

Illegal Migration Bill – Briefing on Inadmissibility

24th March 2023

Outline of the key provisions in the Bill

Two of the key clauses in the bill are clause 4 and clause 2. Clause 2 of the bill places a new duty on the Home Secretary to take steps to remove anyone who fulfils the following four conditions:¹

- They entered the UK in breach of immigration rules;
- They arrived on or after 7 March 2023;
- They didn't travel directly from the country they're seeking protection from; and
- They require leave to remain in the UK but don't have it.

Clause 4 requires the Home Secretary to automatically declare a protection or human rights claim made by a person who meets the four conditions in clause 2 "inadmissible". This means their claim will never be considered in the UK, no matter how strong their claim might be. There are no exemptions to this – it applies to men, women and children (either with their family or on their own).

Impact of the provisions

The new bill changes the current inadmissibility system by removing the requirement to have an agreement with another country in place for an individual to be removed to before an inadmissibility decision can be made. Until that point, the claim is in effect paused. Under current guidance, if an agreement is not in place within 6 months, the claim will be considered in the UK.² Due to the lack of removal agreements in place, this is what happens to the vast majority of claims. Since January 2021, of 18,494 applications that were potentially inadmissible only 83 inadmissibility decisions have been served. Nearly 10,000 have been admitted into the UK's asylum system. In contrast, clause 4(2) the bill states the Home Secretary **must** declare the application inadmissible regardless of whether a removal is in place, and 4(3) does not allow the Home Secretary to ever consider that claim, even if that person cannot be removed.

Clause 11 gives the power to indefinitely detain anyone who is covered by this bill. For those who are not detained, Clause 9 amends section 4 of the Immigration Act 1999 so that people whose claims are declared inadmissible are potentially entitled to support under that section.³ This support is usually available to those whose claim has been refused. Clause 8 extends removal and detention powers to any family members, if that family member does not have permission to be in the UK. Those who fall under conditions of clause 2 and their family members who fall into

¹ The only exemptions are in restricted cases of survivors of modern slavery and separated children. However once those unaccompanied children are 18 the duty to remove will apply.

² Under the Nationality and Borders Act, the Home Secretary currently has the power (but not the duty) to deem an asylum claim inadmissible if the applicant has a connection to a safe third country, but only once there is a removal agreement in place. Under current guidance, if an agreement isn't in place by six months, the application will end up being considered in the UK.

³ [section 4 of the Immigration Act 1999](#)

clause 8 are also prevented from re-entry, ever getting citizenship or obtaining any leave to remain in the future (certain challenges on this are very limited)⁴

- **It's not just people crossing by boats**

The four conditions in Clause 2 are extremely wide and will not just effect those who arrive on small boats. **The criteria will capture the majority of people who seek asylum in the UK**, particularly as it is not possible to apply for asylum without being physically present in the country and there is no visa that allows someone to travel to the UK for the purpose of claiming asylum.

Nationality	Channel crossings 2022	Asylum applications 2022	% channel crossing (max.)
Afghanistan	8,633	10,872	79%
Iran	5,642	9183	61%
Syria	2,916	4534	64%
Eritrea	1,942	3275	59%
Sudan	1,704	3191	53%

Table 1: Breakdown of top nationalities by asylum applications and number of arrivals⁵

Despite the focus on those arriving by small boats, in 2022 people arriving in that way accounted for less than half (45%) of all asylum applicants.⁶ Even for those people from countries like Afghanistan, Iran, Eritrea, Syria and Sudan, who made up half of those who crossed the channel last year,⁷ at most they accounted for only two thirds of the combined applications from those nationalities.

- **Children are not “exempt”**

There is no exemption for children under this bill, whether they're in the UK with family or arrived on their own. Their asylum claims will be inadmissible, they will never get protection in the UK and while the duty to remove in Clause 2 doesn't apply to separated children, **Clause 3 gives the Home Secretary the power to remove them to countries that they have no connection to, without the vital safeguard to consult with the Independent Family Returns Panel.**⁸ They are also liable to be detained indefinitely without the current safeguards applying. Furthermore, once they are 18 the Home Secretary then has a duty to remove them, preventing children from ever being able to integrate and settle properly.

- **Removal – but to where?**

Clause 5 allows for people from 32 countries designated as safe counties whose asylum applications have been ruled inadmissible to be returned to their own country.⁹ This includes Albania which accounted for both the highest nationality applying for asylum and crossing the channel in small boats in 2022. The initial grant rate for Albanian women last year was 85% and for Albanian children it was 87%. Under this bill, those women and children

⁴ Clause 29: Exceptions apply to unaccompanied children and in certain cases of victims of modern slavery (in relation to clause 21) and/or the Secretary of State considers it necessary to comply with the ECHR Convention or other international agreement. A waiver can be applied if someone has been removed and then successfully challenges their removal by way of judicial review on ECHR grounds Explain.

⁵ [Refugee-Council-Asylum-Bill-impact-assessment.pdf](https://www.refugeecouncil.org.uk/wp-content/uploads/2022/03/Refugee-Council-Asylum-Bill-impact-assessment.pdf) ([refugeecouncil.org.uk](https://www.refugeecouncil.org.uk))

⁶ 40,302 asylum applications were made by people who arrived by small boat out of a total of 89,398.

<https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2022/irregular-migration-to-the-uk-year-ending-december-2022#how-many-migrants-were-detected-arriving-in-the-uk-via-small-boats>

⁷ [Refugee-Council-Channel-Crossings-briefing-March-2023.pdf](https://www.refugeecouncil.org.uk/wp-content/uploads/2023/03/Refugee-Council-Channel-Crossings-briefing-March-2023.pdf) ([refugeecouncil.org.uk](https://www.refugeecouncil.org.uk))

⁸ Clause 14 of this Bill disapplies the safeguard to consult with the Independent Family Returns panel when a child is removed or detained, paving the way for dangerous enforced removals of families who are deemed inadmissible.

⁹ Set out in clause 50 of the bill and consist of the 27 EU Member States, plus Liechtenstein, Norway, Iceland, Switzerland and Albania.

recognised as refugees by the UK Government would have been returned to their own country where they faced individual danger and threats to their lives. This bill does not recognise the risk to individuals fleeing from personal danger from a country the government deems 'safe'. For nationals of all other countries outside of this list they cannot be returned to their own country, e.g an Afghan cannot be returned to Afghanistan, or a Syrian to Syria. Instead they can only be removed to one of the 57 countries listed in the Schedule to the bill. However, the Migration and Economic Development Partnership (MEDP) with Rwanda is the only removal agreement the UK has in place that includes third country nationals. The legal and practical challenges faced by that scheme are well documented, and even if it does become operational, it will not be possible to return thousands of people there .¹¹

- **Destitution**

Even if the Home Office are able to return all Albanians to Albania and get the Rwanda deal going, then given the current 0.7% success rate of removing people under the inadmissibility rules, our analysis¹⁰ has shown that at the end of the third year of the bill, between 161,147 and 192,670 people will have had their asylum claims deemed inadmissible but not have been removed. **They will be unable to have their asylum claims processed, unable to work and will be reliant on Home Office support and accommodation indefinitely.** It's not clear how someone under this bill would meet the conditions under Section 4 which is also particularly difficult to successfully apply for¹¹. **Two possibilities are left: tens of thousands of people qualify for section 4 support and are accommodated indefinitely by the Home Office, unable to work. Or tens of thousands of people don't qualify for section 4 support and are left permanently destitute, unable to get support or work.**

The irony is that if all inadmissible asylum claims were in fact processed, it would include people whose asylum claims would be granted, leading them to receive status and be able to integrate into our communities. In addition, it would also include people whose claims would be refused, at that point they would be able to be returned to their own countries. But instead, they will all be left in the UK relying on governments' support. The effect of the high number of people that will be stuck in destitution and indefinite limbo is not only inhumane but will put further strain on local authorities, services and communities.

Key principles on inadmissibility:

- The right to protection from persecution, discrimination and violence is a cornerstone of our international and domestic laws, including the 1951 Refugee Convention. **We are deeply concerned that provisions in the Bill will significantly undermine these principles.**
- People should not be treated as criminals purely to exercise their human right to claim asylum. Everyone should be entitled to a fair hearing regardless of the path they have taken to reach our shores.
- The proposals put forward in the bill are unworkable and costly. According to our calculations which are based on the government's own figures, between £10.1bn and £11bn will have been spent on detaining and accommodating people impacted by the bill.¹²

For any further information, please contact:

Hayden Banks
Senior Public Affairs Advisor
Refugee Council
hayden.banks@refugeecouncil.org.uk
07780664598

¹⁰ [Refugee-Council-Asylum-Bill-impact-assesment.pdf \(refugeecouncil.org.uk\)](#)

¹¹ https://www.asaproject.org/uploads/Factsheet_2_-_Section_4_support_30_July_2021.pdf

¹² [Refugee-Council-Asylum-Bill-impact-assesment.pdf \(refugeecouncil.org.uk\)](#)