

**EXPLANATORY MEMORANDUM TO**  
**THE NATIONALITY AND BORDERS ACT 2022 (CONSEQUENTIAL**  
**AMENDMENTS) REGULATIONS 2022**

**2022 No. 571**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These Regulations make consequential amendments in connection with the coming into force of sections 30(4) and 77 of the Nationality and Borders Act 2022 (“the 2022 Act”)<sup>1</sup>. Section 30 of the 2022 Act sets out the context for the succeeding sections under the ‘Interpretation of the Refugee Convention’ heading; this includes revoking legislation which becomes unnecessary as a result of the 2022 Act. Section 77 allows for any legal challenge brought against an immigration decision to be certified so that it is heard by the Special Immigration Appeals Commission (SIAC), closing a gap which meant that some legal challenges could not be certified.

2.2 These Regulations ensure that the Special Immigration Appeals Commission (Procedure) Rules 2003 cover, in consequence of section 77 of the 2022 Act, all immigration decisions which can now be certified and that the Immigration (Biometric Registration) Regulations 2008 do not refer to the Refugee and Persons in Need of International Protection Regulations 2006 which are revoked by section 30(4) of the 2022 Act, and instead refer to Article 1 of the Refugee Convention<sup>2</sup>.

**3. Matters of special interest to Parliament**

3.1 None.

**4. Extent and Territorial Application**

4.1 The territorial extent of this instrument is all of the United Kingdom.

4.2 The territorial application of this instrument is all of the United Kingdom.

**5. European Convention on Human Rights**

5.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

6.1 The Nationality and Borders Act 2022 received Royal Assent on 28th April 2022.

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<sup>1</sup> Section 30(4) comes into force on 28th June 2022 pursuant to section 87(5)(c) of the Nationality and Borders Act 2022. Section 46(8) and section 77 will be brought into force by the Nationality and Borders Act 2022 (Commencement No. 1. Transitional and Saving Provisions) Regulations 2022, on 28th June 2022.

<sup>2</sup> The Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and the New York Protocol of 31st January 1967.

- 6.2 Section 30(4) comes into force on 28th June 2022, pursuant to section 87(5)(c) of the 2022 Act. Section 77 of the 2022 Act will be brought into force on 28th June 2022 by commencement regulations (including transitional and saving provisions).
- 6.3 These Regulations make provision which is consequential in connection with the coming into force of those provisions of the 2022 Act.

## 7. Policy background

### *What is being done and why?*

- 7.1 **Regulation 2 of these Regulations.** Under section 97 of the Nationality, Immigration and Asylum Act 2002, any immigration decision with a statutory right of appeal can be certified<sup>3</sup> so that it is heard by SIAC. For immigration decisions which carry no statutory right of appeal, a person can nonetheless seek permission to challenge such decisions by way of an application for judicial review. Under the Special Immigration Appeals Commission Act 1997, judicial reviews against some decisions<sup>4</sup> can be certified so they are heard by SIAC. However, judicial reviews of other immigration decisions (for example refusal of entry to a person seeking entry as a worker) cannot be certified so they are heard by SIAC, creating a gap in the current certification power. Section 77 of the 2022 Act closes that gap by ensuring that any decision made in relation to a person's entitlement for immigration leave, right of entry or right to reside can be certified (the criteria for certification are not changed) so that any subsequent challenge to those decisions are heard by SIAC. Regulation 2 of these Regulations, as a consequence of section 77, amends the Special Immigration Appeals Commission (Procedure) Rules 2003 to ensure that they cover any challenge that falls under the new certification power introduced by section 77 of the 2022 Act.
- 7.2 **Regulation 3 of these Regulations.** Section 30(4) of the 2022 Act revokes the Refugee and Persons in Need of International Protection Regulations 2006 ("the 2006 Regulations"). The definition of "refugee" in regulation 2 of the Immigration (Biometric Registration) Regulations 2008 ("the 2008 Regulations") cross refers to regulation 7 of the 2006 Regulations. These Regulations make a consequential amendment to the definition of "refugee" in the 2008 Regulations so that it no longer refers to the revoked 2006 Regulations, and instead refers directly to Article 1 of the Refugee Convention which defines the term 'refugee'. Regulation 3 omits reference to regulation 7 of the 2006 Regulations from the definition of refugee in regulation 2 of the 2008 Regulations as a consequence of the revocation of the 2006 Regulations by section 30(4) of the 2022 Act. Regulation 7 of the 2006 Regulations reflected the exclusion provisions in Article 1(F) of the Refugee Convention (exclusion from the definition of 'refugee'). As a result of its omission from the definition of 'refugee' in the 2008 Regulations, Regulation 3 also replaces the reference to Article 1(A) of the Refugee Convention with a reference to Article 1 of that Convention to ensure the exclusion provisions still apply to the definition.

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<sup>3</sup> The criteria for certification are where a relevant decision is made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public: (a) in the interests of national security, (b) in the interests of the relationship between the United Kingdom and another country; or (c) otherwise in the public interest.

<sup>4</sup> Currently these are: (a) a decision to exclude a person from the United Kingdom; (b) a decision to refuse to issue a certificate of naturalisation (citizenship); (c) certain decisions to deport.

## **8. European Union Withdrawal and Future Relationship**

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

9.1 There are no current plans to consolidate the instruments amended by these Regulations.

## **10. Consultation outcome**

10.1 These Regulations have not been the subject of a public consultation, as this would be disproportionate given the nature of the changes being consequential on provisions in the 2022 Act. However, the contents of the 2022 Act are part of the implementation of the Government's New Plan for Immigration which was publicly consulted on in 2021. Responses to this consultation were considered in policy development of the 2022 Act. The consultation paper, response and associated documentation can be found on gov.uk.

## **11. Guidance**

11.1 Any required guidance relating to these changes to Regulations will be updated and placed on the GOV.UK website on the dates these changes take effect.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because it would be disproportionate given the nature of the changes.

## **13. Regulating small business**

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

14.1 The approach to monitoring of this legislation is that in respect of regulation 2, SIAC will keep under review the Special Immigration (Procedure) Rules 2003, including amendments made by this instrument. The approach to monitoring of this legislation is that in respect of regulation 3, the Home Office will keep under review the Immigration (Biometric Registration) Regulations 2008, including amendments made by this instrument.

## **15. Contact**

15.1 Jacob Graham at the Home Office. Telephone: 07825863666, or email: [jacob.graham@homeoffice.gov.uk](mailto:jacob.graham@homeoffice.gov.uk). Jonathan Wright at the Home Office. Telephone: 07774755613, or email: [Jonathan.wright8@homeoffice.gov.uk](mailto:Jonathan.wright8@homeoffice.gov.uk). Either can be contacted with any queries regarding the instrument.

15.2 Miv Elimelech, Deputy Director for Asylum & Protection Unit, and Sally Weston, Deputy Director for Simplification & Systems Unit, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Tom Pursglove MP, Parliamentary Under Secretary of State (Minister for Justice and Tackling Illegal Migration) at the Home Office can confirm that this Explanatory Memorandum meets the required standard.