
GARDEN COURT
CHAMBERS

Third country inadmissibility: asylum claims pre and post 2022 Act.

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20 June 2023

Contents

Pre-28 June 2022 pt. 1: Inadmissibility candidates

- **Immigration Rule 345A(i)-(iii)** – a claim *"may be treated as inadmissible"* if, in a *"safe third country"*:
  - C was recognised as a refugee & can still avail themselves of protection; or
  - C enjoys sufficient protection including from non-refoulement; or
  - **C could** enjoy sufficient protection including from non-refoulement **because**:
    - Already made a protection application; or
    - Could have made protection application but failed to do absent exceptional circumstances; or
    - They have a connection such that it is "reasonable" for them to go there.

Pre-28 June 2022 pt. 2: Consequences of inadmissibility

- **345C** – SSHD **will** attempt to remove to the relevant STC **or** to any other STC which may agree to their entry.
  - As a result, no entry to UK asylum system i.e., no substantive decision and no appeal.

- **345D –** that obligation on the SSHD will only be removed where (a) removal to STC within a reasonable period of time is **unlikely** or (b) SSHD deems such removal **inappropriate.**
  - If either such condition is met, the SSHD **will** admit the claim for substantive consideration.

Pre-28 June 2022 pt. 3: So, what is a “safe third country”

- **345B:** a country will be a ”safe third country” **for a particular applicant** where:
  - Life and liberty will not be threatened for a Refugee Convention reason;
  - Non-refoulement will be respected;
  - Prohibition on removal contrary to Article 3 will be respected; and
  - Possibility of requesting refugee status **and** receiving protection as per Convention.

Pre-28 June 2022 pt. 4: Sch 3 AITCA 2004 certification

- As per *AAA v SSHD,* certification under AITCA 2004 *"integral"* to inadmissibility decision making pre-June 2022, because it disapplies the prohibition on removal while there is an extant asylum claims (**para 18**).

- Under **para 17 Sch 3**, certification is permitted where: (a) SSHD proposes to send C to a state of which they are not a national / citizen and (b) life/liberty not threatened there & C won't be sent elsewhere in breach of Refugee Convention.

- For pre-28 June 2022 claims, it also meant C could not bring HR appeal **within the UK** if human rights claim *"clearly unfounded"* (**para 19**) (i.e., out of country appeal remains live).

Post-28 June 2022 pt. 1: The similarities

- As per *AAA v SSHD*, the position under NBA 2022 is *"largely similar"* in that:
  - Inadmissibility action depends on *"connection"* to a *"safe third state"* (s80B(1) 2002 Act);
  - The definition of 'safe third state' is substantively the same as r345B (s80B(4)); and
  - If inadmissible, SSHD will not substantively consider claim (s80B(2)), there is no appeal right s(s80B(3)), and the SSHD may remove to *"any other safe third State"* (s80B(6)).

Post-28 June 2022 pt. 2: The differences

- There are, however, **five** key differences to pre-28 June 2022:
  - Where before inadmissible claims substantively considered if STC removal "inappropriate", now there must be "exceptional circumstances" (s80B(7));
  - 5-stage test of sufficient "connection" to a STC (s80C): whereas before A had to show "exceptional circumstances" preventing an asylum claim in a STC where they were present, now they must show it would not have been "reasonable" (s80C(4));
  - No need for certification under 2004 Act: see Schedule 4 2022 Act;
  - No out-of-country appeal right: see up-to-date version of s94 of 2002 Act; and
  - Rule on admitting inadmissible asylum claims where removal is unlikely remains in Immigration Rule 345D – so not guaranteed by statute.

The SSHD's policy on removal to Rwanda

- As per the 'Inadmissibility' guidance, C may be considered for removal to Rwanda where (a) their journey can be described as dangerous – *"able or likely to cause harm or injury"* and (b) claim made on or after 1 January 2022.
- Policy excludes from consideration families with children under 18, unaccompanied minors, and EU nationals. No other group is expressly exempted.
- Policy says that if A makes detailed representations that inadmissibility is inappropriate, *"more detailed consideration may be required"* – but note the challenge to this in CoA.
- "Reasonable time" for removal often equates to 6 months, but not always.

The Rwandan litigation: *AAA v SSHD* pt.1

- **The unhelpful:** Div Court held that, in general, the SSHD's Rwanda policy is lawful:
  - *Ilias* duty of *"thorough examination"* of potential risks complied with by reviewing public domain materials and agreeing Memorandum of Understanding and *Notes Verbales* (paras. 46-61);
  - Rwanda's asylum system sufficient to avoid *refoulement* risk due to Rwanda's *"specific and detailed"* assurances, which the SSHD was entitled to rely on in line with *Othman* due to e.g. good diplomatic relations, financial incentives (paras. 63-64); and
  - No general risk of Article 3 ECHR harm due to conditions as no reason to think Rwanda would harm complainants or that generalised HR problems would affect those protected by MoU (paras. 73-77).

The Rwandan litigation: AAA v SSHD pt.2

- **The not so unhelpful:** despite general lawfulness, the SSHD remains obliged to *"consider the circumstances of each person"* and assess whether they should or should not be removed to Rwanda (see e.g. para. 83 and para. 390).

- **The future:** each of the Div Court's general conclusions above are under challenge in the CoA, whose decision is awaited.

Things to consider to avoid or challenge inadmissibility pt. 1

- **Tip 1:** make a strong human rights claim:
  - Easier to focus on individual factors not considered in substance in *AAA* case e.g., family life, specific vulnerabilities meaning conditions could breach Art 3/8, mental health for Art 3/8, additional needs as VOTs/torture survivors.
  - Likely to be certified as clearly unfounded, but if successfully challenged, in country appeal;
  - Low threshold to challenge: may only lawfully certify if clear beyond reasonable doubt that no FTT judge, taking C's claim at its highest, would be entitled to allow an appeal: see e.g., *SP (Albania) v SSHD* [2019] EWCA Civ 951 and *EM (Eritrea)* [2014] UKSC 12;

Things to consider to avoid or challenge inadmissibility pt. 2

- **Tip 2:** assess whether there is a basis to assert connection to STC is insufficient because it was not reasonable to claim asylum:
  - In *AAA* there was failure to properly consider alleged ill-treatment by police (para. 236);
  - Potential VOTs may escape inadmissibility decision even if present in STC, provided under control of traffickers.
- **Tip 3:** does your client have exceptional circumstances (post 28 June 2022) / would it be inappropriate to remove (pre-28 June 2022):
  - Because STC test focuses on Refugee Convention issues alone, this is where broader human rights issues/vulnerabilities must fall;
  - Suggestion in some decision letters in 2022 that being an Adult at Risk (or not) was relevant – not properly addressed by Div Court.

Things to consider to avoid or challenge inadmissibility pt. 3

- **Tip 4:** Explore the relevance of political expression to your client:
  - Wealth of evidence about risks arising from political expression adverse to the Rwandan regime: HRW, Amnesty, US State Dept, PII material.
  - Unlike general conditions, which aren't relevant to whether a state is "safe", a risk of persecution on grounds of political opinion is.
  - Div Court concluded that there was not in general any risk of this **but** did so in part because *"no suggestion"* any claimant to that litigation would be required to conceal political or other views (see para. 77).
  - Door therefore not fully closed, if there is clear evidence an individual asylum claimant may be required to do so.

Thank you

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INADMISSIBILITY AND PROCEDURAL FAIRNESS

Alison Pickup, Asylum Aid

20 June 2023

Summary

- Procedural fairness in the context of Rwanda plan and *R (Asylum Aid) v SSHD*
- What has happened to people served with Notices of Intent since June 2022
- The Illegal Migration Bill

Procedural fairness: nuts and bolts

It is a fundamental principle of common law that fairness very often requires those who may be adversely affected by decisions to have the opportunity to make representations in order to influence them in their favour. The extent of that opportunity will vary according to the context, but since the right to make representations must be effective, individuals must ordinarily be informed of the factors which weigh against their interests: *R v SSHD ex parte Doody* [1994] 1 AC 531 at 560D-G

Note: this and the next slide are taken directly from AA's skeleton argument in the Court of Appeal, authored by our counsel team: Charlotte Kilroy KC, Michelle Knorr and Sarah Dobbie.

Procedural fairness: importance of what is at stake

- The more significant the rights or interests at stake, the greater the opportunity that must be given. Decision-making powers which have “enormous consequences” for individuals, or which “gravely affect” a person’s future, such as whether to demolish a person’s house (*Cooper v Wandsworth* (1863) 143 ER 414 at 417), or what the length of a custodial sentence should be (*Doody* at 551), will require **notice, an opportunity to be heard in advance of the decision, and “an explicit disclosure of the substance of the matters on which the decision-maker intends to proceed**” (*Doody* at 563F-H).

- As for asylum and human rights decisions, where “the right to be heard may literally be a matter of life and death” (*FP(Iran) v SSHD* [2007] EWCA Civ 13 at §43), these are “of such moment that **only the highest standards of fairness will suffice**”: *R v SSHD ex parte Thirukumar* [1989] Imm AR at 414

The Rwanda plan: what are the decisions that lead to removal

- Decision that the individual is inadmissible under the Immigration Rules / NBA 2022:
  - (1) Did they travel through a third country?
  - (2) Was that third country safe for the person concerned and could/should they have sought asylum there? (Under the 2022 Act: was it reasonable for them to have done so?)
- (3) Was their journey to the UK a dangerous one and did they arrive after 1 January 2022?
- (4) Is Rwanda safe for the individual? There is no statutory presumption of safety for Rwanda. Safety in this context involves consideration of the risks of breaches of Refugee and Human Rights Conventions, including indirect refoulement, as well as the availability of protection at least equivalent to that required under the Refugee Convention
- (5) Human rights consideration in relation to Rwanda and if refused, (6) consideration of certification

The Rwanda Plan: what happened in 2022

- Arrival in the UK normally by small boat or other ‘dangerous’ means;
- Standard screening interview conducted in detention, normally within 2-3 days of arrival;
- Service of pro forma Notice of Intent in English indicating that the SSHD considers the person may be inadmissible and if they are inadmissible, they may be removed to Rwanda + Information Pack stating in general terms that Rwanda is safe;
- 7-day period for responding to the Notice of Intent (14 days if not detained). Possibility of extension (not stated in the NOI or any published policy and rarely granted in practice);
- No guaranteed access to legal advice. Reliance on the DDA scheme and legal aid.
- All relevant decisions then taken and served with RDs, with 5 working days notice

Asylum Aid’s judicial review claim

- Asylum Aid challenged the lawfulness of the Procedure on grounds that:
- (1) the accelerated procedure, which starts from a policy assessment that Rwanda is generally safe, is based on an error of law because Part 5 of Schedule 3 to the 2004 Act (which authorizes removal to non-listed countries) requires individualised assessment.
- (2) it is manifestly unfit for the statutory purpose, in particular, the screening interview followed by a 7- (or 14-) day period for representations with only minimal disclosure and no guarantee of effective access to legal advice is inadequate to enable the SSHD to gather the information needed to make lawful decisions.
- (3) it is seriously unfair, and gives rise to a real risk that individuals may be removed from the jurisdiction without having had effective access to legal advice and thus to the courts.

The Divisional Court's decision

The Divisional Court dismissed Asylum Aid's challenge to the Procedure on the basis that:

(1) Fairness does not require that individuals be given an opportunity to make representations on whether Rwanda was generally safe or on any matter other than those facts specific to that individual (§§389-390);

(2) Fairness does not require individuals to have sight of, or the opportunity to make representations on, SSHD's provisional evaluation of matters relevant to their claim (§389) or of the information relied on to judge the safety of Rwanda (§390);

(3) "Given the scope of the right to make representations in this context" individuals do not require access to lawyers in order to be able to effectively make representations (§403) and a period of seven days to make representations is adequate (§402);

(4) These conclusions remove the premise for AA's submission on fairness and access to justice (§§417, 421)

Asylum Aid's appeal

Asylum Aid has appealed with permission on six grounds:

1) The DC was wrong to hold that the Procedure was not systemically unfair and in particular that fairness did not require the opportunity to make representations on matters relating to general safety;
2) The DC was wrong to hold that procedural fairness does not require access to lawyers
3) The DC was wrong to hold that seven days was enough time to make representations
4) The DC was wrong to hold that procedural fairness does not require disclosure
5) The DC was wrong to hold that the access to justice argument "falls away"
6) The DC's analysis of the Immigration Rules and para 17 of Sch 3 2004 Act was flawed

What has been happening since June 2022?

- Notices of Intent specifying removal to Rwanda as a destination country continue to be served – Information Pack now translated but provision not consistent; Notes Verbales published and links to these and CPIN should be provided with NOI
- Since late August 2022, mainly on people in the community, who have 14 days to respond
- Being sent by post to hotels, lack of clarity about deadline for responding and still no policy or information about extensions; legal aid crisis makes access to legal advice next to impossible
- People served with NOIs often (generally?) not admitted to asylum procedure despite no prospect of removal to Rwanda in near future, and even where they are from one of the high-grant countries subject to the streamlined asylum procedure

Indefinite limbo

Para 345D Immigration Rules: “When an application has been treated as inadmissible and the Secretary of State believes removal to a safe third country within a reasonable period of time is unlikely, the applicant will be admitted for consideration of the claim in the UK”

Inadmissibility guidance, p27:

“There are no rigid timescales within which third countries must agree to admit a person before removal. However, **the inadmissibility process must not create a lengthy ‘limbo’ position**, where a pending decision or delays in removal after a decision mean that a claimant cannot advance their protection claim either in the UK or in a safe third country.

If, taking into account all the circumstances, **it is not possible to make an inadmissibility decision or effect removal following an inadmissibility decision within a reasonable period, inadmissibility action must be discontinued**, and the person’s claim must be admitted to the asylum process for substantive consideration.

How long is too long?

- “As a general guideline, it is expected that in most cases, a safe third country will agree to admit a person within 6 months of the claim being recorded, enabling removal to follow soon after (subject to concluding any legal challenges or other barriers to removal).”
- Sometimes shorter – e.g., where no prospect of removal, because possible countries have refused to accept the person or are not engaging in negotiations
- Sometimes longer – e.g.:
  - Inadmissibility process started later due to late disclosure
  - Delays in reaching agreement on admissibility through no fault of the SSHD
  - NRM referral has been made – inadmissibility action paused
- “what is reasonable will depend upon the particular facts of each case, including any matters which may delay removal, such as **outstanding legal proceedings**, late claims and uncooperative behaviour” (inadmissibility guidance, p. 28)

Illegal Migration Bill – inadmissibility

- Protection claims and human rights claims which relate to (broadly) the country of origin will be automatically inadmissible if the SSHD decides that the duty to remove applies i.e., that the following 4 conditions (in clause 2) are met:
- (1) arrived in /entered the UK without leave, etc. (broadly!)
- (2) arrived on or after 7 March 2023
- (3) didn't come directly to the UK from a country where life/liberty threatened for a Refugee Convention reason
- (4) require leave to enter or remain and don't have it

Illegal Migration Bill - procedure

- Appears there will be an initial decision that a person is subject to the duty to remove
- Unclear what opportunity there will be to put forward evidence or representations before that decision is made but likely to be based on a screening interview
- Decision to remove will include notice of the country of intended removal
- This triggers the possibility of making a “suspensive claim”, either:
  - (a) a factual suspensive claim – with “compelling evidence that [the decision maker] made a mistake of fact” in deciding that the duty to remove applies OR
  - (b) if served with a third country removal notice, a serious harm suspensive claim – with “compelling evidence” that the serious harm condition is met in relation to 3rd country
- Can also make a human rights claim or bring a judicial review in relation to the decision to remove

Inadmissible asylum claims under the Illegal Migration Bill

Adrian Berry

20 June 2023

Inadmissible Asylum and Human Rights Claims

Clause 57 of the Illegal Migration Bill amends Part 4A of the Nationality, Immigration and Asylum Act 2002 (ss 80A-80C) that deals with *Inadmissible Asylum Claims*

Sections 80A (as it stands) concerns Asylum Claims by EU Nationals

- The Secretary of State *must* declare such a claim inadmissible, unless she considers there are *exceptional circumstances*
- Exceptional circumstances include where the EU state of nationality (i) is derogating from ECHR under Article 15 ECHR, or (ii) is the subject of a proposal initiated in accordance with Article 7 of the Treaty on European Union and one of three conditions applies
- An inadmissible claim is not considered and there is no right of appeal to the First-tier Tribunal

Inadmissible Asylum and Human Rights Claims

Changes made by Clause 57 of the Illegal Migration Bill

Heading to Part 4A of the 2002 Act

- Amended so that it covers *Human Rights* as well as *Asylum Claims*

Section 80A of the 2002 Act

- Amened to cover *Human Rights* as well as *Asylum Claims*
- Now extends not only to nationals of EU States but also to nationals of states specified in new **s 80AA(1)**: *EU states, EEA states, and Albania*
- Both human rights claims and asylum claims will not be considered. Further, there are no right of appeal to the First-tier Tribunal

Inadmissible Asylum and Human Rights Claims

Changes made by Clause 57 of the Illegal Migration Bill

Section 80AA of the 2002 Act (if enacted)

- As regards the list (EU states, EEA states, Albania), the Secretary of State may by regulations amend the list so as to add or remove a state

- She may add a State to the list only if satisfied that:

  (a) there is *in general* in that state no *serious risk* of persecution of nationals of that state, and

  (b) removal *to that state* of nationals of that state will not *in general* contravene the UK's obligations under the ECHR

Inadmissible Asylum and Human Rights Claims

Changes made by Clause 57 of the Illegal Migration Bill

Section 80AA of the 2002 Act (if enacted)

- In deciding whether those statements are true of a state, the Secretary of State:

  (a) must have regard to all the circumstances of the state (including its laws and *how they are applied*), and

  (b) must have regard to information from any appropriate source (including EU States and international organisations)

- Regulations must be made by statutory instrument and may include transitional or saving provision

Inadmissible Asylum and Human Rights Claims

Changes made by Clause 57 of the Illegal Migration Bill

Section 80AA of the 2002 Act (if enacted)

- A statutory instrument containing:

  (a) regulations which add a state to the list, or

  (b) regulations which *both add a state to, and remove a state* from, that list, may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament

- A statutory instrument containing regulations, other than one to which the above applies (i.e., where removing state from the list is the sole act), is subject to *annulment* in pursuance of a resolution of either House of Parliament.

Inadmissible Asylum and Human Rights Claims

Changes made by Clause 57 of the Illegal Migration Bill

Section 80AA of the 2002 Act (if enacted)

- For an example of a challenge to subordinate legislation that could be challenged on judicial review grounds, see *R (on the application of Javed) v Secretary of State for the Home Department* [2001] EWCA Civ 789.

- See also, *R (on the application of Brown) v Secretary of State for the Home Department* [2013] EWCA Civ 666.

Inadmissible Asylum and Human Rights Claims

Changes made by Clause 57 of the Illegal Migration Bill

Note:

- No changes are made to the process for certifying Refugee Convention claims for cases that do not fall within the scope of the Illegal Migration Bill.

- For such cases, the procedure in Schedule 3 to the Asylum (Treatment of Claimant, etc.) Act 2004 remains of relevance as regards removal to a third country.

Inadmissible Asylum and Human Rights Claims

Sections 80B concerns Asylum Claims by Persons with a Connection to a Safe Third State

- The Secretary of State *may* declare a claim inadmissible where the person has a connection to a safe third state

- A state is a safe third state in relation to a claimant if:

  (a) the claimant's life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion

  (b) the State is one from which a person will not be sent to another State:

    (i) otherwise than in accordance with the Refugee Convention, or (ii) in contravention of their rights under Article 3 ECHR (freedom from torture or inhuman or degrading treatment), and

  (c) a person may apply to be recognised as a Refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that state.

Inadmissible Asylum and Human Rights Claims

Sections 80B concerns Asylum Claims by Persons with a Connection to a Safe Third State

- A claimant has 'a connection' to a safe third state if they meet any of conditions 1 to 5 set out in section 80C in relation to the State.

- The fact that an asylum claim has been declared inadmissible by virtue of the claimant's connection to a particular safe third state does not prevent the Secretary of State from removing the claimant *to any other safe third state*. (NB this is the Rwanda clause)

- An asylum claim that has been declared inadmissible may nevertheless be considered under the Immigration Rules: (i) if the Secretary of State determines that there are *exceptional circumstances* in the particular case that mean the claim should be considered, or (ii) in such other cases as may be provided for in the Immigration Rules.

Inadmissible Asylum and Human Rights Claims

Section 80C concerns the meaning of 'Connection to a Safe Third State'

Condition 1 is that the claimant:

(a) has been recognised as a Refugee in the safe third state, and;

(b) remains able to access protection in accordance with the Refugee Convention in that state.

Condition 2 is that the claimant:

(a) has otherwise been granted protection in a safe third state as a result of which the claimant would not be sent from the safe third State to another state (i) otherwise than in accordance with the Refugee Convention, or (ii) in contravention of their rights under Article 3 ECHR, and;

(b) remains able to access that protection in that State.

Inadmissible Asylum and Human Rights Claims

Sections 80C concerns the meaning of 'Connection to a Safe Third State'

Condition 3 is that the claimant has made a relevant claim to the safe third state and the claim
(a) has not yet been determined, or
(b) has been refused.

Condition 4 is that:

(a) the claimant was previously present in, and eligible to make a relevant claim to, the safe third state,
(b) it would have been *reasonable* to expect them to make such a claim, and
(c) they failed to do so.

Condition 5 is that, in the claimant's particular circumstances, it would have been *reasonable* to expect them to have made a relevant claim to the safe third state, instead of making a claim in the UK.

Inadmissible claims under the Illegal Migration Bill

Duty to Remove (Clause 2)

Subject to limitation exceptions, the Secretary of State is under a duty to remove a person from the UK where four conditions are satisfied:

- **Condition 1:** includes where a person requiring leave, entered without it; and where a person *arrived* in the UK without the required entry clearance
- **Condition 2:** the person entered or arrived on or after 7 March 2023
- **Condition 3: T**he person did not *come directly* to the UK from a country in which the person's life and liberty were threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion
- **Condition 4:** The person requires leave to enter or remain in the UK but does not have it.

Inadmissible claims under the Illegal Migration Bill

Disregard of Protection and Human Rights Claims (Clause 4)

- The duty to remove in relation to a person who meets the four conditions, regardless of whether:

    1. The person makes a protection claim
    2. The person makes a human rights claim
    3. The person claims to be a victim of slavery or a victim of human trafficking
    4. The person makes an application for judicial review in relation to their removal from the UK

- If a person who meets the four conditions makes a protection claim or a [particular] human rights claim the Secretary of State *must* declare the claim inadmissible

- Inadmissible human rights claims are claims that removal of a person from the UK to (a) a country of which the person is a national or citizen, or (b) a country or territory in which the person has obtained a passport or other document of identity, would be unlawful under section 6 of the Human Rights Act 1998

- The claim is not considered. There is no right of appeal.

Inadmissible claims under the Illegal Migration Bill

Disregard of Protection and Human Rights Claims (Clause 4 and Clause 40(4))

Where a person subject to removal to a third country makes a human rights claim in relation to their removal *to that third country* and the Secretary of State decides to refuse the claim, there is no right of appeal in relation to that decision.

Inadmissible claims under the Illegal Migration Bill

Removal (Clause 5)

- Where the Secretary of State is required to make arrangements for the removal of a person from the UK, she must ensure that the arrangements are made (a) as soon as is reasonably practicable after the person's entry or arrival in the UK, or (b) where the person has ceased to be an unaccompanied child, as soon as is reasonably practicable after the person has ceased to be an unaccompanied child

- As a general proposition a person may be removed to:

  (a) a country of which she is a national or citizen,

  (b) a country or territory in which she has obtained a passport or other document of identity,

  (c) a country or territory in which she embarked for the UK, or

  (d) a country or territory to which there is reason to believe she will be admitted.

Inadmissible claims under the Illegal Migration Bill

Removal (Clause 5)

If the person is a national of a s 80AA(1) country (EU, EEA, Albania), she may not be removed to a country of which she is a national or citizen, or a country or territory in which she has obtained a passport or other document of identity, if:

- She makes a protection claim or a human rights claim, and;
- The Secretary of State considers that there are *exceptional circumstances* which prevent her removal to that country.

Exceptional circumstances include where the EU state of nationality (i) is derogating from ECHR under Article 15 ECHR, or is the subject of a proposal initiated in accordance with Article 7 of the Treaty on European Union and one of three conditions applies.

Inadmissible claims under the Illegal Migration Bill

Removal (Clause 5)

If the person is a national of a s 80AA(1) country (EU, EEA, Albania), and she makes a protection claim or a human rights claim, she may be removed to [a third country] :

- a country or territory in which she embarked for the UK, or
- a country or territory to which there is reason to believe she will be admitted

*But only if it is listed in Schedule 1 (*EU, EEA, Albania, specified others)

Inadmissible claims under the Illegal Migration Bill

Removal (Clause 5)

If the person is *not* a national of a s 80AA(1) country (EU, EEA, Albania), and she makes a protection claim or a human rights claim, she may be removed to [a third country]:

- She may *not* be removed to a country of which she is a national or citizen, or a country or territory in which she has obtained a passport or other document of identity
- She may be removed to:
    - a country or territory in which she embarked for the UK, or
    - a country or territory to which there is reason to believe she will be admitted

*But only if it is listed in Schedule 1 (*EU, EEA, Albania, specified others)

Inadmissible claims under the Illegal Migration Bill

Removal (Clause 5)

- Where a country or territory is listed in *Schedule 1* in respect of a description of person (e.g., Ghana in respect of men), the prescribed rules on removal in relation to a person and that country or territory apply only if the Secretary of State is satisfied that the person concerned is within that description.

- Where a part of a country or territory is listed in *Schedule 1*, references to a country or territory have effect in relation to that country or territory as if they were references to that part.

Inadmissible claims under the Illegal Migration Bill

Power to amend Schedule 1 (Clause 6)

- The Secretary of State may by regulations amend Schedule 1 to add a country or territory, or part of a country or territory, if satisfied that:

    1. there is in general in that country or territory, or part, no serious risk of persecution, and

    2. removal of persons to that country or territory, or part, pursuant to the duty to remove will not *in general* contravene the UK's obligations under the ECHR

- Such designation may occur in respect of a person's characteristics, referring to sex, language, race, religion, nationality, membership of a social or other group, political opinion, or any other attribute or circumstance that the Secretary of State thinks appropriate.

- The Secretary of State must have regard to all the circumstances of the country or territory, or part (including its laws and how they are applied), and must have regard to information from any appropriate source (including EU States and international organisations).

Inadmissible claims under the Illegal Migration Bill

Power to amend Schedule 1 (Clause 6)

- The Secretary of State may by regulations amend Schedule 1 to omit a country or territory, or part of a country or territory; and the omission may be:

  1. general, or

  2. have the effect that the country or territory, or part, remains listed in Schedule 1 in respect of a description of person.

- A statutory instrument containing regulations which add a state to the list may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- A statutory instrument containing regulations to remove a state is subject to *annulment* in pursuance of a resolution of either House of Parliament.

Inadmissible claims under the Illegal Migration Bill

Power to amend Schedule 1 (Clause 6)

- For an example of a challenge to subordinate legislation that could be challenged on judicial review grounds, see *R (on the application of Javed) v Secretary of State for the Home Department* [2001] EWCA Civ 789.

- See also, *R (on the application of Brown) v Secretary of State for the Home Department* [2013] EWCA Civ 666.

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