



# Illegal Migration Act 2023

## 2023 CHAPTER 37

### *Legal proceedings*

PROSPECTIVE

#### **46 Suspensive claims out of time**

- (1) This section applies if—
  - (a) a person makes a suspensive claim after the end of the claim period (see sections 42(7) and 43(7)) but before the person is removed from the United Kingdom under this Act, and
  - (b) the person has not—
    - (i) in the case of a serious harm suspensive claim, made a previous serious harm suspensive claim in relation to the same removal notice, or
    - (ii) in the case of a removal conditions suspensive claim, made a previous removal conditions suspensive claim in relation to the same removal notice.
- (2) The Secretary of State must, before the end of the decision period, consider whether there were compelling reasons for the person not to make the claim within the claim period.
- (3) If the Secretary of State decides that there were compelling reasons for the person not to make the claim within the claim period, the Secretary of State must consider the claim under section 42(2) (serious harm suspensive claims) or (as the case may be) 43(2) (removal conditions suspensive claims).
- (4) If the Secretary of State decides that there were not compelling reasons for the person not to make the claim within the claim period, the person may apply for a declaration from the Upper Tribunal that there were compelling reasons for the person not to make the claim within the claim period.
- (5) An application under subsection (4) must—

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*Status: Point in time view as at 20/07/2023. This version of this provision is prospective.*

*Changes to legislation: Illegal Migration Act 2023, Section 46 is up to date with all changes known to be in force on or before 09 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (a) contain compelling evidence that there were compelling reasons for the person not to make the claim within the claim period, and
  - (b) be determined by the Upper Tribunal only on the basis of written submissions and evidence.
- (6) If the Upper Tribunal grants a declaration on an application under subsection (4), the Secretary of State must consider the claim under section 42(2) or (as the case may be) 43(2).
- (7) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal on an application under subsection (4).
- (8) See also section 51 (finality of certain decisions by the Upper Tribunal).
- (9) Before the end of the decision period in relation to a suspensive claim mentioned in subsection (1)(a), the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (10) In this section “decision period” means the period of 4 days beginning with the day on which the person makes the suspensive claim.

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**Commencement Information**

**II** S. 46 not in force at Royal Assent, see s. 68(1)

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