



Illegal Migration Act 2023

2023 CHAPTER 37

Legal proceedings

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).

[^{F1}(4A) But see sections 2 and 4 of the Safety of Rwanda (Asylum and Immigration) Act 2024 (safety of the Republic of Rwanda).]

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Section 39. (See end of Document for details)

- (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).
- (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.

Textual Amendments

- F1** S. 39(4A) inserted (25.4.2024) by [Safety of Rwanda \(Asylum and Immigration\) Act 2024 \(c. 8\)](#), ss. 7(2), 10(1) (with s. 10(2))

Modifications etc. (not altering text)

- C1** S. 39(4)-(8) applied (with modifications) (25.4.2024) by [Safety of Rwanda \(Asylum and Immigration\) Act 2024 \(c. 8\)](#), ss. 4(5), 10(1) (with ss. 4(6), 10(2))

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Illegal Migration Act 2023, Section 39. (See end of Document for details)

Commencement Information

II S. 39 not in force at Royal Assent, see **s. 68(1)**

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Illegal Migration Act 2023, Section 39.