



# Nationality and Borders Act 2022

## 2022 CHAPTER 36

### PART 2

#### ASYLUM

##### *Treatment of refugees; support for asylum-seekers*

#### **12 Differential treatment of refugees**

- (1) For the purposes of this section—
- (a) a refugee is a Group 1 refugee if they have complied with both of the requirements set out in subsection (2) and, where applicable, the additional requirement in subsection (3);
  - (b) otherwise, a refugee is a Group 2 refugee.
- (2) The requirements in this subsection are that—
- (a) they have come to the United Kingdom directly from a country or territory where their life or freedom was threatened (in the sense of Article 1 of the Refugee Convention), and
  - (b) they have presented themselves without delay to the authorities.

Subsections (1) to (3) of section 37 apply in relation to the interpretation of paragraphs (a) and (b) as they apply in relation to the interpretation of those requirements in Article 31(1) of the Refugee Convention.

- (3) Where a refugee has entered or is present in the United Kingdom unlawfully, the additional requirement is that they can show good cause for their unlawful entry or presence.
- (4) For the purposes of subsection (3), a person's entry into or presence in the United Kingdom is unlawful if they require leave to enter or remain and do not have it.
- (5) The Secretary of State or an immigration officer may treat Group 1 and Group 2 refugees differently, for example in respect of—

- (a) the length of any period of limited leave to enter or remain which is given to the refugee;
  - (b) the requirements that the refugee must meet in order to be given indefinite leave to remain;
  - (c) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the refugee;
  - (d) whether leave to enter or remain is given to members of the refugee’s family.
- (6) The Secretary of State or an immigration officer may also treat the family members of Group 1 and Group 2 refugees differently, for example in respect of—
- (a) whether to give the person leave to enter or remain;
  - (b) the length of any period of limited leave to enter or remain which is given to the person;
  - (c) the requirements that the person must meet in order to be given indefinite leave to remain;
  - (d) whether a condition under section 3(1)(c)(ii) of the Immigration Act 1971 (no recourse to public funds) is attached to any period of limited leave to enter or remain that is given to the person.
- (7) But subsection (6) does not apply to family members who are refugees themselves.
- (8) Immigration rules may include provision for the differential treatment allowed for by subsections (5) and (6).
- (9) In this section—
- “limited leave” and “indefinite leave” have the same meaning as in the Immigration Act 1971 (see section 33 of that Act);
  - “refugee” has the same meaning as in the Refugee Convention.

### **13 Accommodation for asylum-seekers etc**

- (1) In section 97 of the Immigration and Asylum Act 1999 (support for asylum-seekers: supplemental matters), after subsection (3) insert—
- “(3A) When exercising the power under section 95 (support for asylum seekers) or section 4 (accommodation for failed asylum seekers) to provide or arrange for the provision of accommodation, the Secretary of State may decide to provide or arrange for the provision of different types of accommodation to persons supported under those sections on the basis of either or both of the following matters—
- (a) the stage that their claim for asylum has reached, including whether they have been notified that their claim is being considered for a declaration of inadmissibility (see sections 80A and 80B of the Nationality, Immigration and Asylum Act 2002);
  - (b) their previous compliance with any conditions imposed on them under any of the following—
    - (i) section 95(9) (conditions for support under section 95);
    - (ii) Schedule 10 to the Immigration Act 2016 (conditions of immigration bail);
    - (iii) regulations made under section 4(6) (conditions for support under section 4).”

- (2) In section 97(3A) of the Immigration and Asylum Act 1999 (as inserted by subsection (1))—
- (a) in the words before paragraph (a)—
    - (i) for “section 4 (accommodation for failed asylum seekers)” substitute “section 95A (support for failed asylum seekers)”;
    - (ii) for “persons supported under those sections” substitute “supported persons”;
  - (b) in paragraph (a), for “claim for asylum” substitute “protection claim”;
  - (c) in paragraph (b)—
    - (i) for sub-paragraph (iii) substitute—
      - “(iii) regulations made under section 95A(5) (conditions for support under section 95A);”;
    - (ii) at the end insert—
      - “(iv) regulations made under section 30 of the Nationality, Immigration and Asylum Act 2002 (conditions of residence in accommodation centre).”
- (3) In section 98 of that Act (temporary support for asylum-seekers etc), at the end insert—
- “(4) Subsection (3A) of section 97 applies to the power to provide, or arrange for the provision of, accommodation under this section as it applies to the power to do so under section 95.”
- (4) In section 98A of that Act (temporary support for failed asylum-seekers etc), at the end insert—
- “(5) Subsection (3A) of section 97 applies to the power to provide, or arrange for the provision of, accommodation under this section as it applies to the power to do so under section 95A.”
- (5) In section 17 of the Nationality, Immigration and Asylum Act 2002 (support for destitute asylum-seeker), in subsection (1), at the end insert—
- “See also section 97(3A) of the Immigration and Asylum Act 1999 (decision on type of accommodation for asylum-seekers etc).”
- (6) In section 22 of that Act—
- (a) after “95” insert “or 98”;
  - (b) for “(destitute asylum-seeker)” substitute “(support and temporary support for asylum-seekers)”;
  - (c) in the heading, for “s. 95” substitute “sections 95 and 98”.
- (7) After section 22 of that Act, insert—

**“22A Immigration and Asylum Act 1999, sections 95A and 98A**

The Secretary of State may provide support under section 95A or 98A of the Immigration and Asylum Act 1999 (support and temporary support for failed asylum-seekers) by arranging for the provision of accommodation in an accommodation centre.”

---

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

---

- (8) In section 24 of that Act (provisional assistance), in subsection (1), at the end insert—  
“See also section 98(4) of the Immigration and Asylum Act 1999 (decision on type of accommodation for asylum-seekers etc).”
- (9) In section 25 of that Act (length of stay in accommodation centre), in subsection (4), for “shorter” substitute “different”.
- (10) In section 27 of that Act (resident of centre), after paragraph (b) insert—  
“(ba) by virtue of section 22A,”.