Asylum & Humanitarian Protection Webinar

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1st March 2021

Presenters

Rory O'Ryan | Barrister | Garden Court North Chambers
Update on key case law developments in Asylum and Humanitarian Protection

Rory's practice covers the full spectrum of immigration law, ranging from personal and business immigration issues, PBS, EU free movement and protection and human rights appeals in the First tier Tribunal, Upper Tribunal and beyond, having appeared in the Court of Appeal and the Supreme Court. To view Rory's full bio, please click HERE.

Elizabeth Mottershaw | Barrister | Garden Court North Chambers
Discussion what Brexit will mean for Asylum and Humanitarian Protection

Elizabeth's practice focuses on immigration and housing, and her particular interest in vulnerable clients is seeing her develop a growing Court of Protection practice. She also accepts instructions on international human rights law and international humanitarian law. To view Elizabeth's full bio, please click HERE.

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Agenda

- Update on key case law developments in Asylum and Humanitarian Protection

- Discussion what Brexit will mean for Asylum and Humanitarian Protection

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Cessation/Protection

- **Secretary of State for Home Department v OA (Case C-255/19) 20 January 2021**
- Case relating to the status in the UK of Somali nationals of Reer Hamar clan.
- In SSHD v OA (RP/00137/2019) (here) UTJ Storey identified a potential conflict of authority on the role of support from non-state agents when assessing the availability of protection from persecution, and made a referral to the Court of Justice of the European Union.
- Article 1(C)(5) of the Geneva Convention provides that:

> 'This Convention shall cease to apply to any person falling under the terms of section A if:...
>
> (5) He can no longer, because the circumstances in connexion with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality; ..."

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- Various Articles of the Qualification directive 2004/83 were considered, including Arts 7 and 11:

" Article 7(1) and (2):

'1. Protection can be provided by:

(a) the State, or

(b) parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.

2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.'

- Article 11(1)(e) and (2)

1. A third country national or stateless person shall cease to be a refugee, if he or she:…

(e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality;"

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- Held:

  “1. Article 11(1)(e) of Council Directive 2004/83/EC ... must be interpreted as meaning that the requirements to be met by the ‘protection’ to which that provision refers in respect of the cessation of refugee status must be the same as those which arise, in relation to the granting of that status, from Article 2(c) of that directive, read together with Article 7(1) and (2) thereof.

  2. Article 11(1)(e) of Directive 2004/83, read together with Article 7(2) of that directive, must be interpreted as meaning that any social and financial support provided by private actors, such as the family or the clan of a third country national concerned, falls short of what is required under those provisions to constitute protection and is, therefore, of no relevance either to the assessment of the effectiveness or availability of the protection provided by the State within the meaning of Article 7(1)(a) of that directive, or to the determination, under Article 11(1)(e) of that directive, read together with Article 2(c) thereof, of whether there continues to be a well-founded fear of persecution.”

- * A ‘game changer’?

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Status of UNHCR eligibility guidelines

- The Journey towards **AS (Afghanistan) v Secretary of State for the Home Department [2021] EWCA Civ 195 (21 January 2021)**

- **AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) (28 March 2018)**. Headnote:

"(i) A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.

Internal relocation to Kabul

(ii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul. ..."

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- Led to:

- **AS (Afghanistan) v Secretary of State for the Home Department [2019] EWCA Civ 873** (24 May 2019). Held:

(i) The UNAMA statistic for death and injury resulting from armed conflict and security incidents in Kabul was 0.1%, which represented one in 1,000 people. The tribunal had erroneously expressed the risk of harm as being 0.01%, which represented one in 10,000 people. That was an error of law. The case would be remitted for reconsideration on the basis of the correct figure (see paras 26-29 of judgment).

(ii) After the tribunal's decision, the UNHCR produced further guidelines on returns to Afghanistan which, unlike its 2003 and 2016 versions, unequivocally recommended that internal relocation should not be made available in Kabul. Upon remittal of the case, the tribunal would need to consider whether to more extensively revise its Afghanistan country guidance (para.82).

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- Appeal re-heard by the UT:

- **AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 (IAC)** (1 May 2020). Headnote:

Risk on return to Kabul from the Taliban

(i) A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.

Risk of serious harm in Kabul

(ii) There is widespread and persistent conflict-related violence in Kabul. However, the proportion of the population affected by indiscriminate violence is small and not at a level where a returnee, even one with no family or other network and who has no experience living in Kabul, would face a serious and individual threat to their life or person by reason of indiscriminate violence.

- Reasonableness of internal relocation to Kabul

(iii) Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout many other parts of Afghanistan) it will not, in general, be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul and even if he does not have a Tazkera.

(iv) However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above. Given the limited options for employment, capability to undertake manual work may be relevant.

(v) A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return. A person without a network may be able to develop one following return. A person's familiarity with the cultural and societal norms of Afghanistan (which may be affected by the age at which he left the country and his length of absence) will be relevant to whether, and if so how quickly and successfully, he will be able to build a network."

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- Led to:
- **AS (Afghanistan) v Secretary of State for the Home Department [2021] EWCA Civ 195** (21 January 2021) A permission decision (but reported).

- What was the status of UNHCR Guidelines?

* The Court referred to the earlier case of HF (Iraq) & Ors v Secretary of State for the Home Department [2013] EWCA Civ 1276 in particular - paras 42-44:
* The Court rejected the proposition that the Upper Tribunal should be held bound by the considered guidance issued by the UNHCR unless it could point to flaws in the analysis or there was fresh evidence providing a proper basis for departing from that guidance.
* The authorities which demonstrate the considerable respect which the courts afford to UNHCR material are entirely consistent with the conventional view that questions of weight are for the court.
* There was ... no justification for conferring (a) presumptively binding status on UNHCR reports merely because of their source.
* Although the guidance enunciated in a UNHCR report will typically command a very considerable respect ... It will do so because of its intrinsic quality rather than the status of its author.
* Ultimately each piece of evidence has to be put into the balance but the relative weight to be given to the different reports is for the decision maker.

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- It was argued that following the decision of the Supreme Court in IA (Iran) [2014] 1WLR 384, UNHCR guidelines should be regarded as having special and authoritative status and were not to be departed from 'without substantial countervailing reasons'.

- Refusing permission to appeal, the Court of Appeal held that:

  (i) The Court in IA (Iran) was considering a different matter - the status of a previous grant of refugee status by UNHCR, not eligibility guidelines (para 18-19);

  (ii) HF (Iraq) was binding authority on this point (para 23); and

  (iii) the UT in AS (Safety of Kabul) Afghanistan (CG) [2020] UKUT 130 (IAC) have given reasons which were adequate in law for its findings (para 23-27).

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Timing of decisions under Art 33(2) Refugee Convention

- **Al-Siri, R (On the Application Of) v Secretary of State for the Home Department [2021] EWCA Civ 113 (08 February 2021)**

* In 2015 the FtT held that YAS (an Egyptian dissident) was not excluded from the Refugee Convention under Article 1F(c) (relating to persons guilty of acts contrary to the purposes and principles of the United Nations) and that he was a refugee.
* Decision upheld by UT in a decision 17 August 2016.
* CA dismiss SSHD's appeal on 4 August 2017.
* On 11 July 2018 SSHD made a different decision: that YAS did not qualify for refugee status on the basis that there were reasonable grounds for regarding YAS as a danger to the security of the United Kingdom within Article 33(2) of the Convention. YAS was granted restrictively for six months.
* YA judicial review of the SSHD's decision
* On 14 June 2019, the administrative Court held the SSHD's decision to be unlawful
* SSHD appeals to the Court of Appeal

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- **Court of appeal held**:

* Any claims under art.33(2) should be brought at the same time as a claim under art.1(F)(c).

* The SSHD could not be permitted to re-open a decision fo the FtT on the basis of matters which could have been raised.

* Evidence which satisfied the test Ladd v Marshall [1954] EWCA Civ 1 may permit the re-opening of the decision, ie evidence that was relevant, credible and not previously available with due diligence.

* The matters identified in the SSHD's decision were only further examples of YAS's activity in publishing extremist views. Ample evidence of such activity had been produced to the FTT. The decision to make a fresh decision based on the new matters did not even surmount a threshold of rationality ... there must be something different or of significance in the new material to trigger a new decision ... but in this case the new material was ... 'less of the same'.

* JR was available to YAS as a remedy, as opposed to appealing to the FtT, because YAS could not have obtained the same result by way of statutory appeal, and the SSHD could, even if YAS had continued to be successful in an appeal before the FtT, have continued to declined to grant refugee status, had the successful application for judicial review not been made.

QC (verification of documents; Mibanga duty) [2021] UKUT 33 (IAC) (12 January 2021)

- “1 This case concerns two related issues. The first is about the circumstances in which the Secretary of State may have an obligation to make enquiry in order to verify the authenticity and reliability of a document; and the consequences of her not doing so. The second issue is the nature of the obligation on judicial fact-finders to consider the evidence before them “in the round”.

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- Headnote:

- Verification of documents

- (1) The decision of the Immigration Appeal Tribunal in Tanveer Ahmed [2002] UKIAT 00439 remains good law as regards the correct approach to documents adduced in immigration appeals. The overarching question for the judicial fact-finder will be whether the document in question can be regarded as reliable. An obligation on the respondent to take steps to verify the authenticity of the document relied on by an appellant will arise only exceptionally (in the sense of rarely). This will be where the document is central to the claim; can easily be authenticated; and where (as in Singh v Belgium (Application No. 33210/11)), authentication is unlikely to leave any "live" issue as to the reliability of its contents. It is for the tribunal to decide, in all the circumstances of the case, whether the obligation arises. If the respondent does not fulfil the obligation, the respondent cannot challenge the authenticity of the document in the proceedings; but that does not necessarily mean the respondent cannot question the reliability of what the document says. In all cases, it remains the task of the judicial fact-finder to assess the document's relevance to the claim in the light of, and by reference to, the rest of the evidence.

- The Mibanga duty

- (2) Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the "Mibanga duty" to consider credibility "in the round" can be understood (Francois Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual's credibility.

- (3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome.

Gambia - B and C v Switzerland (Application nos. 889/19 and 43987/16) ECtHR

- No CG case on Sexual orientation in Gambia
- There is a Country Policy and Information Note: The Gambia: Sexual orientation and gender identity or expression, which is helpful
- See now the Judgement of the European Court of Human Rights in: B and C v Switzerland (Application nos. 889/19 and 43987/16) ECtHR
- (Third Section), 17 November 2020:

"61. ... ill-treatment may also emanate from non-State actors other than family members ... Reports indicate widespread homophobia and discrimination against LGBTI persons following years of hatred stirred up by the former President Jammeh (see paragraph 39 above, at 2.4 and 6) (The UK CIG) . The third-party interveners submitted that such dangers had in fact increased following the change of government ...

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- 62. … , having taken the view that it was not likely that his sexual orientation would come to the attention of the Gambian authorities or population – an assessment with which the Court disagrees – and that he did thus not face a real risk of ill-treatment, the domestic authorities did not engage in an assessment on the availability of State protection against harm emanating from non-State actors. The parties disagree as to whether the Gambian authorities would be able and willing to provide effective protection to the first applicant against ill-treatment emanating from non-State actors, with the third-party interveners concurring with the applicant. The United Kingdom Home Office documents indicate that the Gambian authorities were generally unwilling to provide protection to LGBTI persons and that it would be unreasonable to expect an LGBTI person to seek protection from the authorities given the continued criminalisation of same-sex sexual acts in the Gambia (see paragraph 39 above, at 2.5). Similarly, UNHCR has been of the view that laws criminalising same-sex relations were normally a sign that State protection of LGBTI individuals was not available (see paragraph 36 above, at § 36).

- 63. In the light of the foregoing, the Court concludes that the domestic courts did not sufficiently assess the risks of ill-treatment for the first applicant as a homosexual person in the Gambia and the availability of State protection against ill-treatment emanating from non-State actors. Accordingly, the Court considers that the first applicant's deportation to the Gambia, without a fresh assessment of these aspects, would give rise to a violation of Article 3 of the Convention."

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Procedure - Fresh claims

- LH v Staatssecretaris van Justitie en Veiligheid (Case C-921/19), 11 February 2021
- Opinion of Advocate General Hogan, 11 February 2021
- The Netherlands Secretary of State declined to admit a fresh claim for asylum, finding that certain documents relied upon by the applicant could only be considered to be 'new elements or findings' (a requirement for fresh claims to be admitted, in domestic law in the Netherlands) if they had been demonstrated to be "authentic". As the relevant government service that examined the documents did not have any reference material at its disposal, it was not able to determine whether the documents had been drawn up by a competent authority, nor was it able to judge their authenticity and substantive accuracy. Fresh claim not admitted.
- The matter was referred for a preliminary ruling to the Court of Justice of the European Union.

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The Advocate Generals opinion is, in summary:

* A practice whereby original documents can never constitute ‘new elements or findings’ for the purposes of a subsequent asylum application if the authenticity of those documents cannot be established is incompatible with Article 40(2) of Directive 2013/32/EU, read in conjunction with Article 4(2) of Directive 2011/95/EU.

* There is no difference between copies of documents or documents originating from a non-objectively verifiable source submitted by an applicant in a subsequent application in so far as all documents have to be considered carefully and rigorously on an individual basis in order to ascertain whether they significantly add to the likelihood that the applicant qualifies as a beneficiary of international protection.

* Those provisions cannot be interpreted as permitting a Member State, when assessing documents and assigning probative value to such documents, to distinguish between documents submitted in an initial application and those submitted in a subsequent application. A Member State, when assessing documents in a subsequent application, is obliged to cooperate with the applicant to the same extent as in the initial procedure.

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Procedure - Screening interviews

- **DA & Ors v The Secretary of State for the Home Department [2020] EWHC 3080 (Admin) (13 November 2020) Fordham J**

* Three claimants alleged that before arriving in the UK they had all travelled through Libya where they had been imprisoned and sold.

* The Secretary of State's Asylum Screening and Routing Guidance, updated and published in April 2020, outlined the questions which had to be asked in all screening interviews.

* From 30 March 2020, an abridged interview process was implemented in light of the COVID-19 pandemic. Under the new process, certain questions were omitted from the interviews. Two of those questions were relevant in identifying potential victims of trafficking:

  Q 3.1 "why have you come to the UK?"

  Q 3.3 "please outline your journey to the UK".

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- For the claimants, those questions were either not asked or not explored properly at their screening interviews; their protection claims were certified and they were notified that they would be removed.

* Following letters before claim for JR, all three Claimants were referred as potential victims of trafficking under the NRM process and were given positive reasonable grounds decisions.

* In their JR claims (which appear to relate to unlawful detention) interim relief was sought that an Order be made that the entirety of the screening interview as set out in the Secretary of State's published guidance must be followed by caseworkers?

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- **Granting interim relief, it was held:**

- It was strongly arguable that the Secretary of State was acting unlawfully in curtailing asylum screening interviews by asking a narrower set of questions than those which were identified in her published policy guidance. There was a strong prima facie case, in particular, that the omission of questions 3.1 and 3.3, which were explicitly identified in the guidance as relevant to the identification of potential victims of trafficking, was contrary to law. ... it was a departure without good reason from the Secretary of State's published policy guidance.

- Order:

  "(1) The Defendant shall ensure as soon as possible but at the latest by 4pm Monday 16 November 2020 that Asylum Screening Interviews in all cases must involve asking Question 3.1 ("why have you come to the UK?") and Question 3.3 ("please outline your journey to the UK") set out at pages 66-67 of the Asylum Screening and Routing Guidance (version 5, 2 April 2020).

  (2) The Defendant shall by 4pm Friday 20 November 2020 file and serve a list of those individuals who after 2pm 13 November 2020 were interviewed without those Questions being asked."

Before **and after** Brexit – international law

- Convention relating to the Status of Refugees 1951/54
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984/87
- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950/53 + Human Rights Act 1998

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Before Brexit – EU law

- Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
- Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection
- Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection
- Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person
- Regulation (EU) No 603/2013 of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 … and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

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Brexit

- Exit day: 31 January 2020
- Transitional period: until 31 December 2020 - EU law continued to apply
- From 31 December 2020: European Union (Withdrawal) Act 2018:

  – *S2: EU-derived domestic legislation, as it has effect in domestic law immediately before exit day, **continues to have effect** in domestic law on and after exit day.*

  – *S4: Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day—*
  (1) (a)are recognised and available in domestic law by virtue of section 2(1) of the European Communities Act 1972, and
  (b)are enforced, allowed and followed accordingly,
  ***continue** on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).*

  – *S8: Dealing with deficiencies arising from withdrawal*
  (1)A Minister of the Crown may by regulations make such provision as the Minister considers appropriate to prevent, remedy or mitigate—
  (a)any failure of retained EU law to operate effectively, or
  (b)any other deficiency in retained EU law,
  arising from the withdrawal of the United Kingdom from the EU

  – *S23(1): A Minister of the Crown may by regulations make such provision as the Minister considers appropriate in consequence of this Act.*

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After Brexit

- Immigration, Nationality and Asylum (EU Exit) Regulations 2019
- Made in exercise of powers conferred by the EU (Withdrawal) Act 2018 ss 8(1) and 23(1)
- Regs 54 + Schedule 1 (part 2) revoke certain retained direct EU legislation including:
  - Dublin
  - Eurodac
- Reg 55 revokes certain rights derived from international agreements – inc. Dublin Convention, plus parallel agreements along Dublin and Eurodac terms with a number of non-EU countries (eg Iceland, Norway, Switzerland, Liechtenstein).
- *Dublin: Schedule 2, Part 3, para. 9 provides that where a request was made to UK to take charge or take back a person to whom Dublin family provisions apply, before commencement, and a decision not yet made, relevant provisions (articles 3, 4, 5(1), 6, 11(2), 11(3)) still apply.*
- *Eurodac: Schedule 2, Part 3, para. 10 provides that aspects of the Eurodac regulation remain in force with respect to data obtained before commencement (articles 34(2), 35(1), 36).*

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End of Dublin: family reunification

- Significant impact is on family reunification
- Article 8: *Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor*
- *Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.*
- Article 9: *Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.*

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End of Dublin: admissibility/safe third countries

- Admissibility and safe third countries, non-EU: paragraphs 345A-D
- 345A: Allows for applications to be treated as inadmissible where:

(i) the applicant has been recognised as a refugee in a safe third country and they can still avail themselves of that protection; or

(ii) the applicant otherwise enjoys sufficient protection in a safe third country, including benefiting from the principle of non-refoulement; or

(iii) the applicant could enjoy sufficient protection in a safe third country, including benefiting from the principle of non-refoulement because:

(a) they have already made an application for protection to that country; or

(b) they could have made an application for protection to that country but did not do so and there were no exceptional circumstances preventing such an application being made, or

(c) they have a connection to that country, such that it would be reasonable for them to go there to obtain protection

Guidance published 31 December 2020: Inadmissibility: safe third country cases Version 5.0
Inadmissibility casework guidance (publishing.service.gov.uk)

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End of Dublin: admissibility/safe third countries

Safe Third Country of Asylum

345B. A country is a safe third country for a particular applicant, if:

1. (i) the applicant's life and liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion in that country;
2. (ii) the principle of non-refoulement will be respected in that country in accordance with the Refugee Convention;
3. (iii) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in that country; and
4. (iv) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention in that country."

345C. When an application is treated as inadmissible, the Secretary of State will attempt to remove the applicant to the safe third country in which they were previously present or to which they have a connection, or to any other safe third country which may agree to their entry."

Exceptions for admission of inadmissible claims to UK asylum process

345D. When an application has been treated as inadmissible and either

1. (i) removal to a safe third country within a reasonable period of time is unlikely; or
2. (ii) upon consideration of a claimant's particular circumstances the Secretary of State determines that removal to a safe third country is inappropriate

the Secretary of State will admit the applicant for consideration of the claim in the UK.

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Explanatory memorandum

- *7.3 … as currently drafted, they allow claims to be treated as inadmissible only if the asylum applicant is accepted for readmission by the third country through which they have travelled or have a connection. A stronger approach to disincentivise individuals is needed to deter claimants leaving safe third countries such as EU Member States, from making unnecessary and dangerous journeys to the UK.*
- *7.4 The changes separate the readmission requirement from the inadmissibility decision, allowing us to treat applicants as inadmissible based solely on whether they have passed through one or more safe countries in order to come to the UK as a matter of choice. They will allow us to pursue avenues for their removal not only to the particular third countries through which the applicant has travelled, but to any safe third country that may agree to receive them.*
- *8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because we will no longer be subject to the Dublin Regulation after the transition period has ended.*

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Future?

- White paper in 2018 ‘The UK’s future skills-based immigration system’:

  We subscribe to the principles of the EU Dublin Regulation to ensure those in need of protection claim asylum in the first safe country they reach and to facilitate the reunion of family groups, so their asylum claim can be considered together. We intend to seek an agreement on this with the EU or with individual Member States.

- Response, March 2020, to HOL committee report: https://committees.parliament.uk/publications/2623/documents/26177/default/

  The Government does not intend to replicate Dublin; instead, the Government is seeking an ambitious new partnership on asylum and illegal migration … The Government has also been clear that it remains committed to seeking a new agreement with the EU for the family reunion of unaccompanied asylum-seeking children in the EU with family members in the UK, where in the child’s best interests, and for children in the UK with family in the EU in equivalent circumstances

- S3 Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020:

  The Secretary of State must review, or arrange for a review of, the ways in which protection claimants who are in a member State are able to enter the United Kingdom lawfully….

  …The review … must, in particular—

  (a)consider the position of unaccompanied children in member States who are protection claimants and are seeking to come to the United Kingdom to join relatives there, and

  (b)include a public consultation on that aspect of the review.

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Role of Court of Justice of the European Union

- European Union (Withdrawal) Act 2018, s6:

  (1) A court or tribunal … is not bound by any principles laid down, or any decisions made, on or after IP completion day by the European Court

  (2) … a court or tribunal may have regard to anything done on or after IP completion day by the European Court, another EU entity or the EU so far as it is relevant to any matter before the court or tribunal

  (3) Any question as to the validity, meaning or effect of any retained EU law is to be decided, so far as that law is unmodified on or after IP completion day and so far as they are relevant to it—

  (a)in accordance with any retained case law and any retained general principles of EU law …

  (4) But … the Supreme Court is not bound by any retained EU case law

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Any Questions?

Thanks for watching!

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