



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 4

#### DETENTION AND REMOVAL

##### *Removal*

#### **77 No removal while claim for asylum pending**

- (1) While a person's claim for asylum is pending he may not be—
- (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
- (2) In this section—
- (a) “claim for asylum” means a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove him from or require him to leave the United Kingdom, and
  - (b) a person's claim is pending until he is given notice of the Secretary of State's decision on it.

[<sup>F1</sup>(2A) This section does not prevent a person being removed to, or being required to leave to go to, a State falling within subsection (2B).

- (2B) A State falls within this subsection if—
- (a) it is a place where a person's life and liberty are not threatened by reason of the person's race, religion, nationality, membership of a particular social group or political opinion,
  - (b) it is a place from which a person will not be removed elsewhere other than in accordance with the Refugee Convention,

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- (c) it is a place—
    - (i) to which a person can be removed without their Convention rights under Article 3 (no torture or inhuman or degrading treatment or punishment) being contravened, and
    - (ii) from which a person will not be sent to another State in contravention of the person’s Convention rights, and
  - (d) the person is not a national or citizen of the State.
- (2C) For the purposes of this section—
- (a) any State to which Part 2 or 3 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 for the time being applies—
    - (i) is to be presumed to be a State falling within subsection (2B)(a) and (b), and
    - (ii) is, unless the contrary is shown by a person to be the case in their particular circumstances, to be presumed to be a State falling within subsection (2B)(c)(i) and (ii);
  - (b) any State to which Part 4 of that Schedule for the time being applies is to be presumed to be a State falling within subsection (2B)(a) and (b);
  - (c) 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;
  - (d) “State” includes any territory outside of the United Kingdom.]
- (3) In [F2 this section, “Convention rights” means the rights identified as Convention rights by section 1 of the Human Rights Act 1998 (whether or not in relation to a State that is a party to the Convention); and] “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.
- (4) Nothing in this section shall prevent any of the following while a claim for asylum is pending—
- (a) the giving of a direction for the claimant’s removal from the United Kingdom,
  - (b) the making of a deportation order in respect of the claimant, or
  - (c) the taking of any other interim or preparatory action.
- (5) Section 15 of the Immigration and Asylum Act 1999 (c. 33) (protection from removal or deportation) shall cease to have effect.

#### Textual Amendments

- F1** S. 77(2A)-(2C) inserted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), s. 87(1), [Sch. 4 para. 1](#); S.I. 2022/590, reg. 2, [Sch. 1 para. 17](#) (with Sch. 2 para. 4(4))
- F2** Words in s. 77(3) substituted (28.6.2022) by [Nationality and Borders Act 2022 \(c. 36\)](#), s. 87(1), [Sch. 4 para. 2](#); S.I. 2022/590, reg. 2, [Sch. 1 para. 17](#) (with Sch. 2 para. 4(4))

#### Modifications etc. (not altering text)

- C1** S. 77 excluded by [1999 c. 33, s. 11\(2\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 80, 162\(2\)](#) (with s. 159); S.I. 2003/754, art. 2(1), [Sch. 1](#) (with Sch. 2 paras. 5, 6(3)))
- S. 77 extended (14.3.2003) by [The Nationality Immigration and Asylum Act 2002 \(Commencement No. 4\) Order 2003 \(S.I. 2003/754\)](#), art. 3, [Sch. 2 para. 1\(2\)](#) (with arts. 3, 4, Sch. 2 (as amended by: S.I. 2003/1040; S.I. 2003/1339; and S.I. 2003/2993))

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S. 77 restricted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), ss. 33, 48(1)-(3), Sch. 3 paras. 4, 9, 14, **18**; S.I. 2004/2523, art. 2, **Sch.** (with art. 3)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1)(1A) substituted for s. 18(1) by [2016 c. 19 Sch. 11 para. 31\(2\)](#)
- s. 22A inserted by [2022 c. 36 s. 13\(7\)](#)
- s. 27(ba) inserted by [2022 c. 36 s. 13\(10\)](#)
- s. 51(2)(d) and word inserted by [2016 c. 19 Sch. 11 para. 26\(6\)](#)
- s. 55(2)(aa) inserted by [2016 c. 19 Sch. 11 para. 26\(7\)](#)
- s. 62(3A) inserted by [2023 c. 37 s. 11\(8\)](#)
- s. 80A(5A) inserted by [2023 c. 37 s. 10\(8\)](#)
- s. 80AA(1)(ka) inserted by [S.I. 2024/523 reg. 2\(a\)](#)
- s. 80AA(1)(oa) inserted by [S.I. 2024/523 reg. 2\(b\)](#)
- s. 82A inserted by [2022 c. 36 s. 23\(1\)](#)
- s. 94(6B) inserted by [2006 c. 13 s. 13](#)
- s. 106(2)(ua) inserted by [2007 c. 30 s. 19\(3\)](#)
- s. 107(2A) inserted by [2022 c. 36 Sch. 3 para. 5\(a\)](#)
- s. 126(2A) inserted by [S.I. 2019/745 reg. 12\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Reg. 12(2)(3) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 3 para. 1(1)(ga) inserted by [2016 c. 19 Sch. 12 para. 2\(2\)](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(a))
- Sch. 3 para. 1(2A) inserted by [2016 c. 19 Sch. 12 para. 2\(4\)](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(b))
- Sch. 3 para. 1A inserted by [2016 c. 19 Sch. 12 para. 3](#)
- Sch. 3 para. 2(1)(ca) inserted by [2016 c. 19 Sch. 12 para. 4\(3\)](#)
- Sch. 3 para. 2A inserted by [2016 c. 19 Sch. 12 para. 5](#)
- Sch. 3 para. 3A-3C inserted by [2016 c. 19 Sch. 12 para. 6](#)
- Sch. 3 para. 7B7C and cross-headings inserted by [2016 c. 19 Sch. 12 para. 9](#)
- Sch. 3 para. 10A10B inserted by [2016 c. 19 Sch. 12 para. 10](#) (This Act is amended by S.I. 2020/1309, Sch. 1 para. 3(c))
- Sch. 3 para. 15(aa) inserted by [2016 c. 19 Sch. 12 para. 14\(2\)](#)
- Sch. 3 para. 15(d)-(f) inserted by [2016 c. 19 Sch. 12 para. 14\(4\)](#)
- Sch. 3 para. 7C(1)(c) word substituted by [S.I. 2019/745 reg. 12\(5\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 12(5)(a)(c)(d) omitted immediately before IP completion day by virtue of S.I. 2020/1309, regs. 1(2)(a), 48)
- Sch. 5 para. 3(1) Sch. 5 para. 3 renumbered as Sch. 5 para. 3(1) by [2005 c. 4 Sch. 4 para. 407\(2\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(2)-(4) inserted by [2005 c. 4 Sch. 4 para. 407\(4\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(1) words inserted by [2005 c. 4 Sch. 4 para. 407\(3\)](#) (This amendment not applied to legislation.gov.uk. The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))