

## Illegal Migration Act: what is in force?

### At a glance

The Illegal Migration Act became law on 20 July 2023.

Although the Act paves the way for an entirely new – and wholly draconian – legal framework for processing asylum claims, many of its provisions have not yet been ‘commenced’. This means that many of the new powers and processes do not yet apply.

This brief guide is aimed to help asylum seekers and refugee support organisations understand which parts of the legislation have been implemented.

**\*\*\*Remember that only OISC registered advisers or solicitors are authorised to provide immigration advice.\*\*\***

### 1. What is the Illegal Migration Act and what does it do?

The [Illegal Migration Act](#) is a piece of legislation that [aims](#) to stop migration to the UK by people seeking sanctuary who arrive via ‘irregular means’. This includes people who:

- Travel clandestinely to the UK e.g. hidden on a lorry;
- Cross the English channel on a small boat;
- Arrive in the UK using false documents, etc.

If and when the legislation is fully implemented, it will effectively penalize anyone who arrives in the UK via such irregular means by blocking them from entering the asylum system. Most people seeking sanctuary will find that they are not eligible to become an asylum seeker. Rather, their asylum claim will be deemed ‘inadmissible’ and they face immigration detention until they can be removed to a ‘safe third country’.

### 2. Is the Illegal Migration Act now in force?

Yes and no. Although the Illegal Migration Act has been passed by Westminster and is now law, the bulk of its provisions have not yet been commenced (or implemented).<sup>1</sup> Some of the most punitive powers – e.g. new powers of removal and detention – have not been commenced.

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<sup>1</sup> [Section 68](#) of the Illegal Migration Act 2023 contains the commencement provisions.

This table outlines the Illegal Migration Act's key provisions and indicates whether each provision currently applies.

Provision		Does it apply yet?
Bar on accessing the UK asylum process	The person seeking sanctuary will not be admitted into the UK asylum process. <sup>2</sup>	No
Removal duty and 'outsourcing' of asylum claim	The new 'removal duty' requires the Home Office to remove the person to a 'safe third country'. To date, Rwanda is the only such country. <sup>3</sup>  The safe third country – rather than the UK - will process the person's asylum application. If refugee status is granted, the person will remain in that safe third country.	No
Detention	Any person subject to the removal duty can be detained pending their removal. <sup>4</sup>	No
Bar on receiving UK refugee status	The person will never be granted refugee status <sup>5</sup> and will never be eligible for British citizenship. <sup>6</sup> This also applies if legal or practical barriers prevent a person's removal from the UK.	Yes
Reduced protections for unaccompanied minors	The care of unaccompanied minors may be transferred from NI Social Services to the Home Office. Some existing Social Services' powers can be removed. <sup>7</sup>	No
Reduced protections for survivors of modern slavery	The duty that currently requires the Department of Justice to provide support to victims and survivors of modern slavery will be removed. <sup>8</sup>	No

<sup>2</sup> Illegal Migration Act 2023, section 5.

<sup>3</sup> Illegal Migration Act 2023, section 2.

<sup>4</sup> Illegal Migration Act 2023, section 11.

<sup>5</sup> Illegal Migration Act 2023, section 30.

<sup>6</sup> Illegal Migration Act 2023, sections 31-37.

<sup>7</sup> Illegal Migration Act 2023, sections 16-17, 19, 21.

<sup>8</sup> Illegal Migration Act 2023 sections 22-23, 25-29.

### 3. In force now: bar on receiving refugee status

A key provision that has been commenced is the bar on receiving refugee status.<sup>9</sup> Specifically, any person seeking sanctuary who entered the UK by irregular means on or after **7 March 2023** is no **longer eligible to be granted refugee status**.

This bar on receiving refugee status applies *regardless* of the strength of the asylum claim.

### 4. So, what happens to people who are now barred from being granted refugee status?

While the new legislation removes the possibility of people being granted refugee status, it also specifies that they **may** be granted leave to remain on human rights grounds.<sup>10</sup>

What this means in practice is currently unclear however it is possible that the asylum seeker will be granted [discretionary leave to remain](#).

Because the person will never be granted refugee status, it means s/he:

- Will not be eligible for refugee family reunion;
- Will not be eligible for a Convention Travel Document (“refugee passport”);
- Even if s/he does eventually settle and obtain Indefinite Leave to Remain, s/he will never be able to obtain British citizenship.
- May be barred from other services/benefits available for refugees such as ‘home fees’ student status and the Home Office [integration loan](#).

**Asylum seekers who arrived after 7 March are affected.** They are likely to have been issued with a [Notice of Intent](#) and are probably currently in the ‘inadmissibility process’.<sup>11</sup> This means that the Home Office must consider whether to ‘admit’ the person into the asylum system.

Post Brexit, for most asylum seekers, the inadmissibility process is essentially an administrative step that just lengthens the whole process: eventually they are admitted into the asylum system. We consider that this practice is likely to continue and that eventually the asylum claims of persons who arrived after 7 March will also be considered at some point. It is worth remembering, however, that any grant of leave will not be refugee status.

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<sup>9</sup> Illegal Migration Act 2023 section 30.

<sup>10</sup> Illegal Migration Act 2023 section 30(3)(3)-(5).

<sup>11</sup> See Home Office guidance, ‘Inadmissibility - Safe third country’ Version 7:0 available [here](#); the Right to Remain toolkit section on Inadmissibility rules available [here](#).

## 5. What about the other major changes?

The other key provisions— such as removal, detention and the outsourcing of asylum claims – envisaged by the Illegal Migration Act are predicated on there being operable ‘safe third country’ agreements.

An agreement must be in place between the UK Government and a country that agrees to receive and accommodate would-be asylum seekers before any removal can take place. Whereas previously, asylum seekers could readily be returned to EU countries, this is no longer possible due to Brexit and the Withdrawal Agreement.

To date, the only third country removal agreement in place is with Rwanda<sup>12</sup> and yet this plan has stalled due to legal proceedings.<sup>13</sup> Unless and until the removal of asylum seekers to Rwanda is deemed lawful by the Supreme Court, asylum seekers cannot be sent there. There is currently no date for the Supreme Court hearing.

If the Supreme Court agrees that the Government can send asylum seekers to Rwanda, the removal duty provisions of the Illegal Migration Act will need to be commenced. This will require regulations.

As it stands, the new removal duty will affect anyone who has arrived since **20 July 2023**.<sup>14</sup> However, there is provision to amend this date and some commentators think that a later start date will be set.<sup>15</sup>

The following table summarises how people are affected by the Illegal Migration Act according to their date of arrival.

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<sup>12</sup> See: Melanie Gower et al, ‘The Migration and Economic Development Partnership with the Rwandan Government’ (House of Commons Library, 20 December 2020). Available [here](#).

<sup>13</sup> In June 2023 the Court of Appeal concluded Rwanda was not sufficiently safe, and the Government’s plan to send asylum seekers to Rwanda was therefore unlawful. A summary of the judgement is available [here](#).

<sup>14</sup> Illegal Migration Act 2023, section 2(3).

<sup>15</sup> The Free Movement blog suggests that ‘unless the government wants a built-in backlog if and when they get around to bringing these sections into force, we can expect that when regulations are made to bring [the removal duty] into force, that date will be changed again’. See: Sonia Lenegan, ‘The Illegal Migration Act: what has changed’ (Free Movement blog, 28 July 2023). Available [here](#).

The following table summarises how people are affected by the Illegal Migration Act according to their date of arrival.

				Arrival date		
				Before 7 March 2023	7 March - 20 July 2023	After 20 July 2023 but only after commencement of removal duty (i.e. if Supreme Court approves the Rwanda scheme)
Can a person who arrives by irregular means be granted refugee status in the UK?	Yes				No, but may be granted other type of leave.	No, but may be granted other type of leave.  Potentially could be granted refugee status in Rwanda.
	Note that anyone who claimed asylum after 28 June 2022 may have been affected by the Nationality & Borders Act 2022. However, the Group 1/Group 2 differentiation has been 'paused'. Anyone who received Group 2 status (Temporary Refugee Protection) should now have their leave upgraded to full refugee status. <sup>16</sup>					
Can s/he be detained and removed to Rwanda?	No			No		Yes

<sup>16</sup> See Minister of State for Immigration Statement, 'Illegal Migration Update' 8 June 2023 UIN HCWS837. Available [here](#).

## 6. What is on the horizon?

The Illegal Migration Act provides the legal framework for a number of other far-ranging provisions to take effect. These include:

- Reduced protections for unaccompanied asylum seeking children;
- Reduced protections for victims and survivors of modern slavery and human trafficking;
- New criminal offences relating to arrival in the UK

These provisions have not yet been commenced. The Law Centre will publish further updates as and when regulations are brought into effect.

The [Free Movement blog](#) provides further details on the new legal powers, outlines key changes to the Act following the legislative process and explains some lesser / technical changes that are also in force.<sup>17</sup>

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<sup>17</sup> Sonia Lenegan, 'The Illegal Migration Act: what has changed' (Free Movement blog, 28 July 2023). Available [here](#).