



Nationality and Borders Act 2022

2022 CHAPTER 36

PART 2

ASYLUM

Treatment of refugees; support for asylum-seekers

12 Differential treatment of refugees

- (1) For the purposes of this section—
 - (a) a refugee is a Group 1 refugee if they have complied with both of the requirements set out in subsection (2) and, where applicable, the additional requirement in subsection (3);
 - (b) otherwise, a refugee is a Group 2 refugee.
- (2) The requirements in this subsection are that—
 - (a) they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention), and
 - (b) they have presented themselves without delay to the authorities.

Subsections (1) to (3) of section 37 apply in relation to the interpretation of paragraphs (a) and (b) as they apply in relation to the interpretation of those requirements in Article 31(1) of the Refugee Convention.

- (3) Where a refugee has entered or is present in the United Kingdom unlawfully, the additional requirement is that they can show good cause for their unlawful entry or presence.
- (4) For the purposes of subsection (3), a person's entry into or presence in the United Kingdom is unlawful if they require leave to enter or remain and do not have it.
- (5) The Secretary of State or an immigration officer may treat Group 1 and Group 2 refugees differently, for example in respect of—

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

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- (a) the length of any period of limited leave to enter or remain which is given to the refugee;
 - (b) the requirements that the refugee must meet in order to be given indefinite leave to remain;
 - (c) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the refugee;
 - (d) whether leave to enter or remain is given to members of the refugee’s family.
- (6) The Secretary of State or an immigration officer may also treat the family members of Group 1 and Group 2 refugees differently, for example in respect of—
- (a) whether to give the person leave to enter or remain;
 - (b) the length of any period of limited leave to enter or remain which is given to the person;
 - (c) the requirements that the person must meet in order to be given indefinite leave to remain;
 - (d) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the person.
- (7) But subsection (6) does not apply to family members who are refugees themselves.
- (8) Immigration rules may include provision for the differential treatment allowed for by subsections (5) and (6).
- (9) In this section—
- “limited leave” and “indefinite leave” have the same meaning as in the Immigration Act 1971 (see section 33 of that Act);
 - “refugee” has the same meaning as in the Refugee Convention.

Commencement Information

- I1** S. 12 not in force at Royal Assent, see **s. 87(1)**
- I2** S. 12 in force at 28.6.2022 by **S.I. 2022/590**, regs. 1(2), 2, **Sch. 1 para. 10** (with **Sch. 2 para. 4(1)**)

13 Accommodation for asylum-seekers etc

- (1) In section 97 of the Immigration and Asylum Act 1999 (support for asylum-seekers: supplemental matters), after subsection (3) insert—
- “(3A) When exercising the power under section 95 (support for asylum seekers) or section 4 (accommodation for failed asylum seekers) to provide or arrange for the provision of accommodation, the Secretary of State may decide to provide or arrange for the provision of different types of accommodation to persons supported under those sections on the basis of either or both of the following matters—
- (a) the stage that their claim for asylum has reached, including whether they have been notified that their claim is being considered for a declaration of inadmissibility (see sections 80A and 80B of the Nationality, Immigration and Asylum Act 2002);

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- (b) their previous compliance with any conditions imposed on them under any of the following—
 - (i) section 95(9) (conditions for support under section 95);
 - (ii) Schedule 10 to the Immigration Act 2016 (conditions of immigration bail);
 - (iii) regulations made under section 4(6) (conditions for support under section 4).”
- (2) In section 97(3A) of the Immigration and Asylum Act 1999 (as inserted by subsection (1))—
 - (a) in the words before paragraph (a)—
 - (i) for “section 4 (accommodation for failed asylum seekers)” substitute “section 95A (support for failed asylum seekers)”;
 - (ii) for “persons supported under those sections” substitute “supported persons”;
 - (b) in paragraph (a), for “claim for asylum” substitute “protection claim”;
 - (c) in paragraph (b)—
 - (i) for sub-paragraph (iii) substitute—
 - “(iii) regulations made under section 95A(5) (conditions for support under section 95A);”;
 - (ii) at the end insert—
 - “(iv) regulations made under section 30 of the Nationality, Immigration and Asylum Act 2002 (conditions of residence in accommodation centre).”
- (3) In section 98 of that Act (temporary support for asylum-seekers etc), at the end insert—
 - “(4) Subsection (3A) of section 97 applies to the power to provide, or arrange for the provision of, accommodation under this section as it applies to the power to do so under section 95.”
- (4) In section 98A of that Act (temporary support for failed asylum-seekers etc), at the end insert—
 - “(5) Subsection (3A) of section 97 applies to the power to provide, or arrange for the provision of, accommodation under this section as it applies to the power to do so under section 95A.”
- (5) In section 17 of the Nationality, Immigration and Asylum Act 2002 (support for destitute asylum-seeker), in subsection (1), at the end insert—
 - “See also section 97(3A) of the Immigration and Asylum Act 1999 (decision on type of accommodation for asylum-seekers etc).”
- (6) In section 22 of that Act—
 - (a) after “95” insert “or 98”;
 - (b) for “(destitute asylum-seeker)” substitute “(support and temporary support for asylum-seekers)”;
 - (c) in the heading, for “s. 95” substitute “sections 95 and 98”.
- (7) After section 22 of that Act, insert—

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“22A Immigration and Asylum Act 1999, sections 95A and 98A

The Secretary of State may provide support under section 95A or 98A of the Immigration and Asylum Act 1999 (support and temporary support for failed asylum-seekers) by arranging for the provision of accommodation in an accommodation centre.”

(8) In section 24 of that Act (provisional assistance), in subsection (1), at the end insert—

“See also section 98(4) of the Immigration and Asylum Act 1999 (decision on type of accommodation for asylum-seekers etc).”

(9) In section 25 of that Act (length of stay in accommodation centre), in subsection (4), for “shorter” substitute “different”.

(10) In section 27 of that Act (resident of centre), after paragraph (b) insert—

“(ba) by virtue of section 22A.”.

Commencement Information

I3 S. 13 not in force at Royal Assent, see **s. 87(1)**

I4 S. 13(1)(3) in force at 28.6.2022 by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 11**

Place of claim

14 Requirement to make asylum claim at “designated place”

- (1) An asylum claim must be made in person at a designated place.
- (2) A “designated place” means any of the following places in the United Kingdom—
 - (a) a place identified in a notice published by the Secretary of State as an asylum intake unit;
 - (b) a removal centre (within the meaning of section 147 of the Immigration and Asylum Act 1999);
 - (c) a port (within the meaning of section 33 of the Immigration Act 1971);
 - (d) a place where there is a person present who, for the purposes of the immigration rules, is authorised to accept an asylum claim on behalf of the Secretary of State;
 - (e) a place to which the claimant has been directed by the Secretary of State or an immigration officer to make the claim;
 - (f) such other place, or a place of such other description, as the Secretary of State may by regulations designate.
- (3) The Nationality, Immigration and Asylum Act 2002 is amended in accordance with subsections (4) and (5).
- (4) In section 18(1)(c) omit “at a place designated by the Secretary of State”.
- (5) In section 113(1), in the definition of “asylum claim”, omit “at a place designated by the Secretary of State”.

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- (6) In this section “asylum claim” means a claim made in accordance with the immigration rules by a person to the Secretary of State that to remove the person from, or require the person to leave, the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.
- (7) The reference to the United Kingdom in subsection (2), so far as it has effect for the purposes of paragraph (d) of that subsection, does not include a reference to the territorial sea of the United Kingdom.
- (8) Regulations under subsection (2)(f) are subject to negative resolution procedure.

Commencement Information

- I5** S. 14 in force at Royal Assent for specified purposes, see **s. 87(4)(a)**
- I6** S. 14(1)(2)(6)(7) in force at 28.6.2022 in so far as not already in force by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 12** (with Sch. 2 para. 4(2))
- I7** S. 14(3)(5) in force at 28.6.2022 for specified purposes by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 13** (with Sch. 2 para. 4(2))

Inadmissibility

15 Asylum claims by EU nationals: inadmissibility

- (1) After Part 4 of the Nationality, Immigration and Asylum Act 2002 insert—

“PART 4A

INADMISSIBLE ASYLUM CLAIMS

80A Asylum claims by EU nationals

- (1) The Secretary of State must declare an asylum claim made by a person who is a national of a member State inadmissible.
- (2) An asylum claim declared inadmissible under subsection (1) cannot be considered under the immigration rules.
- (3) A declaration under subsection (1) that an asylum claim is inadmissible is not a decision to refuse the claim and, accordingly, no right of appeal under section 82(1)(a) (appeal against refusal of protection claim) arises.
- (4) Subsection (1) does not apply if there are exceptional circumstances as a result of which the Secretary of State considers that the claim ought to be considered.
- (5) For the purposes of subsection (4) exceptional circumstances include where the member State of which the claimant is a national—
 - (a) is derogating from any of its obligations under the Human Rights Convention, in accordance with Article 15 of the Convention;
 - (b) is the subject of a proposal initiated in accordance with the procedure referred to in Article 7(1) of the Treaty on European Union and—

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- (i) the proposal has yet to be determined by the Council of the European Union or (as the case may be) the European Council,
- (ii) the Council of the European Union has determined, in accordance with Article 7(1), that there is a clear risk of a serious breach by the member State of the values referred to in Article 2 of the Treaty, or
- (iii) the European Council has determined, in accordance with Article 7(2), the existence of a serious and persistent breach by the member State of the values referred to in Article 2 of the Treaty.

(6) In this section—

“asylum claim”, “the Human Rights Convention” and “the Refugee Convention” have the meanings given by section 113;

“immigration rules” means rules under section 3(2) of the Immigration Act 1971;

“the Treaty on European Union” means the Treaty on European Union signed at Maastricht on 7 February 1992 as it had effect immediately before IP completion day.”

- (2) In consequence of the amendment made by subsection (1), in regulation 4(4)(d) of the Asylum Support Regulations 2000 (S.I. 2000/704) (persons excluded from support), for “under the immigration rules” substitute “(see section 80A of the Nationality, Immigration and Asylum Act 2002)”.

Commencement Information

I8 S. 15 not in force at Royal Assent, see **s. 87(1)**

I9 S. 15 in force at 28.6.2022 by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 14** (with **Sch. 2 para. 4(3)**)

16 Asylum claims by persons with connection to safe third State: inadmissibility

In Part 4A of the Nationality, Immigration and Asylum Act 2002 (as inserted by section 15), after section 80A insert—

“80B Asylum claims by persons with connection to safe third State

- (1) The Secretary of State may declare an asylum claim made by a person (a “claimant”) who has a connection to a safe third State inadmissible.
- (2) Subject to subsection (7), an asylum claim declared inadmissible under subsection (1) cannot be considered under the immigration rules.
- (3) A declaration under subsection (1) that an asylum claim is inadmissible is not a decision to refuse the claim and, accordingly, no right of appeal under section 82(1)(a) (appeal against refusal of protection claim) arises.
- (4) For the purposes of this section, a State is a “safe third State” in relation to a claimant if—

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- (a) the claimant’s life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion,
 - (b) the State is one from which a person will not be sent to another State—
 - (i) otherwise than in accordance with the Refugee Convention, or
 - (ii) in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment), and
 - (c) a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State.
- (5) For the purposes of this section, a claimant has “a connection” to a safe third State if they meet any of conditions 1 to 5 set out in section 80C in relation to the State.
- (6) The fact that an asylum claim has been declared inadmissible under subsection (1) by virtue of the claimant’s connection to a particular safe third State does not prevent the Secretary of State from removing the claimant to any other safe third State.
- (7) An asylum claim that has been declared inadmissible under subsection (1) may nevertheless be considered under the immigration rules—
- (a) if the Secretary of State determines that there are exceptional circumstances in the particular case that mean the claim should be considered, or
 - (b) in such other cases as may be provided for in the immigration rules.
- (8) In this section and section 80C—
- (a) “asylum claim”, “Human Rights Convention”, “immigration rules” and “the Refugee Convention” have the same meanings as in section 80A;
 - (b) a reference to anything being done in accordance with the Refugee Convention is a reference to the thing being done in accordance with the principles of the Convention, whether or not by a signatory to it.

80C Meaning of “connection” to a safe third State

- (1) Condition 1 is that the claimant—
- (a) has been recognised as a refugee in the safe third State, and
 - (b) remains able to access protection in accordance with the Refugee Convention in that State.
- (2) Condition 2 is that the claimant—
- (a) has otherwise been granted protection in a safe third State as a result of which the claimant would not be sent from the safe third State to another State—
 - (i) otherwise than in accordance with the Refugee Convention, or
 - (ii) in contravention of their rights under Article 3 of the Human Rights Convention, and
 - (b) remains able to access that protection in that State.

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- (3) Condition 3 is that the claimant has made a relevant claim to the safe third State and the claim—
- (a) has not yet been determined, or
 - (b) has been refused.
- (4) Condition 4 is that—
- (a) the claimant was previously present in, and eligible to make a relevant claim to, the safe third State,
 - (b) it would have been reasonable to expect them to make such a claim, and
 - (c) they failed to do so.
- (5) Condition 5 is that, in the claimant’s particular circumstances, it would have been reasonable to expect them to have made a relevant claim to the safe third State (instead of making a claim in the United Kingdom).
- (6) For the purposes of this section, a “relevant claim” to a safe third State is a claim—
- (a) to be recognised as a refugee in the State for the purposes of the Refugee Convention, or
 - (b) for protection in the State of the kind mentioned in subsection (2)(a).
- (7) For the purposes of this section “claimant” and “safe third State” have the same meanings as in section 80B; and see subsection (8) of that section.”

Commencement Information

I10 S. 16 not in force at Royal Assent, see [s. 87\(1\)](#)

I11 S. 16 in force at 28.6.2022 by [S.I. 2022/590](#), regs. 1(2), 2, [Sch. 1 para. 15](#) (with [Sch. 2 para. 4\(3\)](#))

17 Clarification of basis for support where asylum claim inadmissible

- (1) The Immigration and Asylum Act 1999 is amended in accordance with subsections (2) and (3).
- (2) If paragraph 1 of Schedule 11 to the Immigration Act 2016, which repeals section 4 of the 1999 Act, is not yet in force on the day this section comes into force, in subsection (2)(b) of that section, after “was rejected” insert “or declared inadmissible (see sections 80A and 80B of the Nationality, Immigration and Asylum Act 2002)”.
- (3) In section 94 (interpretation of Part 6: support for asylum-seekers etc), after subsection (4) insert—

“(4A) For the purposes of the definitions of “asylum-seeker” and “failed asylum-seeker”, the circumstances in which a claim is determined or rejected include where the claim is declared inadmissible under section 80A or 80B of the Nationality, Immigration and Asylum Act 2002.

(4B) But if a claim is—

 - (a) declared inadmissible under section 80B of that Act, and
 - (b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section,

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the claim ceases to be treated as determined or rejected from the time of the decision to consider the claim.

(4C) For the purposes of subsection (3), notification of a declaration of inadmissibility under section 80A or 80B of that Act is to be treated as notification of the Secretary of State’s decision on the claim.”

(4) The Nationality, Immigration and Asylum Act 2002 is amended as follows.

(5) In section 18 (asylum-seeker: definition), after subsection (1) insert—

“(1ZA) For the purposes of subsection (1), the circumstances in which a claim is determined include where the claim is declared inadmissible under section 80A or 80B.

(1ZB) But if a claim is—

- (a) declared inadmissible under section 80B, and
- (b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section,

the claim ceases to be treated as determined from the time of the decision to consider the claim.”

(6) In section 21 (sections 17 to 20: supplementary), in subsection (3)(a), at the end insert “or (as the case may be) of the declaration of inadmissibility under section 80A or 80B”.

(7) In paragraph 17 of Schedule 3 (withholding and withdrawal of support: interpretation), after sub-paragraph (2) insert—

“(2A) For the purposes of the definition of “asylum-seeker” in sub-paragraph (1), a claim is also determined if the Secretary of State has notified the claimant that it has been declared inadmissible under section 80A or 80B.

(2B) But if a claim is—

- (a) declared inadmissible under section 80B, and
- (b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section,

the claim ceases to be treated as determined from the time of the decision to consider the claim.”

Commencement Information

I12 S. 17 not in force at Royal Assent, see **s. 87(1)**

I13 S. 17 in force at 28.6.2022 by S.I. 2022/590, regs. 1(2), 2, **Sch. 1 para. 16**

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PROSPECTIVE

Supporting evidence

18 Provision of evidence in support of protection or human rights claim

- (1) The Secretary of State or an immigration officer may serve an evidence notice on a person who has made a protection claim or a human rights claim.
- (2) An “evidence notice” is a notice requiring the recipient to provide, before the specified date, any evidence in support of the claim.
- (3) Subsection (5) applies if the recipient of an evidence notice provides the Secretary of State or an immigration officer with evidence in support of the claim on or after the specified date.
- (4) Subsection (5) also applies if the recipient of an evidence notice provides the First-tier Tribunal, the Upper Tribunal (when acting in the circumstances mentioned in section 22(9)) or the Special Immigration Appeals Commission with evidence in support of the claim where the evidence—
 - (a) should have been provided in response to the evidence notice but was not, and
 - (b) is provided on or after the specified date.
- (5) The recipient must also provide a statement setting out their reasons for not providing the evidence before the specified date (and see section 26 of this Act and section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004).
- (6) In this section, “specified date” means the date specified in an evidence notice.

Commencement Information

114 S. 18 not in force at Royal Assent, see **s. 87(1)**

19 Asylum or human rights claim: damage to claimant’s credibility

- (1) Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (claimant’s credibility) is amended in accordance with subsections (2) to (6).
- (2) After subsection (1) insert—

“(1A) Tribunal Procedure Rules must secure that, where the deciding authority is the First-tier Tribunal, it must include, as part of its reasons for a decision that disposes of proceedings, a statement explaining—

 - (a) whether it considers that the claimant has engaged in behaviour to which this section applies, and
 - (b) if it considers that the claimant has engaged in such behaviour, how it has taken account of the behaviour in making its decision.

(1B) Rules under section 5 of the Special Immigration Appeals Commission Act 1997 (SIAC procedure rules) must secure that, where the deciding authority is the Special Immigration Appeals Commission, it must include, as part of

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its reasons for a decision that determines proceedings, a statement explaining the matters mentioned in subsection (1A)(a) and (b).”

(3) After subsection (3) insert—

“(3A) This section also applies to any relevant behaviour by the claimant that the deciding authority thinks is not in good faith.

(3B) In subsection (3A) “relevant behaviour” means behaviour—

- (a) in connection with the asylum claim or human rights claim in question or (in the case of an appeal relating to such a claim) the appeal in question,
- (b) in any dealings with a person exercising immigration and nationality functions, or
- (c) in connection with—
 - (i) a claim made, or civil proceedings brought, under any provision of immigration legislation, or
 - (ii) judicial review proceedings, or (in Scotland) an application to the supervisory jurisdiction of the Court of Session, relating to a decision taken by a person in exercise of immigration and nationality functions.”

(4) After subsection (6) insert—

“(6A) This section also applies to the late provision by the claimant of evidence in relation to the asylum claim or human rights claim in question, unless there are good reasons why the evidence was provided late.

(6B) For the purposes of subsection (6A), evidence is provided “late” by the claimant if—

- (a) it is provided pursuant to an evidence notice served on the claimant under section 18(1) of the Nationality and Borders Act 2022, and
- (b) it is provided on or after the date specified in the notice.”

(5) In subsection (7), at the appropriate places insert—

““immigration and nationality functions” means functions exercisable by virtue of—

- (a) the Immigration Acts (but see subsection (9B)), or
- (b) the Nationality Acts;”;

““immigration legislation” means—

- (a) the Immigration Acts,
- (b) the Nationality Acts, and
- (c) rules under section 3(2) of the Immigration Act 1971 (general immigration rules);”;

““Nationality Acts” means—

- (a) the British Nationality Act 1981,
- (b) the Hong Kong Act 1985,
- (c) the Hong Kong (War Wives and Widows) Act 1996, and
- (d) the British Nationality (Hong Kong) Act 1997;”.

(6) After subsection (9A) insert—

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“(9B) In paragraph (a) of the definition of “immigration and nationality functions” in subsection (7), the reference to the Immigration Acts does not include a reference to—

- (a) sections 28A to 28K of the Immigration Act 1971 (powers of arrest, entry and search, etc), or
- (b) section 14 of this Act (power of arrest).”

(7) The amendments made by this section apply in relation to a determination mentioned in section 8(1) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 only where—

- (a) the asylum claim or human rights claim to which the determination relates was made, or
- (b) if the determination is made in appeal proceedings, the appeal was brought, on or after the day on which this section comes into force.

Commencement Information

I15 S. 19 not in force at Royal Assent, see [s. 87\(1\)](#)

PROSPECTIVE

Priority removal notices

20 Priority removal notices

- (1) The Secretary of State or an immigration officer may serve a person who is liable to removal or deportation from the United Kingdom with a priority removal notice.
- (2) A person who receives such a notice is referred to in this section as the “PRN recipient”.
- (3) A priority removal notice is a notice—
 - (a) requiring the PRN recipient to provide to the Secretary of State (and any other competent authority specified in the notice)—
 - (i) a statement setting out the matters described in section 120(2)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (reasons and grounds for application etc),
 - (ii) any relevant status information (within the meaning given by section 58(3)), and
 - (iii) any evidence in support of the matters mentioned in sub-paragraphs (i) and (ii), and
 - (b) setting out the date (the “PRN cut-off date”) before which the PRN recipient must comply with that requirement.
- (4) The requirement in subsection (3)(a) does not apply in relation to anything that the PRN recipient has previously provided to the Secretary of State or any other competent authority.

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- (5) Subsection (7) applies if the PRN recipient provides the Secretary of State or any other competent authority with any statement, information or evidence mentioned in subsection (3)(a) on or after the PRN cut-off date.
- (6) Subsection (7) also applies if the PRN recipient provides the First-tier Tribunal, the Upper Tribunal (when acting in the circumstances mentioned in section 22(9)) or the Special Immigration Appeals Commission with any statement, information or evidence mentioned in subsection (3)(a) that—
 - (a) should have been provided in response to the priority removal notice but was not, and
 - (b) is provided on or after the PRN cut-off date.
- (7) The PRN recipient must also provide a statement setting out their reasons for not providing the statement, information or evidence before the PRN cut-off date (and see sections 22 and 26).
- (8) For the purposes of this section, a person is “liable to removal or deportation from the United Kingdom” if they are liable to—
 - (a) removal under section 10 of the Immigration and Asylum Act 1999 (removal of persons unlawfully in the United Kingdom), or
 - (b) deportation under section 3(5) or (6) of the Immigration Act 1971 (deportation of foreign nationals where conducive to the public good or on conviction of offence punishable with imprisonment etc).
- (9) In this section “competent authority” has the same meaning as in Part 5 (see section 69).

Commencement Information

116 S. 20 not in force at Royal Assent, see [s. 87\(1\)](#)

21 Priority removal notices: supplementary

- (1) A priority removal notice remains in force until the end of the period of 12 months beginning with—
 - (a) the PRN cut-off date, or
 - (b) if later, the day on which any appeal rights of the PRN recipient in respect of a relevant claim are exhausted.

See section 82A of the Nationality, Immigration and Asylum Act 2002 (the “2002 Act”) for the consequences of a priority removal notice being in force.

- (2) In subsection (1) “relevant claim” means a protection claim or a human rights claim brought by the PRN recipient while the priority removal notice is in force.
- (3) For the purposes of subsection (1), the PRN recipient’s appeal rights in respect of a claim are exhausted at the time when—
 - (a) the PRN recipient’s claim has been determined,
 - (b) the PRN recipient could not bring an appeal in respect of the claim under section 82 of the 2002 Act (ignoring any possibility of an appeal out of time with permission), and

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

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- (c) no appeal brought by the PRN recipient is pending within the meaning of section 104 of that Act.
- (4) A priority removal notice remains in force until the end of the period mentioned in subsection (1) even if the PRN recipient ceases to be liable to removal or deportation from the United Kingdom during that period.
- (5) A priority removal notice may not be served on a person in relation to whom such a notice is already in force (but this does not prevent a further notice from being served once the previous notice ceases to be in force as mentioned in subsection (1)).
- (6) Subsection (7) applies if the PRN recipient has previously been served with—
 - (a) an evidence notice under section 18,
 - (b) a slavery or trafficking information notice under section 58, or
 - (c) a notice under section 120 of the 2002 Act (requirement to provide reasons and grounds).
- (7) The previous notice ceases to have effect on the service of the priority removal notice.
- (8) Expressions used in this section that are defined for the purposes of section 20 have the same meaning in this section as in that section.

Commencement Information

I17 S. 21 not in force at Royal Assent, see [s. 87\(1\)](#)

22 Late compliance with priority removal notice: damage to credibility

- (1) This section applies where—
 - (a) a PRN recipient provided material in response to the priority removal notice served on them,
 - (b) the material was provided late, and
 - (c) a relevant decision is being made.
- (2) This section also applies where—
 - (a) a PRN recipient provided material to the First-tier Tribunal, the Upper Tribunal (when acting in the circumstances mentioned in subsection (9)) or the Special Immigration Appeals Commission,
 - (b) the material should have been provided in response to the priority removal notice served on the PRN recipient but was not,
 - (c) the material was provided late, and
 - (d) a relevant decision is being made.
- (3) A “relevant decision” is being made if—
 - (a) a protection claim or a human rights claim made by the PRN recipient is being considered, or
 - (b) a competent authority is making a reasonable grounds decision or a conclusive grounds decision in relation to the PRN recipient (decisions concerning status as victim of slavery or human trafficking).
- (4) In determining whether to believe a statement made by or on behalf of the PRN recipient, a deciding authority must take account, as damaging the PRN recipient’s

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credibility, of the late provision of the material, unless there are good reasons why it was provided late.

- (5) Tribunal Procedure Rules must secure that, where the First-tier Tribunal or the Upper Tribunal (when acting in the circumstances mentioned in subsection (9)) is making a decision that disposes of proceedings, it must include, as part of its reasons for the decision, a statement explaining—
 - (a) whether it considers that this section applies, and
 - (b) if it considers that this section does apply, how, in making its decision, it has taken account of the fact that the PRN recipient provided the material late.
- (6) Rules under section 5 of the Special Immigration Appeals Commission Act 1997 (SIAC procedure rules) must secure that, where the Special Immigration Appeals Commission is making a decision that determines proceedings, it must include, as part of its reasons for the decision, a statement explaining the matters mentioned in subsection (5)(a) and (b).
- (7) For the purposes of this section, material is provided “late” by the PRN recipient if it is provided on or after the PRN cut-off date.
- (8) In subsection (4) “deciding authority”—
 - (a) in relation to a decision mentioned in subsection (3)(a) means—
 - (i) the Secretary of State,
 - (ii) an immigration officer,
 - (iii) the First-tier Tribunal,
 - (iv) the Upper Tribunal in the circumstances described in subsection (9),
or
 - (v) the Special Immigration Appeals Commission;
 - (b) in relation to a decision mentioned in subsection (3)(b), means the competent authority.
- (9) The circumstances are when the Upper Tribunal is acting—
 - (a) under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 (Upper Tribunal re-making First-tier Tribunal decision on finding of error of law), or
 - (b) in relation to—
 - (i) an expedited appeal within the meaning of section 82A of the Nationality, Immigration and Asylum Act 2002, or
 - (ii) an expedited related appeal within the meaning of section 24 that involves a protection claim or a human rights claim.
- (10) In this section—

“competent authority”, “conclusive grounds decision” and “reasonable grounds decision” have the same meanings as in Part 5;

“priority removal notice”, “PRN cut-off date”, “PRN recipient” and “relevant status information” have the same meanings as in section 20.
- (11) Section 26 makes further provision about the effect of a PRN recipient providing evidence late.

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.
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Commencement Information

I18 S. 22 not in force at Royal Assent, see **s. 87(1)**

23 Priority removal notices: expedited appeals

(1) After section 82 of the Nationality, Immigration and Asylum Act 2002 insert—

“82A Expedited appeal to Upper Tribunal in certain cases

- (1) This section applies where —
- (a) a person (“P”) has been served with a priority removal notice,
 - (b) P has made a protection claim or a human rights claim on or after the PRN cut-off date but while the priority removal notice is still in force, and
 - (c) P has a right under section 82(1) to bring an appeal from within the United Kingdom (see section 92) in relation to the claim.
- (2) The Secretary of State must certify P’s right of appeal under this section, unless satisfied that there were good reasons for P making the claim on or after the PRN cut-off date (and P’s right of appeal may not be certified if the Secretary of State is satisfied that there were good reasons).
- (3) If certified under this section, P’s right of appeal under section 82(1) is to the Upper Tribunal instead of the First-tier Tribunal (and any appeal brought pursuant to such a right is referred to in this section as an “expedited appeal”).
- (4) Tribunal Procedure Rules must make provision with a view to securing that expedited appeals are brought and determined more quickly than an appeal under section 82(1) would, in the normal course of events, be brought and determined by the First-tier Tribunal.
- (5) Tribunal Procedure Rules must secure that the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is done in the case of a particular expedited appeal, order that the appeal is to be continued as an appeal to the First-tier Tribunal and accordingly is to be transferred to that Tribunal.
- (6) In this section, “priority removal notice” and “PRN cut-off date” have the same meanings as in section 20 of the Nationality and Borders Act 2022.”
- (2) In section 13(8) of the Tribunals, Courts and Enforcement Act 2007 (decisions excluded from right to appeal to the Court of Appeal), after paragraph (b) insert—
- “(bza) any decision of the Upper Tribunal on an expedited appeal within the meaning given by section 82A(3) of the Nationality, Immigration and Asylum Act 2002 (expedited appeal against refusal of protection claim or human rights claim).”
- (3) Schedule 3 makes amendments consequential on this section.

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

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Commencement Information

II9 S. 23 not in force at Royal Assent, see [s. 87\(1\)](#)

24 Expedited appeals: joining of related appeals

- (1) For the purposes of this section, an “expedited section 82 appeal” is an expedited appeal within the meaning of section 82A of the Nationality, Immigration and Asylum Act 2002 (expedited appeals for claims brought on or after PRN cut-off date).
- (2) For the purposes of this section, a “related appeal” is an appeal under any of the following—
 - (a) section 82(1) of the Nationality, Immigration and Asylum Act 2002 (appeals in respect of protection and human rights claims), other than one which is an expedited section 82 appeal;
 - (b) section 40A of the British Nationality Act 1981 (appeal against deprivation of citizenship);
 - (c) the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 ([S.I. 2020/61](#)) (appeal rights in respect of EU citizens’ rights immigration decisions etc);
 - (d) regulation 36 of the Immigration (European Economic Area) Regulations 2016 ([S.I. 2016/1052](#)) (appeals against EEA decisions) as it continues to have effect following its revocation.
- (3) If a person brings an expedited section 82 appeal at a time when a related appeal brought by that person is pending before the First-tier Tribunal, the related appeal is, from that time, to be continued as an appeal to the Upper Tribunal and accordingly is to be transferred to the Upper Tribunal.
- (4) If an expedited section 82 appeal brought by a person is pending, any right that the person would otherwise have to bring a related appeal to the First-tier Tribunal is instead a right to bring it to the Upper Tribunal.
- (5) A related appeal within subsection (3) or brought to the Upper Tribunal as mentioned in (4) is referred to in this section as an “expedited related appeal”.
- (6) Tribunal Procedure Rules must make provision with a view to securing that the Upper Tribunal consolidates an expedited related appeal and the expedited section 82 appeal concerned or hears them together (and see section 82A(4) of the Nationality, Immigration and Asylum Act 2002).
- (7) Tribunal Procedure Rules must secure that the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is done in the case of a particular expedited related appeal, order that the appeal is to be continued as an appeal to the First-tier Tribunal and accordingly is to be transferred to that Tribunal.
- (8) For the purposes of this section, an appeal is “pending”—
 - (a) in the case of an appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 (including an expedited section 82 appeal), if it is pending within the meaning of section 104 of that Act;
 - (b) in the case of an appeal under section 40A of the British Nationality Act 1981, during the period—
 - (i) beginning when it is instituted, and

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- (ii) ending when it is finally determined or withdrawn;
 - (c) in the case of an appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020, if it is pending within the meaning of regulation 13 of those Regulations;
 - (d) in the case of an appeal under the regulation 36 of the Immigration (European Economic Area) Regulations 2016, if it is pending within the meaning of Part 6 of those Regulations (see regulation 35).
- (9) In section 13(8) of the Tribunals, Courts and Enforcement Act 2007 (decisions excluded from right to appeal to the Court of Appeal), after paragraph (bza) (inserted by section 22) insert—
- “(bzb) any decision of the Upper Tribunal on an expedited related appeal within the meaning given by section 24 of the Nationality and Borders Act 2022 (expedited appeals against refusal of protection claim or human rights claim: joining of related appeals),”.

Commencement Information

I20 S. 24 not in force at Royal Assent, see [s. 87\(1\)](#)

25 Civil legal services for recipients of priority removal notices

- (1) In Part 1 of Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services), after paragraph 31 (immigration: accommodation for asylum-seekers etc) insert—

“Immigration: recipients of priority removal notices

- 31ZA (1) Civil legal services provided, to an individual who has received a priority removal notice, in relation to—
- (a) the priority removal notice;
 - (b) the individual's immigration status;
 - (c) the lawfulness of the individual's removal from the United Kingdom;
 - (d) immigration detention of the kinds mentioned in paragraph 25(1).

Condition applying to services described in sub-paragraph (1): overall time limit

- (2) Civil legal services described in sub-paragraph (1) may be provided for up to (but no more than) 7 hours.
- (3) If a person who has been provided with civil legal services described in sub-paragraph (1) subsequently receives a further priority removal notice, sub-paragraph (2) applies again (so that time spent in providing services following receipt of the earlier notice does not count towards the new limit).

General exclusions

- (4) Sub-paragraph (1) is subject to the exclusions in Part 2 of this Schedule.

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Specific exclusions

- (5) The services described in sub-paragraph (1) do not include—
- (a) advocacy;
 - (b) attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on a claim in respect of the rights mentioned in paragraph 30(1), except where regulations provide otherwise;
 - (c) attendance at an interview conducted by the competent authority under the national referral mechanism for the purposes of making a reasonable grounds decision or a conclusive grounds decision;
 - (d) services provided in relation to—
 - (i) any private law rights the individual may have (such as rights under employment law or the law of tort), or
 - (ii) any claim for damages in relation to unlawful detention.

Definition

- (6) In this paragraph “priority removal notice” means a notice under section 20 of the Nationality and Borders Act 2022.”
- (2) In section 9 of that Act (civil legal aid: general cases), after subsection (2) insert—
- “(3) The powers conferred by subsection (2)(b) include power to amend paragraph 31ZA of Part 1 of Schedule 1 (immigration: recipients of priority removal notices) so as to alter the time limit applicable to the provision of services described in sub-paragraph (1) of that paragraph (whether generally or in specified cases or circumstances).
- (4) The Lord Chancellor may by order make provision as to the operation of any overall time limit applicable to the provision of services described in paragraph 31ZA(1), including in particular—
- (a) provision for determining the time available (not exceeding the overall time limit) for the provision of such services in any individual’s case, or
 - (b) provision as to the use that may, or must, be made of some or all of the time available.”
- (3) In regulation 11(9) of the Civil Legal Aid (Merits Criteria) Regulations 2013 ([S.I. 2013/104](#)) (qualifying for civil legal services: cases in which merits criteria do not apply), at the end insert “, or
- (e) in relation to any matter described in paragraph 31ZA of Schedule 1 to the Act (immigration: recipients of priority removal notices).”
- (4) In regulation 5(1) of the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 ([S.I. 2013/480](#)) (exceptions from requirement to make a determination in respect of an individual’s financial resources), omit the “and” at the end of paragraph (ka) and, after paragraph (l), insert—
- “(m) civil legal services described in paragraph 31ZA of Part 1 of Schedule 1 to the Act (immigration: recipients of priority removal notices).”

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Commencement Information

I21 S. 25 not in force at Royal Assent, see **s. 87(1)**

PROSPECTIVE

Late evidence

26 Late provision of evidence in asylum or human rights claim: weight

- (1) This section applies where—
 - (a) evidence is provided late by a claimant in relation to an asylum claim or a human rights claim, and
 - (b) the evidence falls to be considered by a deciding authority for the purpose of determining—
 - (i) the claim, or
 - (ii) where a decision in respect of the claim is the subject of a relevant appeal, the appeal.
- (2) Unless there are good reasons why the evidence was provided late, the deciding authority must, in considering it, have regard to the principle that minimal weight should be given to the evidence.
- (3) For the purposes of subsection (1)(a), evidence is provided “late” by a claimant if it is within subsection (4) or (5).
- (4) Evidence is within this subsection if—
 - (a) it is provided pursuant to an evidence notice served on the claimant under section 18(1), and
 - (b) it is provided on or after the date specified in the notice.
- (5) Evidence is within this subsection if—
 - (a) it is provided pursuant to a priority removal notice served on the claimant under section 20 in support of the matters mentioned in subsection (3)(a)(i) of that section (reasons and grounds for application), and
 - (b) it is provided on or after the PRN cut-off date.
- (6) The reference in subsection (1)(b)(i) to determining a claim includes a reference to determining—
 - (a) whether to certify the claim under section 94(1) of the 2002 Act (unfounded claims);
 - (b) whether to accept or reject further submissions made by the claimant for the purposes of the immigration rules.
- (7) In this section—

“the 2002 Act” means the Nationality, Immigration and Asylum Act 2002;
“asylum claim” has the meaning given by section 113(1) of the 2002 Act;
“deciding authority” means—

 - (a) an immigration officer,

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- (b) the Secretary of State,
 - (c) the First-tier Tribunal,
 - (d) the Upper Tribunal in the circumstances described in subsection (8), or
 - (e) the Special Immigration Appeals Commission;
“PRN cut-off date” has the same meaning as in section 20;
“relevant appeal” means an appeal under—
 - (a) section 82 of the 2002 Act, or
 - (b) section 2 of the Special Immigration Appeals Commission Act 1997.
- (8) The circumstances are when the Upper Tribunal is acting—
- (a) under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 (Upper Tribunal re-making First-tier Tribunal decision on finding of error of law), or
 - (b) in relation to—
 - (i) an expedited appeal within the meaning of section 82A of the Nationality, Immigration and Asylum Act 2002, or
 - (ii) an expedited related appeal within the meaning of section 24 that involves an asylum claim or a human rights claim.

Commencement Information

I22 S. 26 not in force at Royal Assent, see [s. 87\(1\)](#)

Appeals

27 Accelerated detained appeals

- (1) In this section “accelerated detained appeal” means a relevant appeal (see subsection (6)) brought—
- (a) by a person who—
 - (i) was detained under a relevant detention provision (see subsection (7)) at the time at which they were given notice of the decision which is the subject of the appeal, and
 - (ii) remains in detention under a relevant detention provision, and
 - (b) against a decision that—
 - (i) is of a description prescribed by regulations made by the Secretary of State, and
 - (ii) when made, was certified by the Secretary of State under this section.
- (2) The Secretary of State may only certify a decision under this section if the Secretary of State considers that any relevant appeal brought in relation to the decision would likely be disposed of expeditiously.
- (3) Tribunal Procedure Rules must secure that the following time limits apply in relation to an accelerated detained appeal—
- (a) any notice of appeal must be given to the First-tier Tribunal not later than 5 working days after the date on which the appellant was given notice of the decision against which the appeal is brought;

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- (b) the First-tier Tribunal must make a decision on the appeal, and give notice of that decision to the parties, not later than 25 working days after the date on which the appellant gave notice of appeal to the tribunal;
 - (c) any application (whether to the First-tier Tribunal or the Upper Tribunal) for permission to appeal to the Upper Tribunal must be determined by the tribunal concerned not later than 20 working days after the date on which the applicant was given notice of the First-tier Tribunal’s decision.
- (4) A relevant appeal ceases to be an accelerated detained appeal on the appellant being released from detention under any relevant detention provision.
- (5) Tribunal Procedure Rules must secure that the First-tier Tribunal or (as the case may be) the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is done in a particular case, order that a relevant appeal is to cease to be an accelerated detained appeal.
- (6) For the purposes of this section, a “relevant appeal” is an appeal to the First-tier Tribunal under any of the following—
- (a) section 82(1) of the Nationality, Immigration and Asylum Act 2002 (appeals in respect of protection and human rights claims);
 - (b) section 40A of the British Nationality Act 1981 (appeal against deprivation of citizenship);
 - (c) the Immigration (Citizens’ Rights Appeals) (EU Exit) Regulations 2020 ([S.I. 2020/61](#)) (appeal rights in respect of EU citizens’ rights immigration decisions etc);
 - (d) regulation 36 of the Immigration (European Economic Area) Regulations 2016 ([S.I. 2016/1052](#)) (appeals against EEA decisions) as it continues to have effect following its revocation.
- (7) For the purposes of this section, a “relevant detention provision” is any of the following—
- (a) paragraph 16(1), (1A) or (2) of Schedule 2 to the Immigration Act 1971 (detention of persons liable to examination or removal);
 - (b) paragraph 2(1), (2) or (3) of Schedule 3 to that Act (detention pending deportation);
 - (c) section 62 of the Nationality, Immigration and Asylum Act 2002 (detention of persons liable to examination or removal);
 - (d) section 36(1) of the UK Borders Act 2007 (detention pending deportation).
- (8) In this section “working day” means any day except—
- (a) a Saturday or Sunday, Christmas Day, Good Friday or 26 to 31 December, and
 - (b) any day that is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971 in the part of the United Kingdom where the appellant concerned is detained.
- (9) Regulations under this section are subject to negative resolution procedure.

Commencement Information

I23 S. 27 in force at Royal Assent for specified purposes, see [s. 87\(4\)\(b\)](#)

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

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28 Claims certified as clearly unfounded: removal of right of appeal

- (1) The Nationality, Immigration and Asylum Act 2002 is amended in accordance with subsections (2) and (3).
- (2) In section 92 (place from which an appeal may be brought or continued)—
 - (a) in each of subsections (2)(a) and (3)(a), for “94(1) or (7) (claim clearly unfounded or removal to a safe third country)” substitute “94(7) (removal to a safe country)”;
 - (b) in each of subsections (6) and (8), for “94(1) or (7)” substitute “94(7)”.
- (3) In section 94 (appeal from within the United Kingdom: unfounded human rights or protection claim)—
 - (a) after subsection (3) insert—

“(3A) A person may not bring an appeal under section 82 against a decision if the claim to which the decision relates has been certified under subsection (1).”;
 - (b) in subsection (4), for “Those States” substitute “The States”;
 - (c) for the heading substitute “Certification of human rights or protection claims as unfounded or removal to safe country”.
- (4) The amendments made by this section do not apply in relation to a protection claim or human rights claim that was certified by the Secretary of State under section 94(1) before the coming into force of this section.

Commencement Information

I24 S. 28 in force at 28.6.2022, see s. 87(5)(a)

Removal to safe third country

29 Removal of asylum seeker to safe country

Schedule 4 makes amendments to—

- (a) section 77 of the Nationality, Immigration and Asylum Act 2002 (no removal while claim for asylum pending), and
- (b) Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (removal of asylum seeker to safe country).

Commencement Information

I25 S. 29 in force at 28.6.2022 for specified purposes, see s. 87(5)(b)

I26 S. 29 in force at 28.6.2022 in so far as not already in force by S.I. 2022/590, regs. 1(2), 2, Sch. 1 para. 17 (with Sch. 2 para. 4(4))

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.
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Interpretation of Refugee Convention

30 Refugee Convention: general

- (1) The following sections apply for the purposes of the determination by any person, court or tribunal whether a person (referred to in those sections as an “asylum seeker”) is a refugee within the meaning of Article 1(A)(2) of the Refugee Convention—
 - (a) section 31 (persecution);
 - (b) section 32 (well-founded fear);
 - (c) section 33 (reasons for persecution);
 - (d) section 34 (protection from persecution);
 - (e) section 35 (internal relocation).
- (2) Section 36 applies for the purposes of the determination by any person, court or tribunal whether the provisions of the Refugee Convention do not apply to a person as a result of Article 1(F) of that Convention (disapplication of Convention to serious criminals etc).
- (3) Section 37 applies for the purposes of the determination by any person, court or tribunal whether Article 31(1) of the Refugee Convention (immunity from certain penalties) applies in relation to a person who is a refugee within the meaning of Article 1(A)(2) of the Refugee Convention.
- (4) The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (S.I. 2006/2525) are revoked.
- (5) Subsections (1) and (2), and sections 31 to 36, apply only in relation to a determination relating to a claim for asylum where the claim was made on or after the day on which this section comes into force.
- (6) For the purposes of subsection (5), a claim for asylum includes a claim, in any form or to any person, which falls to be determined as mentioned in subsection (1).

Modifications etc. (not altering text)

- C1** S. 30(4) excluded (26.5.2022) by [The Nationality and Borders Act 2022 \(Commencement No. 1, Transitional and Saving Provisions\) Regulations 2022 \(S.I. 2022/590\)](#), reg. 1(2), [Sch. 2 para. 5](#)

Commencement Information

- I27** S. 30(1)(2)(4)-(6) in force at 28.6.2022, see [s. 87\(5\)\(c\)](#)
I28 S. 30(3) in force at 28.6.2022 by [S.I. 2022/590](#), regs. 1(2), 2, [Sch. 1 para. 18](#)

31 Article 1(A)(2): persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention, persecution can be committed by any of the following (referred to in this Part as “actors of persecution”)
 - (a) the State,
 - (b) any party or organisation controlling the State or a substantial part of the territory of the State, or

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

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- (c) any non-State actor, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide reasonable protection against persecution.
- (2) For the purposes of that Article, the persecution must be—
- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or
 - (b) an accumulation of various measures, including a violation of a human right, which is sufficiently severe as to affect an individual in a similar manner as specified in paragraph (a).
- (3) The persecution may, for example, take the form of—
- (a) an act of physical or mental violence, including an act of sexual violence;
 - (b) a legal, administrative, police or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
 - (c) prosecution or punishment which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
 - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts as described in Article 1(F) of the Refugee Convention (on which, see section 36).

Commencement Information

I29 S. 31 in force at 28.6.2022, see s. 87(5)(d)

32 Article 1(A)(2): well-founded fear

- (1) In deciding for the purposes of Article 1(A)(2) of the Refugee Convention whether an asylum seeker's fear of persecution is well-founded, the following approach is to be taken.
- (2) The decision-maker must first determine, on the balance of probabilities—
- (a) whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), and
 - (b) whether the asylum seeker does in fact fear such persecution in their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence) as a result of that characteristic.
- (See also section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (asylum claims etc: behaviour damaging to claimant's credibility).)
- (3) Subsection (4) applies if the decision-maker finds that—
- (a) the asylum seeker has a characteristic mentioned in subsection (2)(a) (or has such a characteristic attributed to them), and
 - (b) the asylum seeker fears persecution as mentioned in subsection (2)(b).

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- (4) The decision-maker must determine whether there is a reasonable likelihood that, if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)—
- (a) they would be persecuted as a result of the characteristic mentioned in subsection (2)(a), and
 - (b) they would not be protected as mentioned in section 34.
- (5) The determination under subsection (4) must also include a consideration of the matter mentioned in section 35 (internal relocation).

Commencement Information

I30 S. 32 in force at 28.6.2022, see s. 87(5)(d)

33 Article 1(A)(2): reasons for persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention—
- (a) the concept of race may include consideration of matters such as a person's colour, descent or membership of a particular ethnic group;
 - (b) the concept of religion may include consideration of matters such as—
 - (i) the holding of theistic, non-theistic or atheistic beliefs,
 - (ii) the participation in formal worship in private or public, either alone or in community with others, or the abstention from such worship,
 - (iii) other religious acts or expressions of view, or
 - (iv) forms of personal or communal conduct based on or mandated by any religious belief;
 - (c) the concept of nationality is not confined to citizenship (or lack of citizenship) but may include consideration of matters such as membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State;
 - (d) the concept of political opinion includes the holding of an opinion, thought or belief on a matter related to a potential actor of persecution and to its policies or methods, whether or not the person holding that opinion, thought or belief has acted upon it.
- (2) A group forms a particular social group for the purposes of Article 1(A)(2) of the Refugee Convention only if it meets both of the following conditions.
- (3) The first condition is that members of the group share—
- (a) an innate characteristic,
 - (b) a common background that cannot be changed, or
 - (c) a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.
- (4) The second condition is that the group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.
- (5) A particular social group may include a group based on a common characteristic of sexual orientation, but for these purposes sexual orientation does not include acts that are criminal in any part of the United Kingdom.

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Commencement Information

I31 S. 33 in force at 28.6.2022, see s. 87(5)(d)

34 Article 1(A)(2): protection from persecution

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention, protection from persecution can be provided by—
- (a) the State, or
 - (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.
- (2) An asylum seeker is to be taken to be able to avail themselves of protection from persecution if—
- (a) the State, party or organisation mentioned in subsection (1) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and
 - (b) the asylum seeker is able to access the protection.

Commencement Information

I32 S. 34 in force at 28.6.2022, see s. 87(5)(d)

35 Article 1(A)(2): internal relocation

- (1) An asylum seeker is not to be taken to be a refugee for the purposes of Article 1(A)(2) of the Refugee Convention if—
- (a) they would not have a well-founded fear of being persecuted in a part of their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence), and
 - (b) they can reasonably be expected to travel to and remain in that part of the country.
- (2) In considering whether an asylum seeker can reasonably be expected to travel to and remain in a part of a country, a decision-maker—
- (a) must have regard to—
 - (i) the general circumstances prevailing in that part of the country, and
 - (ii) the personal circumstances of the asylum seeker;
 - (b) must disregard any technical obstacles relating to travel to that part of that country.

Commencement Information

I33 S. 35 in force at 28.6.2022, see s. 87(5)(d)

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.
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36 Article 1(F): disapplication of Convention in case of serious crime etc

- (1) A person has committed a crime for the purposes of Article 1(F)(a) or (b) of the Refugee Convention if they have instigated or otherwise participated in the commission of the crimes specified in those provisions.
- (2) In Article 1(F)(b), the reference to a serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective.
- (3) In that Article, the reference to a crime being committed by a person outside the country of refuge prior to their admission to that country as a refugee includes a crime committed by that person at any time up to and including the day on which they are issued with a relevant biometric immigration document by the Secretary of State.
- (4) For the purposes of subsection (3), a relevant biometric immigration document is a document that—
 - (a) records biometric information (as defined in section 15(1A) of the UK Borders Act 2007), and
 - (b) is evidence of leave to remain in the United Kingdom granted to a person as a result of their refugee status.

Commencement Information

I34 S. 36 in force at 28.6.2022, see s. 87(5)(d)

37 Article 31(1): immunity from penalties

- (1) A refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country.
- (2) A refugee is not to be taken to have presented themselves without delay to the authorities unless—
 - (a) in the case of a person who became a refugee while they were outside the United Kingdom, they made a claim for asylum as soon as reasonably practicable after their arrival in the United Kingdom;
 - (b) in the case of a person who became a refugee while they were in the United Kingdom—
 - (i) if their presence in the United Kingdom was lawful at that time, they made a claim for asylum before the time when their presence in the United Kingdom became unlawful;
 - (ii) if their presence in the United Kingdom was unlawful at that time, they made a claim for asylum as soon as reasonably practicable after they became aware of their need for protection under the Refugee Convention.
- (3) For the purposes of subsection (2)(b), a person's presence in the United Kingdom is unlawful if they require leave to enter or remain and do not have it.

Status: Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

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- (4) A penalty is not to be taken as having been imposed on account of a refugee’s illegal entry or presence in the United Kingdom where the penalty relates to anything done by the refugee in the course of an attempt to leave the United Kingdom.
- (5) In section 31 of the Immigration and Asylum Act 1999 (defences based on Art.31(1) of the Refugee Convention)—
- (a) in subsection (2), for “have expected to be given” substitute “be expected to have sought”;
 - (b) after subsection (4) insert—

“(4A) But this section does not apply to an offence committed by a refugee in the course of an attempt to leave the United Kingdom.”
- (6) In this section—
- “claim for asylum” means a claim that it would be contrary to the United Kingdom’s obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom;
 - “country” includes any territory;
 - “refugee” has the same meaning as in the Refugee Convention.

Commencement Information

I35 S. 37 not in force at Royal Assent, see **s. 87(1)**

I36 S. 37 in force at 28.6.2022 by **S.I. 2022/590, regs. 1(2), 2, Sch. 1 para. 19** (with **Sch. 2 para. 6**)

38 Article 33(2): particularly serious crime

- (1) Section 72 of the Nationality, Immigration and Asylum Act 2002 (serious criminal) is amended as follows.
- (2) In subsection (1), for “protection” substitute “prohibition of expulsion or return”.
- (3) In subsection (2)—
- (a) in the words before paragraph (a)—
 - (i) for “shall be presumed to have been” substitute “is”;
 - (ii) omit “and to constitute a danger to the community of the United Kingdom”;
 - (b) in paragraph (b), for “two years” substitute “12 months”.
- (4) In subsection (3)—
- (a) in the words before paragraph (a)—
 - (i) for “shall be presumed to have been” substitute “is”;
 - (ii) omit “and to constitute a danger to the community of the United Kingdom”;
 - (b) in paragraph (b), for “two years” substitute “12 months”;
 - (c) in paragraph (c), for “two years” substitute “12 months”.
- (5) In subsection (4), in the words before paragraph (a)—
- (a) for “shall be presumed to have been” substitute “is”;
 - (b) omit “and to constitute a danger to the community of the United Kingdom”.

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(6) After subsection (5) insert—

“(5A) A person convicted by a final judgment of a particularly serious crime (whether within or outside the United Kingdom) is to be presumed to constitute a danger to the community of the United Kingdom.”

(7) In subsection (6), for “(2), (3) or (4)” substitute “(5A)”.

(8) In subsection (7), for “(2), (3) or (4)” substitute “(5A)”.

(9) In subsection (8), for “mentioned in subsection (6)” substitute “under subsection (5A)”.

(10) In subsection (9)(b), for “presumptions under subsection (2), (3) or (4) apply” substitute “a presumption under subsection (5A) applies”.

(11) In subsection (10)(b), for “presumptions under subsections (2), (3) or (4) apply” substitute “a presumption under subsection (5A) applies”.

(12) In subsection (11)(b)—

(a) in the opening words, for “two years” substitute “12 months”;

(b) in sub-paragraph (ia), for “two years”, in both places it occurs, substitute “12 months”;

(c) in sub-paragraph (iii), for “two years” substitute “12 months”.

(13) The amendments made by this section apply only in relation to a person convicted on or after the date on which this section comes into force.

Commencement Information

I37 S. 38 in force at 28.6.2022, see s. 87(5)(d)

Interpretation

39 Interpretation of Part 2

In this Part—

“human rights claim” has the meaning given by section 113 of the Nationality, Immigration and Asylum Act 2002;

the “Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom;

“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

“immigration rules” means rules under section 3(2) of the Immigration Act 1971;

the “Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and its Protocol;

“protection claim” has the meaning given by section 82(2) of the Nationality, Immigration and Asylum Act 2002.

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Commencement Information

I38 S. 39 in force at 28.6.2022, see [s. 87\(5\)\(e\)](#)

Status:

Point in time view as at 28/06/2022. This version of this part contains provisions that are prospective.

Changes to legislation:

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