

Illegal Migration Act 2023: Overview

ILPA in partnership with the Greater London Authority

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Agenda

1. Mini-overview of the Act
 - a. Who does it target?
 - b. What happens to those who are targeted?
 - c. What is in force so far?

2. Section by section breakdown, each followed by Q&A

Who does the Act target?

Not just individuals arriving on small boats

It targets anyone who meets four conditions:

1. The person entered the UK by means the government deems irregular (such as requiring entry clearance or an electronic travel authorisation, but arriving without it, obtaining leave to enter by deception, entering in breach of a deportation order).
2. The person entered or arrived in the UK on or after the day on which the Act passed (when the amendment was proposed, the Government referred to the date of the Bill's Royal Assent, i.e. 20 July 2023, see [Hansard](#)).
3. The person did not come directly to the United Kingdom 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, i.e. they 'passed through or stopped in' a country where their life and liberty were not so threatened.
4. The person requires leave to enter or remain in the UK and does not have it.

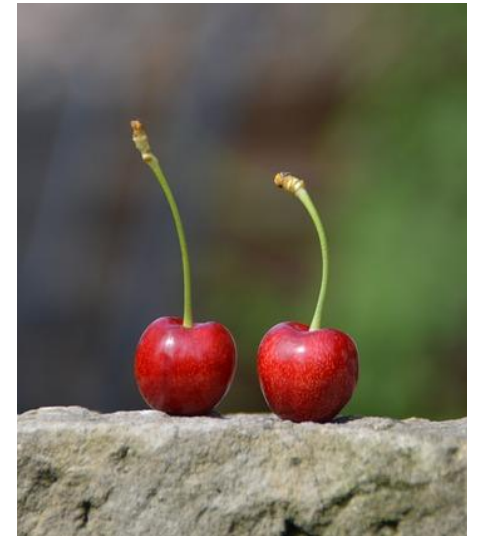
Cherry Picking

Under this Act, the Government of the day can cherry pick who can be granted refuge, by choosing who is resettled, and by choosing which resettlement routes are subject to a cap.

It will set an annual cap (a maximum, not a target or quota) on the number of people who can come to the UK on “safe and legal” routes (s 60 IMA 2023).

The [consultation](#) with local authorities is currently running from 20 October 2023, and it states, *‘The cap will include the main safe and legal routes used by vulnerable and at-risk people, including the UK Resettlement Scheme (UKRS), the Afghan Citizens Resettlement Scheme (ACRS) and the Community Sponsorship Scheme. [...] The cap does not include the Ukraine visa schemes, the Afghan Relocation and Assistance Policy (ARAP), the Hong Kong British National (overseas) route or the Mandate Scheme. However, the government is also asking local authorities to consider the impact of these routes in their responses to ensure an accurate picture of their capacity.’*

Does the Act sets out new routes to safety in the UK? No. Although a report must be laid under (s 61 IMA 2023), there is no guarantee it will contain new routes.

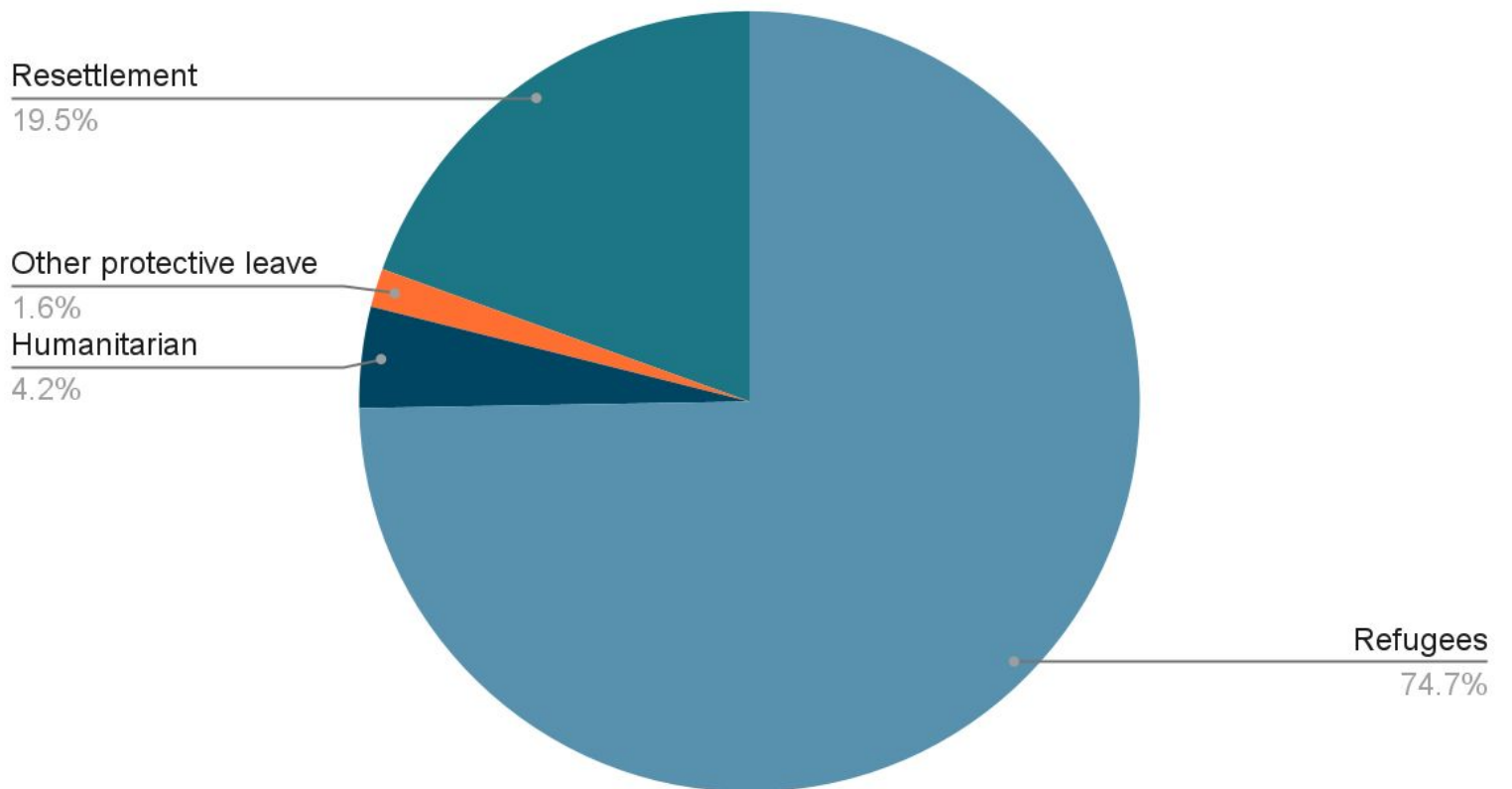


How many are cherry picked?

According to [Home Office statistics](#), the 'UK offered protection to 22,648 people (including dependants) in the year ending March 2023 comprising:

- 16,805 people granted refugee permission following an asylum application
- 120 granted temporary refugee permission
- 947 granted humanitarian protection
- 362 granted alternative forms of protective leave (such as discretionary leave, UASC leave)
- 4,414 resettled to the UK through resettlement schemes'

Protection the UK offered in year ending March 2023



Cherry Picking and Capping

How many have been granted on capped routes?

In the year ending March 2023:

- Afghan Citizens Resettlement Scheme (ACRS) Pathways 1 to 3: 281
- Community Sponsorship: 247
- UK Resettlement Scheme: 711

Total: 1,239

How many have been granted on uncapped routes?

- Mandate Scheme: 4
- Afghan Relocations and Assistance Policy: 3,167
- Ukraine Family and Sponsorship Schemes: 198,358
- Hong Kong British National (Overseas) route entry clearance: 47,227

Total: 248,756

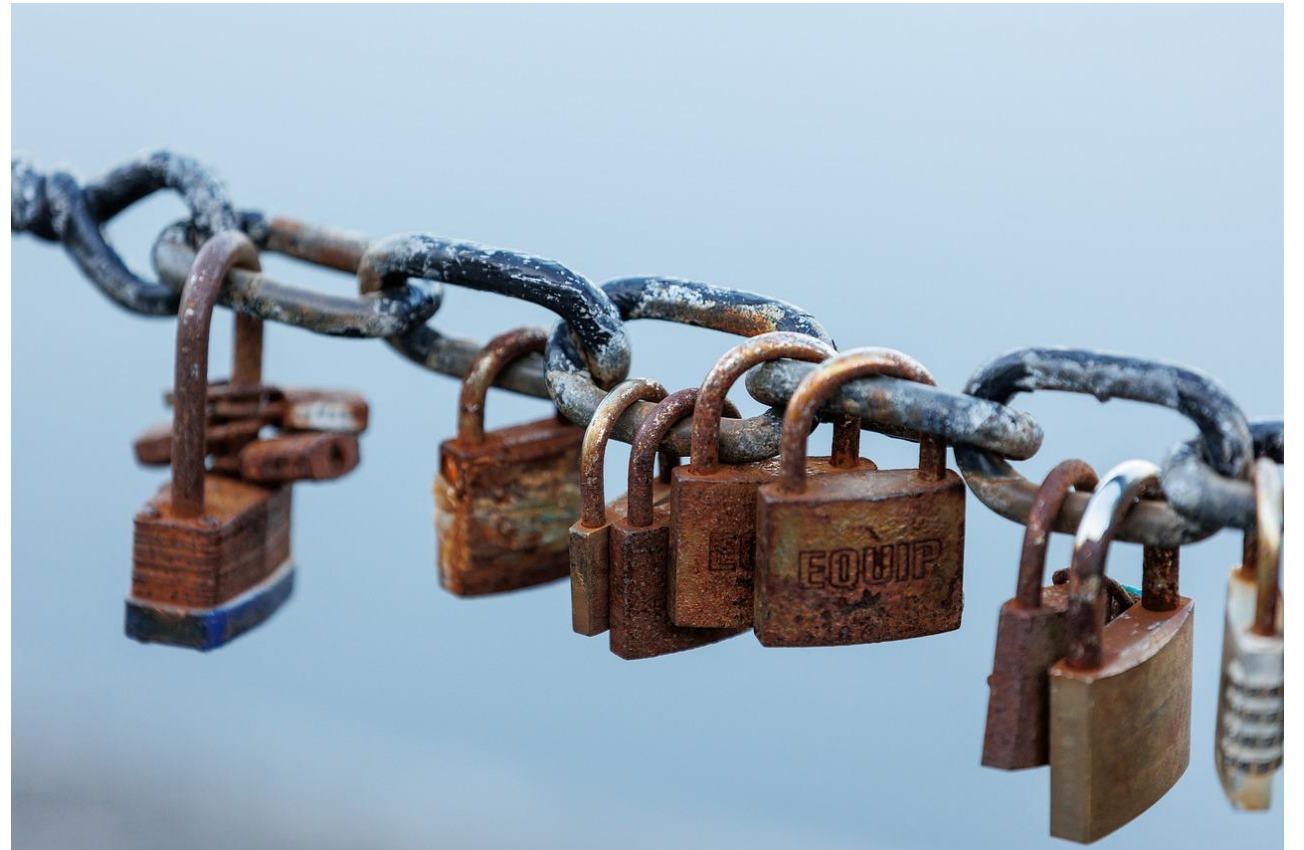


What happens to those who arrive in the UK,
but who were not cherry picked?

By Design, under the Illegal Migration Act:

At the risk of oversimplification, those targeted by the Act will be –

- Locked out of asylum and protection
- Locked in indefinite limbo
- Locked out of lawful status and citizenship
- Locked in detention
- Locked out of recovery and support as victims of trafficking and modern slavery



Case Study

Rafi is being detained in Harmondsworth Immigration Removal Centre (IRC).

Rafi arrived in the UK on 1 January 2024, on a small boat.

He was screened at Manston, on 1 January 2024, a few hours after his arrival. He did not have any legal advice before the screening, and did not understand what was happening. He was asked if he wanted to make a human rights or protection claim in his screening interview. He said that he explained that he was scared of the Taliban back home and that he has family members in the UK.

The same day, 1 January 2024, he received a removal notice. It says the Home Office is planning to remove him to Rwanda and that he has 8 days, beginning with the date he received the removal notice, to make a suspensive claim. It also says that any protection or human rights claim he makes would be inadmissible.

He saw a legal aid advisor on 4 January 2024, who attended a detained duty advice scheme (DDAS) surgery remotely, but then he was told by the IRC on 5 January 2024 that the advisor had no capacity to take on his case.

What's in force so far?

The Act's Commencement Provisions (1/2)

68 Commencement

- (1) Subject to subsections (3) and (4), this Act comes into force on such day as the Secretary of State may by regulations appoint.
- (2) Regulations under subsection (1) may appoint different days for different purposes.
- (3) The following provisions come into force on the day on which this Act is passed—
 - (a) sections 30 to 37;
 - (b) section 52;
 - (c) sections 63 to 67;
 - (d) this section;
 - (e) section 69.

Key sections commenced on 20 July 2023

- **Section 52**, which makes all judges of the First-tier Tribunal, judges of the Upper Tribunal
- **Sections 30 to 37** on entry, settlement and citizenship, which ban a person who ever met the four conditions of section 2 of the Act, but entered or arrived on or after 7 March 2023, from acquiring the necessary leave, clearance, or authorisation to enter, remain, settle and acquire British nationality, with limited exceptions.



The Act's Commencement Provisions (2/2)

The remaining section 68 commencement provisions relate to making regulations:

- (4) The following provisions come into force on the day on which this Act is passed for the purposes of making regulations—
 - (a) section 3 (amendment of date in section 2(3) etc);
 - (b) section 4 (unaccompanied children and power to provide for exceptions);
 - (c) section 7 (powers to amend Schedule 1);
 - (d) section 11(2) (detention under authority of immigration officer);
 - (e) section 11(6) (detention under authority of Secretary of State);
 - (f) section 18 (duty of local authority to provide information to Secretary of State);
 - (g) section 20 (extension of provisions relating to unaccompanied children to Wales, Scotland and Northern Ireland);
 - (h) section 24 (modern slavery: support in Scotland);
 - (i) section 40 (meaning of “serious and irreversible harm”);
 - (j) section 42 (serious harm suspensive claims);
 - (k) section 43 (removal conditions suspensive claims);
 - (l) section 60(7) (definition of safe and legal routes).
- (5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.

Illegal Migration Act 2023 (Commencement No. 1) Regulations 2023

Brought into force on 28 September 2023:

- **Section 12** (the period for which persons may be detained), which seeks to overturn the principle that it is for the court to decide, for itself, whether there is a reasonable or sufficient prospect of removal within a reasonable period of time. It states that a person may be detained:
 - *'for such period as, in the opinion of the Secretary of State, is reasonably necessary'*,
 - *'regardless of whether there is anything that for the time being prevents' their removal or deportation, and*
 - if the Home Secretary decides she cannot carry out examination/removal/deportation in a reasonable period, she may detain the person *'for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate'*

Illegal Migration Act 2023 (Commencement No. 1) Regulations 2023

A few key problems with section 12:

- It applies to all forms of detention, not just those who have arrived irregularly.
- If it achieves its intended purpose, section 12 will mean the Home Office can continue to detain people where, for example, they are not pursuing removal diligently.
- It appears to confer more discretion than the limited ‘grace period’ for making such arrangements for release (such as bail accommodation), which have been held to be lawful by the courts.
- The *Hardial Singh* principles only do what Article 5 ECHR requires: ‘they require that the power to detain be exercised reasonably and for the prescribed purpose of facilitating deportation’ (*R (Lumba) v SSHD* [2011] UKSC 12 at [30]). As Lord Chief Justice Thomas held, ‘It is this objective approach of the court which reviews the evidence available at the time that removes any question that the period of detention can be viewed as arbitrary in terms of Article 5 of the European Convention on Human Rights’ (*SSHD v Fardous* [2015] EWCA Civ 931 at [43].)

Illegal Migration Act 2023 (Commencement No. 1) Regulations 2023

Also brought into force on 28 September 2023:

- **Section 15** and the following paragraphs of Schedule 2 (electronic devices etc), for the purpose of making regulations—
 - paragraph 8 (power of retention);
 - paragraph 10 (relevant articles containing items subject to legal privilege);
 - paragraph 11 (extension of powers to other persons).
- **Section 62 (credibility of claimant: concealment of information etc)**. amends section 8 of the 2004 Act to damage a person's credibility where a device has been found on them, or appears to have been in their possession, and they do not provide access (e.g. password) when asked to do so by an immigration officer/Home Secretary
- **Section 59** (inadmissibility of certain asylum and human rights claims), for the purpose of making regulations, for the Home Secretary to add or remove countries to the 'safe' list (which is not itself in force) in section 80AA of the Nationality, Immigration and Asylum Act 2002
- **Section 60** (cap on number of entrants using safe and legal routes), so far as not already in force - and now the [consultation](#) on the cap has begun
- **Section 61** (report on safe and legal routes)

1 - Introduction and Asylum Ban

Introduction

1. Introduction

Duty to make arrangements for removal

2. Duty to make arrangements for removal
3. Amendment of date in section 2(3) etc
4. Unaccompanied children and power to provide for exceptions
5. Disregard of certain claims, applications etc
6. Removal for the purposes of section 2 or 4
7. Powers to amend Schedule 1
8. Further provisions about removal
9. Support where asylum claim inadmissible
10. Other consequential amendments relating to removal

Important Introduction to the Act: Section 1

The Purpose? Removal.

Section 1 of the Illegal Migration Act 2023

‘(1) The purpose of this Act is to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal from the United Kingdom of certain persons who enter or arrive in the United Kingdom in breach of immigration control.’

[...]

‘(3) Accordingly, and so far as it is possible to do so, provision made by or by virtue of this Act must be read and given effect so as to achieve the purpose mentioned in subsection (1).’

What about the Human Rights Act 1998?

Section 1(5) of the IMA 2023 disapplies section 3 of the Human Rights Act 1998, which requires:

‘So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.’

Instead of reading the IMA 2023 and giving it effect in a way which is compatible with rights in the European Convention on Human Rights, it is to be read and given effect to require removal of certain people from the UK.

It puts the Government on a direct collision course with the European Court of Human Rights.

Compatibility with Human Rights

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Suella Braverman has made the following statement under section 19(1)(b) of the Human Rights Act 1998:

I am unable to make a statement that, in my view, the provisions of the Illegal Migration Bill are compatible with the Convention rights, but the Government nevertheless wishes the House to proceed with the Bill.

Compatibility with Human Rights

Clause 1

LORDS AMENDMENT 1

1 Leave out Clause 1 and insert the following new clause –

“Introduction

Nothing in this Act shall require any act or omission that conflicts with the obligations of the United Kingdom under –

- (a) the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (b) the 1951 UN Convention relating to the Status of Refugees including the Protocol to that Convention;
- (c) the 1954 and 1961 UN Conventions on the Reduction of Statelessness;
- (d) the 1989 UN Convention on the Rights of the Child;
- (e) the 2005 Council of Europe Convention on Action against Trafficking Human Beings.”

COMMONS REASON

The Commons disagree to Lords Amendment 1 for the following Reason –

1A *Because it is unnecessary, as the Bill does not require any act or omission that conflicts with the obligations of the United Kingdom under the European Convention of Human Rights or other listed international instruments, and it would undermine the UK’s dualist legal system.*

1 - Asylum Ban

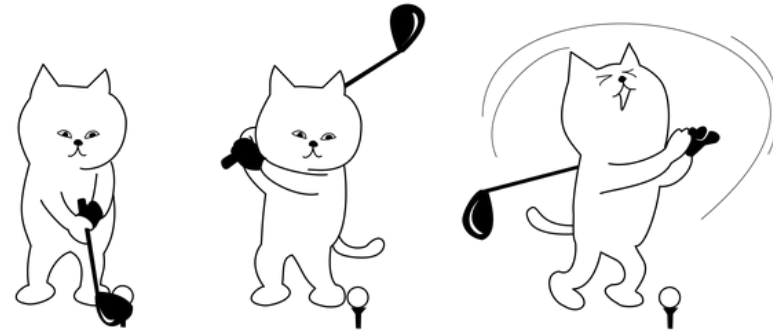
Section 2	Aims to place a blanket duty, with limited exceptions, on the Home Secretary to remove people who have 'entered or arrived in the UK illegally' on or after the day on which the Act passed, and did not come directly from a country in which their life and liberty were threatened for a Refugee Convention reason.
Section 3	Allows the Home Secretary to change the date specified in ss 2, 5 and 6 'the day on which this Act is passed' to a later date in Regulations
Section 4	Aims to make the duty to remove <i>discretionary</i> , and only exercisable in certain circumstances, for unaccompanied children until they turn 18 and to give the Home Secretary power to make other exceptions to the duty.
Section 5	Aims to declare permanently inadmissible any protection or human rights claim (regarding removal to country of nationality/identity being unlawful under s.6 HRA 1998) a person (whether adult or child) targeted by the duty to remove makes. There is no right of appeal against inadmissibility.

1 - Asylum Ban

Section 6	Aims to ensure that where the duty to remove applies, people will be removed as soon as reasonably practicable from the UK (or for unaccompanied children this would be once they turn 18). People from “safe countries” - EEA, Switzerland, Albania, and the Government intends to add India and Georgia - can be removed to their country of nationality/identity unless ‘exceptional circumstances’ apply or to a designated third country listed in Schedule 1 to the Act. All other nationals can be removed only to Schedule 1 countries.
Section 7	Explains how the list of third countries/territories in Schedule 1 can be amended and the test to be applied. A country can be designated as safe for only specific groups and only part of a country can be designated safe - if ‘in general’ there is no serious risk of persecution, or removal will not ‘in general’ breach the UK’s obligations under the ECHR.
Section 8	Requires a written removal notice to be given explaining the planned country/territory of removal, the right to make a claim that suspends removal, and claim period for such a suspensive claim. Allows the Home Secretary to force private individuals and companies to make removal arrangements and help enforce removal.
Section 9	Provides access to s.4 asylum support (under the Immigration and Asylum Act 1999) on the basis that ‘individuals who fall within the duty to remove who are not detained will need access to support if they would otherwise be destitute’.

Why will this Act be a practical failure?

1. The UK may eradicate its 'asylum backlog', but only by refusing to consider claims.
2. Permanent inadmissibility will make nearly everyone the Act targets unremovable in reality.
 - a. If a person who is not a Swiss, Albanian or EEA national make a protection or human rights claim, they may be removed to a country listed in Schedule 1 of the Act if they "embarked for the United Kingdom" from there, or "there is reason to believe" that they would be admitted to it.
 - b. If they are Swiss, Albanian, or an EEA national, they may be removed either to a third country, or to their own country unless there are "exceptional circumstances".
3. The Act will create a large and permanent population of people living in limbo at public expense (see s.9 IMA which extends s.4 support under 1999 Act) for the rest of their lives, without any hope of securing lawful status.



Questions on Asylum Ban

What is the impact of the asylum ban for Rafi?

- Rafi likely meets the four conditions of section 2, having arrived in the UK by small boat on 1 January 2024. However, it is important to take instructions regarding the conditions, particularly regarding the countries through which a person passed to understand whether their life and liberty were threatened in those countries for a Refugee Convention reason (that reason may be different than the reason they fear returning to their country of origin or habitual residence).
- If Rafi is an unaccompanied child (i.e. he is also under the age of 18, and at the time of his entry/arrival no individual (whether or not a parent) who was aged 18 or over had care of him, then the s 2 duty is a s 4 power.
- Rafi should make clear he wishes to make a protection and human rights claim regarding his return. If he does not, and he is a child, that is a reason the power to remove him under section 4 can be exercised. If he is a child, the power becomes a duty on his 18th birthday.
- If Rafi is an adult, the Home Secretary has a duty to make arrangements for his removal as soon as reasonably practicable.
- Any protection and human rights claim regarding removal to Afghanistan the Home Secretary must declare as inadmissible, if he meets the four section 2 conditions. There is no right of appeal against that inadmissibility declaration. However, Rafi cannot be returned to Afghanistan, because these claims are not assessed.
- Rafi urgently needs legal help regarding his removal notice to Rwanda.
- Rafi may also make an application for section 4 support, given his claim is inadmissible.

2 - Detention and Electronic Devices

Detention, bail etc

- 11. Powers of detention
- 12. Period for which persons may be detained
- 13. Powers to grant immigration bail
- 14. Disapplication of duty to consult Independent Family Returns Panel
- 15. Electronic devices etc

2 - Detention and Electronic Devices

Section 11	Introduces wide new powers for detaining persons the Home Secretary has or may have a duty to remove (under section 2), new powers for detaining unaccompanied children (to be exercised as specified in Regulations), removing statutory safeguards and widening the list of places where people can be detained to 'any place that the Secretary of State considers appropriate'.
Section 12	Aims to restrict the role of the courts in providing oversight of the exercise of statutory immigration detention powers, by intending to overturn well-established common law principle that it is for the court to decide for itself whether the detention of a person for the purposes of removal is for a period that is reasonable, and providing more discretion for the Home Secretary to detain 'for such further period' as she thinks 'reasonably necessary' to make arrangements for release.
Section 13	Aims to make it very difficult for people targeted by this Act to challenge their release, by prohibiting First-tier Tribunal bail for the first 28 days of their detention (8 days for unaccompanied children detained pending their removal / decision to remove under s 4 IMA 2023), restricting grounds of judicial review for the first 28 days (to bad faith and procedural defect that amounts to a fundamental breach of the principles of natural justice), and leaving only an application for a writ of habeas corpus

2 - Detention and Electronic Devices

Section 13	Disapplies the Home Secretary's duty to consult the Independent Family Returns Panel on how best to safeguard and promote the welfare of the children in relation to return and detention of families.
Section 14	Gives the power to search persons liable to be detained, and vehicles, premises and property, for things on which certain information is or may be stored in electronic form as well as powers to seize and retain such things, and to access, copy and use information stored on those things

Detention Questions

What are some issues for concern for Rafi?

- If section 11 is commenced and Rafi is an unaccompanied child, he can only be detained in the circumstances specified in Regulations (these have yet to be laid, at the time of writing).
- There is no statutory time limit on his detention, whether he is an accompanied child, unaccompanied child, or an adult.
- He can also be detained 'in any place' the Home Secretary considers appropriate.
- He has limited means to challenge detention, and he needs legal advice regarding his options. He can make an application for bail to the Home Secretary, but the First-tier Tribunal is prohibited in most cases from granting bail for 28 days (unless Rafi is an unaccompanied child detained pending a removal decision or pending removal under the Act, in which case 8 days), and judicial review grounds are extremely limited for the first 28 days of detention, leaving only habeas corpus.

3 - Accommodating Unaccompanied Children

Unaccompanied children

16. Accommodation and other support for unaccompanied migrant children
17. Transfer of children from Secretary of State to local authority and vice versa
18. Duty of local authority to provide information to the Secretary of State
19. Enforcement of local authorities' duties under sections 17 and 18
20. Extension to Wales, Scotland and Northern Ireland
21. Transfer of children between local authorities

3 - Accommodating Unaccompanied Children

Section 16	Confers a power on the Home Secretary to directly provide accommodation to “unaccompanied migrant children” or to ask a third party to do so (without any limit on the period a child can spend in Home Office accommodation). It applies to unaccompanied children arriving <u>on or after 7 March 2023</u> .
Section 17	Creates a power for the Home Secretary to decide a ‘looked after’ child is to cease being ‘looked after’ by the local authority in England, and ‘must direct’ the local authority to cease looking after the child on the transfer date.
Section 18	Imposes a duty on local authorities to provide information to the Home Secretary for the purpose of allowing <i>‘the sensible flow of information that would be relevant to a child transferring into local authority care or out of their care’</i> akin to the National Transfer Scheme (‘NTS’)
Section 19	Provides for an enforcement mechanism to ensure compliance by local authorities with information requests
Section 20	Creates a broad delegated power for the Home Secretary to amend ‘any enactment’ to extend the provisions in sections 16 to 19 to Wales, Scotland and Northern Ireland
Section 21	Amends section 69 of the Immigration Act 2016 to facilitate the transfer of responsibility for caring for particular categories of unaccompanied migrant children from one local authority to another

4 - Modern Slavery

Modern slavery

- 22. Provisions relating to removal and leave
- 23. Provisions relating to support: England and Wales
- 24. Provisions relating to support: Scotland
- 25. Provisions relating to support: Northern Ireland
- 26. Suspension and revival of sections 22 to 25
- 27. Procedure for certain regulations under section 26
- 28. Amendments relating to sections 22 to 25
- 29. Disapplication of modern slavery provisions

4 - Modern Slavery

Section 22	Extends the public order disqualification to potential victims of modern slavery, to a person targeted for removal under section 2, unless they are cooperating with an investigation or criminal proceeding and it is necessary for them to be in the UK. The SSHD must assume it is not necessary 'unless the Secretary of State considers that there are compelling circumstances which require the person to be present in the United Kingdom for that purpose', and 'compelling circumstances' are to be set out in guidance.
Section 23	Disapplies the duties on the Secretary of State under section 50A of the Modern Slavery Act 2015 to provide necessary assistance and support during the recovery period to potential victims of modern slavery (for whom a positive reasonable grounds decision has been made)
Section 24	Disapplies equivalent mandatory and discretionary powers in Scotland to support potential victims of modern slavery
Section 25	Disapplies equivalent mandatory and discretionary powers in Northern Ireland to support potential victims of modern slavery

4 - Modern Slavery

Section 26	Automatically suspends provisions in sections 22 to 25 two years after commencement, and allow provisions to be suspended before that and to be revived by Regulations made by the Home Secretary
Section 27	If the provisions suspend, they can be revived by Regulations subject to the affirmative procedure, or the made affirmative procedure in cases of urgency.
Section 28	Aims to make support and assistance, the recovery period, any additional recovery period, temporary leave for potential victims of slavery, and revocation of leave, subject to the public order disqualification
Section 29	Amends s 63 of the Nationality and Borders Act 2022 to <u>require</u> the cessation of the prohibition on removal and granting leave to people who are a threat to public order, or have claimed to be a victim of slavery or human trafficking in bad faith. It also adds persons liable to deportation as categories of persons who are considered to be a threat to public order and disqualified from protection.

5 - Entry, settlement and citizenship

Entry, settlement and citizenship

- 30. Entry into and settlement in the United Kingdom
- 31. Persons prevented from obtaining British citizenship etc
- 32. British citizenship
- 33. British overseas territories citizenship
- 34. British overseas citizenship
- 35. British subjects
- 36. Disapplication of sections 32 to 35
- 37. Amendments relating to sections 32 to 36

5 - Entry, settlement and citizenship

Section 30	Bars persons targeted for removal under section 2, arriving on or after 7 March 2023, from limited leave to enter and remain, entry clearance, electronic travel authorisation, and indefinite leave to remain subject to certain exceptions
Section 31	Sets out which people will not be eligible for British citizenship, British overseas territories citizenship, British overseas citizenship and British subject status, and extends ineligibility to people arriving/entering the UK, Channel Islands, the Isle of Man and British overseas territories
Section 32	Provides that ineligible persons will not be able to register or naturalise as a British citizen under the specified provisions

5 - Entry, settlement and citizenship

Section 33	Prevents ineligible persons from acquiring British overseas territories citizenship
Section 34	Prevents ineligible persons from acquiring British overseas citizenship under section 27(1) of the British Nationality Act 1981
Section 35	Prevents ineligible persons from registering as a British subject under section 32 of the British Nationality Act 1981
Section 36	Allows the Home Secretary to determine that a person is not 'ineligible' for registration or naturalisation, if she considers it necessary in order to comply with the UK's obligations under the ECHR
Section 37	Amends the relevant provisions of the 1981 Act to make them subject to the Act

Entry, settlement and citizenship

- Section 30 covers all forms of leave, Electronic Travel Authorisations (ETAs), and entry clearance.
- Sections 31-36 cover citizenship. References to the United Kingdom in section 2 IMA and in section 31 are to be read as if they included references to the Channel Islands, Isle of Man, and the British overseas territories.

Entry, Leave, Settlement ban

Section 8AA of the 1971 Act, which is introduced by section 30 of the Illegal Migration Act 2023 states that a person:

(2) Subject to subsections (3) to (5), the person—

*(a) must not be **given leave to enter or leave to remain in the United Kingdom**, unless it is—*

(i) limited leave given under the immigration rules to a person within section 4(1) of that Act (unaccompanied children), or

(ii) limited leave to remain given under section 65 of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking) as it has effect by virtue of section 22 of the Illegal Migration Act 2023 (provisions relating to removal and leave),

(b) must not be granted an entry clearance, and

(c) must not be granted an ETA.

Exception - ETAs, Entry Clearance, Leave to Enter

BUT in section 8AA of the 1971 Act:

*(3) The Secretary of State may give the person **limited leave to enter** the United Kingdom, or grant to the person an **entry clearance or an ETA**, if—*

*(a) the person has **left or been removed** from the United Kingdom after having become a person within subsection (1), and*

(b) the Secretary of State considers that—

*(i) failure to give the leave or grant the entry clearance or ETA would contravene the United Kingdom's obligations under the **Human Rights Convention**, or*

*(ii) there are **other exceptional circumstances** which apply in relation to the person which mean that it is appropriate to give the leave or grant the entry clearance or ETA.*

Exception - Leave to Remain

AND in section 8AA of the 1971 Act:

*(4) The Secretary of State may give the person **limited leave to remain** in the United Kingdom if—*

(a) the Secretary of State considers that failure to do so would contravene the United Kingdom's obligations under the Human Rights Convention or any other international agreement to which the United Kingdom is a party, or

*(b) the Secretary of State has exercised the power in subsection (3) in respect of the person, **and** the Secretary of State considers that there are other exceptional circumstances which apply in relation to the person which mean that it is appropriate to give the person limited leave to remain.*

Exception - Leave to Remain

ALSO, in section 30 IMA 2023:

(4) Until section 2(1) comes into force in relation to a person, section 8AA of the Immigration Act 1971 has effect in relation to that person as if it also permitted the Secretary of State to give the person limited leave to enter or limited leave to remain in the United Kingdom in any other circumstances, subject as follows.

(5) If a person in relation to whom section 8AA of the Immigration Act 1971 applies leaves or is removed from the United Kingdom after having become such a person, subsection (4) of this section does not permit the Secretary of State to give the person limited leave to enter the United Kingdom if the person returns to the United Kingdom (but see section 8AA(3) of that Act).

(6) If a person in relation to whom section 8AA of the Immigration Act 1971 applies is given limited leave to enter the United Kingdom under subsection (3) of that section, subsection (4) of this section does not permit the Secretary of State to give the person limited leave to remain in the United Kingdom (but see section 8AA(4) of that Act).

(7) Any leave to enter or remain in the United Kingdom given to a person by virtue of subsection (4) is to be disregarded in determining, for the purposes of this Act or any other enactment, whether the person meets the four conditions in section 2.

Citizenship

- Luckily, the Bill as introduced to Parliament, was amended. Otherwise, the citizenship provisions would have also applied to descendants of people who met the four conditions in section 2. Children would have been penalised for the actions of their parents.
- Section 32(1) removes entitlement to register as a British citizen, including for minors born to British citizens by descent (under section 3(2) or (5) of the British Nationality Act 1981). It also removes the ability of the Home Secretary to exercise discretion to register children under the catch-all in section 3(1) of the British Nationality Act 1981 and to naturalise adults under section 6 of the British Nationality Act 1981.
- It also removes the option of acquiring British overseas territories citizenship (s.33), British overseas citizenship (s.34), British subjects (s.35)

The Exception for ILR and Citizenship

For ILR in section 8AA(5) of the 1971 Act:

- (5) The Secretary of State may give the person indefinite leave to remain in the United Kingdom if the Secretary of State considers that failure to do so would contravene the United Kingdom's obligations under the Human Rights Convention.

For citizenship in section 36 IMA 2023:

36 Disapplication of sections 32 to 35

- (1) This section applies in relation to a person who would otherwise be an ineligible person for the purposes of sections 32 to 35 (see section 31).
- (2) The Secretary of State may determine that the person is not to be an "ineligible person" for the purposes of sections 32 to 35 if the Secretary of State considers that the application of those sections in relation to the person would contravene the United Kingdom's obligations under the Human Rights Convention.

UNHCR's Recommendations, 6 Oct 2023

5. UNHCR urges the Secretary of State to adopt Immigration Rules and published policies confirming that she will exercise her new discretionary powers under the IMA 2023 by granting refugees and stateless people in the UK a form of leave to remain that complies with the UK's obligations under the Refugee Convention and the 1954 Stateless Persons Convention.

[...]

8. Given that the determination that a person is a refugee or is stateless is a declaratory rather than a constitutive act, many people who remain in the UK but are made ineligible for a grant of leave to remain by Section 30(3) will be refugees or stateless and have rights as such under international law, even if their claims are never formally considered by the UK. However, if they are not granted any form of lawful status in the UK, they will have little or no access to those rights.

9. [As the duty to remove is not yet in force] 'the protection claims of people who entered the UK on or after 7 March 2023 are, at the present time, still being processed within the existing asylum system. Those whose claims are refused may be removed to their own countries; those whose claims are granted, however, will be recognized as refugees but ineligible for leave to remain under the Immigration Rules.'

UNHCR's Recommendations, 6 Oct 2023

The clear purpose of [Section 8AA(4)] is to prevent the UK from contravening its international obligations with regard to individuals covered by the duty to remove who nonetheless remain in the UK. In order to fulfill this purpose, as far as possible within the constraints of the other provisions of the IMA 2023, the following rights should be attached to the form of leave to remain that is granted:

- (i) The right to engage in wage-earning employment and self-employment, and to practice a profession, in accordance with Articles 17, 18 and 19 of the Refugee Convention and of the 1954 Stateless Persons Convention;*
- (ii) Access to public funds and to the NHS on the same terms as nationals, in accordance with Article 23 of the Refugee Convention and of the 1954 Stateless Persons Convention;*
- (iii) Access to housing, in accordance with Article 21 of the Refugee Convention and of the 1954 Stateless Persons Convention;*
- (iv) An unrestricted right to rent residential property, in accordance with Article 13 of the Refugee Convention and of the 1954 Stateless Persons Convention;*
- (v) Freedom of movement, in accordance with Article 26 of the Refugee Convention and of the 1954 Stateless Persons Convention;*
- (vi) Travel documents, in accordance with Article 28 of the Refugee Convention and of the 1954 Stateless Persons Convention;*
- (vii) Protection against expulsion except on national security and public order grounds, in accordance with Article 32 of the Refugee Convention and Article 31 of the 1954 Stateless Persons Convention;*
- (viii) Sufficient security of status to facilitate integration, in accordance with Article 34 of the Refugee Convention and Article 32 of the 1954 Stateless Persons Convention;*
- (ix) Free access to the courts, on equal terms with nationals with regard to legal assistance, in accordance with Article 16 of the Refugee Convention and of the 1954 Stateless Persons Convention.*

UNHCR's Recommendations, 6 Oct 2023

17. UNHCR notes that with regard to settlement and naturalization, the Secretary of State is only expressly authorized to exercise her discretion to grant indefinite leave to remain or citizenship where this is required by the European Convention on Human Rights.²⁹ UNHCR notes in this regard that security of status is essential to refugees' integration and employment, such that long-term precarity is in the interests of neither refugees and stateless people, nor of their host communities. The ECtHR, moreover, has found that lack of secure status or the denial of nationality can engage Article 8, depending on the adverse consequences for a person's enjoyment of their rights to family or private life.³⁰ Those consequences are likely to be particularly significant for refugees and stateless persons, who do not have access to the protection of their country, or countries, of nationality or former habitual residence.³¹ UNHCR therefore urges the UK to adopt rules and guidance that ensure that applications for settlement and naturalization by stateless persons and refugees subject to the duty to remove are viewed in a humanitarian spirit, in line with the UK's obligations under Article 34 of the Refugee Convention and Article 32 of the 1954 Statelessness Convention, and with due consideration of all relevant personal circumstances.

Entry, settlement and citizenship questions

On what basis/bases can Rafi apply for limited leave to remain?

- If Rafi is an unaccompanied child, leave under section 8AA(2)(a) of the IA 1971
- Whether Rafi is an adult or a child, limited leave to remain on the basis the failure to do so would contravene the United Kingdom's obligations under the ECHR or any other international agreement under section 8AA(4) of the IA 1971
- As section 2(1) will have come into force, since he received a removal notice, he cannot apply on the basis of section 30(4) of the IMA 2023

6 - Legal Proceedings

Legal proceedings

- 38. Suspensive claims: interpretation
- 39. Serious harm suspensive claims: interpretation
- 40. Meaning of “serious and irreversible harm”
- 41. Relationship with other proceedings
- 42. Serious harm suspensive claims
- 43. Removal conditions suspensive claims
- 44. Appeals in relation to suspensive claims
- 45. Permission to appeal in relation to suspensive claims certified as clearly unfounded
- 46. Suspensive claims out of time
- 47. Suspensive claims: duty to remove
- 48. Upper Tribunal consideration of new matters
- 49. Appeals in relation to suspensive claims: timing
- 50. Procedure for Tribunal Procedure Rules
- 51. Finality of certain decisions by the Upper Tribunal
- 52. Judges of First-tier Tribunal and Upper Tribunal
- 53. Special Immigration Appeals Commission
- 54. Interim remedies
- 55. Interim measures of the European Court of Human Rights
- 56. Legal aid

6 - Legal Proceedings

Section 38	Interpretation section for Legal Proceedings (ss 39-53), importantly defines “Third country removal notice” as a removal notice under which a person is to be removed to a third country.
Section 39	Defines a serious harm suspensive claim, made against third country removals and “serious harm condition”
Section 40	Permits the Home Secretary to amend section 39 to make provision about the meaning of “serious and irreversible harm”, but does not permit removal of examples of serious and irreversible harm
Section 41	Provides that a serious harm suspensive claim is not a human rights claim, and will not attract a right of appeal, but a person can make a human rights claim regarding their removal to a third country and seek a judicial review of refusal of that human rights claim

6 - Legal Proceedings

Section 42	Sets out the process for the submission and determination of valid serious harm suspensive claims, and provides for restrictive time limits (with the possibility of Home Secretary extension)
Section 43	Sets out the process for the submission and determination of valid removal conditions suspensive claims, and provides for restrictive time limits (with the possibility of Home Secretary extension)
Section 44	Provides for an appeal, on limited grounds, to the Upper Tribunal where the Home Secretary has refused a suspensive claim and has not certified the claim as clearly unfounded, which can be further appealed to the Court of Appeal or Court of Session
Section 45	Makes provision for permission to appeal against a decision by the Home Secretary to certify a suspensive claim as clearly unfounded (as there is no automatic right of appeal), and sets a high threshold for permission
Section 46	Makes provision for out-of-time suspensive claims, made before a person's removal from the UK
Section 47	Details the consequences for removal of a person making a suspensive claim

6 - Legal Proceedings

Section 48	Makes provision for the Upper Tribunal to consider new matters that were not available to the Home Secretary, if there are 'compelling reasons'
Section 49	Requires Tribunal Procedure Rules setting very short time limits for the appeals process, with general extensions if that is the 'only way' to secure justice is done in a particular case
Section 50	Permits the Lord Chancellor rather than the Tribunal Procedure Committee to make the first set of Tribunal Procedure Rules for the purposes of any of sections 44 to 49
Section 51	Ousts supervisory jurisdiction of the High Court and Court of Session to consider judicial review challenges of certain decisions of the Upper Tribunal, even if the Upper Tribunal has acted beyond its powers
Section 52	Redefines Upper Tribunal judges to include First-tier Tribunal judges

6 - Legal Proceedings

Section 53	Provides for appeals and applications for permission to appeal if the Home Secretary certifies the decision was made wholly or partly in reliance on information which, in the opinion of the Secretary of State, should not be made public, to lapse and instead be appeals to the Special Immigration Appeals Commission (SIAC).
Section 54	Restricts a court or tribunal granting interim remedies that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom
Section 55	Provides that an interim measure indicated by the European Court of Human Rights does not affect the duty in s 2 of the Act to make arrangements for the removal of a person from the United Kingdom, unless a Minister determines that it does, and a court or tribunal cannot have regard to the interim measure.
Section 56	Provides for the provision of civil legal services to a person in receipt of a removal notice is in scope of legal aid, and which will not be means or merit tested.

Suspensive Claims and Appeals

- Why are these called suspensive claims? They are the only mechanism in the Act to suspend/pause/stop removal of a person to a country.
- Suspensive claims are not human rights claims. Therefore, any human rights claim (which would not itself be suspensive) would need to be made additionally and would run concurrently to the suspensive claim process.
- There are two types of suspensive claims:
 - **Serious harm suspensive claims** for which a person must show that they would face a ‘real, imminent and foreseeable risk of serious and irreversible harm’.
 - **Removal conditions suspensive claims** for which a person must show that they do not meet the removal conditions.
- What are the avenues for challenging removal? The avenues available depend on a person’s country of nationality/identity.

“Safe State” nationals

A national of a country listed in the new section 80AA of the Nationality, Immigration and Asylum Act 2002, added by section 59 of the Act (at the time of the presentation an EEA, Albanian or Swiss national, but following it the Government proposed [adding](#) Indian and Georgian nationals):

- who is to be removed to their country of nationality or a country in which they have obtained an identity document, who makes a protection or human rights claim, will not have it considered, unless ‘exceptional circumstances’ apply. They will have no right of appeal and the intention of the Act is for them to have no ability to suspend their removal, unless they make a removal conditions suspensive claim. Therefore, Albanians can be removed to Albania, with very limited ability to prevent removal.
- who is to be removed to a third country, in which they embarked for the UK or any other country (listed in the Schedule to the Act) where there is reason to believe they may be admitted (such as Rwanda), may bring a removal conditions or a serious harm suspensive claim regarding their removal to that third country.
- can make a human rights claim against removal to a third country (such as Rwanda), which does not suspend removal, and, if refused, there is no right of appeal but the decision may be challenged by way of an application for judicial review.

All other nationals

An individual who is not a national of a “Safe State” listed in section 80AA (i.e. who is not an Albanian, Swiss, or EEA national, or Indian and Georgian national *if/when* the Regulations are made):

- cannot be removed to their country of nationality or to a country in which they have obtained an identity document. *Therefore, for example, an Afghan cannot be removed to Afghanistan.*
- who is to be removed to a third country, in which they embarked for the UK or any other country (listed in the Schedule) where there is reason to believe they may be admitted (such as Rwanda), may also bring a suspensive removal conditions and serious harm suspensive claim regarding removal to that third country.
- can additionally make a human rights claim against removal to a third country (such as Rwanda), which does not suspend removal, and, if refused, there is no right of appeal but the decision may be challenged by way of an application for judicial review.

Serious Harm Suspensive Claims

These only arise in relation to third-country removals (not removals to a person's country of nationality/identity).

A person must show:

- that they would face a 'real, imminent and foreseeable risk of serious and irreversible harm' AND
- that the harm would arise before the period it will take for their human rights claim to be decided, including the time for judicial review to be concluded.

Section 39(4) gives examples that include death, persecution, torture, inhuman or degrading treatment or punishment, onward removal to a country where a person would face a real, imminent and foreseeable risk of any of the aforementioned harms.

Specifically precluded from constituting serious and irreversible harm is *'any pain or distress resulting from a medical treatment that is available to P in the United Kingdom not being available to P in the relevant country or territory'*.

Furthermore, section 40 still provides that the Home Secretary may amend the definition of serious and irreversible harm in regulations, defining any aspect or giving further examples.

Removal conditions suspensive claims

These arise in relation to third-country removals (not removals to a person's country of nationality/identity) AND in relation to removal to a country of nationality/identity.

A person must show that they do not meet the removal conditions.

Whether they meet most removal conditions is likely to be quite clear:

- Did they arrive on or after the date the Act is passed?
- Did they enter or arrive with the appropriate leave, entry clearance, ETA?
- Did they arrive in breach of a deportation order?
- Are they an excluded person?
- Do they require leave to enter or remain and not have it?

More complex issues may arise in relation to the following questions:

- Did they obtain leave to enter by deception, for example, if they entered as a visitor or student and then claimed asylum?
- Did they come directly to the UK from a country in which their life and liberty were threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion? Or did they pass through or stop in another country outside the United Kingdom where their life and liberty were not so threatened?

New Suspensive Appeal Process

Step 1: Lodging the Suspensive Claim

In-time Claims

Individual to lodge suspensive claim within 8 days, beginning with the day on which the person is given the removal notice.

The claim must contain 'compelling' evidence, be in a form and manner yet to be prescribed, and contain information yet to be prescribed. These will be prescribed in Regulations made by the Home Secretary.

8 days is an extremely short period of time for a person without a legal representative to find one, give instructions, gather evidence, and make the suspensive claim.

The Home Secretary has the power to extend the claim period, 'where the Secretary of State considers it appropriate to do so.'

Details of all relevant matters should be raised in the 8-day claim period, otherwise they will be considered 'new matters'.

New Suspensive Appeal Process (1)

Step 1: Lodging the Suspensive Claim

Out-of-time Claims

If a person fails to meet the 8-day timeframe, they must provide 'compelling reasons' why they did not claim in-time.

If the Home Secretary decides there were not compelling reasons, a person can apply to the Upper Tribunal within 7 working days for a declaration that there were such reasons.

The Upper Tribunal must determine the declaration application and give notice within 7 working days.

There is no right of appeal, and there are limited grounds for judicial review, if the Upper Tribunal finds there were no such reasons.

Once an out-of-time claim is pending, it pauses removal. So, it is important to balance the importance of lodging in-time raising all relevant matters, with also providing the appeal in the prescribed form with the compelling evidence required.

New Suspensive Appeal Process (2)

Step 2: Home Secretary Decision on the Suspensive Claim

The Secretary of State is to make a decision on the suspensive claim within 4 days beginning with the day of receipt, unless the decision period is extended. The decision maker may:

- accept the claim,
- refuse the claim, or
- refuse it and also certify that it is '*clearly unfounded*'.

New Suspensive Appeal Process (2)

Step 2: Home Secretary Decision on the Suspensive Claim

(a) If the claim is accepted:

The person may not be removed from the United Kingdom to the country or territory specified in the removal notice, unless there has been a change of circumstances in relation to the person.

If there has been a change of circumstances (including if a human rights claim or judicial review application regarding their removal is unsuccessful) the Secretary of State may revise the decision and instead make a decision to refuse their suspensive claim.

However, if it is only their serious harm suspensive claim that is successful, the Home Secretary would still have a section 2 duty to make arrangements for the removal of a person from the United Kingdom, as soon as is reasonably practicable.

New Suspensive Appeal Process (2)

Step 2: Home Secretary Decision on the Suspensive Claim

(b) If the claim is refused but not certified as clearly unfounded:

A notice of appeal, with 'compelling' evidence, must be given to the Upper Tribunal within 7 working days. The only available grounds of appeal are:

- that the 'serious harm' condition is met; or
- that the person does not meet the removal conditions.

The Upper Tribunal must make a decision within 23 working days, beginning with the day on which the appellant gave notice of appeal to the Upper Tribunal.

If the appeal is dismissed by the Upper Tribunal, onward appeal is to the Court of Appeal or Court of Session.

New Suspensive Appeal Process (2)

Step 2: Home Secretary Decision on the Suspensive Claim

(c) If the claim is refused and certified as clearly unfounded:

An application for permission to appeal must be made to the Upper Tribunal within 7 working days, beginning with the day on which the applicant was given notice that the Secretary of State had certified the person's suspensive claim as clearly unfounded.

There is no automatic right of appeal.

The thresholds are raised for obtaining permission to appeal.

- For a serious harm suspensive claim, the Upper Tribunal may grant permission 'only' if it considers there is 'compelling' evidence that the person meets the 'serious harm condition' and the risk is 'obvious'.
- For a removal conditions suspensive claim, the Upper Tribunal may grant permission to appeal 'only' if it considers that there is 'compelling' evidence that the person does not meet the removal conditions.

Permission hearings will be on the papers only, unless the Upper Tribunal considers an oral hearing is necessary for justice to be done in a particular case.

New Suspensive Appeal Process (2)

Step 2: Home Secretary Decision on the Suspensive Claim

(c) If the claim is refused and certified as clearly unfounded:

Permission to Appeal

The Upper Tribunal must determine the permission application and give notice within 7 working days, beginning with the day on which the application was made to the Upper Tribunal.

If permission to appeal is granted, then the procedure reverts to the process in Step 2(b): as if the claim had been refused but not certified.

If permission to appeal is refused, there is no right of appeal, and there are limited grounds for judicial review.

New Suspensive Appeal Process

New Matters

The Upper Tribunal can take into account any matter it considers relevant to the substance of the decision.

But without the permission of the Home Secretary, the Upper Tribunal may not consider 'new matters' (i.e matters raised in an application or appeal it is raised by the person in the course of the appeal or application, which the person did not provide details of to the Secretary of State before the end of the 8-day suspensive claim period).

The Home Secretary may provide consent *only* if the Home Secretary considers that there were compelling reasons for the person not to have provided details of the matter before the end of the claim period. She has 3 working days beginning with the day after the day on which the new matter is raised by the person in the course of the appeal or application.

If the Home Secretary refuses consent to consider the 'new matters', section 48 provides that the Upper Tribunal may determine that there were compelling reasons for the person not to have provided details of the matter to the Home Secretary before the end of the claim period.

There is no right of appeal in relation to a decision of the Upper Tribunal to make or not to make a determination, and there are limited grounds for judicial review.

Limited Grounds for Judicial Review

If a decision is made to grant or refuse permission to appeal, a declaration in an out-of-time claim, or to make or not make a determination on new matters, section 51 dictates that the decision is final, and not liable to be questioned or set aside in any other court.

In particular, the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision, and there can be no judicial review except so far as the decision involves or gives rise to any question as to whether—

- (a) the Upper Tribunal has or had a valid application before it (for permission to appeal or out of time claims)
- (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application or a decision on new matters, or
- (c) the Upper Tribunal is acting or has acted—
 - (i) in bad faith, or
 - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

Such grounds are unlikely to frequently arise in practice.

When is the duty to remove suspended?

- where a person has made an in-time suspensive claim, removal is suspended until the Secretary of State has made a decision on the claim;
- where a person has made an out-of-time suspensive claim, removal is suspended until the Secretary of State has made a decision on whether there were compelling reasons the claim was out-of-time;
- where a person has made an out-of-time suspensive claim and the Secretary of State considers there were no compelling reasons for an out-of-time claim, removal is suspended until either the person has applied to the Upper Tribunal for a declaration that there were compelling reasons for an out-of-time claim, or the period for making such an application has expired;
- where a person has made an out-of-time suspensive claim and the Secretary of State considers there were compelling reasons for an out-of-time claim or the Upper Tribunal grants an application under section 46 requiring the Secretary of State to consider the out-of-time claim, removal is suspended until the Secretary of State has considered the suspensive claim;

When is the duty to remove suspended?

- where the Secretary of State has refused a suspensive claim and has not certified the claim as clearly unfounded, removal is suspended until any appeal is determined or the time for lodging an appeal has expired.
- where the Secretary of State accepts the suspensive claim, or where a person successfully appeals to SIAC or the Upper Tribunal, they may not be removed to that country or territory in the removal notice. Although, the duty to remove still applies, and so a removal notice for a different country could be issued and this process repeated. But if a person has a change of circumstances, such as a failed judicial review or human rights claim regarding their removal, it can cause the Home Office to also issue a new removal notice following a successful appeal or revise their decision if the Home Secretary previously accepted the suspensive claim.

What else can a court or tribunal do to stop removal?

Interim Remedy: A court or tribunal cannot grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom (see section 54).

Interim Measures: The Upper Tribunal when considering any application or appeal under this Act, and a court or tribunal when considering any application or appeal which relates to a decision to remove a person from the United Kingdom under this Act, is also restricted by Ministerial decision as to whether it can consider interim measures indicated by the European Court of Human Rights (see section 55). A Minister can decide personally whether the section 2(1) duty should apply to a person, to make arrangements for their removal, if the ECtHR has indicated an interim measure.

The Minister may have regard to any relevant matters including, in particular—

- (a) whether the government of the United Kingdom was given an opportunity to present observations and information before the interim measure was indicated;*
- (b) the form of the decision to indicate the interim measure;*
- (c) whether the European Court of Human Rights will take account of any representations made to it by the government of the United Kingdom seeking reconsideration, without undue delay, of the decision to indicate the interim measure;*
- (d) the likely duration of the interim measure and the timing of any substantive determination by the European Court of Human Rights.*

IMA Legal Proceedings

X day - Screening Interview

X day - IMA s.8 Removal Notice

1. Lodge Suspensive Claim

[potential extension of time application under ss 42(6) and 43(6), including if no access to legal advice unclear if DDAS rep having no capacity will count].

a. In-time

X+7 Deadline for making suspensive claim(s) regarding removal to countries listed in Removal Notice

or

b. Out of time claims

+3 days for SSHD to make decision

+6 working days app to be made to Upper Tribunal if SSHD decides no compelling reasons for out-of-time claim

+6 working days UT to determine whether compelling reasons for out-of-time claim

(if out-of-time declaration is refused, limited judicial review grounds - per s.51) NB. note s 8(2) removal can happen

IMA Legal Proceedings

2. Decision on Suspensive Claim
+3 Deadline for SSHD to decide suspensive claim (with possibility of SSHD extending time)
3. Permission to Appeal if claim is certified
+6 working days Deadline for permission to appeal application to Upper Tribunal
+6 working days Deadline for Upper Tribunal Decision on permission to appeal application
(if permission to appeal refused, limited judicial review grounds - per s.51)
4. Appeal deadline (if permission to appeal is granted or claim is not certified)
+6 working days deadline to give notice of appeal to Upper Tribunal
5. Upper Tribunal Decision
+22 working days for Upper Tribunal to make decision and give notice (time can be extended if only way to secure justice is done, or for +3 working days where new matter is raised in appeal or application)
6. Onward appeal to Court of Appeal if Upper Tribunal decides removal conditions are met or serious harm condition is not met.

Legal Aid

It is worth noting that in England and Wales, civil legal services are in scope of legal aid to an individual who has received a removal notice, in relation to the removal notice (including in relation to a suspensive claim relating to the removal notice, and an application, under section 46(4) of the Illegal Migration Act 2023, for a declaration from the Upper Tribunal that there were compelling reasons for the person to not have claimed in-time). They are not merit tested.

Advocacy in proceedings in the Upper Tribunal, under any of sections 44 to 49 of the Illegal Migration Act 2023, or under Tribunal Procedure Rules made for the purposes of any of those sections, are also brought into scope.

The [Civil Legal Aid \(Financial Resources and Payment for Services and Remuneration\) \(Amendment\) Regulations 2023](#) (a) amend the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 to ensure that means-testing does not apply to these civil legal services brought into scope of legal aid by section 56(3)-(4); and (b) the 2023 Regulations amend the Civil Legal Aid (Remuneration) Regulations 2013 to introduce new hourly rates (increased by 15%) to remunerate legal aid providers and barristers in independent practice for this work.

There is also increased scope of legal aid for individuals who wish to judicially review refusals of human rights claims regarding removal to third countries, where their claim arises from Article 2 or 3 of the European Convention on Human Rights. However, such judicial reviews will still be subject to any relevant means test.

Questions on the Suspensive Process

What are some key points we should advise Rafi in relation to the suspensive claim and/or appeal process?

- The most urgent thing to do is to try to get Rafi legal help with his suspensive claim(s) and appeal. An extension of time can be requested from and granted by the Home Secretary, particularly if Rafi does not have access to legal help.
- Following instructions, it is likely that the most viable claims he can make are serious harm suspensive claim regarding removal to Rwanda (very urgent) and a human rights claim regarding removal to Rwanda (this is less urgent, but can be judicially reviewed if refused). Take instructions to find out whether he has a removal conditions suspensive claim.
- Compelling evidence will need to be quickly gathered and submitted.
- Wherever possible, try to file the claim in-time, so that you do not need to have recourse to the out-of-time claim process. If claiming out of time, this needs to be done as soon as possible, given that he is subject to removal until a suspensive claim is lodged. Thereafter, try to meet any appeal deadlines of the Upper Tribunal.
- Interim measures from the European Court of Human Rights are still worth pursuing, but Ministers can require courts and tribunals to ignore them.

7 - Miscellaneous

Age assessments etc

57. Decisions relating to a person's age

58. Age assessments: power to make provision about refusal to consent to scientific methods

Inadmissibility of certain asylum and human rights claims

59. Inadmissibility of certain asylum and human rights claims

Safe and legal routes

60. Cap on number of entrants using safe and legal routes

61. Report on safe and legal routes

Credibility of claimant

62. Credibility of claimant: concealment of information etc

7 - Miscellaneous

<p>Section 57</p>	<p>Removes the age assessment right of appeal in NABA 2022, if a relevant authority (including a local authority) decides the age of a person who meets the four conditions in section 2. Any judicial review of age assessment, or removal on the basis of age assessment, does not prevent the exercise of any duty or power to make arrangements for removal.</p> <p>Limits judicial review so a court or tribunal may only grant relief on the basis that the decision was wrong in law, and may not grant relief on the basis that the court or tribunal considers the decision was wrong as a matter of fact.</p>
<p>Section 58</p>	<p>Home Secretary may make regulations about the effect of a decision by a person to refuse to consent to the use of a specified scientific method for the purposes of an age assessment, where there are no reasonable grounds. The regulations may provide that section 52(7) of the Nationality and Borders Act 2022 (refusal to consent to scientific methods to be taken to damage credibility) does not apply, and that a person is to be treated as if the decision-maker had decided that the person was over the age of 18.</p>

7 - Miscellaneous

Section 59	Intends to extend the current inadmissibility process for asylum claims from people from the EU, in section 80A Nationality, Immigration and Asylum Act 2002, to cover other nationalities (Albania, Iceland, Liechtenstein, Norway and Switzerland - following the presentation, the Government has draft Regulations to add India and Georgia) and to also make human rights claims inadmissible. It also inserts the list of 'Safe States for the purposes of section 80A' in section 80AA of the 2002 Act.
Section 60	Requires the Secretary of State, by regulations, to determine an annual cap (determined following consultation with local authorities and other relevant bodies) on the resettlement of refugees admitted to the UK <i>via</i> safe and legal routes
Section 61	Requires the Secretary of State to prepare and publish a report on 'safe and legal routes' for entry into the United Kingdom, and lay the report before Parliament.
Section 62	Amends section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to provide for certain kinds of behaviour relating to an identity document or electronic information by a person who makes an asylum claim or a human rights claim to be taken into account as damaging the claimant's credibility

8 - General

General

- 63. Financial provision
- 64. Consequential and minor provision
- 65. Regulations
- 66. Defined expressions
- 67. Extent
- 68. Commencement
- 69. Short title

9 - Schedules

Schedule 1

COUNTRIES OR TERRITORIES TO WHICH A PERSON MAY BE REMOVED

1	Republic of Albania.
2	Austria.
3	Belgium.
4	Bolivia.
5	Bosnia and Herzegovina.
6	Brazil.
7	Bulgaria.
8	Republic of Croatia.
9	Republic of Cyprus.
10	Czech Republic.
11	Denmark.
12	Ecuador.
13	Estonia.
14	Finland.
48	Republic of Rwanda.

However, note section 7(1) of the IMA 2023:

(1) *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—*

(a) there is in general in that country or territory, or part, no serious risk of persecution, and

(b) removal of persons to that country or territory, or part, pursuant to the duty in section 2(1) will not in general contravene the United Kingdom's obligations under the Human Rights Convention.

9 - Schedules

Schedule 2

Section 15

ELECTRONIC DEVICES ETC

Introduction

- 1 In this Schedule “relevant person” means a person who—
- (a) is liable to be detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (illegal migrants), and
 - (b) entered or arrived in the United Kingdom as mentioned in section 2(2) of this Act on or after the day this Schedule came into force.
- 2 (1) In this Schedule—
- “appropriate adult”, in relation to a person, means—
- (a) a person appearing to an immigration officer to be the person’s parent or guardian,
 - (b) if the person is in the care of a relevant authority or voluntary organisation, a person representing that authority or organisation.

ILPA

FAST TRACK SUSPENSIVE PROCESS

Removal condition suspensive claims against return.
Serious harm suspensive claim against removal to 3rd country - but if successful, the SSHD is still under a duty to remove that person.

DETENTION

Indefinite detention powers, including of children, with limited judicial oversight (no First-tier Tribunal bail and judicial review on limited grounds for 28 days)

Vicious Circle of the Illegal Migration Act 2023

LIMBO

SSHD banned from granting status / citizenship, with limited exceptions (ss 30-31 IMA 2023)

DUTY OF REMOVAL

The SSHD has a statutory duty (power, for lone children, that becomes a duty on their 18th birthday) to remove individuals who meet the 4 conditions (ss 2-3 IMA 2023)

INADMISSIBILITY

Permanent statutory inadmissibility bans the SSHD from considering protection & human rights claims regarding return.

No trafficking or modern slavery claim, human rights claim against a third country, or judicial review will suspend removal. (s 5(1) IMA 2023)

Judges' hands are tied as they cannot issue interim remedies that prevent or delay removal and may be limited in taking into account interim measures indicated by the ECtHR. (ss 54-55 IMA 2023)

Why will this Act be a reputational failure?

Breach of International Legal Obligations

The right to seek and enjoy asylum; the obligation of non-refoulement; protection from torture and modern slavery; the right to liberty, and the right to an effective remedy



The UK is not a country of its word

The Act shows the UK does not interpret treaties to which it is a party, in good faith in light of their object and purpose.

Strasbourg Litigation and Council of Europe

The Act will likely increase cases brought and won against the UK in Strasbourg.

Enabling Ministers to require courts to ignore interim measures indicated by the ECtHR places the UK on a collision course with the Council of Europe.

The Act shows that the UK is not interested in playing its part in global responsibility sharing, in interpreting its international legal obligations in good faith, or in upholding an international rules-based order.

It shows that it will undermine universal human rights to achieve its policy ends.