

Illegal Migration Act 2023

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In the chat box tell us about you ...





• Where do you work?



 Is there anything particular you want to get out of todays session?





Session Overview

Section s.30(3) New Exclusion from Leave

Removal Conditions s.2

Gateways 1 - 4 (ss.30(3) - 30(5))

Prohibitions for 'ineligible person' (ss.31 - 37)

Advice for the two groups arriving pre and post 20 July 2023

Case Studies



Section 30(3) – new exclusion from leave

New s8AA Immigration Act 1971

Persons ineligible for leave to enter and remain, entry clearance and ETA

(1)This section applies in relation to a person who has ever met the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), reading subsection (3) of that section as if it referred to a person entering or arriving in the United Kingdom as mentioned in subsection (2) of that section on or after 7 March 2023.



Removal conditions – s2

- a) Entry in breach of normal immigration rules (includes arrival in breach of DO, VV or are a visa national without visa)
- b) Arrived on or after 20 July 2023 [7 March 2023] (this can be amended by Regs)
- c) Did not come <u>directly</u> 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
- d) Must require leave to enter or remain but does not have it

Nb. All conditions must be met for s.2 duty to apply



Exclusion from leave

New: s8AA Immigration Act 1971 (inserted by s30(2) IMA)

- (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.

(emphasis added)



Gateway 1 – re-entering the UK

- (3) The Secretary of State <u>may</u> 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—
 - 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.

(emphasis added)



Gateway 2: granting leave to remain

- (4)The Secretary of State <u>may</u> 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 <u>subsection (3)</u> 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.



Gateway 3: granting ILR

(5) The Secretary of State <u>may</u> 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.

(emphasis added)



Gateway 4: transitional provision

s30(4) IMA 2023:

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

Except if you leave the UK and try to come back (s30(5)(6) – but see s8AA(3)(4)) ©

NB: When removal duty is in force, s30(4) leave is disregarded for purpose of deciding if removal conditions apply (s30(7))



UNHCR Recommendations

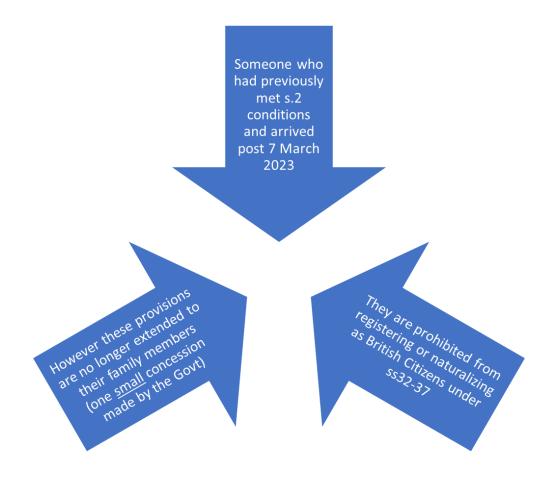
https://www.unhcr.org/uk/media/unhcr-recommendations-implementation-illegal-migration-act-pdf

Gateway 2 (s8AA(4)(a)) gives SSHD means to avoid breaches of RC/SC. Therefore leave granted must ensure rights to refugees & stateless persons i.e.:

- Right to work
- Access to public funds & NHS on same terms as nationals
- Access to housing and unrestricted right to rent
- Freedom of movement domestically & travel documents
- Protection from expulsion except on national security & public order grounds
- Sufficient security of status to facilitate integration
- Free access to courts on equal terms with nationals
- Family reunion



S. 31 'Ineligible Person'





Ss.32-37 more prohibitions for ineligible persons

S.32 prevents registration as a British Citizen under BNA 1981

S.33 prevents registration as BOTS

S.34 prevents a minor ineligible person registering as a BOTS

S.35 prevents registration as a British subject

BUT

S.36 provides a <u>very</u> limited exception if to determine someone as an 'ineligible person' would breach the ECHR

S37 – consequential amendments to nationality legislation – see: https://www.legislation.gov.uk/ukpga/2023/37/section/37/enacted



When is ILR / citizenship necessary to prevent breach of ECHR rights? (Gateway 3 / s36)

- Most likely to engage Article 8 right to private life
- Article 8 doesn't guarantee as such a right to a particular type of residency but it
 must 'enable the individual in question to exercise unhindered his right to private
 and/or family life'
- Nor does it guarantee a right to a particular nationality or citizenship, but arbitrary denial of citizenship might raise an Article 8 issue
- Helpful summaries of caselaw and principles here:

 https://www.echr.coe.int/documents/d/echr/guide art 8 eng &
 https://www.echr.coe.int/documents/d/echr/Guide Immigration ENG



Advice for people who arrived 07.03.23-19.07.23

Arrived in UK and claimed asylum between 07.03.23 and 19.07.23 Nothing in the Act prevents the HO considering claims (asylum, trafficking, HRA) subject to the usual inadmissibility rules Assuming inadmissibility doesn't apply, HO considers the claim but are prevented from granting leave to anyone who arrived post 07.03.23 and meet the removal conditions (s.2 IMA) i.e.

Entered/arrived in the UK without leave or with leave obtained by deception

Didn't come directly from the country where they fear persecution

Require leave to enter or remain and don't have it

If you meet the removal conditions (and haven't left the UK) then you can only be granted limited leave under s8AA if you are a

UASC

VOT (helping police + you need to be in UK + no public order issue)

it would be a breach of your Convention Rights or any other international agreement i.e Refugee Convention, ECAT (S.8AA(4)) If you don't meet any of those, then until main parts of IMA in force, HO has the power to grant LLTR under any other circumstances (s.30(4) IMA 2023)

NB could be 5 vears or could be

less not clear

under S.8AA(4)

Then assuming you've secured leave and the IMA is still not fully in force, you can apply for ILR under s.8AA(5) but only if a refusal of ILR would breach your ECHR rights.

British citizenship only available if refusal would breach ECHR (s32, s37 IMA 2023)



Advice for people who arrived on/after 20.07.23

Arrived in UK on/after 20.07.23 and claimed asylum etc.

Nothing in the Act prevents the HO considering claims (asylum, trafficking, HRA) [subject to the usual inadmissibility rules] **prior** to asylum ban (ss2—10 IMA 2023) coming into force

However if asylum ban is brought into force before a decision is made then under s.5 all claims are inadmissible and client will be subject to duty to remove under s.2

NB it's possible date of 20.07.23 might be amended under s3 and be pushed back to avoid inbuilt backlog Assuming inadmissibility doesn't apply, HO considers the claim but are prevented from granting leave to anyone who arrived post 07.03.23 and meet the removal conditions (s.2 IMA) i.e.

Entered/arrived in the UK without leave or with leave obtained by deception

Didn't come directly from the country where they fear persecution

Require leave to enter or remain and don't have it If you meet the removal conditions then you can only be granted leave if you are a

UASC

VOT (helping police and no public order issue + you need to be in UK)

It would be a breach of your Convention Rights or any other international agreement i.e. Refugee Convention, ECAT (S.8AA(4)) If you don't meet any of those, then until main parts of IMA in force, HO has the power to grant LLTR under any other circumstances (s.30(4)) IMA 2023

> If HO make a decision before rest of IMA brought into force then can grant under s.8AA(4) or s.30(4)

If granted leave under s.8AA(4) before removal duty in force then removal duty would not apply as you have leave.

However, if granted under s.30(4) then removal duty could still apply because under s.30(7) this leave can be disregarded! Then assuming you've secured leave and the IMA is still not fully in force, you can apply for ILR under s.8AA(5) but only if to not do so would breach your human rights. The same goes for any subsequent request for British Citizenship

s.32 IMA



Case study 1 – answers in the chat

- M arrived in the UK from Iran via small boat and claimed asylum in June 2023. He meets the removal conditions under s.2 but the duty is not yet in force.
 - 1. Is he eligible for a grant of leave?
 - 2. What kind of leave?
 - 3. Will he be eligible for settlement?
 - 4. What difference would it make if he were an unaccompanied child?



Case study 2 – answer in the chat

- F is from Ethiopia; she is trafficked through Europe and eventually enters the UK via small boat on 20 July 2023. She claims asylum and is referred into the NRM. The asylum ban parts of the IMA are not yet in force.
 - 1. Can she be granted VTS leave as a survivor of trafficking?
 - 2. If not granted VTS leave, under which section would you argue for a grant of leave?
 - 3. If F is granted leave, what will happen to her when the asylum ban (s.2 duty etc.) comes into force?



Questions





Thank you