

Illegal Migration Act 2023

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In the chat box tell us about you ...



- What is your name?



- Where do you work?



- Is there anything particular you want to get out of today's 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 **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
- 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 **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.

(emphasis added)

Gateway 2: granting leave to remain

(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.

(emphasis added)

Gateway 3: granting ILR

(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**.

(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'

Someone who had previously met s.2 conditions and arrived post 7 March 2023

However these provisions are no longer extended to their family members (one small concession made by the Govt)

They are prohibited from registering or naturalizing as British Citizens under ss32-37

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 very limited exception if to determine someone as an 'ineligible person' would breach the ECHR

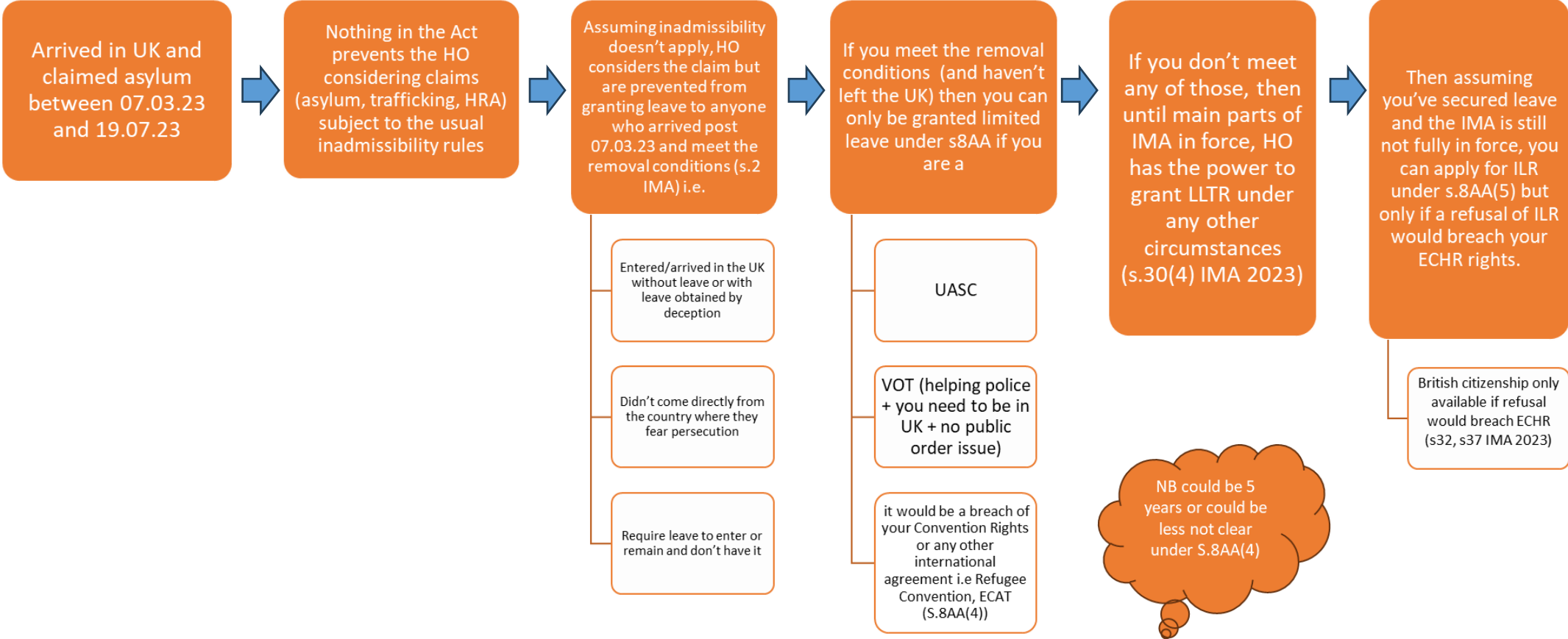
S37 – consequential amendments to nationality legislation – see:
<https://www.legislation.gov.uk/ukpga/2023/37/section/37/enacted>

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

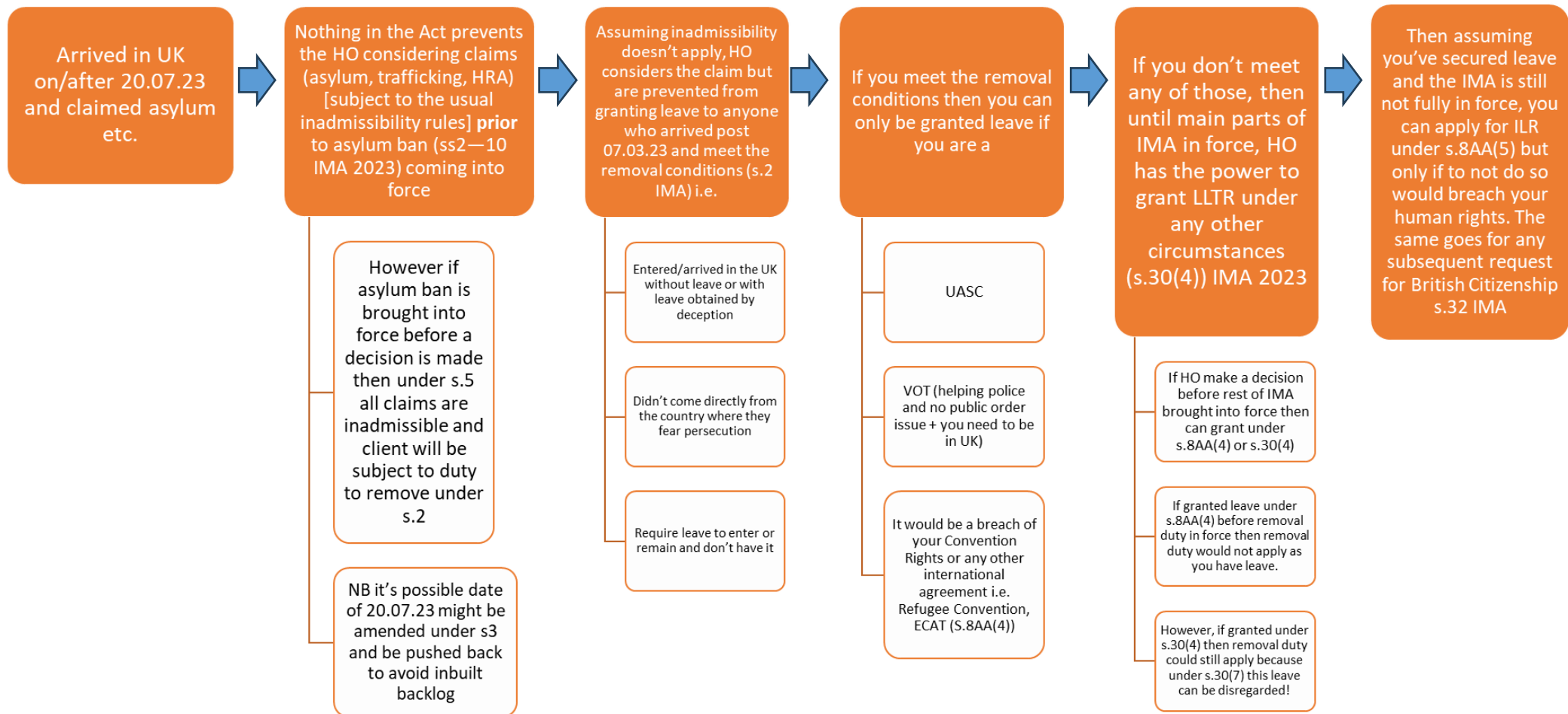
- Most likely to engage Article 8 right to private life
- Article 8 doesn't guarantee as such a right to a particular type of residency but it must 'enable the individual in question to exercise unhindered his right to private and/or family life'
- Nor does it guarantee a right to a particular nationality 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

ILPA

Advice for people who arrived 07.03.23-19.07.23



Advice for people who arrived on/after 20.07.23



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