# Nationality and Borders Act 2022

**2022 CHAPTER 36**

## PART 2

ASYLUM

*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;

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(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—

(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**

**I1** S. 15 not in force at Royal Assent, see **s. 87(1)**

**I2** 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**

**I3** S. 16 not in force at Royal Assent, see **s. 87(1)**

**I4** 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**

**I5** S. 17 not in force at Royal Assent, see **s. 87(1)**

**I6** 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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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 54(6)(c) and word inserted by 2023 c. 37 s. 57(11)(b)
- s. 63(2A) inserted by 2023 c. 37 s. 29(3)
- s. 63(3)(fa)(fb) inserted by 2023 c. 37 s. 29(4)(b)
- s. 63(5A)(5B) inserted by 2023 c. 37 s. 29(5)
- s. 63(8) inserted by 2023 c. 37 s. 28(9)
- s. 65(8A) inserted by 2023 c. 37 s. 28(12)