

SWAP OVER CLAIMS

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1 Introduction

Swap over claims are cases where an applicant who has previously been a dependant on an asylum claim, which has usually reached the appeal rights exhausted (ARE) stage, makes a claim in their own right, often with the rest of the family as their dependants. Although the claims are often made at the end of the asylum process and may be seen as an attempt to frustrate the removal process, full and substantive consideration must be given when assessing the merits of the claim.

In accordance with [section 120 of the Nationality, Immigration and Asylum \(NIA\) Act 2002](#), all applicants and their dependants who may be liable to an immigration decision should be served with a “one-stop warning” notice, which requires the recipient to state any grounds that they may have for wishing to enter or remain in the UK.

If a one stop notice has been served on an applicant who was previously dependant on another claim and the present claim falls to be refused, the officer dealing should consider certification under section 96 of the NIA Act 2002.

1.1 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.

It should be noted that children who are dependants or were formerly dependants may choose to claim asylum in their own right, and Case Owners must have regard to section 55 in such cases.

2 Previous Dependants Claiming Asylum by Post

Where an asylum or protection related human rights claim is either imputed or explicitly stated in a written request the 'would be' applicant should be informed that a claim can only be processed at either one of the two designated Asylum Screening Units, in Liverpool or Croydon. The original correspondence should be returned to the potential applicant along with an ACD.1036 – Refusal to Accept Postal Application, informing the applicant that they should attend an ASU in order for the claim to be accepted. A copy of the correspondence received should also be attached to the file on which the 'would-be' applicant was originally dependent.

3 Asylum Claims Made By Previous Dependants at an Asylum Screening Unit

Where a claim for asylum is made by a person previously dependant on another claim at one of the designated Asylum Screening Units they are not required to undergo the normal screening procedures. This is because they have already undergone screening as a dependant on the previous claim. However, if it is found that the applicant has not been screened, ASU should arrange for screening to take place.

Before processing the claim ASU staff will conduct a number of checks to ensure that the claim can be dealt with at ASU. If the file is held at an Enforcement and Removals Directorate (E&RD) location and removal directions have been set and have not been cancelled, or are going to be set within seven days, the claim should still be accepted, but then referred to the LEO who will assume responsibility for the case (see [Asylum Claims Made by Previous Dependents, Where Removal Directions Have Been Set](#)). Where a claim can be processed at one of the designated screening units ASU staff will arrange for a new file to be created, which will be marked to ensure that the case is clearly identifiable as a swap claim. A new case type will also be created on the Case Information Database (CID) and a pro forma completed ICD.2556, containing the minimum screening data required.

ASU staff will also retain old Application Registration Cards (ARC) and issue new cards to the applicant and any dependants on their claim. If a previous dependant wishes to make their own claim and add dependants to that claim the dependants must be present at the screening location. If they are not present they cannot be added to the claim.

4 Asylum Claims Made by Previous Dependants, Where Removal Directions Have Been Set

When an applicant who is identified as having been a dependant makes a claim at ASU, file tracking and CID should be checked to see where the file is located and/or being handled. If the file is at an E&RD location and removal directions have been set and have not been cancelled, or are due to be set within seven days (see [Checking Whether Removal Directions Have Been Set](#)), the case should be referred to E&RD. The officer dealing with the claim should immediately contact the LEO where the file is located and inform them that the dependant has claimed asylum in their own right. A pro forma should also be completed and faxed to the LEO and the case notes on CID of the main applicant on which they were a dependant updated, to record that the dependant has made their own asylum claim.

6 Deciding Who Should Consider the Case, Where Removal Directions Have not Been Set

ASU staff will segment the case into Segment 4 or 5 and pass the file to the New Asylum Model (NAM) Routing Team, who will check the segmentation decision. The case will then be referred to the National Intake Unit (NIU), who will consider whether the applicant is suitable for detention. If the applicant is not accepted for detention, the file is returned to the Routing Team and then allocated to either a Croydon or Liverpool Complete Case Management Team (CCMT), depending on whether accommodation is required by the applicant. The Routing Team will issue the applicant with the Routing letter and IS96 and will also arrange the first reporting event and advise the CCMT of the day and time. Cases that are not transferred to the NAM, should be referred back to ASU who will arrange for the case to be considered by the Asylum Casework Directorate (ACD). When cases are to be considered by ACD, ASU will attach the pro forma to the case file and forward the file to the appropriate ACU.

7 The New Asylum Model

Paragraphs 7 to 12 provide instructions for handling swap over claims in the NAM. It should be noted that NAM case owners should follow these instructions regardless of whether the claim on which the applicant was originally dependent, was handled by the NAM. For guidance on how to process cases in ACD, [see Guidance on how to Process Cases in Asylum Legacy Directorate](#). Once the case has been allocated to a CCMT, the CCMT Team Leader will assign a case owner, who will open the risk assessment and case plan and allocate administrative aspects of routing. In conjunction with CCMT Team Support, the case owner should then:

- Arrange a substantive interview for day 5 (unless the case owner concludes that due to certain circumstances an alternative time scale is more appropriate) and also set Reporting Rhythm.
- Contact the Interview Booking Unit (IBU) to arrange an interview room and where an interpreter is required for the substantive interview, complete and send an Interpreters Booking Form by e-mail.
- Prepare all documentation to be given to the applicant at the first reporting event on day 1, including a substantive interview invitation letter and Refugee Council leaflet.
- Ensure all details are updated on CID.
- Raise barriers to removal on CID for the dependants of the applicant. The appropriate barrier from the drop down menu in the Removal Group Screen should be selected. This should make it apparent to any IO/LEO or others looking to remove, that there is an outstanding issue which until resolved prevents removal.

Team support should also request all sub files by phone. If the case file is at a LEO and removal directions have not been set, it will be released. Any files received by team support should be tracked to the CCMT and linked to the main file.

8 Conducting an Asylum Interview

Case owners are reminded that the Asylum Instruction on [Conducting the Asylum Interview](#), remains current.

The NAM case owners should note that if advised by the applicant at a contact management event that their dependant wishes to claim asylum in their own right, they should inform the applicant that their dependant will need to attend ASU in order for their claim to be registered. If the previous dependant claims asylum following the setting of removal directions it will be at the case owner's discretion to determine whether they have sufficient evidence to consider the claim and therefore whether it is deemed necessary for the applicant to attend ASU and be interviewed.

The NAM case owners should also check whether it is necessary to complete the re-documentation interview, as this may have already been completed

9 Implementing the Decision

Once a decision has been made the case owner should:

- Prepare the necessary decision paperwork.
- Update CID to record the determination of the asylum claim.
- If the claim falls to be refused the case owner should also:
 - Decide whether the applicant should be detained, based on the personal behaviour of the applicant and the likelihood of their removal. It should be noted that this is not an exhaustive list of factors to consider when deciding whether to detain. For a full list see the [Operation Enforcement Manual, Chapter 38 Detention/Temporary Release](#). (The case owner should be considering throughout the asylum process whether detention may be appropriate once the decision has been served).
 - Prepare the necessary removal documentation.

If the claim has been refused and certified under section 94 or 96 of the 2002 Act the case owner should:

If the claim falls to be granted the case owner should also:

- Determine whether a SUNRISE service provider is available and if so, prepare the necessary SUNRISE documentation.

10 Serving the Decision in Person

The case owner should serve the decision in person on day 11 (unless the case owner concludes that due to certain circumstances an alternative time scale is more appropriate) and if the claim falls to be refused, advise the applicant whether they are entitled to appeal. If the claim has been certified the case owner should detain the applicant at the service of the decision, unless there are exceptional reasons not to.

If the immigration decision attracts a right of appeal the file should be passed to CCMT Team Support, who will prepare the appeal bundle.

11 Guidance on How to Process Cases in Asylum Legacy Directorate

If it has been established that the case is to be considered by ALD, ASU should fax or phone through the pro forma to the appropriate ACU, who will book the substantive asylum interview, fill in the interview booking form and forward it to the appropriate interviewing and consideration unit. The Case Management Unit (CMU) responsible for interviewing the applicant should be informed of the interview date and time.

If the applicant is an adult the consideration of the claim should be handled by the CMU dedicated to handling swap over claims. If the applicant is a child the substantive interview and consideration of the claim should be conducted by the CMU responsible for handling claims from minors.

12 Interview Booking Procedure

The interview booking slots for the appropriate CMU should be checked and the steps below followed.

- The asylum interview booked for two weeks in advance.
- The invitation to interview letter (ACD.0062) or if the applicant is receiving Asylum Support (ICD.1973) and (ACD.0062) saved.
- Calendar events on CID updated with the asylum interview details.
- ASU informed that the letter is ready to print, in order that the letter can be handed to the applicant.

If the interview is not booked on the day the claim is made, and therefore the letter cannot be handed to the applicant personally, the letter should be printed and sent to the applicant.

12.1 Updating CID Barrier To Removal

Barriers to removal should be raised on CID for the applicant's dependants.

13 Requesting Sub Files

All sub files should be requested by phone. If the file is held at a LEO but removal directions have not been set, the file should be released. The sub files should be linked to the new file and then forwarded to the appropriate CMU.

14 Case Management Unit (CMU) Action

When the sub files arrive at the CMU they should be tracked in and attached to the new file. The Team Leader should then complete the interview allocation spreadsheet and allocate the file to a caseworker for interview.

15 Conducting an Asylum Interview

All staff are reminded that the policy instruction given in the AI [Conducting the Asylum Interview](#) remain current.

16 Claims from Children

Asylum claims from children who were previously dependent on another application should be interviewed and considered by caseworkers trained to handle claims from children.

Further guidance on interviewing asylum seeking children can be found in [Processing Asylum Applications from Children](#).

17 Considering the Claim

Swap over claims should be considered, and judged on their own merits, in the same manner as other asylum claims. If the claim falls to be refused consideration should be given to whether certification is appropriate (see Consideration of certification under section 96 of the 2002 Act and Case by case certification under section 94 of the 2002 Act).

For further guidance see the Asylum Instruction [Considering Asylum Claims](#).

17.1 Consideration of certification under section 96 of the 2002 Act

If after examining the claim the application a decision is made to refuse asylum and no leave is to be granted, consideration should be given as to whether certification under section 96 of the NIA Act 2002 is appropriate. When a certificate is issued under section 96 of the 2002 Act, no appeal may be brought. Where caseworkers consider certification under section 96 to be appropriate they should draft an RFRL and pass to a SCW for approval, before implementing the decision. For further guidance on certifying under section 96 see the IDI on [Appeals – The One-Stop Procedure Warnings and Certificates](#). See also: [1.1 Application of this instruction in respect of children and those with children](#)

17.2 Case by case certification under section 94 of the 2002 Act

If no section 96 certificate is issued, caseworkers should consider whether certification under section 94 may be appropriate. A decision to certify under section 94 should be made by a NSA accredited decision maker. Caseworkers who consider that a case is suitable for case by case certification should clearly minute the file and forward it to the Senior Caseworker (SCW) with country responsibility relevant to the asylum claim. The SCW will then decide whether the claim should be considered by a NSA accredited asylum caseworker or returned to the asylum caseworker for normal action under the 'non-certified' process.

For further guidance on certifying under s94 see the AI [Certification under section 94 of the NIA Act 2002](#).

18 Implementing / Serving the Decision

Caseworkers should implement the decision in the usual way and pass the file to team support who will complete the necessary paperwork and dispatch the case file to ADSU, who will serve the decision.

19 Claims from Children

An applicant under 18 years of age will fall within Segment 2 of the NAM. However, minors are currently being dealt with by dedicated CMUs within ACD.

Further guidance on interviewing asylum seeking children can be found in [Conducting the Asylum Interview](#).

20 Considering the Claim

Swap over claims should be considered and judged on their own merits in the same manner as other claims. If the claim falls to be refused consideration should be given to whether certification is appropriate (see below)

For further information refer to the Asylum Guidance [Considering Asylum Claims](#) and related Asylum Guidance.

20.1 Consideration of certification under s96 of the 2002 Act

If after examining the claim the application falls to be refused and no leave is to be granted, consideration should be given as to whether certification under section 96 of the NIA Act 2002 is appropriate. When a certificate is issued under section 96 of the NIA Act 2002, no appeal may be brought.

Where case owners consider certification under section 96 to be appropriate they should draft an RFRL (ACD.0015) and pass to a colleague of the same grade or above to act as a 'second pair of eyes', before implementing the decision.

For further guidance on certifying under section 96 see Chapter 12 Section 3 of the Immigration Directorates' Instructions [Appeals – The One-Stop Procedure Warnings and Certificates](#).

20.2 Case by case certification under s94 of the 2002 Act

If no s96 certificate can be issued, case owners should consider whether certification under s94 may be appropriate. A decision to issue a certificate under section 94 should be made by a NSA accredited decision maker. Case owners who are NSA accredited and consider that a case is suitable for case by case certification should make the decision themselves. The case owner should prepare the Recommendation Minute (ACD.2672) and the RFRL (ACD.1956) and then refer the case to a NSA accredited colleague to act as a 'second pair of eyes'. Once the file has been returned to the case owner, the decision should then be implemented.

For further guidance on certifying under s94 see the Asylum Instruction [Certification under section 94 of the NIA Act 2002](#).

21 Glossary

Term	Meaning
ACD.1063	Refusal to accept postal application
ICD.2556	ASU swap over claim proforma
ACD.00156	Reasons for Refusal Letter
ACD.2672	Recommendation minute - NSA cases
ACD.1956	Reasons for Refusal Letter - NSA cases
ACD.0062	Invitation to interview letter
ACD.1973	Travel to interview letter - if receiving Asylum Support

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	BF	19/02/07	New web style implemented
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