



Illegal Migration Act 2023

2023 CHAPTER 37

Legal proceedings

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—

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“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—
- “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,

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- (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—
- “(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—

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“(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
- (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;”.

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Commencement Information

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

Status:

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Changes to legislation:

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