



# Nationality and Borders Act 2022

## 2022 CHAPTER 36

### PART 2

#### ASYLUM

##### *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).

### **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
- (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).

### **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).
- (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).

### **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.

**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.

**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.

**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.

### **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.
- (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.

### **38 Article 33(2): particularly serious crime**

- (1) Section 72 of the Nationality, Immigration and Asylum Act 2002 (serious criminal) is amended as follows.

---

*Status: This is the original version (as it was originally enacted).*

---

- (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”.
- (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.