



Public Law Project

**Public Law Project briefing on the Safety
of Rwanda (Immigration and Asylum Act)
2024: What happens next?**

May 2024

Executive summary

1. This briefing outlines what happens next for asylum seekers in the immediate aftermath of the Safety of Rwanda legislation being passed.

What is the status of key legislation and powers?

2. The Safety of Rwanda (Immigration and Asylum) Act 2024 has become law and the UK's treaty with Rwanda has been ratified despite a number of vital treaty provisions relating to healthcare, safeguarding and legal assistance, not having been fully implemented.¹
3. Against the backdrop of the Illegal Migration Act (IMA), the Safety of Rwanda Act permits the Home Secretary to remove individuals who meet the eligibility criteria to Rwanda to have their asylum claims processed. The duty to remove irregular migrants under section 2 of the Illegal Migration Act has not yet been brought into force but it may be at any time of the Home Secretary's choosing.
4. This legislation is in direct opposition to the Supreme Court judgment in November 2023 which declared Rwanda generally not to be a safe third country (*R (AAA) v Secretary of State for the Home Department* [2023] UKSC 42).

Who will be affected?

5. Two groups of people are at risk of removal to Rwanda and different legal regimes apply to them.
6. The first at immediate risk of removal to Rwanda are the group of individuals who arrived in the UK on or after 1st January 2022 and who received a notice of intent prior to the Court of Appeal's judgment in *R (AAA) v Secretary of State for the Home Department* [2023] EWCA Civ 745 (on 29 June 2023) which informed them that their asylum claim may be considered inadmissible and that they may be removed to Rwanda under the terms of the Migration and Economic Development Partnership (MEDP).²
7. The second group is those who arrived in the UK after the Illegal Migration Act was passed on 20 July 2023. Because the duty to remove under section 2 of the 2023 Act has not yet been brought into force, this group will not yet be removed to Rwanda. However, the Home Office may choose to bring into force the section 2 at any stage and thereafter remove individuals to Rwanda.

Are victims of trafficking at risk of being sent to Rwanda?

8. Once the duty to remove in the Illegal Migration Act has been brought into force, those who arrived in the UK by irregular means since 20 July 2023 are at risk of being issued with a written notification under section 8(2) of the Act, which begins the official process of their removal. Individuals affected will include victims of human trafficking who have arrived in the UK by irregular means. It is not known when this group will be issued with notifications – this is a matter for the Home Office - but the IMA says the 2005 Modern Slavery Act's protections are disappplied. Therefore, their claims are inadmissible in the same way as other migrants.

¹ [Home Office Statement](#) (April 2024).

² [Consideration of inadmissibility claims under the Migration and Economic Development Partnership - GOV.UK \(www.gov.uk\)](#)

How does the notification process work?

9. This depends on whether the individual is in the pre- or post-Illegal Migration Act cohort.
10. If they are in the pre-Illegal Migration Act cohort, there is no legal duty on the Home Office to remove the person. Instead, their asylum claim may – but need not – be declared inadmissible if they have a connection to a safe third country (section 16 of the Nationality and Borders Act 2022). The individual will be issued with a “notice of intent”. This will inform them they are potentially inadmissible and invite them to submit any evidence about why they should not be considered inadmissible. The notice of intent gives people seven days to respond if they are in a detention centre, or 14 days if they are not detained.³
11. If the individual arrived after 20 July 2023 and section 2 of the Illegal Migration Act is brought into force, asylum claims will be automatically inadmissible, with no discretion on the Home Office to consider an application, where: the person does not have leave to enter the UK and they did not come directly to the UK from an unsafe country. In practice, this amounts to almost all asylum claims. This rule applies even if the person had even a fleeting or involuntary connection to a safe third country. For example, some people will have been trafficked through safe countries and not had the chance to apply for asylum and yet the Illegal Migration Act will still apply to them.
12. Before removing someone under the IMA, the Home Office must issue a “notification of removal” under section 8 of the Act. On receipt of the written notification, individuals will have eight days to respond to challenge their removal through a suspensive claim (see the next section for more details).

On what grounds can people challenge their removal?

13. Where the duty to remove a person in section 2 of the Illegal Migration Act applies, their asylum and protection claims are automatically disregarded and made inadmissible. The only way to challenge removal under the IMA is through “suspensive claims”, either factual (that the Home Office has wrongly identified someone as being inadmissible) or serious harm (that a person would suffer “a real, imminent and foreseeable risk of serious and irreversible harm” if removed). The claimant must provide “compelling evidence” that they face this risk.⁴
14. From the new guidance published by the Home Office on 29 April 2024, the Government intends this to be a high evidential threshold, with the onus on the claimant to prove the harm that they face.⁵ The meaning of “compelling evidence” will, however, be clarified by the courts over time.
15. Individuals only have eight days to make a suspensive claim to challenge removal, and they must do so in a “prescribed form and manner.”⁶ Aside from the reality that individuals facing removal are already likely to be fearful, unsettled and disorientated – as many organisations have pointed out -it is unrealistic to expect them, many of whom may not speak the language, to complete a complicated application in such a short period of time⁷, particularly as immigration and asylum is a well-documented ‘legal aid desert’.⁸

³ [Inadmissibility.docx \(publishing.service.gov.uk\)](#) (p 22)

⁴ [How the Illegal Migration Bill threatens our constitution - Public Law Project](#)

⁵ [Safety of Rwanda guidance- MEDP \(publishing.service.gov.uk\)](#)

⁶ [Illegal Migration Act 2023 - Parliamentary Bills - UK Parliament](#) (Section 41(5) and 42(5).

⁷ [How the Illegal Migration Bill threatens our constitution - Public Law Project](#)

⁸ [Immigration and asylum – legal aid deserts \(Law Society, February 2024\)](#)

Will more people be sent to immigration detention centres?

16. The IMA empowers the Home Office to detain migrants indefinitely as part of the process of removal. The Home Office has already made moves to detain additional people. Given that there are estimated to be hundreds of thousands of people in the UK who are eligible to be sent to Rwanda, this will put significant pressure on detention centres in the UK which are already operating at capacity.
17. On 28th April 2024, it was also reported that detention of people at risk of being removed would start on Monday 29th April 2024, with officials planning to hold asylum seekers who turn up for routine meetings at immigration service offices and will also pick people up nationwide in a major two-week exercise.⁹

How many people will the Government send to Rwanda?

18. The Government has not stated how many removals will realistically occur. Whilst there is no cap on the number of people who can be sent to Rwanda under the scheme, reports suggest the numbers will be initially low with Rwanda allegedly only agreeing to receive approximately 2,000 people who have claimed asylum in the UK this year.¹⁰

What happens to people who are left in limbo?

19. At the time the Illegal Migration Act was first laid before Parliament, the Refugee Council estimated that the Illegal Migration Act could cause up to 257,000 asylum claims to be inadmissible, including up to 45,000 children. Of these, up to 192,000 would not be able to be removed, either because there is no safe country to which the UK can remove them or because there is no returns agreement with their home country. Because asylum seekers cannot normally work in the UK, the Refugee Council estimated that the Home Office would spend up to £9.6bn supporting destitute asylum seekers.¹¹ Even more recent estimates suggest that over 100,000 men, women and children could be left in permanent limbo by the IMA by the end of 2024 alone.¹²
20. These numbers are significantly disproportionate to both the capacity of the detention centres and the expected amount of removals to Rwanda. The current size of detention centres permits 2,500 people to be detained, with current capacity reaching 1800- leaving space for fewer than 700 migrants to be detained under the Government's Rwanda scheme.¹³
21. According to the Refugee Council, "instead of their claim being considered on its merits and either granted or refused, they will be left unable to get on with their lives. They will face two choices- indefinitely on Home Office support, which could cost the taxpayer over £17 million per day, or else disappear, leaving them at risk of destitution, exploitation and abuse."¹⁴ Asylum seekers cannot work in the UK, so they are forced to rely on Home Office subsistence support.

⁹ [Home Office to detain asylum seekers across UK in shock Rwanda operation | Immigration and asylum | The Guardian](#)

¹⁰ [What we know about the Rwanda Act and Treaty so far – Right to Remain](#)

¹¹ [Illegal Migration Bill – Assessment of impact of inadmissibility, removals, detention, accommodation and safe routes \(Refugee Council\)](#)

¹² [Cost, chaos and human misery – the impact of the Illegal Migration Act 2023 and the Rwanda Plan April 2024 \(Refugee Council\)](#)

¹³ [UK lacks detention capacity for Rishi Sunak's migration crackdown \(ft.com\)](#)

[Immigration Detention in the UK - Migration Observatory - The Migration Observatory \(ox.ac.uk\)](#)

¹⁴ [Cost, chaos and human misery – the impact of the Illegal Migration Act 2023 and the Rwanda Plan April 2024 \(Refugee Council\)](#)

How will migrants access legal advice?

22. Individuals seeking to challenge their removal will be met with an existing legal advice desert. Despite the Illegal Migration Act uplift, an initiative by the Government to increase legal aid fees by 15% for work under the new Illegal Migration Act, there will simply not be enough lawyers available to support asylum seekers to challenge removals.¹⁵ We can therefore expect to see more vulnerable individuals faced with navigating a complex legal system without vital legal support.¹⁶

Immediate policy questions and pinch-points?

23. When will the Home Secretary bring into force the section 2 duty to remove?
24. With detention estates already at capacity there will be questions around their size and likely expansion and how they can function to accommodate what is expected to be high numbers of asylum seekers being detained.
25. How many children and victims of trafficking will the UK remove?
26. What will the legislation mean for asylum seeker support given that they are banned from working?
27. Will there be a rise in the use of GPS tagging for individuals subject to removal proceedings? On 15th June 2022, the Home Office began a 12 month pilot where some 600 migrants arriving in the UK through irregular routes were tagged.¹⁷ Evidence shows the serious implications on the physical and mental well-being of those who are tagged- raising fundamental questions about the inhumanity of the monitoring technology and the role it may play going forward.¹⁸

Further Information

28. We encourage you to be aware of and highlight the above issues in the coming days as the Government implements this scheme. If you have any questions or would like further information on the above, please contact Lauren Agnew at: l.agnew@publiclawproject.org.uk.

¹⁵ [Government pushes ahead with 15% uplift in fees for Illegal Migration Act work - Association of Costs Lawyers](#)

¹⁶ [Immigration legal aid call for evidence - can you help? - Public Law Project](#)

¹⁷ [Equality impact assessment: GPS electronic monitoring expansion pilot - GOV.UK \(www.gov.uk\)](#)

¹⁸ [Equality impact assessment: GPS electronic monitoring expansion pilot - GOV.UK \(www.gov.uk\)](#)

About Public Law Project

Public Law Project is an independent national legal charity.

We are researchers, lawyers, trainers and public law policy experts. The aim of all of our work is to make sure that state decision-making is fair and lawful and that each person can hold the state to account.

For over 30 years we have represented and supported people marginalised through poverty, discrimination or disadvantage when they have been affected by unlawful state decision-making.

Public Law Project responds to consultations, policy proposals and legislation which have implications for public law remedies, access to justice and the rule of law.

We provide evidence to inquiries, reviews, statutory bodies and parliamentary committees, and we publish independent research and guides to increase understanding of public law.

Public Law Project's research and publications are available at:

<https://publiclawproject.org.uk/resources-search/>

Contact

Lauren Agnew
Public Affairs Manager
l.agnew@publiclawproject.org.uk

Luke Robins-Grace
Communications Director
l.robins-grace@publiclawproject.org.uk