal was brought and whether or not any appeal brought has been determined),
- (b) that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision, and
- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for the matter not having been raised in an appeal against the old decision.”

For certification under section 96(1) to be possible, the case owner must be satisfied that the following criteria are met:

- The applicant must have been notified of a right of appeal under section 82 against a previous immigration decision (e.g. a refusal of leave to enter following an asylum claim). Whether the applicant chose to exercise his Right of Appeal is irrelevant.
- The fresh claim must rely on a matter which could have been raised on appeal against the earlier refusal. Case owners will need to carefully consider whether the new claim relies on a matter which could have been raised at an earlier appeal. In Article 8 ECHR cases, for instance, although the basic facts of the Article 8 case may have been available

earlier, the case is likely to have evolved over time. For example, a child may have been born since the initial Article 8 claim was decided. If there has been a material change in the case certification is not likely to be appropriate, whereas a simple evolution of the facts over time which does not significantly impact upon the claim is not likely to make certification inappropriate.

- There must be no satisfactory reason for the matter not having been raised at the earlier appeal. For example, an applicant may submit a newspaper article some time after becoming Appeal Rights Exhausted in relation to his/her initial asylum claim. If the article was written a period of time before the appeal was heard, the case owner would be entitled to judge that this information could have been raised earlier. Therefore, in the event that the case owner decides both to refuse leave but accept a fresh claim, certification action may be suitable.

If an applicant appeals against the initial decision, raises the relevant matter in that appeal, but then abandons the appeal, the case owner should still consider certifying under section 96 if he later makes further submissions relying on that matter.

Where a case owner decides to certify under section 96(1), he should act as follows:

- Follow instructions on minute sheet ASL.2899 – Asylum Claim (Refuse Outright).
- Draft the response using the further submissions response proforma, found on Doc. Gen
- Ensure that CID is updated

The decision should be served in person or by recorded delivery post, in line with local practices.

If the individual is in receipt of support, Case Owners should consider whether discontinuation is appropriate.

Section 96(2) – One-Stop Notices

Section 96(2) states the following:

“An appeal under section 82(1) against an immigration decision (‘the new decision’) in respect of a person may not be brought if the Secretary of State or an immigration officer certifies –

- (a) that the person received a notice under section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision,
- (b) that the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice, and
- (c) that, in the opinion of the Secretary of State or the immigration officer, there is no satisfactory reason for the matter not having been raised in a statement in response to that notice.”

For certification under section 96(2) to be possible, the case owner must be satisfied that the following criteria are met:

- The applicant must have received a one-stop notice in relation to an earlier application (e.g. an earlier asylum claim or an application for leave to enter as a dependant of a family member claiming asylum).
- The fresh claim must rely on a matter which should have been, but has not been, raised in a valid response to that notice. A one-stop notice gives rise to a *continuing* obligation to disclose reasons and grounds for staying in the United Kingdom. As a consequence, an applicant is obliged to provide information about any matters which arise subsequent to the service of the notice at the earliest possible opportunity. Where an applicant replies to a one-stop notice, but fails to do so *promptly* following receipt of the notice or at the point at which the new matter arises, the case owner should not consider this as a valid response to the notice.
- There must be no satisfactory reason for the matter not having been raised in a valid response to that notice. For example, where an applicant receives a one-stop notice in relation to an application and was clearly aware of the matter at that time but failed to disclose it, the case owner would be entitled to argue that section 96 certification is possible if he later raises submissions relying on the same matter.

Section 96 certification is possible in certain cases where paragraph 353 is not relevant. For example, although paragraph 353 should not be applied where a person who is named as a dependant on another person's asylum or human rights claim then goes onto make a claim in his own right section 96 certification may still be appropriate. This is because a one-stop notice should have been served on the applicant when he applied for leave as a dependant. Therefore, he will have had an opportunity to submit a response to the one-stop notice meaning that section 96(2) can be applied when he subsequently makes a claim in his own right. However, section 96(1) will not be appropriate in this case, as a person refused leave as a dependant will only have been notified of an out-of-country right of appeal. This makes later certification on the basis of the earlier right of appeal inappropriate.

Case owners may not certify under section 96(1) or section 96(2) where the applicant did, in fact, raise the issue in an earlier appeal or in a valid response to the one-stop notice. Certification is only possible where the applicant either could or should have raised the matter on appeal or by way of a valid response to the one-stop notice but failed to do so.

Where a case owner decides to certify under section 96(2), he should act as follows:

- Follow instructions on minute sheet ASL.2899 – Asylum Claim (Refuse Outright).
- Draft the response using the further submissions response proforma, found on Doc. Gen

Ensure that CID is updated

The decision should be served in person or by recorded delivery post, in line with local practices.

If the individual is in receipt of support, Case Owners should consider whether discontinuation is appropriate.

Certifying under both sections 96(1) and 96(2)

Case owners should be aware that a fresh claim may be suitable for certification under both section 96(1) and section 96 (2) of the NIA Act 2002. If this is appropriate, case owners should make use of both certificates.

Annexes

Annex A - Equality Impact Assessment

Equality Impact Assessment

Preliminary Screening

Statistics & Research

Gathering Evidence through Community Engagement

Assessment & Analysis

Action Plan

The EIA Report



EQUALITY IMPACT ASSESSMENT
UKBA
Immigration Group
Immigration Policy Unit (Asylum Policy)

PRELIMINARY SCREENING

Date of Screening	03/2009
Name of Policy Writer	Anna Kasparian/Amelia Wright
Director General	Lin Homer

Requiring further submissions (where someone whose appeals rights are exhausted asks us to reconsider their claim based on further evidence or a change in personal circumstances) to be made in person.		This is a new policy
	X	This is a change to an existing policy
		This is an existing policy

Policy Aims, Objectives & Projected Outcomes

This policy is part of continued reform of the asylum system and aims to ensure that information about an individual's case is registered at each stage of the process to support fast and fair decision-making and case conclusions.

From 14 October 2009:

- those who claimed asylum before 5 March 2007, and whose case is being managed by the Case Resolution Directorate, will be required to make any further submissions by appointment and in person at Liverpool Further Submissions Unit.
- those who claimed asylum on or after 5 March 2007, and whose case is being managed by NAM, will be required to make any further submissions in person at a specified reporting centre in their region.

Registering further submissions in person and ensuring fast and fair decision-making allows us to minimise the risk of fraud by checking the identity of people who are making further submissions and ensure that permanent solutions are found for individuals' claims. Those found to be in need of our protection will receive it more quickly, allowing them access to the mainstream system and job market. It also will ensure that we can maintain contact with people and where we decide that the further information they have submitted does not amount to a fresh claim, we can look to ensure the return of those who are found to have no protection needs through voluntary or enforced measures.

Better targeting of resources in this way will also ensure that where further submissions are clearly unfounded, access to support will be limited, ensuring better targeting of the asylum support budget.

Will the policy have an impact on national or local people/staff?	YES
Are particular communities or groups likely to have different needs,	YES

experiences and/or attitudes in relation to the policy	
Are there any aspects of the policy that could contribute to equality or inequality?	YES
Could the aims of the policy be in conflict with equal opportunity, elimination of discrimination, promotion of good relations?	YES
If this is an amendment of an existing policy, was the original policy impact assessed?	NO

If your answer to any of these questions is **YES**, go on to the full EIA.

If you have answered **NO to any particular questions**, please provide explanatory evidence.

The original policy dates from 1999, at which time we were not committed to carrying out Equality Impact Assessments for changes in policy.

If you have answered **NO to all of these questions** then you must also attach the following statement to all future submissions that are related to this policy and ensure it is signed off by senior management. You must also include this statement within any regulatory impact assessment that is related to this policy.

“This policy was screened for impact on equalities on [insert date]. The following evidence [Evidence] has been considered. As a result of this screening, it has been decided that a full equality impact assessment is not required. “

FULL IMPACT ASSESSMENT

STATISTICS & RESEARCH

What relevant quantitative & qualitative data do you have in relation to this policy?

Please site any quantitative (e.g. statistical research) and qualitative evidence (monitoring data, complaints, satisfaction surveys, focus groups, questionnaires, meetings, research interviews etc) of communities or groups having different needs, experiences or attitudes in relation to this policy area.

Equality Target Areas	<p>How does the data identify potential or known positive impacts?</p> <p>How does the data identify any potential or known adverse impacts?</p>
Data sources:	<p>In all of these sections we have relied on management information, which cannot be published, and the experience of internal policy, process and operational staff in UKBA.</p>
Race (consider e.g. nationalities, Gypsies, Travellers, languages)	<p>All those who want to put in further submissions will be required to make their further submissions in person, regardless of race or nationality.</p> <p>Key information on the process change has been translated into the 17 languages most frequently used by asylum seekers and is available on our website. This will ensure that failed asylum seekers can access information to aid them in lodging their further submissions and where to seek legal advice.</p>
Disability (consider social access and physical access)	<p>Those who claimed asylum before 5 March 2007, and whose case is being managed by the Case Resolution Directorate, will be required to make any further submissions by appointment and in person at Liverpool Further Submissions Unit.</p> <p>Those who claimed asylum on or after 5 March 2007, and whose case is being managed by NAM, will be required to make any further submissions in person at a specified reporting centre in their region.</p> <p>In the very exceptional case where a person is genuinely unable to attend one of these sites, alternative arrangements will be made to ensure that person can still make further submissions, in line with the system currently in place for initial asylum applications. Those whose condition (documented or visually apparent) is such that they cannot reasonably be expected to travel may be treated discretionally and have their application recorded and screened regionally at a Local Reporting Centre. This will include those who have a disability or severe illness and are physically unable to travel.</p> <p>Satisfactory medical evidence must be provided to substantiate a postal application where the failed asylum seeker (FAS) claims to have a</p>

	<p>disability or severe illness and is physically unable to travel.</p>
Gender	<p>This policy is likely to impact lone parents. While we do not collate data on the number of failed asylum seeking lone parents broken down by gender, experience within the system would suggest that the majority of lone parents will be women.</p> <p>Lone parents will be expected to lodge their further submissions in person along with other families with children. It is not necessary for dependents to attend in person to put in the further submission in person, except where the dependent is an applicant in their own right. Some reporting centres also offer limited childcare facilities.</p>
Gender Identity	<p>The change in policy is unlikely to have a particular affect on gender identity issues and no additional research has been carried out.</p>
Religion and Belief	<p>Statistics are not kept on the religion and beliefs of failed asylum seekers. However, the change in policy is unlikely to have a particular affect on people of a particular religion or belief, and no additional research has been carried out.</p>
Sexual Orientation	<p>The policy is unlikely to have a particular affect on gender equality issues and no additional research has been carried out.</p>
Age	<p>The new further submissions in person policy will be applicable to all failed asylum seekers regardless of age. We do not keep statistics on the age profiles of failed asylum seekers.</p> <p>Elderly people who are unable to travel will be dealt with as one of the very exceptional cases who can make their further submissions at a Local Reporting Centre.</p> <p>In the very exceptional case where a person is genuinely unable to attend one of these sites, alternative arrangements will be made to ensure that person can still make further submissions, in line with the system currently in place for initial asylum applications. Unaccompanied asylum-seeking children (UASC) will be amongst those very exceptional cases whereby at the caseowner's discretion the UASC will be able to make further submissions at a Local Reporting Centre. Elderly people who are unable to travel may be dealt with as one of the very exceptional cases who may be able make their further submissions at a Local Reporting Centre depending on the circumstances of the case.</p> <p>It is not necessary for all dependents to attend to put in further submissions in person, except where the dependent is an applicant in their</p>

	own right.
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What research have you considered commissioning to fill any data gaps?

For example, you may need to ensure quantitative & qualitative data groups include stakeholders with respect to this policy.

N.B Include any recommendations in your action plan

UKBA will monitor exceptional cases to ensure consistent implementation of the policy and performance in processing further submissions. This will be taken forward by the NAM+ Programme.

Who are the stakeholders, community groups, staff or customers for this policy area?

Failed asylum seekers (and their dependants) who make further submissions.
Refugee organisations, including one stop services.
Legal representatives and practitioners.
Local Authorities.

What are the overall trends and patterns in this qualitative & quantitative data?

Disproportionality; regional variations; different levels of access, experiences or needs; combined impacts.

In this section we have relied on management information, which cannot be published, and the experience of internal policy, process and operational staff in UKBA.

Data sampling of intake and types of further submissions in CRD and UKBA regions has suggested that a significant proportion of individuals submit more than one further submission. The majority of further submissions are found to be unfounded, in that they do not amount to a fresh claim.

Around 70% of s.4 support applications are currently made on the basis of outstanding further submissions. The majority of supported cases in CRD have been dispersed to the North West Region and surrounding regions.

Please list the specific equality issues that may need to be addressed through consultation (and further research)?

UKBA will monitor implementation of the policy with a particular focus on exceptional cases to ensure consistent implementation of the policy and to ensure the impact is understood. This will be taken forward by the NAM+ Programme.

GATHERING EVIDENCE THROUGH COMMUNITY ENGAGEMENT

INTERNAL STAKEHOLDER ENGAGEMENT: Consulting & involving Other Government Departments, Staff, Agencies & NDPBs

Does this policy affect the experiences of staff? How? What are their concerns?	
Staff	Refresher training on decision-making on further submissions will be provided for staff, including specific training on the new guidance and pro-formas on further submissions.
Staff Networks & Associations	N/a
Trade Unions	N/a

How have you consulted, engaged and involved internal stakeholders in considering the impact of this proposal on other public policies and services?

For example your policy may affect access to housing, education, health, employment services.

A workshop was held with key internal stakeholders (Asylum Policy Team, Central Policy Team, Legal Advisers Branch, the Simplification Team, Case Resolution Directorate and the NAM+ Programme Team) on options for managing further submissions more effectively.

A project board was established with key policy colleagues and central/regional process and operational leads from CRD, NAM and other core functions and met on a weekly basis.

Regional Directors were consulted on a regular basis.

Regular advice was sought from legal advisers branch.

Caseowners and senior caseowners were consulted on supporting processes, including the supporting guidance and pro formas.

What positive and adverse impacts were identified by your internal consultees? Did they provide any examples?

Key benefits of the proposed reform are:

- **Improved guidance and faster decision-making.** The application pro-forma and supporting guidance is designed to make it easier for applicants to focus their further submissions, making clearer what has changed in their personal circumstances or in their country of origin since their case was last considered, and ensuring they understand the information UKBA needs to make a decision on their further submission. This will facilitate quicker decision making, making sure that the individual receives a faster decision on their case.
- **Individual engagement with the process.** The system will ensure that failed asylum seekers lodge further submissions themselves and understand where their submission is in the process.

- **Protection needs.** Speeding up decision-making will ensure that those who are in need of our protection receive it more quickly, and obtain access to the mainstream system and job market.

The following potential adverse impacts were considered:

- **Ability to travel.** The need for an exceptional policy for the very rare cases where an individual may not be able to travel was identified and this has been developed.
- **Accessibility of information.** We are translating tailored guidance into the 17 languages most frequently used by asylum seekers. This will ensure that failed asylum seekers can access information to aid them in lodging their further submissions, understand how they can seek legal advice, and ensure that they understand are aware of what information UKBA would like to see in their further submissions to aid decision-making.
- **Importance of ensuring that individuals who wish to make further submissions have an opportunity to do so before removal in the context of complying with our international protection legal obligations.** Failed asylum seekers who wish to make further submissions just prior to removal are unlikely to have time to submit them in person. The policy includes arrangements for further submissions to be made while an individual is in immigration detention or in prison. Where this is not the case and an individual has been picked up by enforcement, removal directions have been set or an individual has been accepted on a charter flight, contact should be made with the caseowner, and alternative arrangements for making further submissions will be made.

EXTERNAL CONSULTATION & INVOLVEMENT

How did your engagement exercise highlight positive and negative impacts on different communities?	
Voluntary Organisations	We consulted externally with legal practitioners to get their views on the use of our proposed pro-forma and guidance on further submissions. We have considered the comments made by legal practitioners and taken these on board where possible in order to improve the quality and accessibility of proformas.
Race	
Faith	
Disability Rights	We have not consulted with external stakeholders on this specific issue. However, we have regular meetings with key asylum stakeholders, including the bi-monthly National Asylum Stakeholder Forum and sub-groups of this forum, and so are familiar with their views on a range of issues regarding the current asylum system and how we operate it. We have borne these views in mind when developing this policy change. We are committed to ongoing discussions with stakeholders and we have scheduled upcoming meetings with stakeholders for this purpose; details of which are in our Action Plan at the end of this document.
Gender	
Gender Identity	
Sexual Orientation	
Age	

ASSESSMENT & ANALYSIS

Does the EIA show a potential for differential impact on any group(s) if this proposal is introduced? If Yes, state briefly whether impact is adverse or positive and in what equality areas.

Potential adverse impact on individuals with disabilities, lone parents (who are more likely to be women) and different age groups. Policy development took this into account in the following ways:

- Those whose condition (documented or visually apparent) is such that they cannot reasonably be expected to travel may be treated discretionally and make their further submission regionally at a Local Reporting Centre. (This also applies to the principle dependants of the FAS). Such cases will be very exceptional in nature.
- There may be some very exceptional cases where unaccompanied asylum seeking children will not be required to travel to make further submissions.
- It is not necessary for dependents to attend in person to put in the further submission in person, except where the dependent is an applicant in their own right.

This further submissions policy is a logical continuation of the change made in 2003, where we required those making an initial asylum application to attend in person. Based on UKBA's experience of the initial asylum application process, we anticipate the alternative arrangements will only need to be made in a very small number of cases.

What were the main findings of the engagement exercise and what weight should they carry?

The following potential adverse impacts were considered:

- **Ability to travel.** The need for an exceptional policy for the very rare cases where an individual may not be able to travel was identified and this has been developed.
- **Accessibility of information.** We are translating tailored guidance into the 17 languages most frequently used by asylum seekers. This will ensure that failed asylum seekers can access information to aid them in lodging their further submissions, understand how they can seek legal advice, and ensure that they understand are aware of what information UKBA would like to see in their further submissions to aid decision-making.
- **Importance of ensuring that individuals who wish to make further submissions have an opportunity to do so before removal in the context of complying with our international protection legal obligations.** Failed asylum seekers who wish to make further submissions just prior to removal are unlikely to have time to submit them in person. The policy includes arrangements for further

submissions to be made while an individual is in immigration detention or in prison. Where this is not the case and an individual has been picked up by enforcement, removal directions have been set or an individual has been accepted on a charter flight, the individual should contact their caseowner and alternative arrangements for making further submissions will be made.

Engagement with legal and judicial practitioners and internal stakeholders on the development of further submissions application and response pro-formas, and guidance to support this change was carried out. All responses were considered and legal representatives suggested some practical changes to the pro-formas and guidance which was taken on board. It was agreed that the quality with which proformas are completed would be key, and so refresher training for caseowners on further submissions and on the proformas is being rolled out as part of this package.

Does this policy have the potential to cause unlawful direct or indirect discrimination? Does this policy have the potential to exclude certain group of people from obtaining services, or limit their participation in any aspect of public life?

Our current policy is that insufficient funds or inconvenience is not an acceptable reason for a person not being able to submit information about their claim in person. We will continue to apply this policy. However, as with current practice, in the very exceptional case where a person is genuinely unable to attend in person, alternative arrangements will be made to ensure that an individual's further submission can be processed.

We will continue to apply current policy under which an alternative arrangement or location is arranged where there is evidence of exceptional circumstances that prevent an individual from making a further submission in person. Alternative arrangements may involve a visit to the applicant's home or hospital to record the further submission.

No one will, therefore, be excluded from obtaining services and no group of people will be limited in their participation in public life.

How does the policy promote equality of opportunity?

By ensuring that further submissions are registered and fast and fair decisions are made on these submissions, those in need of our protection will be able to access it more quickly, allowing them to move into the mainstream system and work. Uncertainty is reduced for those not in need of our protection as they will receive quicker responses to their claims, enabling them to plan to return home voluntarily, drawing on existing assisted voluntary return schemes.

How does your policy promote good relations? How does this policy make it possible for different groups to work together, build bridges

between parallel communities, or remove barriers that isolate groups and individuals from engaging in civic society more generally?

Our policy will increase public confidence in showing UKBA to be making clear operational changes in the way failed asylum seekers are dealt with, and in showing UKBA's strong commitment to making fast and fair decisions. This policy change will make it clear that UKBA's decision-making process supports the integration of those who are found to have protection needs.

How can the policy be revised, or additional measures taken, in order for the policy to achieve its aims without risking any adverse impact?

As outlined above, the policy has been development taking into account any adverse impact and how this may be mitigated. Implementation will be monitored to ensure consistency and to identify any unintended impacts.

Are there any concerns from data gathering, consultation and analysis that have not been taken on board?

Please justify and explain the reason for your decision.

External legal practitioners voiced concern that failed asylum seekers may be misled into thinking that the application pro-forma is mandatory. Furthermore, stakeholders were concerned that the pro-formas put unfair pressure on unrepresented failed asylum seekers. We have not stated that the pro-forma is mandatory on our website or in our guidance. We strongly recommend that failed asylum seekers without legal representation seek legal advice before making a further submission. This recommendation has been included in the information on the process change included on our website, which we have translated into the 17 languages most frequently used by asylum seekers and is available on the UKBA website. Information on how to access legal advice if individual's do not already have a legal representative is already included on the UKBA website. This is designed to assist unrepresented failed asylum seekers, and not to put pressure on them.

Stakeholders were also concerned that we should not request failed asylum seekers, where possible, to submit copies of documents that UKBA should already have on file. We did not take this concern on board as we believe that the application pro-forma focuses a failed asylum seeker on why they is making further submissions, and asking them to link those reasons to supporting documents further supports this aim. If a failed asylum seeker is unrepresented and cannot therefore supply the necessary documents, we are still obligated by international law to consider their further submissions.

Stakeholders were further concerned that the section on the response pro-forma where we consider issues relating to Article 8 of the European Convention on Human Rights was both lengthy and had the potential to be confusing. We did not take this on board as we received legal advice that the Article 8 section was sufficient to address Article 8 issues in detail; something that is key to ensure thorough consideration of a case.

The NAM+ Programme and Case Resolution Directorate will monitor the use of the proforma and keep this under review.

ENSURING ACCESS TO INFORMATION

How can you ensure that information used for this EIA is readily available in the future?

(N.B. You will need to include this in your action plan)

Statistics on asylum seekers are published quarterly and annually on the Home Office Research Development Statistics (RDS) website and in the Control of Immigration Statistics in the United Kingdom which are published quarterly and annually.

How will you ensure your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy?

(N.B. You will need to include this in your action plan)

We have not consulted with external stakeholders on this specific issue for operational reasons. However, we have regular meetings with key asylum stakeholders, including the bi-monthly National Asylum Stakeholder Forum and sub-groups of this forum, and so are familiar with their views on a range of issues regarding the current asylum system and how we operate it. We have borne these views in mind when developing this policy change. We are committed to ongoing discussions with stakeholders and we have scheduled upcoming meetings with stakeholders for this purpose; details of which are in our Action Plan at the end of this document.

We hold bi-monthly NASF meetings, which is a forum in which issues pertinent to stakeholders can be discussed. We are holding a number of events in the month of October after the go-live date at which this issue can be discussed and relevant information can be made available to stakeholders, as well as the chance to discuss the issue in detail. These meetings include the National Asylum Support Operational Forum on 15 October, two meetings on 22 October (with the Still Human Still Here and the Case Resolution Directorate sub-group), and the National Asylum Stakeholder Forum on 26 November.

How will you monitor this policy to ensure that the policy delivers the equality commitments required?

(N.B. You will need to include this in your action plan)

The NAM+ Programme will monitor implementation of this policy via:

- management information;
- feedback from delivery leads in NAM and CRD; and
- feedback from voluntary agency partners.

ACTION PLAN

Recommendations	Responsibility	Actions required	Success Indicators	Target Date	What progress has been made?
Data Collection	NAM+ Programme, UKBA Regions and CRD	Data sampling	Data returned regularly from all regions	From October 2009	To start in October 2009
Monitoring & Review Arrangements	NAM+ Programme	Monitor: <ul style="list-style-type: none"> • implementation of policy to ensure consistency across Agency, with particular focus on exceptional cases; • performance of delivery of decisions on further submissions and case conclusions. 	Consistency of implementation of policy within UKBA. Improved performance of delivery of decisions on further submissions.	Monthly from October 2009	To start in October 2009

Further Submissions in Person EIA
08 October 2009

Staff training	NAM+ Programme, UKBA Regions, Case Resolution Directorate, Criminal Casework Directorate	Develop training package for staff to provide refresher training on further submissions and the completing the new response proformas.	Increased quality and timeliness of decision-making on further submissions within UKBA. Improved case conclusion performance within UKBA.	September 2009 onwards	Training packages developed. Some roll-out of refresher training on further submissions has already been carried out in Case Resolution Directorate.
External meetings	NAM+ Programme, CRD and Asylum Policy	National Asylum Stakeholder Operational Forum (15 Oct), Still Human Still Here coalition (22 October), Case Resolution Directorate sub-group (22 Oct), National Asylum Stakeholder Forum (26 November)	Discussion re: policy change and greater stakeholder support	October and November 2009	Meetings set up

Review of Equality Impact Assessment post-implementation	Asylum Policy, NAM+ Programme Team, Case Resolution Directorate	Review Equality Impact Assessment following completion of above actions.	Equality Impact Assessment reviewed. Policy aims achieved whilst mitigating any potential adverse impacts.	Within 6 months of implementation.	N/A

THE EQUALITY IMPACT ASSESSMENT REPORT

Background:

Individuals whose appeal rights have been exhausted may ask us to re-examine their claim on the basis of further information or a change in their personal circumstances. These are called further submissions.

From 14 October:

- those who claimed asylum before 5 March 2007, and whose case is being managed by the Case Resolution Directorate, will be required to make any further submissions by appointment and in person at Liverpool Further Submissions Unit.
- those who claimed asylum on or after 5 March 2007, and whose case is being managed by NAM, will be required to make any further submissions in person at a specified reporting centre in their region.

Registering further submissions in person and ensuring fast and fair decision-making will allow us to minimise the risk of fraud by checking the identity of people who are making further submissions and ensure that permanent solutions are found for individual's claims. Those found to be in need of our protection will receive it more quickly, allowing them access to the mainstream system and job market. It also will ensure that we can maintain contact with people and where we decide that the further information they have submitted does not amount to a fresh claim, we can look to ensure the return of those who are found to have no protection needs through voluntary or enforced measures.

Methodology:

This EIA is based upon:

- Interviews with key policy, process and operational leads in UKBA
- Workshops and project board meetings with internal stakeholders

Analysis was conducted on the basis of existing equality legislation requirements and the equality issues raised by individuals during the engagement exercise. It has taken into account key diversity strands covered in varying degrees.

Consultation & Involvement:

There has been extensive internal stakeholder consultation and involvement.

Three key benefits were identified, including:

- **Improved guidance and faster decision-making.** The application pro-forma and supporting guidance is designed to make it easier for applicants to focus their further submissions, making clearer what has changed in their personal circumstances or in their country of origin since their case was last considered, and ensuring they understand the information UKBA needs to make a

decision on their further submission. This will facilitate quicker decision making, making sure that the individual receives a faster decision on their case.

- **Individual engagement with the process.** The system will ensure that failed asylum seekers lodge further submissions themselves and understand where their submission is in the process.
- **Protection needs.** Speeding up decision-making will ensure that those who are in need of our protection receive it more quickly, and obtain access to the mainstream system and job market.

We have not consulted with external stakeholders on the specific issue of requiring further submissions to be made in person for operational reasons. However, we have regular meetings with key asylum stakeholders, including the bi-monthly National Asylum Stakeholder Forum and sub-groups of this forum, and so are familiar with their views on a range of issues regarding the current asylum system and how we operate it. We have borne these views in mind when developing this policy change. We are committed to ongoing discussions with stakeholders and we have scheduled upcoming meetings with stakeholders for this purpose; details of which are in our Action Plan at the end of this document. We have also consulted legal practitioners on the further submissions proformas and supporting guidance.

Assessment & analysis

There is a potential adverse impact on individuals with disabilities, lone parents and different age groups. Policy development took this into account in the following ways:

- Those whose condition (documented or visually apparent) is such that they cannot reasonably be expected to travel may be treated discretionally and make their further submission regionally at a Local Reporting Centre. (This also applies to the principle dependants of the failed asylum seekers). Such cases will be very exceptional in nature.
- There may be some very exceptional cases where unaccompanied asylum seeking children will not be required to travel to make further submissions.
- It is not necessary for dependents to attend in person to put in the further submission in person, except where the dependent is an applicant in their own right.

This further submissions policy is a logical continuation of the change made in 2003, where we required those making an initial asylum application to attend in person. Based on UKBA's experience of the initial asylum application process, we anticipate the alternative arrangements will only need to be made in a very small number of cases.

Recommendations

The policy has been development taking into account any adverse impact and how this may be mitigated. We will use upcoming stakeholder meetings to discuss this change with our external stakeholders.

The policy will be reviewed once recommended actions have been completed.

Date of EIA Report

9 October 2009

Date of Publication of Results

13 October 2009.

Annex B - Further Submissions Application proforma

Further Submissions relating to claim for asylum, humanitarian protection or discretionary leave

Name:

Any other name by which you are known:

Address:

HO Ref:

Dependants:

Date of birth and nationality of dependants:

You are expected to use this form when submitting further submissions. All documentation relating to your claim should be submitted with this form. It is not compulsory for you to use this form but it will help you to decide whether you should make further submissions and to structure those submissions effectively if you decide to make them.

You should be aware that very few further submissions are successful because they do not attach the relevant information. Your claim has already been carefully considered by your Case Owner and you have had the opportunity to have that decision reconsidered by an independent tribunal.

Your further submissions should be:

- NEW, not OLD – not repetition of a previous claim
- SIGNIFICANT – new material should mean that UKBA might realistically grant you leave to remain in the United Kingdom
- RELEVANT TO YOU – if you submit a country report or similar objective evidence, you must say how this relates to YOUR claim
- NOT PREVIOUSLY AVAILABLE – this should be the first opportunity you have had to submit the information and evidence
- Submitted NOW, NOT LATER – if you delay submitting information, this could impact on your appeal rights

For further information, please see the “notes to assist completion”, at the end of this form.

Where possible, please include with this form copies of:

Tick box below to show what you are including

1. Letter refusing your asylum claim
2. The appeal determination (if applicable)
3. Any other further submissions which you may have already made (if applicable)

If you submit documents in a language other than English, you must also submit an English translation of the document otherwise your document will not be considered.

Please bring this completed form with you to Liverpool ASU, if you are a CRD case, and to your regional reporting centre if you are a NAM case.

**Details of this process can be found on the UKBA website,
<http://www.ukba.homeoffice.gov.uk/>.**

Have you submitted any of the documents accompanying this form to UKBA or to the Asylum and Immigration Tribunal (AIT) previously? If so, please list all of these documents, together with the date on which they were submitted:

Document submitted:	Date submitted:	To whom submitted?:

1. Submission based on a change in your Country of Claim which is relevant to you

<p>What has changed?</p>	<p>You must attach evidence to support your claim.</p> <p>You must attach document(s) and specify:</p> <ul style="list-style-type: none"> • document title • page number • paragraph number <p>that contain the information relevant to each part of your claim.</p>
<p>How does this affect you personally?</p>	

2. Submission to support your previous claim, based on evidence which was not previously available.

What is your new evidence?	You must attach evidence to support your claim. You must attach document(s) and specify: <ul style="list-style-type: none">• document title• page number• paragraph number that contain the information relevant to each part of your claim.
Explain why you did not give us this evidence earlier?	
Why is this evidence significant?	

3. Submission based on a change in your personal circumstances.

<p>What is the change in your circumstances and when did this occur?</p>	<p>You must attach evidence to support your claim (e.g. a birth or marriage certificate).</p> <p>You must attach document(s) and specify:</p> <ul style="list-style-type: none">• document title• page number• paragraph number <p>that contain the information relevant to each part of your claim.</p>

Why does this mean you should remain in the UK?

Notes to assist completion

You must explain your reasons for wanting to remain in the UK which relate:

- (i) To a change in your country of claim; **and / or**
- (ii) To new evidence in support of your previous claim; **and / or**
- (iii) To a change in your personal circumstances, **either in your country of claim, or in the UK.**

Your reasons must contain significant new material which was not available at the time when your claim was last considered. You should not merely repeat previous claims.

What the UK Border Agency would like to see from your further submissions:

NEW, NOT OLD	Further submissions should be based on new material, not repetition of a previous claim or submission, unless there has been a change in legislation, case law or policy since your last submission.
BE SIGNIFICANT	The new material should be significant. This means that there should be sufficient information in the new material for there to be a realistic prospect of the UK Border Agency or an immigration judge deciding either: <ul style="list-style-type: none">• that you should be granted asylum, humanitarian protection or discretionary leave, or• be granted leave on the basis that removal would breach your human rights or• be granted leave on the basis of compassionate circumstances.
RELEVANT TO YOU	The new material should be relevant to you, and the further submissions should explain how the material is relevant to you. Copies of reports from organisations such as Amnesty International, newspapers etc are not sufficient on their own without an explanation of the relevance to your own case. If a report is available in the public domain, you could, for example, submit the title and date of a report and reference the part that applies to your own case. In such circumstances you would not need to submit a hard copy of the report itself.
NOT PREVIOUSLY AVAILABLE	Material should not have been available prior to the most recent decision on your case, whether that decision is an initial decision, an appeal or a decision on previous further submissions, unless there is a good reason why you did not submit the material earlier.
NOW, NOT LATER	Further submissions should be made as soon as is reasonably practicable.

You must include the evidence you have which supports your new claim:

- Write down in the space provided the document title, page number and paragraph number to show where your evidence comes from.
- You must explain how the evidence relates to you personally. General information about the situation in your own country is not sufficient. UKBA dedicates resources to monitoring the general situation in countries from which individuals arrive in the UK seeking asylum and will therefore already be in possession of such general information and will take it into account when considering the other material you have submitted.

Is there anything else which you have not told us?

- If you tell us now or later something which you could or should have told us earlier, or give us evidence which you could have given us earlier, we will consider whether and how your credibility is affected by your delay. Additionally, you may not be able to appeal if the application is refused, even if we find that your evidence is significant.
- If there is not enough space in the boxes, please continue on a separate sheet if necessary:

If you have a **legal representative**, please fill in their details here:

Name:

Organisation:

Address:

Tel:

If a **voluntary organisation** has helped you to fill out this form, please fill in their details here:

Name:

Organisation:

Address:

Tel:

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	C. C./J. C.	03/04/08	First approved version
2.0	S. K.	29/10/08	Update branding only
3.0	C. C.	13/10/09	Update for further submissions in person
4.0	C.C.	26/10/09	Children's Duty reference added