



The Illegal Migration Act 2023

British Citizenship and Leave to Remain for Children in the UK

A briefing for Parliamentarians

July 2024

1. The Illegal Migration Act ('IMA' or 'the Act') became law on 20 July 2023. The key provision relating to removal (Section 2) is not yet in force. The provisions relating to British citizenship and leave to remain came into force immediately on 20 July 2023, and some other provisions are also currently in force.¹
2. The leave to remain and citizenship provisions have generally received less attention but have a profound long-term impact on the lives of many children in the UK. They permanently exclude those affected from any form of leave to remain in the UK and from some of the most common routes to British citizenship (unless an exception applies).² Many of those affected are children born in the UK and/or those who have never known any other country.
3. Kids in Need of Defense UK (KIND UK) assists children with immigration and citizenship matters on a pro bono basis. We partner with 27 corporate law firms to deliver free legal advice and representation. We assist approximately 700-1000 children each year, many of whom have grown up in the UK and only become aware they are not British citizens towards the end of school when issues of university and work arise.
4. Pathways to secure immigration status and British citizenship previously available to such children under the Immigration Rules and British Nationality Act (BNA) 1981 have been shut down or significantly altered by the IMA, condemning a generation of children in the UK to a lifetime of instability and poverty.
5. The leave to remain and citizenship provisions of the IMA brush aside the well-established and common-sense principles that children should not be punished or discriminated against based on the actions or status of their parents (Article 2, UN Convention on the Rights of the Child),³ and that the best interests of the child should always be a primary consideration in decisions about them (Section 55 of the Borders, Citizenship and Immigration Act 2009 and Article 3, CRC).⁴
6. Under the IMA provisions relating to leave to remain and citizenship, a baby or young child could be brought to the UK by a parent or carer and spend their entire childhood here, but be banned for life from any path to citizenship, based on the actions of their parent or carer.

Consequently the child could grow up in Britain, but have no right to work or study in the only country they know when they reach adulthood.

7. During Parliamentary debates before the passage of the IMA, Baroness Ludford raised concerns about people left in limbo by the Act, some of whom are ***"excluded from any path to settlement or citizenship—in other words, an outcast underclass."***⁵
8. We urge all Parliamentarians to call for the repeal of the Illegal Migration Act and for the new Government to take immediate steps to ensure that its negative impact on the lives of children in the UK is minimised.

The human and financial costs

9. Lady Hale has commented that the “intrinsic importance of citizenship” should never be played down.⁵ British citizenship enables a person to live and work in the UK permanently, to vote, to hold public office, to participate fully in British life in a way that no other type of status allows. For many children who entered the UK since 7 March 2023, the possibilities of British citizenship are forever lost while the IMA remains law.
10. The Refugee Council estimates that implementation of the IMA may cost nearly £10 billion for accommodation and detention in the first three years.⁶
11. KIND UK, the British Association of Social Workers and more than 20 other organisations,⁷ have raised concerns that the IMA will lead to a large and growing number of people living in limbo in the UK at risk of homelessness, destitution, exploitation and deteriorating health. The Refugee Council has estimated that the IMA could affect as many as 45,000 children in the first three years.⁸
12. We have further warned that local authorities, already struggling financially, are left to deal with much of the financial impact of the IMA. Although the previous Government presented the IMA as having little impact at the local level,⁹ it will in reality have very significant consequences for local authorities and the communities they serve.¹⁰ The increasing number of people pushed into the limbo created by the IMA – unable to be removed, barred from pathways to regularise their status, and prohibited from working – will need to be supported and housed for extended periods of time.

British Citizenship

13. The citizenship provisions of the IMA affect children who enter the UK (including the Channel Islands, the Isle of Man, and British Overseas Territories¹¹) irregularly on or after 7 March 2023

not coming directly from a country where their life and liberty were threatened.¹²

14. The IMA blocks entirely or makes less accessible the most common routes for affected children to acquire British citizenship. Some examples include:
- a. **Entitlement at birth is blocked.** Under the British Nationality Act 1981, children are automatically British citizens at birth if a parent has settled (been granted indefinite leave to remain or a similar status) or been granted British citizenship before the child was born.¹³ Under the IMA, many refugee and other parents will never be eligible for leave to remain or British citizenship, so their children born in the UK are denied British citizenship at birth.
 - b. **The settled parent route is blocked.** Under the BNA, children born in the UK have an entitlement to British citizenship if a parent settles or acquires British citizenship after the child's birth.¹⁴ Under the IMA, any affected refugee or other parents will not be eligible for leave to remain or citizenship, so this route to citizenship is not available to their children.
 - c. **The 10 year route has been made less accessible.** Under the BNA, children become entitled to British citizenship if they were born in the UK and continuously live in the UK for the first 10 years of their life.¹⁵ The IMA does not directly bar this route, but if the child is removed from the UK before age 10 (for example with parents), then the child will likely not become eligible for British citizenship under this route because they are no longer living in the UK. Or, if the child remains in the UK, but the parents have no way to regularise their status, they may live 'underground' and be too scared to apply for citizenship for their child. Such children will likely live in poverty and instability for many years.
 - d. **The discretionary route is blocked.** Under the BNA, The Secretary of State has wide powers to grant British citizenship to any child if he or she thinks fit.¹⁶ This is a crucial pathway to citizenship for children not born in the UK but who have strong ties to the UK and for whom British citizenship would be in their best interests. However, under the IMA, children who arrived in the UK irregularly on or after 7 March 2023 cannot be granted British citizenship under this provision of the BNA, leaving them in a permanent limbo.
 - e. **The stateless route has been made less accessible.** Under the BNA, children who were born in the UK, who are and always have been stateless, and who were continuously resident in the UK for the past 5 years (and meet other requirements) are entitled to British citizenship, up to age 22.¹⁷ The IMA does not directly bar these children from becoming British citizens, but if such children are removed from the UK before they acquire British citizenship they may be permanently denied this route to citizenship, or as for the 10-year route, if parents go underground, they may be too scared to register these children as British citizens when eligible.

15. Possible exceptions to the bars on British citizenship include:

- a. The Secretary of State can disapply the citizenship provisions of the IMA and grant British citizenship if they consider that barring the person from citizenship would not comply with the UK's obligations under the Human Rights Convention.¹⁸
- b. There are no explicit exceptions for unaccompanied children, victims of modern slavery or trafficking, or children in care, but these groups may fall within the human rights exception.

Leave to remain

16. The leave to remain provisions of the IMA affect children who enter the UK irregularly on or after 7 March 2023, not coming directly from a country where their life and liberty were threatened.

17. Those affected are excluded from any form of leave to remain in the UK.

18. The IMA contains three possible exceptions to the bars on leave to remain:

- a. For children who entered the UK unaccompanied. No details or guidance have been provided, and it appears that the vast majority of children who may be affected have had no decisions on their applications for asylum or other leave to remain.¹⁹
- b. For children or adults who are victims of slavery or human trafficking (if they cooperate with an investigation or criminal proceedings). This would only cover the investigation period, following which they will be subject to removal from the UK.²⁰
- c. If failure to grant limited leave to remain would not comply with the UK's obligations under the Human Rights Convention or any other relevant international agreement, or the Secretary of State considers that some other exceptional circumstance applies,²¹ or if failure to grant indefinite leave to remain would not comply with the UK's obligations under the Human Rights Convention.²²

Recommendations

19. The Illegal Migration Act is a deeply flawed piece of legislation. It cannot be saved through amendment. No further provisions of the IMA should be brought into force, and the Act should be repealed in its entirety.

20. As an interim or alternative measure, the Illegal Migration Act could be amended to remove the leave to remain and citizenship provisions at Sections 30-37, to remove other provisions which are in force, and bring no new provisions of the Act into force. However, retaining the Act as legislation complicates rather than simplifies immigration law and leaves a dangerous

prospect of the Illegal Migration Act being brought fully into force and implemented by a future government.

21. Outstanding and new applications for asylum, leave to remain, and citizenship should be processed promptly and fairly.
22. Until the IMA is repealed, the Government should introduce immediate guidance to minimise its negative impact:
 - a. Ensuring that the best interests of any affected child are a primary consideration in decisions made under the Act.
 - b. Requiring that the bars on leave to remain and British citizenship are not applied to children (or adults) who would otherwise be eligible for refugee status, humanitarian protection, leave to remain as stateless persons, leave to remain on other human rights grounds, or child-specific immigration routes (such as for children in care or children in the UK for more than 7 years).
 - c. Specifying that human rights and international law exceptions available to the Secretary of State under the Act must be applied in favour of children, refugees, and others in need of protection, because failure to do so would contravene the Human Rights Convention.
23. The Government should take urgent steps to ensure that children and adults affected by the IMA can access competent legal advice to ensure that exceptions to the leave to remain or citizenship provisions of the IMA are applied in all cases in which application of the IMA would result in human rights violations. Local authorities should be legally obligated to obtain competent legal advice for children and young people affected by the IMA who are or should be in care, looked after, or care leavers. Such advice should be funded by the national Government, and this should include private (fee-paying) advice where a competent Legal Aid advisor cannot be accessed, as is frequently the case.²³
24. While the Illegal Migration Act remains law, in developing strategies and measures to address child poverty, the Government should consider the impact of the Act in forcing the children it affects to live in poverty for prolonged periods.

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More detail on the leave to remain and citizenship provisions of the IMA is available [here](#).

KIND UK is KIND UK (Kids in Need of Defense UK) provides free legal help to children, young people and families as they navigate the UK's immigration and nationality procedures.

We are a collaboration of five award-winning, UK-based organisations specialising in children's immigration, asylum, and citizenship law: Central England Law Centre, Coram Children's Legal Centre, Greater Manchester Immigration Aid Unit, JustRight Scotland, and the Migrant and Refugee Children's Legal Unit at Islington Law Centre. We partner with KIND, a US charity supporting legal representation for children facing deportation proceedings alone.

KIND UK is hosted by Central England Law Centre, a company limited by guarantee. Registered in England and Wales under number 4149673 and registered as a Charity number 1087312, Registered office Oakwood House, St Patricks Road, Coventry CV1 2HL.

Notes

1. Illegal Migration Act 2023 (IMA), section 68(3)(a). To see which sections of the Act are in force, go to <https://www.legislation.gov.uk/ukpga/2023/37/contents>.
2. IMA, sections 6, 30.
3. See eg Written Evidence by the UK Committee for UNICEF (IMB0034), 6 April 2023; UNCRC, Article 2, <https://committees.parliament.uk/writtenevidence/119953/html/>; and [UNHCR, UK Asylum and Policy and the Illegal Migration Act](#). We note that some provisions of the Bill changed before it was enacted; however, the Act still punishes or discriminates against some children due to their parents' status or activities, and therefore, it is not compatible with the CRC.
4. UNCRC, Article 3(1); Borders, Citizenship and Immigration Act 2009, section 55.
5. <https://hansard.parliament.uk/Lords/2023-05-10/debates/36161ECC-6FAF-4CEC-9830-80C71BEB1272/IllegalMigrationBill>
6. <https://www.refugeecouncil.org.uk/information/resources/illegal-migration-bill-impact-assessment/>
7. <https://www.kidsinneedofdefense.org.uk/2023/10/illegal-migration-act-third-sector-statement-local-authorities/>; see also BASW, "General Election Blog: Repeal the Illegal Migration Act" (29 April 2024) <https://new.basw.co.uk/articles/basw-general-election-blog-repeal-illegal-migration-act>, stating: "There is no positive aspect of the Illegal Migration Act, and we believe it should be repealed."
8. <https://www.refugeecouncil.org.uk/information/resources/illegal-migration-bill-impact-assessment/>
9. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1165397/Illegal_Migration_Bill_IA_-_LM_Signed-final.pdf
10. <https://www.kidsinneedofdefense.org.uk/2023/10/illegal-migration-act-third-sector-statement-local-authorities>
11. IMA, sections 31(4), (7)
12. IMA, section 31(1)
13. BNA, section 1(1)
14. BNA, section 1(3)
15. BNA, section 1(4)

16. BNA, section 3(1)
17. BNA Schedule 2, Para 3-3A
18. MA section 36(2)
19. IMA, sections 5, 30(3), amending Immigration Act 1971, 8AA(2)
20. IMA, sections 22(3), 30(3) , amendment to Immigration Act 1971, 8AA(2)
21. IMA, section 30(3), sections 5, 30(3), amendment to Immigration Act 1971, 8AA(4). The Human Rights Convention means the European Convention on Human Rights
22. IMA section 30(3)(4)(a) and 30(3)(5)
23. See <https://freemovement.org.uk/over-half-the-people-seeking-asylum-are-now-unable-to-access-a-legal-aid-lawyer/>