

Briefing for Local Authorities: the Illegal Migration Act

The Illegal Migration Act 2023 constitutes the most sweeping changes to the UK's asylum system in decades, and will have a profound impact on [communities and local authorities](#) across the UK. In this briefing note, we set out some of the key aspects of the Act, consider the impact of these measures, and share practical and political actions local authorities can take to support people seeking asylum in their communities.

Although the Act is already having a major impact on the experience of people seeking safety in the UK, many of the central powers are not yet in force. See an analysis of the sections in force so far [here](#).

Removing the right to seek asylum and settle in the UK

Detaining and deporting people seeking safety

The key part of the Act is Section 2, which creates a duty for the Home Secretary to detain and deport anyone who meets the below four conditions:

- They arrived on or after 20 July 2023, and;
- They entered irregularly (including those who arrive without leave, e.g. in small boats and those who used false documents or deception to arrive) and;
- They have no leave to enter or remain and;
- They did not travel directly from the country they were fleeing.

These conditions would affect the [majority of people who seek asylum in the UK](#): there are almost no 'regular' routes that people can use to travel to the UK to seek asylum, and it is not possible to apply for asylum in the UK without being physically present.

Crucially, this duty is not yet in force. If fully enacted, it would require the Home Secretary to deport people seeking safety to either their home country because it has been designated as 'safe' by the Government, or to another 'safe third country' that has agreed to receive people and process their claims.

As it stands, the only country that the Government has this type of agreement with is Rwanda, although this policy was found to be unlawful by the Supreme Court on the basis that Rwanda is [not a safe country](#) to send people seeking asylum to. If passed, the [Safety of Rwanda Bill](#) would permit the Government to declare Rwanda a safe country and exclude people seeking asylum from [basic human rights protections](#), potentially allowing the Government to proceed with removal flights. However, it is anticipated that if flights to Rwanda do go ahead, only [limited numbers of people](#) would be removed.

'Inadmissibility': preventing people from claiming asylum

Anyone who the Government considers to meet the four conditions above would also have their human rights or asylum claim listed as ['inadmissible'](#), meaning that their claim would not be admitted to the UK asylum system. People considered to meet these four conditions will also be banned from ever being granted leave to enter or stay, or acquiring UK citizenship. There is a significant risk of large numbers of people being deemed inadmissible, even if the Government has no prospect of removing them.

Why is this harmful, and what does this mean for communities?

If enacted, these measures will effectively lead to what the UN Refugee Agency has described as an ['asylum ban'](#) in the UK, closing asylum-related routes to settlement to the majority of people seeking safety in the UK. It will result in hundreds of thousands of people living in our communities being denied protection, forced into limbo, and facing the threat of detention and deportation. Without a route to status, people will be left without the right to work or the ability to claim mainstream benefits, at risk of destitution and exploitation.

What can local authorities do?

Local authorities have a key political role to play in publicly standing with people seeking safety in their communities and protecting the right to seek asylum in the UK. Steps they can take include:

- Calling on the UK Government to repeal the Illegal Migration Act;
 - Taking public action to defend the right to seek safety in the UK, including [passing a motion](#) and signing the [Pledge to Fight the Anti-Refugee Laws](#);
 - Working with local organisations and people with lived experience of the asylum system to identify ways to mitigate the effects of these measures in their local authority area;
 - Building the strength, sustainability and resilience of welcome across the local authority by committing to becoming a recognised [Council of Sanctuary](#);
 - Ensuring councillors and officers are connected to communities of support and best practice via the [Local Authority Network](#) and the [Migrant Champions Network](#).
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Destitution and homelessness

Removing hope and creating an indefinite limbo

While the duty to remove has not yet come into force, [tens of thousands of people](#) across the UK are already being held in what has been described as a ['perma-backlog'](#) meaning that members of our communities are already being prevented from rebuilding their lives with just the partial enforcement of the Act.

- **Over 22,000 people** who arrived between 7 March 2023 (when the Illegal Migration Bill entered Parliament) and 20 July 2023 (when the Bill became an Act) and meet the four Section 2 conditions outlined above are being held in the ['Illegal Migration Bill backlog'](#). This is due to one of the few parts of the Act that is currently in force, which prevents the Government from giving people in this cohort refugee status, although the Government has no duty to remove them. It is unclear how the Government intends to resolve this indefinite limbo.
- **Over 33,000 people** who arrived since July 20 2023 are being held in the ['Illegal Migration Act backlog'](#). This is a cohort of people who meet the four conditions as above, but who the Government *would* have a duty to remove if Section 2 was enforced. While the figure of 33,000 is accurate at the time of writing (March 2024), the number of people caught in this backlog will grow daily.

If the Illegal Migration Act was ever fully enacted, the Refugee Council has estimated that in the first three years, between [225,347 and 257,101 people](#) could have their asylum claims deemed inadmissible and face the threat of removal. Of this group, the Refugee Council estimates that between [161,147 and 192,670 people](#) will have had their claim for protection deemed inadmissible but will not have been removed from

the UK. This group will face indefinite limbo, and will be unable to work and reliant on destitution-related support from the Home Office to survive.

The added fear of removal is already having a significant impact on people seeking sanctuary, [particularly vulnerable torture and trafficking survivors](#), who have described anxiety about the future, a profound loss of hope, and traumatic reminders of past experiences.

Rather than continue to engage with a system that denies them any asylum-related route to settlement in the UK, it is likely that a significant number of people will choose to disappear into the community. Those who do this will be at risk of homelessness, destitution, and exploitation in the housing and labour market.

Destitution amongst people in the asylum system

As with the current asylum system, people who are assessed as being destitute whilst awaiting progress on their case will be eligible for support from the Home Office. Those subject to the powers of the Illegal Migration Act will [likely remain in asylum accommodation](#) and provided with a prepaid card for food and other essentials while the Government attempts to remove them.

As of February 2024, the standard asylum support rate is [£49.18 per week](#) or £7.03 a day, whilst those living in hotels receive just £8.86 a week, or £1.27 a day. This is insufficient for people to feed themselves and their families, buy adequate clothing, or afford public transport. People often find themselves [trapped in a state of financial uncertainty](#), where one essential need must be sacrificed for another.

Those affected by the legislation will be unable to independently support themselves or their families, unable to progress their case, and simultaneously unable to be removed from the UK. This will force tens of thousands of people to endure life below the poverty line for long periods of time, and place additional pressures on those support services– including charities and local commissioned services – dedicated to supporting people in the asylum and immigration system.

The risk of destitution, homelessness, and exploitation

The closing of asylum-related routes to settlement creates a major risk that many people, upon arrival in the UK in search of protection, will choose not to present themselves to authorities. Meanwhile, those who initially engage with the Home Office process may later choose to [disengage from asylum support](#) when threatened with removal.

This will create a large population living on the brink of destitution for prolonged periods of time, unable to work legally, and with no recourse to public funds. Those who disengage from the system will be dependent on informal support to avoid homelessness and destitution, and liable to exploitation in the housing and labour market.

Those subject to the Act may have no clear route to settling their status in the UK, which will severely restrict the support that charities and other support services can offer this group to help them move out of homelessness and unlock their full potential within communities.

Local authorities may see a growing need for their services from people with irregular immigration status, who, were it not for the Act, would be people admitted into the asylum system with a chance of being granted protection in the UK.

Families and adults with care needs already face barriers to accessing local authority support for people with NRPF, with demand outstripping availability. With the Act further limiting the routes to settlement for those affected, finding positive move-on outcomes for people will be even more challenging, likely resulting in those with care needs being reliant on already overstretched local authority support for longer.

Health implications of homelessness and having unsettled status

Leading medical organisations in the UK have suggested that the Illegal Migration Act will have [serious negative effects](#) on the “health, wellbeing and dignity of people seeking safety and trafficked people in the UK”, creating an acute demand on public health services which are already overstretched and facing severe pressures.

The uncertainty and isolation associated with prolonged precarity in the asylum system can have [serious tolls on mental and physical health](#), and those in receipt of support from the Home Office often face [barriers to accessing healthcare](#).

Those whose claims are deemed inadmissible, and those who disengage with the system, [will not be entitled](#) to receive most NHS secondary, tertiary and community services free of charge, while people experiencing homelessness will face [significant health inequalities and poorer health outcomes](#).

What can local authorities do?

Considering the expected [increase of destitution and homelessness](#) created by the Illegal Migration Act, local authorities should review their support offer and services for people with restricted eligibility to public funds. Practical steps include:

- Exploring all possible avenues to unlock access to accommodation for non-UK nationals with undetermined or restricted eligibility.
 - 👉 In '[Unlocking the Door](#)', NACCOM and Homeless Link draw on good practice from local authorities across England to explore the steps that councils can take to develop homelessness services and expand accommodation offers that work for people with restricted eligibility; accompanying [case studies](#) contain various approaches and service models implemented by councils.
- Considering [investing in immigration advice in homelessness settings](#);
- Preventing rough sleeping through community-based awareness raising and outreach;
- Strengthening partnerships and relationships with frontline services in the migrant rights, homelessness, and poverty sectors.

Children and safeguarding

How will the Act affect children?

Children's claims for asylum will be inadmissible on the same grounds as adults, meaning they will be denied the right to seek refuge and human rights protection, and will typically be [unable to access long term leave or citizenship](#). The Refugee Council estimates that between [39,500 and 45,066 children](#) will be affected by these powers in the first three years of the legislation coming into effect.

The Act reverses some key safeguards around detaining children. Children in families with 'inadmissible' asylum claims can be detained, potentially indefinitely, with no option to apply for bail before 28 days.

There are also certain circumstances in which unaccompanied children [can be detained](#), with the option to apply for bail after eight days.

Typically, unaccompanied children will be given leave to remain until the age of 18, after which they will be subject to the same processes as adults. Although local authorities can typically expect to look after unaccompanied asylum-seeking children until this age, the Act grants power to the Home Office to provide accommodation and support to separated children where necessary, and there is [no explanation how this interacts with existing children's legislation](#), for example, the Children's Act 1989 and similar legislation in other regions of the UK.

Why is this harmful, and what does it mean for our communities?

The Illegal Migration Act withdraws many safeguards that currently exist for children, and tens of thousands of children will have their right to protection stripped by the actions or decisions they have no control over.

The harms caused by detaining children are [well documented](#). The fear of deportation, detention or being left in limbo is also likely to have a severe effect on children's health, well-being and development that will make working with them even more challenging.

There are major concerns that the Act could provoke children to run away from social care, placing them further at risk of trafficking and exploitation. The British Association of Social Workers has warned that children [may go missing from their care](#) as they know they may face deportation when they turn 18. Given that 75% of children who arrive are 16 or 17, the numbers [could be very high](#).

Children's charities have suggested that the powers granted to the Home Office to accommodate unaccompanied children risks creating a [two-tier system for children in the care of the state](#). It also increases the possibility that children will be placed in unsuitable and unsafe settings like hotels, unverified by children's social care teams, from where [children have gone missing in the past](#).

A child whose age is disputed may be particularly vulnerable under the new Act. The [Children's Commissioner](#) and leading medical bodies have expressed concerns about the use of 'scientific methods' to determine children's age and the fact that if a child refuses an age assessment they will [automatically be treated as an adult](#). With inadequate safeguards, there are concerns that children will be wrongly identified as adults and removed from the UK.

Permanently denying routes to settlement and British citizenship to children is likely to [force them to live in poverty and instability](#), and to push them into potential exploitation and harm.

What can local authorities do?

- Ensure that the Cabinet Member responsible for children and young people, senior management in children's services, council officers and social workers have access to [information](#) and [training](#) about the likely impact of the Act;
- Adopt the [Refugee and Migrant Children's Consortium's recommendations](#) for supporting individual children who might be affected by the Act;

- Ensure they do not rely on age assessments made by the Home Office given the serious consequences for children treated as adults and providing [training for social care staff](#) on running best practice age assessment processes;
 - Adopt South London's Refugee Association's [Taking Care report and pledge](#) calling on local authorities to commit to:
 - Identify all looked-after children and care leavers with immigration and nationality issues
 - Connect looked-after children and care leavers with good quality legal support as soon as possible
 - Take a proactive and informed role in supporting looked after children and care leavers through any immigration applications and appeals
 - Enable those who are eligible to apply for permanent status and British citizenship.
 - Seek legal advice and where feasible bring legal challenges to the Act, particularly those provisions which are at odds with the Children's Act 1989 (England), the Children (Scotland) Act 1995 (and similar legislation in other regions of the UK) or other laws.
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Removing protections for survivors of trafficking and modern slavery

What is the effect of the Act?

If fully enforced, the Illegal Migration Act will deny vital protections for survivors of modern slavery who the Government deems to have arrived in the UK irregularly. This includes people whose entry to the UK is an [integral element of the criminal offence of trafficking committed against them](#).

Those who receive a positive 'reasonable grounds decision' confirming that they are a potential survivor of modern slavery, but who are deemed to have entered the UK irregularly, will be [denied several protections currently afforded](#) during their 'recovery and reflection' period. This includes the right not to be removed from the UK, and the right to access specialist support services such as accommodation and legal advice. Importantly, potential survivors of trafficking and modern slavery deemed to have entered the UK irregularly will not be given a final 'conclusive grounds decision' to formally recognise them as a survivor of modern slavery in the UK.

Unaccompanied children will continue to receive modern slavery protections until the age of 18. Accompanied children will not receive these protections, leaving them liable for detention and removal, even if they are potential survivors of trafficking and modern slavery.

A person who is [co-operating with an investigation](#) relating to an incident that occurred in the UK will continue to be entitled to specialist support and protections.

Why is this harmful and what does it mean for our communities?

The Act will deny safety, dignity, and medical care to survivors of modern slavery, whilst making them liable to detention and removal from the UK. This poses a [serious threat to survivor well-being](#), as well as efforts to combat exploitation.

If the Act is enforced, those suspected of being a survivor of modern slavery, but deemed to have entered the UK irregularly, will be denied the offer of safe accommodation, financial support to meet essential needs, practical help and advice from a support worker, including assistance to access healthcare and

legal aid, and exemption from charges for NHS care. Denial of specialised services is likely to significantly hinder recovery, whilst evidence suggests that denial of a recovery and reflection period, and a lack of rehabilitation and effective long-term support, [may facilitate re-trafficking](#).

Survivors worried about their asylum status, or fearing the threat of detention and removal from the UK, may be forced 'underground', where they could continue to be exploited, and face a high risk of destitution and homelessness. Traffickers may also have [more leverage over their victims](#), as they can threaten to report them to the authorities, at which point they could face detention and deportation.

What can local authorities do?

In the absence of access to support and safe accommodation for survivors of trafficking and modern slavery, people in our communities are likely to be forced into more entrenched situations of exploitation. In this context, it will be crucial that local authorities support communities to develop specialist support and services. Practical steps local authorities can take include:

- Supporting and investing in local organisations and groups trusted by community members;
- Ensuring local stakeholders, including charities and council officers, have a strong understanding of identifiers of trafficking (see [Training Framework for Identification, Care and Support of Survivors; UNICEF's Practical Guide](#) including child-friendly communication techniques)
- Sourcing and developing legal representation for survivors;
- Reviewing and updating homelessness and housing strategies in light of survivors likely no longer being eligible for National Referral Mechanism (NRM) accommodation and support;
- Developing specialist services and alternative accommodation options for survivors of trafficking and slavery, working with specialist organisations and providers (for example [Hope at Home](#)).