

Cost, chaos and human misery – the impact of the Illegal Migration Act 2023 and the Rwanda Plan

April 2024

Summary

The Government's flagship Illegal Migration Act (IMA 2023) and its Rwanda Plan fundamentally change the ability for people to access the UK's asylum system.

Under the IMA 2023, the majority of protection claims made in the UK are permanently inadmissible. While the Home Secretary will also be under a duty to arrange for their removal, in reality only a small proportion are ever likely to be removed to their own country or Rwanda.

The vast majority will be left in permanent limbo in the UK, stranded with their claims never being processed. They will be left either being supported indefinitely by the Home Office or being at risk of exploitation.

Based on the Home Office being able to remove 2,000 people to Rwanda by the end of this year, of whom up to 100 are expected to be people already in the asylum system that are not subject to any of provisions in the IMA 2023, and removing all those who can be returned to their own country under the IMA 2023, the Refugee Council estimates that at the end of 2024:

- **105,309 people will have had their asylum claim declared inadmissible** and be subject to the duty to remove as a result of the IMA 2023.
- Of those, 9,478 people will be eligible to be removed to their own country.
- Of the remaining 95,831 people whose claims have been declared inadmissible, at the most **1,900 will have been removed to Rwanda.**
- **93,931 people will be stuck in permanent limbo** having had their asylum claim declared permanently inadmissible, but not removed from the UK. Even if the UK Government were able to remove 5,000 people to Rwanda by the end of 2024, there would be just over 90,000 people left in this situation.
- **A further 21,644 people** who arrived in the UK between 7 March 2023 and 19 July 2023 will be prevented from being able to be granted leave, and so will also be stuck in limbo as their asylum claim is unable to be processed.
- **A total of 115,575 men, women and children will be stranded as a result of the IMA 2023.**
- **It will be costing up to £17.1 million per day, equivalent to £6.2 billion a year, to accommodate people stuck in limbo.**

How the Illegal Migration Act 2023 shuts down the asylum system

The duty to remove

One of the central components of the IMA 2023 is the creation of a duty for the Home Secretary to arrange for the removal of anyone who meets the four conditions set out in section 2 of the Act:

- i) They entered the UK in breach of immigration rules;
- ii) They arrived on or after 20 July 2023, the day the Act gained Royal Assent;
- iii) They didn't travel directly from the country they were seeking protection from;
- iv) They require leave to remain in the UK but don't have it.

The duty to remove will apply to people who have crossed the Channel in small boats but, critically, is not limited to them. It will also cover people who come to the UK to seek asylum but who arrive through other so-called irregular methods.ⁱ As there is currently no way to apply for asylum from outside the UK, the duty to remove will impact the vast majority of the men, women and children who apply for asylum in the UK.

There are limited exemptions to the duty to remove, including separated children who arrive alone, under the age of 18.ⁱⁱ But as soon as they turn 18 the duty is applicable. Furthermore, children who have been assessed briefly by immigration officials and wrongly identified as adults are not exempt and there is no right to challenge this assessment.

Automatic inadmissibility of asylum applications

Anyone who the duty to remove applies to will not have any asylum application they make processed in the UK. Under section 5(2) of the IMA 2023, any protection or relevant human rights claimⁱⁱⁱ must automatically be declared inadmissible. That means the claim will never be considered in the UK's asylum system, no matter how strong it may be. The Act gives no discretion to the Home Secretary to allow some claims to be processed in the UK's asylum system. Section 5(3) adds that any claim declared inadmissible "cannot be considered under the immigration rules".

The UN Refugee Agency has described this as amounting to "an asylum ban in the UK."^{iv}

While there is a limited exemption to the duty to remove for separated children, the automatic inadmissibility provision does apply prior to them turning 18. So, while a child who arrives alone might not be subject to the duty to remove prior to their eighteenth birthday, while they are waiting their asylum claim will not be processed.

At the time of writing, neither the duty to remove nor the automatic inadmissibility of asylum claims have legal force. As soon as they are in force, which the Refugee Council expects will happen soon after the Safety of Rwanda (Asylum and Immigration) Bill receives Royal Assent, then they will apply to all those who have arrived irregularly since 20 July 2023.

As a result, tens of thousands of people who are already in the UK will be impacted by these provisions as soon as they are commenced. The IMA 2023 does give the Home Secretary the power to change the date of arrival for when these provisions apply a later date^v, but so far there has been no indication that it will be used by the current government.

Ban on granting leave to remain or enter

A key element of the IMA 2023 that has been in force since it received Royal Assent on 20 July 2023 is the ban on granting leave to remain or enter to anyone who arrived irregularly since 7 March 2023.^{vi} This would include anyone whose asylum claims are admissible and so can be considered under the UK's asylum system. Prior to commencement of the duty to remove and automatic inadmissibility provisions, that situation would apply to anyone who arrived irregularly after 7 March 2023. Once those provisions are in force, it will be those who arrived between 7 March 2023 and 19 July 2023.

In practice, this could mean that someone who arrived on 7 March 2023 and applied for asylum could have that claim processed and accepted – they could be found to be a refugee – but then be prevented from being given any form of immigration leave. Unlike the duty to remove and inadmissibility provisions, the IMA 2023 does give the Home Secretary some discretion to grant leave in cases like this.^{vii} In particular, this includes where granting leave is required to meet the UK's international obligations such as those under the Refugee Convention.

However, despite this element having been in force for more than eight months and potentially applying to tens of thousands of outstanding asylum claims, the Government has issued no public guidance on how it will be operationalised. There is no guidance publicly available. As a result, it is not known how the ban on leave is being applied, including any potential use of the discretion afforded to the Home Secretary and the impact this is having on people. Until that guidance is issued, these claims cannot be fully processed.

Between them, the duty to remove, automatic permanent inadmissibility of asylum claims, and the ban on granting people leave shut down the asylum system, either by preventing claims from even being processed or by blocking those people whose claims can be processed from being given status.

After the duty to remove

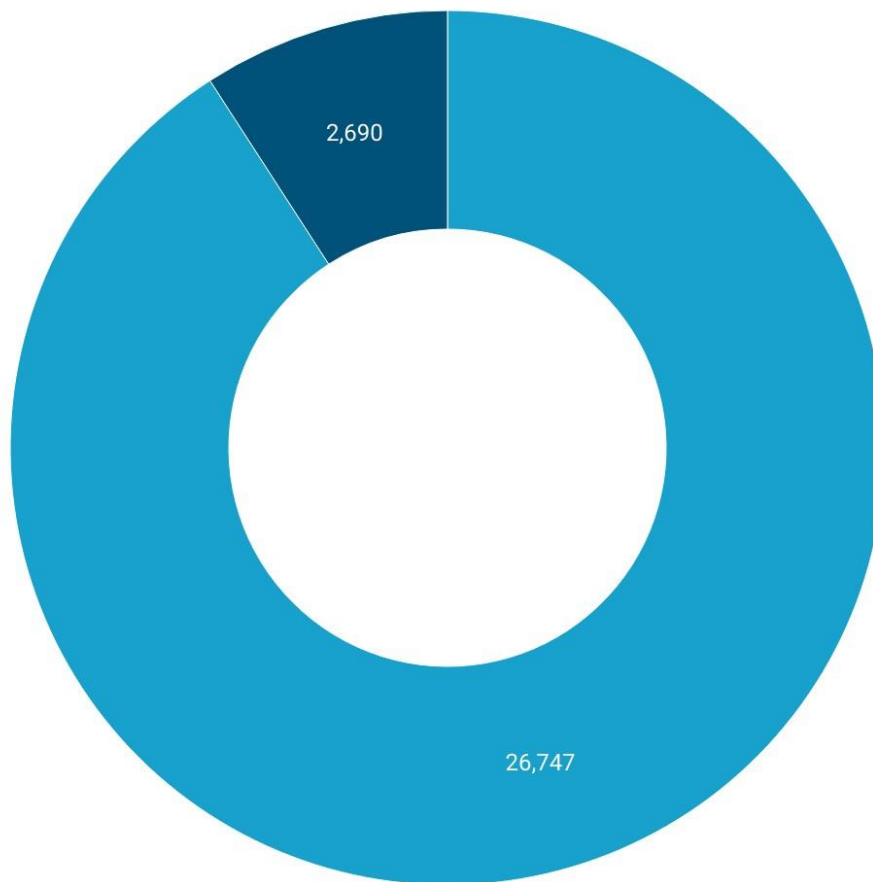
The explanatory notes to the IMA 2023 state that the purpose of the Act is that anyone arriving irregularly in the UK “will be promptly removed to their home country or to a safe third country to have any asylum or human rights claim processed.” This will not be what happens in reality for most people.

Under the IMA 2023, where someone can be removed to depends on whether they have made an asylum claim and where they are from. If someone has claimed asylum, they can only be removed to their own country if they are from one of 34 countries – the EU27, Iceland, Liechtenstein, Norway, Switzerland, Albania, Georgia and India.^{viii} Anyone else can only be removed to a safe third country.

The main option for a safe third country will be Rwanda. The Migration and Economic Development Partnership (MEDP) between the governments of the UK and Rwanda, the accompanying treaty and the Safety of Rwanda (Asylum and Immigration) Act are supposed to provide for Rwanda to be a destination where those who have had their asylum claim deemed inadmissible in the UK can then be removed to.

In 2023, there were 2,690 people who crossed the Channel in a small boat and who came from one of the 34 countries that people can be returned to directly. The remaining 26,474 people, 91 per cent of those who made the crossing, would only be able to be removed to a safe third country, which for now is Rwanda.^{ix}

Number of small boat arrivals in 2023 by eligible place of removal under the IMA 2023



■ 3rd country only ■ Country of nationality or 3rd country

Source: Refugee Council analysis of Home Office Irregular Migration Statistics, year ending December 2023, table Irr_D01 • Created with Datawrapper

While the Rwanda Plan is uncapped, in reality the number of people who can be removed to Rwanda will be limited by the capacity of the Rwandan system and logistical challenges that the Home Office face. The UK Government has not set out how many people will be sent to Rwanda, but reports have suggested that 5,000 people may be removed under the plan in the first year, with 2,000 of those in the first six months.^x Not all of those who may be removed to Rwanda will be people who have arrived since 7 March 2023. It is expected that the initial focus will be people who have been in the country longer and whose claims will have been declared inadmissible under the Nationality and Borders Act 2022.

As well as Rwanda, it is possible that a small number of people will be removed to other countries, especially if someone already has refugee status in that country. However, those numbers will be very small. Since the existing inadmissibility process came into effect at 23:00 on 31 December 2020, of the 77,304 claims that have been identified as potentially inadmissible, only 84 have been declared inadmissible. Of those, only 25 people have actually been removed.^{xi}

The majority of the people impacted by the duty to remove will only be removable to safe third countries. And for the majority of that group, there will be no safe third country for them to be sent to.

For those who cannot be removed, or are awaiting removal, they will either be detained or released on immigration bail. The IMA 2023 includes extensive powers to detain people, including children, with no time limits applying and with people unable to apply to the courts for bail within the first 28 days. Section 13 gives the Home Secretary the ability to deprive someone to whom the duty to remove applies of their liberty, including children, for four weeks before there is any legal oversight of that detention. Even after 28 days there is no guarantee that bail will be granted.

Once people are released on immigration bail, the IMA 2023 section 9 amends section 4 of the Immigration and Asylum Act 1999 so that people whose claims are declared inadmissible under the IMA 2023 are potentially entitled to support under that section. This is support usually available to those whose claim has been refused and consists of accommodation and weekly payments of £49.18 if in self-catering accommodation, or £8.86 for those in catered accommodation such as hotels.

However, section 4 is particularly difficult to successfully apply for. As well as being destitute, people have to show that they satisfy at least one condition set out in regulations. It's not clear how someone whose claim is inadmissible and who cannot be removed from the UK because there isn't a removal agreement in place would meet these conditions. Changes to the relevant regulations as well as clear guidance will be required to ensure people are able to access support.

Previous research commissioned by the Refugee Council also found that, as well as resulting in people taking more dangerous journeys to reach the UK, the IMA 2023 will drive people underground, potentially into the arms of criminal gangs and away from support structures and organisations.^{xii} This will leave people at risk of exploitation and destitution, with costs for individuals and their communities.

The impact of the Illegal Migration Act on the asylum backlog

After reaching record levels, there has been a lot of focus on the asylum backlog. In December 2022, Rishi Sunak, the Prime Minister, committed to clearing a part of the backlog – the “legacy” claims that had been made before 28 June 2022 – by the end of 2023. As a result of that commitment, over the course of 2023 the backlog of initial decisions reduced from 135,959 to 98,599. The legacy backlog was reduced from 90,704 claims to 4,537.^{xiii}

The asylum backlog in April 2024 can be broken down into four cohorts of cases:

- Legacy cases – applications made before 28 June 2022 when the main provisions of the Nationality and Borders Act came into force
- Flow cases – applications made between 28 June 2022 and 6 March 2023
- Illegal Migration Bill cases – applications made between 7 March 2023, when the IMA 2023 was introduced in Parliament, and 20 July 2023, when it gained Royal Assent
- Illegal Migration Act cases – applications made on or after 20 July 2023

Cohort	Cases waiting for an initial decision as of 14 April 2024	People waiting for an initial decision as of 14 April 2024
Legacy cases	2,377	2,947
Flow cases	7,358	9,124
Illegal Migration Bill cases	21,313	26,428
Illegal Migration Act cases	51,926	64,388
Total	82,974	102,888

Source: Refugee Council analysis of Home Office Statistics relating to the Illegal Migration Act, published 22 April 2024, table IMB_02. In the Home Office publication, the total number of cases waiting for an initial decision is given as 83,154. However, that isn't the total of the sum of the cases by cohort as published. The number of people awaiting an initial decision is an estimate based on the average number of people per asylum claim during 2022 and 2023. During these two years, there was an average of 1.24 applicants per asylum application. • Created with Datawrapper

At the beginning of 2024, the backlog of legacy cases had been reduced to what were described as the most complex cases and a few of those are still waiting for a decision. The flow backlog has also fallen, down from 54,459 in March 2023, as some of the processes that were been put in place to reduce the legacy backlog have also been applied to the flow cases.

Now in April 2024, nearly nine in 10 (88 per cent) of claims in the asylum backlog have been made after the IMA 2023 was first introduced in Parliament on 7 March 2023. As the ban on granting leave potentially applied to all of those cases, the influence of the IMA 2023 on the prevention of claims being processed is already well established. 51,926 cases, nearly two-thirds of the cases waiting for a decision, have been made since the Illegal Migration Act gained Royal Assent. As the vast majority of those will be declared inadmissible under IMA 2023 once it's fully in force, and the capacity of the Rwanda Plan is far lower, nearly all of those people will be left shut out of the asylum system.

By the end of 2024, the situation will be even more stark. All new applications will fall under the IMA 2023 and the majority will be prevented from even being considered.

Before the IMA 2023, the way to reduce the asylum backlog was to increase the number of decisions being taken. The IMA 2023 will prevent this from happening. Instead, the asylum system at the end of 2024 will be largely closed down as cases will be declared inadmissible, but with no prospect of the person being removed from the UK.

The Home Office has not provided any publicly available estimate of how many people will be impacted by the IMA 2023. The impact assessment for the legislation goes as far as to say that it “does not attempt to estimate the annual volumes of individuals that may arrive following commencement of the Bill.”^{xiv} There are, therefore, no answers to the following questions:

- How many people will be subject to the duty to remove?
- How many people will have their protection or human rights claim declared permanently inadmissible?

- How many people will be removed from the UK?
- How many will be left in permanent limbo, having not been removed from the UK but also not having their claim processed in the UK?

The answers to these questions are vital for understanding the impact the IMA 2023 will have on individuals, the consequences for the Home Office including financially, and the way in which voluntary sector organisations will be able to support people. In the absence of answers from the UK Government, the Refugee Council has used publicly available sources to estimate what the state of the asylum system will be at the end of 2024.

Refugee Council's analysis

The Refugee Council's analysis shows that, at the end of 2024:

- **105,309 people will have had their asylum claim declared inadmissible** and be subject to the duty to remove as a result of the IMA 2023.
- Of those, 9,478 people will be eligible to be removed to their own country.
- Of the remaining 95,831 people whose claims have been declared inadmissible, at the most **1,900 will have been removed to Rwanda**.
- **93,931 people will be stuck in permanent limbo**, having had their asylum claim declared permanently inadmissible, but not having been removed from the UK. Even if the UK Government were able to remove 5,000 people to Rwanda by the end of 2024, there would be just over 90,000 people left in this situation.
- **The ban on granting leave to remain will impact a further 21,644 people** who arrived in the UK between 7 March 2023 and 19 July 2023, and who will also be stuck in limbo as their asylum claim is unable to be processed.
- **A total of 115,575 people will be left stranded as a result of the IMA 2023.**
- **Only 31,738 people who have applied for asylum 7 March 2023 will be able to have their application processed.**

Assuming that the people left in limbo are successfully able to apply for support under the Immigration and Asylum Act 1999, at the end of 2024 **the Home Office would be spending £17.1 million per day to provide accommodation, the vast majority likely to be in hotels. This would be equivalent to £6.2 billion a year.**

The assumptions and data sources for the calculations are set out in Appendix 1 below.

Conclusion

For all the focus on the Rwanda Plan, the asylum system that any Government will be dealing with at the end of 2024 will be shaped by the IMA 2023.

The Refugee Council's analysis highlights how the IMA 2023 could leave more than 100,000 men, women and children seeking asylum in limbo. Instead of their claim being considered on its merits and either granted or refused, they will be left unable to get on with their lives. They will face two choices – rely indefinitely on Home Office support, which could cost the taxpayer over £17 million pounds every day, or else disappear, leaving them at risk of destitution, exploitation and abuse.

The IMA 2023 and the Rwanda Plan will create huge cost and chaos. There will be dysfunction and disorder causing more human misery for people who have come to the UK seeking safety. There

has already been one asylum meltdown that led to the Prime Minister personally seeking to fix the system by clearing the asylum backlog. There will now be yet another, entirely avoidable, meltdown.

Any Government that wants to operate an effective, efficient and fair asylum system must repeal the IMA 2023 and the Safety of Rwanda Act at the earliest possible opportunity. In the meantime, the opportunities contained in the legislation to allow cases to be processed in the UK and leave granted to those who are recognised as refugees should be utilised.

Instead of extinguishing the right to asylum in the UK, the focus should be on running a fair and efficient system. It should be a process that aims to make the right decision first time, so that those who are recognised as refugees can get on with their lives in the UK, and those who are found not to be in need of protection are enabled to be removed with support and humane treatment if it's safe to do so. This should be accompanied by the creation of more safe routes for refugees to reach the UK and an increase in international cooperation to reduce the number of people taking dangerous journeys.

More detail on the Refugee Council's alternative approach is available in our report 'Towards a National Refugee Strategy'^{xv} which proposes:

- Treating people who arrive in the UK fairly and with dignity, including giving them access to a fair and efficient asylum system.
- An expansion of safe routes, including the pilot of a refugee visa that allows people to safely travel to the UK for the purpose of claiming asylum.
- A bespoke agreement between the UK and the EU, which would include the ability for people currently in the EU to be transferred to the UK to join family members, and for people who arrive in the UK having previously made an asylum application in the EU to be returned.
- An agreement between the governments of the UK and France that allows for families to be reunited and joint work on expanding safe routes.

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Appendix 1

Assumptions and data sources:

- The duty to remove and automatic inadmissibility provisions of the IMA 2023 are commenced before the end of 2024.
- 92,184 people apply for asylum in the UK in 2024. This is based on the average number of applications in 2022 and 2023.^{xvi}
- There will be no reduction in asylum applications as a result of some people being sent to Rwanda, as there is no evidence that the policy will have a deterrent effect.^{xvii}
- The Rwanda Plan starts in June, and by the end of the year 2,000 people have been removed, of which 1,900 are removed under the IMA 2023.
- 80 per cent of people who apply for asylum arrive irregularly and so are impacted by the duty to remove and automatic inadmissibility provisions and/or the ban on leave to enter or remain under the IMA 2023.
- The power in section 3(1) of the IMA 2023 to move the date of arrival after which the duty to remove applies is not used to amend the 20 July 2023 date.
- The Home Secretary does not use their discretion to enable the processing of claims impacted by the ban on granting leave to remain or enter.
- People continue to apply for asylum after the IMA 2023 is commenced in full. A potential impact of the legislation is that rather than apply for asylum, people instead avoid contact with the authorities and go underground.
- It costs £147.74 per night to accommodate someone in a hotel.^{xviii}
- There is an average of 1.24 main and dependent applicants for each asylum application made.^{xix}
- No one who is covered by the duty to remove and is from one of the 34 nationalities who can be removed to their own country under the IMA 23 meets one of the exemptions contained in the legislation that means they could only be sent to a third country.

ⁱ Under the IMA 2023, anyone who enters the UK without leave and who hasn't travelled directly from a country they are fleeing i.e. they have flown from that country to the UK, is considered to have arrived irregularly. As well as those arriving by small boat, this will include, but is not limited to, people arriving in the back of a lorry and people arriving from the EU across the Irish land border without leave.

ⁱⁱ Section 4(1) of the IMA 2023.

ⁱⁱⁱ A relevant human rights claim is one which argues that the removal of the claimant to their country of nationality or another country in which the claimant has obtained a passport or identity document would be in contravention of the Human Rights Act 1998. See section 5(5) of the IMA 2023.

^{iv} UNHCR UK, [UK Asylum and Policy and the Illegal Migration Act](#)

^v Section 3(1)(a) of the IMA 2023. For example, the power could be used to change the date to 1 January 2024. The impact of that would be that anyone who had arrived between 20 July 2023 and 31 December 2023 would no longer be impacted by the duty to remove and the automatic inadmissibility of any asylum claim.

^{vi} Section 30 of the IMA 2023, which inserts a new section 8AA into the Immigration Act 1971.

^{vii} Section 8AA(4) of the Immigration Act 1971, as inserted by section 30 of the IMA 2023. Subsection 30(4) of the IMA 2023 allows for broader discretion prior to commencement of the duty to remove.

^{viii} Georgia and India were added to this list via the [Nationality, Immigration and Asylum Act 2002 \(Amendment of List of Safe States\) Regulations 2024](#)

^{ix} Refugee Council analysis of Home Office Irregular Migration Statistics, year ending December 2023, table Irr_D01

^x iNews, [2,000 migrants set to be sent to Rwanda in first six months, Government believes](#)

^{xi} Home Office Immigration System Statistics, year ending December 2023, Asylum and Resettlement summary tables, table Asy_09a

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- ^{xii} Refugee Council, [The Human Impact of the Illegal Migration Act and the Rwanda Plan](#)
- ^{xiii} Home Office Statistics relating to the Illegal Migration Act, published 2 January 2024, table IMB_02
- ^{xiv} [Illegal Migration Bill Impact Assessment](#)
- ^{xv} Refugee Council, [Towards a National Refugee Strategy: Our Vision for a Fair and Humane Asylum System](#)
- ^{xvi} Home Office Immigration System Statistics, year ending December 2023, Asylum and Resettlement - Applications, Initial decisions, and Resettlement, table Asy_D01
- ^{xvii} Research commissioned by the Refugee Council concluded that the policy would not deter people from crossing the Channel, but is likely to force people into taking other routes. See [The Human Impact of the Illegal Migration Act and the Rwanda Plan](#). A ministerial direction was also required for the policy as the Permanent Secretary to the Home Office did not believe there was “sufficient evidence” to show that the deterrent effect would lead to value for money. See [letter from Matthew Rycroft on Migration and Economic Development Partnership](#).
- ^{xviii} Based on the cost of accommodating someone in a hotel in January 2024. See National Audit Office (2024), [Investigation into asylum accommodation](#), page 29.
- ^{xix} Based on the average number of people per asylum claim during 2022 and 2023. Home Office Immigration System Statistics, year ending December 2023, Asylum and Resettlement - Applications, Initial decisions, and Resettlement, table Asy_D01