



Illegal Migration Act 2023

2023 CHAPTER 37

Legal proceedings

PROSPECTIVE

38 Suspensive claims: interpretation

- (1) The definitions in subsections (2) to (8) have effect for the purposes of this section and sections 39 to 53.
- (2) “Suspensive claim” means—
 - (a) a serious harm suspensive claim (see section 39), or
 - (b) a removal conditions suspensive claim.
- (3) “Removal conditions suspensive claim” means a claim by a person who has been given a removal notice that the person does not meet the removal conditions.
- (4) “Removal notice” means a notice of removal given to a person under section 8(2)(a) (further provisions about removal).
- (5) “Third country removal notice” means a removal notice under which a person is to be removed to a third country.
- (6) “Third country”, in relation to a person, means a country or territory other than—
 - (a) a country of which the person is a national, or
 - (b) a country or territory in which the person has obtained a passport or other document of identity.
- (7) “Removal conditions” means the four conditions in section 2 (duty to make arrangements for removal).
- (8) “Working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

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Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)*

- (9) Where a removal notice specifies part of a country or territory, references in this section and sections 39 to 53 to the country or territory specified in the removal notice are to the part of the country or territory so specified.

Commencement Information

- II** S. 38 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

39 Serious harm suspensive claims: interpretation

- (1) The definitions in subsections (2) and (3) have effect for the purposes of section 38, this section and sections 40 to 53.
- (2) A “serious harm suspensive claim” means a claim by a person (“P”) who has been given a third country removal notice that the serious harm condition is met in relation to P.
- (3) The “serious harm condition” is that P would, before the end of the relevant period, face a real, imminent and foreseeable risk of serious and irreversible harm if removed from the United Kingdom under this Act to the country or territory specified in the third country removal notice.
- (4) The following are examples of harm that constitute serious and irreversible harm for the purposes of this Act—
 - (a) death;
 - (b) persecution falling within subsection (2)(a) or (b) of section 31 of the Nationality and Borders Act 2022 (read together with subsections (1) and (3) of that section) (Article 1(A)(2) of the Refugee Convention: persecution) where P is not able to avail themselves of protection from that persecution;
 - (c) torture;
 - (d) inhuman or degrading treatment or punishment;
 - (e) onward removal from the country or territory specified in the third country removal notice to another country or territory where P would face a real, imminent and foreseeable risk of any harm mentioned in paragraphs (a) to (d).
- (5) The following are examples of harm that do not constitute serious and irreversible harm for the purposes of this Act—
 - (a) persecution not falling within subsection (2)(a) or (b) of section 31 of the Nationality and Borders Act 2022 (read together with subsections (1) and (3) of that section);
 - (b) persecution falling within subsection (2)(a) or (b) of section 31 of that Act (read together with subsections (1) and (3) of that section) where P is able to avail themselves of protection from that persecution;
 - (c) where the standard of healthcare available to P in the relevant country or territory is lower than is available to P in the United Kingdom, any harm resulting from that different standard of healthcare (including, in particular, a less favourable medical prognosis).

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- (6) Subsection (7) is an example of harm that is unlikely to constitute serious and irreversible harm for the purposes of this Act.
- (7) Any pain or distress resulting from a medical treatment that is available to P in the United Kingdom not being available to P in the relevant country or territory.
- (8) For the purposes of subsections (4) and (5)—
- (a) protection from persecution can be provided by—
 - (i) the government of the relevant country or territory, or
 - (ii) any party or organisation, including any international organisation, controlling the relevant country or territory or a substantial part of it;
 - (b) P is to be taken to be able to avail themselves of protection from persecution if—
 - (i) the government, party or organisation mentioned in paragraph (a) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and
 - (ii) P is able to access the protection.
- (9) In this section “relevant period” means the total period of time that it would take—
- (a) for P to make a human rights claim in relation to P’s removal from the United Kingdom under this Act (see section 41 (relationship with other proceedings)),
 - (b) for the claim to be decided by the Secretary of State, and
 - (c) for any application for judicial review in relation to a decision of the Secretary of State to refuse the claim to be exhausted.

Commencement Information

I2 S. 39 not in force at Royal Assent, see [s. 68\(1\)](#)

40 Meaning of “serious and irreversible harm”

- (1) The Secretary of State may by regulations amend section 39 to make provision about the meaning of “serious and irreversible harm” for the purposes of this Act.
- (2) Regulations under subsection (1) may in particular—
- (a) define any aspect of serious and irreversible harm;
 - (b) give examples of what is or is not to be treated as serious and irreversible harm.
- (3) Regulations under subsection (1) may not amend subsection (4) of section 39 to remove any example of serious and irreversible harm which is listed in that subsection when this Act is passed.
- (4) Regulations under subsection (1) may make consequential amendments to this Act.

Commencement Information

I3 S. 40 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(i\)](#)

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PROSPECTIVE

41 Relationship with other proceedings

- (1) A “serious harm suspensive claim” made under this Act is not a “human rights claim” for the purposes of the Nationality, Immigration and Asylum Act 2002 or the Nationality and Borders Act 2022.
- (2) Accordingly no right of appeal under section 82(1)(a) or (b) of the Nationality, Immigration and Asylum Act 2002 (appeal against refusal of protection claim or human rights claim) arises in relation to any decision of the Secretary of State made under section 42 (serious harm suspensive claims), 46 (out of time claims) or 48 (new matters) of this Act in respect of a serious harm suspensive claim.
- (3) The making of a serious harm suspensive claim by a person (or the possibility of a person making such a claim) does not affect any ability of the person to make a human rights claim in relation to their removal from the United Kingdom to a third country under this Act.
- (4) Where—
 - (a) a person subject to removal to a third country under this Act makes a human rights claim in relation to their removal to that third country, and
 - (b) the Secretary of State decides to refuse the claim,
 there is no right of appeal under section 82(1)(a) or (b) of the Nationality, Immigration and Asylum Act 2002 in relation to that decision.
- (5) Subsection (4) does not affect any ability of the person to make an application for judicial review in relation to a decision of the Secretary of State to refuse the claim (but section 5(1)(d) (disregard of application for judicial review) applies in relation to any such application).
- (6) In section 82(3) of the Nationality, Immigration and Asylum Act 2002, after “Part” insert “and in section 41(4) of the Illegal Migration Act 2023 (relationship with other proceedings)”.

Commencement Information

I4 S. 41 not in force at Royal Assent, see s. 68(1)

42 Serious harm suspensive claims

- (1) This section applies where, within the claim period, a person makes a serious harm suspensive claim to the Secretary of State.
- (2) The Secretary of State must, before the end of the decision period, consider the claim and make one of the following decisions—
 - (a) that the serious harm condition is met in relation to the person, or
 - (b) that the serious harm condition is not met in relation to the person.
- (3) If the Secretary of State makes a decision under subsection (2)(b), the Secretary of State may also certify that the claim is clearly unfounded (see sections 44(1)(c) and 45 (appeals)).

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- (4) In considering a serious harm suspensive claim, the Secretary of State must take into account the following factors—
- (a) any assurances given by the government of the country or territory specified in the removal notice;
 - (b) any support and services (including in particular medical services) provided by that government;
 - (c) in circumstances where it is reasonable to expect a person to have provided certain evidence and they have not done so, the fact that the person has not provided such evidence.
- (5) A claim under subsection (1) must—
- (a) contain compelling evidence that the serious harm condition is met in relation to the person,
 - (b) contain the prescribed information, and
 - (c) be made in the prescribed form and manner.

In this subsection “prescribed” means prescribed in regulations made by the Secretary of State.

- (6) Before the end of the claim period or the decision period in relation to a serious harm suspensive claim, the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (7) In this section—
- “claim period” means the period of 8 days beginning with the day on which the person is given the third country removal notice;
 - “decision period” means the period of 4 days beginning with—
 - (a) the day on which the person makes the serious harm suspensive claim, or
 - (b) where section 46(3) or (6) (out of time claims) applies, the day on which the Secretary of State makes the decision mentioned in section 46(3) or is given notice of the determination of the Upper Tribunal mentioned in section 46(6) (as the case may be).

Commencement Information

I5 S. 42 in force at Royal Assent for specified purposes, see [s. 68\(4\)\(j\)](#)

43 Removal conditions suspensive claims

- (1) This section applies where, within the claim period, a person makes a removal conditions suspensive claim to the Secretary of State.
- (2) The Secretary of State must, before the end of the decision period, consider the claim and make one of the following decisions—
- (a) that the person does not meet the removal conditions, or
 - (b) that the person meets the removal conditions.
- (3) If the Secretary of State makes a decision under subsection (2)(b), the Secretary of State may also certify that the claim is clearly unfounded (see sections 44(1)(c) and 45 (appeals)).

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- (4) In considering a removal conditions suspensive claim in circumstances where it is reasonable to expect a person to have provided certain evidence and they have not done so, the Secretary of State must take into account the fact that the person has not provided such evidence.
- (5) A claim under subsection (1) must—
- (a) contain compelling evidence that the person does not meet the removal conditions,
 - (b) contain the prescribed information, and
 - (c) be made in the prescribed form and manner.

In this subsection “prescribed” means prescribed in regulations made by the Secretary of State.

- (6) Before the end of the claim period or the decision period in relation to a removal conditions suspensive claim, the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (7) In this section—
- “claim period” means the period of 8 days beginning with the day on which the person is given the removal notice;
- “decision period” means the period of 4 days beginning with—
- (a) the day on which the person makes the removal conditions suspensive claim, or
 - (b) where section 46(3) or (6) (out of time claims) applies, the day on which the Secretary of State makes the decision mentioned in section 46(3) or is given notice of the determination of the Upper Tribunal mentioned in section 46(6) (as the case may be).

Commencement Information

I6 S. 43 in force at Royal Assent for specified purposes, see s. 68(4)(k)

PROSPECTIVE

44 Appeals in relation to suspensive claims

- (1) This section applies if—
- (a) a person makes a suspensive claim,
 - (b) the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to the claim, and
 - (c) the Secretary of State has not certified the claim as clearly unfounded under section 42(3) or (as the case may be) 43(3).
- (2) The person may appeal to the Upper Tribunal against the decision mentioned in subsection (1)(b).
- (3) An appeal under subsection (2) must be brought on the ground that—

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- (a) in the case of a serious harm suspensive claim, the serious harm condition is met in relation to the person;
 - (b) in the case of a removal conditions suspensive claim, the person does not meet the removal conditions,
- and the notice of appeal must contain compelling evidence of such ground.
- (4) In considering an appeal in relation to a serious harm suspensive claim, the Upper Tribunal must take into account the factors mentioned in section 42(4).
 - (5) In considering an appeal in relation to a removal conditions suspensive claim in circumstances where it is reasonable to expect a person to have provided certain evidence and they have not done so, the Upper Tribunal must take into account the fact that the person has not provided such evidence.
 - (6) Where an appeal is brought under subsection (2), the Upper Tribunal must decide—
 - (a) in relation to a serious harm suspensive claim, whether the serious harm condition is met in relation to the person;
 - (b) in relation to a removal conditions suspensive claim, whether the person meets the removal conditions.
 - (7) See section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) for provision about the only right of appeal against a decision of the Upper Tribunal under this section.

Commencement Information

I7 S. 44 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

45 Permission to appeal in relation to suspensive claims certified as clearly unfounded

- (1) This section applies if—
 - (a) a person makes a suspensive claim,
 - (b) the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to the claim, and
 - (c) the Secretary of State has certified the claim as clearly unfounded under section 42(3) or (as the case may be) 43(3).
- (2) The person may not appeal to the Upper Tribunal against the decision mentioned in subsection (1)(b), but they may apply to the Upper Tribunal for permission to appeal to the Upper Tribunal against the decision.
- (3) In relation to a serious harm suspensive claim, the Upper Tribunal may grant permission to appeal in response to a person's application under subsection (2) only if it considers that there is compelling evidence that—
 - (a) the serious harm condition is met in relation to the person, and
 - (b) the risk mentioned in section 39(3) is obvious.

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- (4) In relation to a removal conditions suspensive claim, the Upper Tribunal may grant permission to appeal in response to a person's application under subsection (2) only if it considers that there is compelling evidence that the person does not meet the removal conditions.
- (5) Unless the Upper Tribunal considers that an oral hearing is necessary to secure that justice is done in a particular case, an application under subsection (2) is to be determined by the Upper Tribunal only on the basis of written submissions and evidence.
- (6) If the Upper Tribunal grants permission to appeal, the person may appeal to the Upper Tribunal under section 44(2) against the decision mentioned in subsection (1)(b).
- (7) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal on an application under this section.
- (8) See also section 51 (finality of certain decisions by the Upper Tribunal).

Commencement Information

18 S. 45 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

46 Suspensive claims out of time

- (1) This section applies if—
 - (a) a person makes a suspensive claim after the end of the claim period (see sections 42(7) and 43(7)) but before the person is removed from the United Kingdom under this Act, and
 - (b) the person has not—
 - (i) in the case of a serious harm suspensive claim, made a previous serious harm suspensive claim in relation to the same removal notice, or
 - (ii) in the case of a removal conditions suspensive claim, made a previous removal conditions suspensive claim in relation to the same removal notice.
- (2) The Secretary of State must, before the end of the decision period, consider whether there were compelling reasons for the person not to make the claim within the claim period.
- (3) If the Secretary of State decides that there were compelling reasons for the person not to make the claim within the claim period, the Secretary of State must consider the claim under section 42(2) (serious harm suspensive claims) or (as the case may be) 43(2) (removal conditions suspensive claims).
- (4) If the Secretary of State decides that there were not compelling reasons for the person not to make the claim within the claim period, the person may apply for a declaration

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from the Upper Tribunal that there were compelling reasons for the person not to make the claim within the claim period.

- (5) An application under subsection (4) must—
 - (a) contain compelling evidence that there were compelling reasons for the person not to make the claim within the claim period, and
 - (b) be determined by the Upper Tribunal only on the basis of written submissions and evidence.
- (6) If the Upper Tribunal grants a declaration on an application under subsection (4), the Secretary of State must consider the claim under section 42(2) or (as the case may be) 43(2).
- (7) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal on an application under subsection (4).
- (8) See also section 51 (finality of certain decisions by the Upper Tribunal).
- (9) Before the end of the decision period in relation to a suspensive claim mentioned in subsection (1)(a), the Secretary of State may, by notice to the person concerned, extend the period where the Secretary of State considers it appropriate to do so.
- (10) In this section “decision period” means the period of 4 days beginning with the day on which the person makes the suspensive claim.

Commencement Information

19 S. 46 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

47 Suspensive claims: duty to remove

- (1) A person who has been given a removal notice may not be removed from the United Kingdom under this Act to the country or territory specified in the removal notice during any of the following periods—
 - (a) where the person makes a suspensive claim before the end of the claim period, before the Secretary of State makes a decision under section 42(2) (serious harm suspensive claim) or (as the case may be) 43(2) (removal conditions suspensive claim) in relation to the claim;
 - (b) where section 46 (out of time claims) applies in relation to a suspensive claim made by the person, before the Secretary of State makes a decision under section 46(3) or (4) in relation to the claim;
 - (c) where the Secretary of State makes a decision under section 46(4) in relation to a suspensive claim made by the person, before the process for making an application to the Upper Tribunal under section 46(4) has been exhausted;
 - (d) where the Secretary of State is required by section 46(3) or (6) (out of time claims) to consider a suspensive claim made by the person, before the Secretary of State makes a decision under section 42(2) or (as the case may be) 43(2) in relation to the claim;

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- (e) where the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to a suspensive claim made by the person, before the appeals process in relation to the decision has been exhausted.
- (2) Where—
- (a) the Secretary of State makes a decision under section 42(2)(a) or 43(2)(a) (acceptance of suspensive claim) in relation to a suspensive claim made by a person, or
- (b) a person successfully appeals under section 44 (appeals) or section 2AA of the Special Immigration Appeals Commission Act 1997 (appeals in relation to the Illegal Migration Act 2023) against a decision of the Secretary of State under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim),
- the person may not be removed from the United Kingdom under this Act to the country or territory specified in the removal notice.
- (3) But if at any time it appears to the Secretary of State that there has been a change of circumstances in relation to the person—
- (a) in a case within subsection (2)(a), the Secretary of State may revise the decision and instead make a decision under section 42(2)(b) or (as the case may be) 43(2)(b) in relation to the claim;
- (b) in a case within subsection (2)(b), the Secretary of State or an immigration officer may give a new removal notice to the person (and accordingly a new claim period begins in relation to the making of a further suspensive claim).
- (4) In subsection (3) the reference to a change of circumstances in relation to a person includes in particular where any—
- (a) human rights claim, or
- (b) application for judicial review,
- made by the person in relation to their removal from the United Kingdom is not successful.
- (5) Where the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) in relation to a suspensive claim, the person may, subject to any appeal (see sections 44, 45 and 53), be removed from the United Kingdom under this Act to the country or territory specified in the removal notice.

Commencement Information

I10 S. 47 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

48 Upper Tribunal consideration of new matters

- (1) **This section** applies where the Upper Tribunal is considering—
- (a) an appeal by a person under section 44(2) (appeals in relation to suspensive claims), or
- (b) an application by a person under section 45(2) (permission to appeal: claims certified as clearly unfounded),

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- in relation to a decision of the Secretary of State under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim).
- (2) The Upper Tribunal may consider any matter which it considers relevant to the substance of the decision.
 - (3) But the Upper Tribunal must not consider a new matter unless the condition in subsection (5) is met.
 - (4) A matter is a “new matter” if—
 - (a) it is raised by the person in the course of the appeal or application, and
 - (b) the person did not provide details of the matter to the Secretary of State before the end of the claim period for the suspensive claim (see sections 42(7) and 43(7)).
 - (5) The condition in this subsection is that—
 - (a) within the relevant period the Secretary of State has given the Upper Tribunal consent to consider the new matter, or
 - (b) where the Secretary of State has not given such consent within the relevant period, the Upper Tribunal determines that there were compelling reasons for the person not to have provided details of the matter to the Secretary of State before the end of the claim period.
 - (6) The Secretary of State may provide consent under subsection (5)(a) only if the Secretary of State considers that there were compelling reasons for the person not to have provided details of the matter before the end of the claim period.
 - (7) In subsection (5) “relevant period” means the period of 3 working days beginning with the day after the day on which the new matter is raised by the person in the course of the appeal or application.
 - (8) There is no right of appeal under section 13 of the Tribunals, Courts and Enforcement Act 2007 (right of appeal to Court of Appeal etc) in relation to a decision of the Upper Tribunal to make or not to make a determination under subsection (5)(b).
 - (9) See also section 51 (finality of certain decisions by the Upper Tribunal).

Commencement Information

111 S. 48 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

49 Appeals in relation to suspensive claims: timing

- (1) Tribunal Procedure Rules must secure that in relation to an appeal under section 44(2) (appeal against decision to refuse suspensive claim)—
 - (a) the notice of appeal must be given to the Upper Tribunal within the period of 7 working days beginning with—
 - (i) the day on which the appellant was given notice of the decision against which the appeal is brought, or

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- (ii) where permission to appeal has been granted under section 45(2), the day on which the appellant was given notice of the Upper Tribunal's decision to grant such permission;
 - (b) the Upper Tribunal must make a decision on the appeal, and give notice of that decision to the parties, within the period of 23 working days beginning with the day on which the appellant gave notice of appeal to the Upper Tribunal.
- (2) Tribunal Procedure Rules must secure that in relation to an application for permission to appeal under section 45(2) (permission to appeal: claims certified as clearly unfounded)—
 - (a) the application must be made to the Upper Tribunal within the period of 7 working days beginning with the day on which the applicant was given notice that the Secretary of State had certified the person's suspensive claim as clearly unfounded;
 - (b) the Upper Tribunal must determine the application, and give notice of that determination to the parties, within the period of 7 working days beginning with the day on which the application was made to the Upper Tribunal.
- (3) Tribunal Procedure Rules must secure that in relation to an application for a declaration under section 46(4) (out of time claims)—
 - (a) the application must be made to the Upper Tribunal within the period of 7 working days beginning with the day on which the applicant was given notice of the decision in relation to which the application is brought;
 - (b) the Upper Tribunal must determine the application, and give notice of that determination to the parties, within the period of 7 working days beginning with the day on which the application was made to the Upper Tribunal.
- (4) But Tribunal Procedure Rules must—
 - (a) secure that the Upper Tribunal may, if it is satisfied that it is the only way to secure that justice is done in a particular case, order that any period of time mentioned in subsection (1), (2) or (3) is to be extended to such period as the Upper Tribunal may order, and
 - (b) without prejudice to paragraph (a), secure that the Upper Tribunal may order that any period of time mentioned in subsection (1)(b) or (2)(b) is to be extended by a period of up to 3 working days where a new matter (within the meaning of section 48(4)) is raised in the course of the appeal or application.

Commencement Information

I12 S. 49 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

50 Procedure for Tribunal Procedure Rules

- (1) The first time after the passing of this Act that Tribunal Procedure Rules are made for the purposes of any of sections 44 to 49 (appeals in relation to suspensive claims), the Rules may be made by the Lord Chancellor rather than by the Tribunal Procedure Committee.

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- (2) Before making Tribunal Procedure Rules by virtue of subsection (1), the Lord Chancellor must consult—
 - (a) the Senior President of Tribunals,
 - (b) the Lord Chief Justice of England and Wales,
 - (c) the Lord President of the Court of Session, and
 - (d) the Lord Chief Justice of Northern Ireland.
- (3) The Lord Chancellor is not required to undertake any other consultation before making Tribunal Procedure Rules by virtue of subsection (1).
- (4) A requirement to consult under subsection (2) may be satisfied by consultation that took place wholly or partly before the passing of this Act.
- (5) Tribunal Procedure Rules made by virtue of subsection (1) are to be made by statutory instrument.
- (6) A statutory instrument containing Tribunal Procedure Rules made by virtue of subsection (1) must be laid before Parliament after being made.
- (7) Tribunal Procedure Rules contained in a statutory instrument laid before Parliament under subsection (6) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (8) In calculating the period of 40 days, no account is to be taken of any whole days that fall within a period during which—
 - (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (9) If Tribunal Procedure Rules cease to have effect as a result of subsection (7)—
 - (a) that does not affect the validity of anything previously done under the Rules, and
 - (b) subsection (1) applies again as if the Rules had not been made.
- (10) In this section “Tribunal Procedure Committee” means the committee of that name constituted under Part 2 of Schedule 5 to the Tribunals, Courts and Enforcement Act 2007.

Commencement Information

I13 S. 50 not in force at Royal Assent, see s. 68(1)

PROSPECTIVE

51 Finality of certain decisions by the Upper Tribunal

- (1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal—
 - (a) to grant or refuse permission to appeal in response to an application under section 45(2) (permission to appeal: claims certified as clearly unfounded),
 - (b) to grant or refuse an application for a declaration under section 46(4) (out of time claims), or

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- (c) to make or not to make a determination under section 48(5)(b) (new matters).
- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
 - (a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
 - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
 - (a) the Upper Tribunal has or had a valid application before it under section 45(2) or 46(4),
 - (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application or, in the case of a decision mentioned in subsection (1)(c), for the purpose of making the decision, or
 - (c) the Upper Tribunal is acting or has acted—
 - (i) in bad faith, or
 - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) In this section—
 - “decision” includes any purported decision;
 - “the supervisory jurisdiction” means the supervisory jurisdiction of—
 - (a) the High Court, in England and Wales or Northern Ireland, or
 - (b) the Court of Session, in Scotland.

Commencement Information

I14 S. 51 not in force at Royal Assent, see [s. 68\(1\)](#)

52 Judges of First-tier Tribunal and Upper Tribunal

In section 5(1) of the Tribunals, Courts and Enforcement Act 2007 (judges and other members of the Upper Tribunal), after paragraph (c) insert—

“(ca) is a judge of the First-tier Tribunal.”.

Commencement Information

I15 S. 52 in force at Royal Assent, see [s. 68\(3\)\(b\)](#)

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

PROSPECTIVE

53 Special Immigration Appeals Commission

- (1) This section applies where the Secretary of State makes a decision under section 42(2)(b) or 43(2)(b) (refusal of suspensive claim) in relation to a suspensive claim.
- (2) An appeal under section 44, or an application for permission to appeal under section 45, in relation to the decision may not be brought or continued if the Secretary of State acting in person certifies that the decision was 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.
- (3) Where a certificate is issued under subsection (2), any pending appeal, or application for permission to appeal, in relation to the decision lapses.
- (4) The Special Immigration Appeals Commission Act 1997 is amended as follows.
- (5) After section 2 insert—

“2AA Jurisdiction: appeals in relation to the Illegal Migration Act 2023

- (1) A person may appeal to the Special Immigration Appeals Commission against a refusal decision if—
 - (a) the person would, but for a certificate of the Secretary of State under section 53 of the Illegal Migration Act 2023 (Special Immigration Appeals Commission), be able to—
 - (i) appeal against the decision under section 44 of that Act, or
 - (ii) apply for permission to appeal against the decision under section 45 of that Act, or
 - (b) an appeal against the decision under section 44 of that Act, or an application for permission to appeal against the decision under section 45 of that Act, lapsed under section 53 of that Act by virtue of a certificate of the Secretary of State under that section.
- (2) Sections 44(3) to (6) and 48(2) to (7) of the Illegal Migration Act 2023 apply, with the modification in subsection (3), in relation to an appeal under this section as they apply in relation to an appeal under section 44 of that Act.
- (3) The modification is that references to the Upper Tribunal are to be read as references to the Special Immigration Appeals Commission.
- (4) In this section “refusal decision” means a decision of the Secretary State under section 42(2)(b) or 43(2)(b) of the Illegal Migration Act 2023 (refusal of suspensive claim).

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

2AB Finality of certain decisions by the Special Immigration Appeals Commission

- (1) Subsections (2) and (3) apply in relation to a decision by the Special Immigration Appeals Commission to make or not to make a determination under section 48(5)(b) of the Illegal Migration Act 2023 (consideration of new matters), as applied by section 2AA(2) of this Act.
- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
 - (a) the Special Immigration Appeals Commission is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
 - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
 - (a) the Special Immigration Appeals Commission is or was properly constituted for the purpose of making the decision, or
 - (b) the Special Immigration Appeals Commission is acting or has acted—
 - (i) in bad faith, or
 - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) In this section—

“decision” includes any purported decision;

“the supervisory jurisdiction” means the supervisory jurisdiction of—

 - (a) the High Court, in England and Wales or Northern Ireland, or
 - (b) the Court of Session, in Scotland.”
- (6) In the following provisions, for “2 or 2B” substitute “2, 2AA or 2B”—
 - (a) section 5(1)(a) and (b);
 - (b) section 5(2);
 - (c) section 6A(1);
 - (d) section 6A(2)(a).
- (7) In section 5 (procedure in relation to jurisdiction under sections 2 and 3)—
 - (a) in the heading, after “2” insert “, 2AA”;
 - (b) in subsection (9), at the beginning, insert “Subject to subsection (10),”;
 - (c) after subsection (9), insert—

“(10) A statutory instrument containing the first rules made for the purposes of section 2AA (appeals in relation to the Illegal Migration Act 2023) must be laid before Parliament after being made.

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

- (11) Rules contained in a statutory instrument laid before Parliament under subsection (10) cease to have effect at the end of the period of 40 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (12) In calculating the period of 40 days, no account is to be taken of any whole days that fall within a period during which—
 - (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (13) If rules cease to have effect as a result of subsection (11)—
 - (a) that does not affect the validity of anything previously done under the rules, and
 - (b) subsection (10) applies again as if the rules had not been made.”

Commencement Information

I16 S. 53 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

54 Interim remedies

- (1) This section applies to any court proceedings relating to a decision to remove a person from the United Kingdom under this Act (whether the proceedings involve consideration of Convention rights or otherwise).
- (2) Any power of the court or tribunal to grant an interim remedy (whether on an application of the person or otherwise) is restricted as follows.
- (3) The court or tribunal may not grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom in pursuance of the decision.
- (4) In this section—
 - “Convention rights” has the same meaning as in the Human Rights Act 1998 (see section 1(1) of that Act);
 - “court proceedings” means proceedings in any court or tribunal (including, in particular, proceedings on an application for judicial review);
 - “decision” includes any purported decision;
 - “interim remedy” means any interim remedy or relief however described (including, in particular, an interim injunction or interdict).

Commencement Information

I17 S. 54 not in force at Royal Assent, see [s. 68\(1\)](#)

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

PROSPECTIVE

55 Interim measures of the European Court of Human Rights

- (1) This section applies where the European Court of Human Rights indicates an interim measure in proceedings relating to the intended removal of a person from the United Kingdom under, or purportedly under, this Act.
- (2) A Minister of the Crown may (but need not) determine that the duty in section 2(1) (duty to make arrangements for removal) is not to apply in relation to the person.
- (3) A decision as to whether or not to make a determination under subsection (2) is to be taken personally by the Minister of the Crown.
- (4) In considering whether to make a determination under subsection (2), the Minister may have regard to any matter that the Minister considers relevant, including in particular the matter in subsection (5).
- (5) The matter mentioned in subsection (4) is the procedure by reference to which the interim measure was indicated, including in particular—
 - (a) whether the government of the United Kingdom was given an opportunity to present observations and information before the interim measure was indicated;
 - (b) the form of the decision to indicate the interim measure;
 - (c) whether the European Court of Human Rights will take account of any representations made to it by the government of the United Kingdom seeking reconsideration, without undue delay, of the decision to indicate the interim measure;
 - (d) the likely duration of the interim measure and the timing of any substantive determination by the European Court of Human Rights.
- (6) Where a Minister of the Crown does not make a determination under subsection (2), a person or body to which subsection (7) applies may not have regard, in the circumstances mentioned in subsection (7), to the interim measure.
- (7) This subsection applies to—
 - (a) the Secretary of State or an immigration officer when exercising a function under section 2(1) or 8(2), (8) or (9) (further provisions about removal),
 - (b) the Upper Tribunal when considering any application or appeal under this Act, and
 - (c) a court or tribunal when considering any application or appeal which relates to a decision to remove a person from the United Kingdom under this Act.
- (8) No inference is to be drawn from this section as to whether or not a person or body mentioned in subsection (7) would otherwise have been required to have regard to the interim measure.
- (9) Nothing in this Act requires the Secretary of State or an immigration officer to effect the removal of a person from the United Kingdom pending a decision by a Minister of the Crown as to whether or not to make a determination under subsection (2).
- (10) In this section—

“decision” includes any purported decision;

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

“determination” includes any purported determination.

Commencement Information

I18 S. 55 not in force at Royal Assent, see [s. 68\(1\)](#)

PROSPECTIVE

56 Legal aid

(1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services) is amended as mentioned in subsections (2) to (4).

(2) In Part 1 (services), in paragraph 19 (judicial review)—

(a) after sub-paragraph (6) insert—

“(6A) Sub-paragraph (5) does not exclude services provided to an individual who is subject to removal to a third country under the Illegal Migration Act 2023, in relation to judicial review of a refusal of a human rights claim that—

(a) arises from Article 2 or 3 of the Human Rights Convention, and

(b) is made by the individual.”;

(b) in sub-paragraph (10) insert at the appropriate places—

““human rights claim” has the meaning given by section 113 of the Nationality, Immigration and Asylum Act 2002;”;

““the Human Rights Convention” has the meaning given by paragraph 30 of this Part of this Schedule;”;

““third country” has the meaning given by [section 38](#) of the Illegal Migration Act 2023.”

(3) In that Part, after paragraph 31B insert—

“Removal notices under the Illegal Migration Act 2023

31C (1) Civil legal services provided to an individual who has received a removal notice, in relation to the removal notice (including in relation to a suspensive claim relating to the removal notice, and an application under [section 46\(4\)](#) of the Illegal Migration Act 2023 as regards such a claim).

(2) [Sub-paragraph \(1\)](#) is subject to the exclusions in Parts 2 and 3 of this Schedule.

(3) In this paragraph “removal notice” and “suspensive claim” have the meaning given by [section 38](#) of the Illegal Migration Act 2023.”

(4) In Part 3 (advocacy: exclusions and exceptions) after paragraph 16 insert—

*Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)*

- “16A Advocacy in proceedings in the Upper Tribunal under any of sections 44 to 49 of the Illegal Migration Act 2023, or under Tribunal Procedure Rules made for the purposes of any of those sections.”
- (5) In regulation 11(9) of the Civil Legal Aid (Merits Criteria) Regulations 2013 (S.I. 2013/104) (qualifying for civil legal services: cases in which merits criteria do not apply)—
- (a) omit the “or” at the end of sub-paragraph (d);
 - (b) after sub-paragraph (e) insert “, or
 - (f) in relation to any matter described in paragraph 31C of Part 1 of Schedule 1 to the Act (removal notices under the Illegal Migration Act 2023).”
- (6) The Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) is amended in accordance with subsections (7) and (8).
- (7) In Article 14 (decisions about provision of funded services), after paragraph (2A) insert—
- “(2AA) But paragraph (2A) does not apply to a grant of representation for the purposes of—
- (a) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 (proceedings under or for the purposes of the Illegal Migration Act 2023),
 - (b) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or
 - (c) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in sub-paragraph (a) or (b).”
- (8) In paragraph 2 of Schedule 2 (civil legal services: exceptions to excluded services), after paragraph (ib) insert—
- “(ic) proceedings before the Upper Tribunal under any of sections 44 to 49 of the Illegal Migration Act 2023, or under Tribunal Procedure Rules made for the purposes of any of those sections,
 - (id) proceedings before the Upper Tribunal on an application for judicial review within the meaning of the Illegal Migration Act 2023 (see section 5(6) of that Act), where the application relates to that Act.”
- (9) The Civil Legal Services (General) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 195) are amended in accordance with subsections (10) to (14).
- (10) In regulation 2 (interpretation), in the definition of “representation (higher courts)”, in paragraph (f), after “2(ib)” insert “, (ic) or (id)”.
- (11) In regulation 31 (applications for advice and assistance)—
- (a) in paragraph (1), after “Subject to” insert “paragraph (1A) and”,
 - (b) after paragraph (1), insert—

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Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

“(1A) An application for advice and assistance may be made to a supplier by an applicant by telephone where the applicant is being detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023) or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023).”, and

(c) in paragraph (3), after “except where” insert “paragraph (1A),”

(12) In regulation 32 (extensions)—

(a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (2A)”, and

(b) after paragraph (2) insert—

“(2A) No extension shall be required under paragraph (1) if the advice and assistance is advice and assistance mentioned in regulation 4(1)(n) of the Financial Regulations (advice and assistance relating to removal notices under the Illegal Migration Act 2023).”

(13) In regulation 41 (applications for certificates)—

(a) in paragraph (2), after “Subject to” insert “paragraph (2A) and”,

(b) after paragraph (2), insert—

“(2A) An application for a certificate under this Part may be made to a supplier by an applicant by telephone where the applicant is being detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023) or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023).”,

(c) in paragraph (3), after “The applicant shall” insert “, except where paragraph (2A) applies”, and

(d) in paragraph (3)(b), after “met” insert “(where they apply)”.

(14) In regulation 43 (determination of applications for certificates)—

(a) in paragraph (1), for “paragraph (2)” substitute “paragraphs (2) and (3)”, and

(b) after paragraph (2) insert—

“(3) But paragraphs (1) and (2) do not apply to an application for a certificate in respect of—

(a) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 to the Order (proceedings under or for the purposes of the Illegal Migration Act 2023),

(b) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or

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Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings. (See end of Document for details)

- (c) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in sub-paragraph (a) or (b).”
- (15) In regulation 4 of the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 196) (exceptions from requirement to make a determination in respect of an individual’s financial resources)—
- (a) in paragraph (1), after sub-paragraph (m) insert—
- “(n) advice and assistance provided to an individual who has received a removal notice, in relation to the removal notice, and such advice and assistance—
- (i) includes advice and assistance in relation to a suspensive claim relating to the removal notice, and an application under section 46(4) of the Illegal Migration Act 2023 as regards such a claim, but
- (ii) does not include advice and assistance in relation to an application for judicial review within the meaning of the Illegal Migration Act 2023 (see section 5(6) of that Act) relating to the removal notice;
- (o) representation in respect of—
- (i) proceedings before the Upper Tribunal mentioned in paragraph 2(ic) of Schedule 2 to the Order (proceedings under or for the purposes of the Illegal Migration Act 2023),
- (ii) proceedings before the Special Immigration Appeals Commission under or by virtue of section 2AA of the Special Immigration Appeals Commission Act 1997 (jurisdiction: appeals in relation to the Illegal Migration Act 2023), or under rules under section 5 of that Act made for the purposes of that section, or
- (iii) an appeal to the Court of Appeal or the Supreme Court in respect of proceedings mentioned in paragraph (i) or (ii).”;
- (b) in paragraph (3), at the appropriate places insert—
- ““removal notice” has the meaning given by section 38 of the Illegal Migration Act 2023;”
- ““suspensive claim” has the meaning given by section 38 of the Illegal Migration Act 2023;”.

Commencement Information

I19 S. 56 not in force at Royal Assent, see s. 68(1)

Status:

This version of this cross heading contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Illegal Migration Act 2023, Cross Heading: Legal proceedings.