

2022 No. 590

CRIMINAL LAW, ENGLAND AND WALES

IMMIGRATION AND ASYLUM

NATIONALITY

**The Nationality and Borders Act 2022 (Commencement No. 1,
Transitional and Saving Provisions) Regulations 2022**

Made - - - -

26th May 2022

The Secretary of State, in exercise of the powers conferred by sections 84(1) and 87(1) and (2) of the Nationality and Borders Act 2022^(a), makes the following Regulations.

Citation, interpretation and extent

1.—(1) These Regulations may be cited as the Nationality and Borders Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022.

(2) In these Regulations—

“the 1971 Act” means the Immigration Act 1971^(b);

“the 2022 Act” means the Nationality and Borders Act 2022;

“the appointed day” means 28th June 2022;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

(3) These Regulations extend to England and Wales, Scotland and Northern Ireland, subject as follows.

(4) Paragraph 24 of Schedule 1 and paragraph 9 of Schedule 2 extend to England and Wales only.

Provisions coming into force on 28th June 2022

2. The day appointed for the coming into force of the provisions of the 2022 Act listed in Schedule 1 is 28th June 2022.

(a) 2022 c. 36.

(b) 1971 c. 77.

Transitional and saving provisions

3. Schedule 2, which contains transitional and saving provisions, has effect.

Tom Pursglove
Parliamentary Under Secretary of State
Home Office

26th May 2022

SCHEDULE 1

Regulation 2

Provisions of the 2022 Act coming into force on 28th June 2022

1. Section 1 (historical inability of mothers to transmit citizenship).
2. Section 2 (historical inability of unmarried fathers to transmit citizenship).
3. Section 4 (sections 1 and 2: related British citizenship), except to the extent that section 4K(1)(a) of the British Nationality Act 1981^(a), inserted by section 4(2) of the 2022 Act, refers to section 17H of the British Nationality Act 1981.
4. Section 5 (period for registration of person born outside the British overseas territories).
5. Section 6 (disapplication of historical registration requirements).
6. Section 7 (citizenship where mother married to someone other than natural father).
7. Section 8 (citizenship: registration in special cases).
8. Section 9 (requirements for naturalisation etc) and Schedule 1 (waiver of requirement of presence in UK etc), except for paragraph 3(4)(d) of that Schedule.
9. Section 11 (citizenship: stateless minors).
10. Section 12 (differential treatment of refugees).
11. Section 13(1) and (3) (accommodation for asylum seekers etc).
12. Section 14(1), (2), (6) and (7) (requirement to make asylum claim at “designated place”), so far as not already in force.
13. Section 14(3) and (5), for the purposes of section 15 (asylum claims by EU nationals: inadmissibility) and section 16 (asylum claims by persons with connection to safe third State: inadmissibility).
14. Section 15 (asylum claims by EU nationals: inadmissibility).
15. Section 16 (asylum claims by persons with connection to safe third State: inadmissibility).
16. Section 17 (clarification of basis for support where asylum claim inadmissible).
17. Section 29 (removal of asylum seeker to safe third country), so far as not already in force, and paragraphs 1 to 4 of Schedule 4.
18. Section 30(3) (interpretation of Refugee Convention).
19. Section 37 (Article 31(1): immunity from penalties).
20. Section 40 (illegal entry and similar offences), save in so far as it relates to the insertion of section 24(E1) into the 1971 Act.

^(a) 1981 c. 61.

21. Section 41 (assisting unlawful immigration or asylum seeker).
22. Section 45 and Schedule 7 (maritime enforcement).
23. Section 46(6) (amendment to section 10(10) of the Immigration and Asylum Act 1999).
24. Section 47 (prisoners liable to removal from the United Kingdom) and Schedule 8 (prisoners returning to the UK: modifications of Criminal Justice Act 2003).
25. Section 48 (matters relevant to decisions relating to immigration bail).
26. Section 75 (electronic travel authorisations).
27. Section 77 (Special Immigration Appeals Commission).
28. Section 79 (references to justices of the peace in relation to Northern Ireland).
29. Section 82 (pre-consolidation amendments of immigration legislation), so far as not already in force.

SCHEDULE 2

Regulation 3

Transitional and Saving Provisions

Section 5 of the 2022 Act

1. Section 5 of the 2022 Act applies in relation to an application for registration as a British overseas territories citizen under section 17 of the British Nationality Act 1981 (acquisition by registration: minors)(a) made but not determined before the appointed day.

Section 6 of the 2022 Act

2. Section 6 of the 2022 Act applies in relation to an application for registration as a British citizen under sections 4C (acquisition by registration: certain persons born between 1961 and 1983)(b) and 4I (other person unable to become citizen at commencement)(c) of the British Nationality Act 1981 made but not determined before the appointed day.

Section 9 of, and Schedule 1 to, the 2022 Act

3. Section 9 of, and to the extent brought into force by regulation 2, Schedule 1 to, the 2022 Act apply in relation to an application for registration or naturalisation as a citizen under the following provisions made but not determined before the appointed day—

- (a) section 4 of the British Nationality Act 1981 (acquisition of British citizenship by registration: British overseas territories citizens etc);
- (b) section 6 of that Act (acquisition of British citizenship by naturalisation), or
- (c) section 18 of that Act (acquisition of British overseas territories citizenship by naturalisation).

(a) Section 17 was amended by section 1(1) and section 2(2)(b) of the British Overseas Territories Act 2002 (c. 8), section 261(1) of, and paragraph 75 of Schedule 27 to, the Civil Partnership Act 2004 (c. 33), and section 9(3) of, and paragraph 161 of Schedule 9 to, the Nationality, Immigration and Asylum Act 2002; section 17 is prospectively amended by section 5(1) of the Nationality and Borders Act 2022.

(b) Section 4C was inserted by section 13(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) and by sections 45 and 56 of, and the Schedule to, the Borders, Citizenship and Immigration Act 2009 (c. 11); section 4C is prospectively amended by section 6(2) of the Nationality and Borders Act 2022.

(c) Section 4I was inserted by section 65 of the Immigration Act 2014 (c. 22).

Sections 12, 14, 15, 16 and 29 of, and paragraphs 1 to 4 of Schedule 4 to, the 2022 Act

4.—(1) Section 12 of the 2022 Act does not apply in relation to a claim for asylum, within the meaning of section 37(6) of that Act, made before the appointed day.

(2) Section 14 of the 2022 Act, to the extent brought into force by regulation 2, does not apply in relation to an asylum claim, within the meaning of section 14(6) of that Act, made before the appointed day.

(3) Sections 15 and 16 of the 2022 Act do not apply in relation to a claim made, before the appointed day, by a person to the Secretary of State that to remove the person from or require the person to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.

(4) Section 29, to the extent brought into force by regulation 2, and paragraphs 1 to 4 of Schedule 4 of the 2022 Act, do not apply in relation to a claim by a person that it would be contrary to the United Kingdom's obligations under the Refugee Convention to remove the person from or require the person to leave the United Kingdom, made before the appointed day.

Section 30 of the 2022 Act

5.—(1) Section 30(4) of the 2002 Act (revocation of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006(a)) does not apply in relation to an asylum claim made before the appointed day.

(2) In paragraph (1), “asylum claim” means a claim made by a person to the Secretary of State that to remove the person from or require them to leave the United Kingdom would breach the United Kingdom's obligations under the Refugee Convention.

Section 37 of the 2022 Act

6. Where Article 31(1) of the Refugee Convention is relevant to any criminal offence or alleged criminal offence, or a decision to prosecute a criminal offence or alleged criminal offence, section 37 of the 2022 Act does not apply to offences committed or alleged to have been committed before the appointed day.

Sections 40 and 41 of the 2022 Act

7. The amendments made by section 40 (to the extent brought into force by regulation 2) and section 41 of the 2022 Act apply only in relation to an offence committed on or after the appointed day.

Section 45 of, and Schedule 7 to, the 2022 Act

8.—(1) Paragraph (2) applies where—

- (a) before the appointed day, the Secretary of State has given authority under sections 28M(3), 28N(3) or 28O(3) of the 1971 Act(b) for the exercise of powers set out in Schedule 4A to that Act in relation to a ship, and
- (b) pursuant to that authority, those powers are in the process of being exercised in relation to that ship immediately before the appointed day.

(2) The authority referred to in paragraph (1)(a) is to be treated as authority under section 28LA(3) of the 1971 Act(c) in relation to that ship for the exercise of the powers set out in Part A1 of Schedule 4A to the 1971(d) Act in United Kingdom waters, other than—

(a) S.I. 2006/2525.

(b) Sections 28M, 28N and 28O were inserted by section 75 of, and paragraphs 1 and 7 of Schedule 14 to, the Immigration Act 2016 (c. 19).

(c) Section 28(LA) is inserted by paragraph 2 of Schedule 7 to the Nationality and Borders Act 2022.

(d) Part A1 of Schedule 4A to the Immigration Act 1971 is inserted by paragraph 10 of Schedule 7 to the Nationality and Borders Act 2022.

- (a) the power conferred by paragraph B1(2)(c) of Part A1 of that Schedule, except to the extent it permits requiring the ship to be taken to a port in the United Kingdom and detained there;
- (b) the power conferred by paragraph B1(2)(d) of Part A1 of that Schedule.

(3) In paragraph (2), “United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom’s territorial sea.

Section 47 of, and Schedule 8 to, the 2022 Act

9. Section 47 (prisoners liable to removal from the United Kingdom) of, and Schedule 8 (prisoners returning to the UK: modifications of Criminal Justice Act 2003) to, the 2022 Act do not apply in respect of the removal of a prisoner from the United Kingdom under section 260 of the Criminal Justice Act 2003 (early removal of prisoners liable to removal from United Kingdom)(a) before the appointed day.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first set of commencement regulations made under the Nationality and Borders Act 2022 (c. 36) (“the 2022 Act”).

Regulation 2 brings the provisions of the 2022 Act listed in Schedule 1 into force on 28th June 2022. (The provisions of the 2022 Act listed in section 87(5) of that Act also come into force on that day.)

Regulation 3 and Schedule 2 make transitional and saving provision in relation to the provisions of the 2022 Act commencing on 28th June 2022.

Paragraphs 1 to 3 of Schedule 2 make provision in relation to the coming into force of sections 5 (period for registration of person born outside the British overseas territories), 6 (disapplication of historical registration requirements) and 9 (requirements for naturalisation etc) of, and Schedule 1 to (except for paragraph 3(4)(d) of that Schedule; waiver of requirement of presence in UK etc), the 2022 Act. They provide that in relation to the types of application referred to in paragraphs 1 to 3, those provisions of the 2022 Act apply to such applications made but not determined before 28th June 2022.

Paragraphs 4 and 5 of Schedule 2 make provision in relation to the coming into force of sections 12 (differential treatment of refugees), 14 (to the extent brought into force by these Regulations; requirement to make asylum claim at “designated place”), 15 (asylum claims by EU nationals: inadmissibility), 16 (asylum claims by persons with connection to safe third State: inadmissibility), 29 so far as not already in force (removal of asylum seeker to safe third country) and 30 (Refugee Convention: general) of, and paragraphs 1 to 4 of Schedule 4 (removal of asylum seeker to safe country) to, the 2022 Act. They provide that those provisions do not apply to asylum claims (defined in each case as appropriate) made before 28th June 2022.

Paragraph 6 of Schedule 2 provides that where Article 31(1) of the Refugee Convention is relevant to any criminal offence or alleged criminal offence, or a decision to prosecute such offences, the provisions in section 37 of the 2022 Act (Article 31(1): immunity from penalties) do not apply to offences committed or alleged to have been committed before 28th June 2022.

(a) 2003 c. 44. Section 260 was amended by section 378(1) of, and paragraph 225 of Schedule 16 to, the Armed Forces Act 2006 (c. 52), sections 14(1), 34 and 149 of, and Schedule 28 to, the Criminal Justice and Immigration Act 2008 (c. 4), sections 111(2), 116(1), section 116(5), 121(6) and 125 of, and paragraphs 5 and 11 of Schedule 14, paragraphs 1 and 6 of Schedule 17 and paragraphs 1 and 9 of Schedule 20 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10), sections 6(2), 8(3), 14 and 15(6) of, and paragraphs 14 and 20 of Schedule 1 and paragraphs 4 and 8 of Schedule 3 to, the Criminal Justice and Courts Act 2015 (c. 2), section 7(2) and 7(5) of the Terrorist Offenders (Restriction of Early Release) Act 2020 (c. 3), section 410 of, and paragraphs 217 and 234 of Schedule 24 to, the Sentencing Act 2020 (c. 17), and S.I. 2008/978; and is prospectively amended by section 46 of the Nationality and Borders Act 2022.

Paragraph 7 of Schedule 2 provides that the provisions in section 40 (to the extent brought into force by these Regulations; illegal entry and similar offences) and section 41 (assisting unlawful immigration or asylum seeker) of the 2022 Act, apply only in relation to an offence committed on or after the appointed day.

Paragraph 8 of Schedule 2 makes provision in relation to section 45 of, and Schedule 7 to, the 2022 Act (maritime enforcement), so that in the circumstances set out in paragraph 8, an authority given by the Secretary of State under sections 28M, 28N or 28O of the Immigration Act 1971 (c. 77) before 28th June will be treated as an authority given by the Secretary of State under section 28LA(3) of that Act, which is inserted by paragraph 2 of Schedule 7 to the 2022 Act and comes into force on 28th June.

Paragraph 9 of Schedule 2 provides that section 47 (prisoners liable to removal from the United Kingdom) of, and Schedule 8 (prisoners returning to the UK: modifications of Criminal Justice Act 2003) to, the 2022 Act do not apply to prisoners who were removed under section 260 of the Criminal Justice Act 2003 before 28th June 2022 and therefore saves the previous version of section 261 of that Act, which will continue to provide for how those prisoners are dealt with if they return to the United Kingdom.

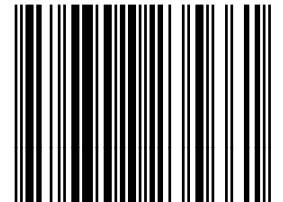
© Crown copyright 2022

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

<http://www.legislation.gov.uk/id/uksi/2022/590>

ISBN 978-0-34-823566-1



9 780348 235661