

## REFUGEE AND MIGRANT RIGHTS

### Asylum legislation in need of repeal

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The current government has rejected some of its predecessor's plans for the UK asylum system. However, it has not yet repealed any of the legislation its predecessor introduced for implementing those plans. This briefing considers the legislation that should be repealed, with particular focus on legislation relating to the asylum system.

#### Recent legislation relating to asylum

The previous government introduced legislation relating to asylum in each of the last three parliamentary sessions<sup>i</sup> before the 2024 general election. This led to:

- the Safety of Rwanda (Asylum and Immigration) Act 2024<sup>ii</sup>
- the Illegal Migration Act 2023;<sup>iii</sup> and
- the Nationality and Borders Act 2022.<sup>iv</sup>

The purpose behind much of this legislation was to support and sustain the previous government's policy of refusing to process many thousands of asylum claims. That policy has harmed many people, cost huge sums of money, and collapsed the asylum system.<sup>v</sup> The current government has indicated an intention to change course because it considers that policy to be financially unsustainable.<sup>vi</sup>

As indicated in this briefing, there are other reasons for abandoning the previous government's policy. In any event, repeal of legislation<sup>vii</sup> is necessary to clearly and effectively end that policy. This briefing explains what is needed by way of repeal. It considers each of the three Acts of Parliament listed above.

#### Safety of Rwanda (Asylum and Immigration) Act 2024

The sole purpose of the Act is to enable the government to implement a deal with Rwanda that would allow the UK to cast off its asylum responsibilities ("the Rwanda deal").<sup>viii</sup> This deal was intended to allow the UK to send people seeking asylum from the UK to Rwanda for that country to take all responsibility for the people and their asylum claims.<sup>ix</sup>

In summary, the Act:

- bars the Home Office and the courts from considering any evidence that implementing this deal would generally be unsafe;<sup>x</sup>
- bars the UK courts and the European Court of Human Rights from preventing the Home Office causing people serious harm by sending them to Rwanda under the deal;<sup>xi</sup> and

- excludes specific provisions of the Human Rights Act 1998.<sup>xii</sup>

**The government has clearly stated it will not implement the Rwanda deal.**<sup>xiii</sup> There is, therefore, no purpose to keeping the Act. Failing to repeal it would cast doubt on whether the government's statement that it will not implement this deal can be relied upon. It would also undermine:

- the government's commitment to international law, including the European Convention on Human Rights;<sup>xiv</sup>
- the government's commitment to the rule of law, including respect for the courts and their role in the UK's constitution;<sup>xv</sup> and
- any effort to encourage respect for the rule of law, including international law, in other countries.<sup>xvi</sup>

**The Safety of Rwanda (Asylum and Immigration) Act 2024 must therefore be repealed in its entirety.**

## **Illegal Migrant Act 2023**

The sole purpose of this Act is to entrench the policy of refusing to process many thousands of asylum claims.<sup>xvii</sup> The aim of this policy was to deter people from coming to the UK to seek asylum by refusing to even consider the asylum claims of people who nonetheless continue to come.

In summary, the Act:

- requires the Home Office to attempt to remove people seeking asylum from the UK without ever considering their claims to asylum. This requirement applies unless someone had permission to come to the UK to seek asylum or had travelled directly from their home country to the UK.<sup>xviii</sup> The Act made this requirement inflexible, permanent and mandatory;<sup>xix</sup>
- creates a limited and inadequate process for UK tribunals to oversee whether the Home Office is attempting to remove someone to a country where they will not be safe. Other than this, it generally seeks to bar the UK courts and the European Court of Human Rights from preventing the Home Office causing people serious harm by sending them to another country (other than their own);<sup>xx</sup>
- empowers the Home Office to detain people for up to 28 days without any effective oversight from a court or tribunal;<sup>xxi</sup>
- removes protections, including for children and survivors of human trafficking;<sup>xxii</sup> and
- excludes the Human Rights Act 1998.<sup>xxiii</sup>

**The government has already taken action to prevent this Act having any immediate effect on its asylum operations.**<sup>xxiv</sup> Failing to repeal this Act would however cast doubt on the government's commitment to change the course set by its predecessor. It would also:

- risk the reintroduction of the previous government's policy of refusing to process many thousands of asylum claims; and
- undermine international law and the rule of law, and commitment to these, in the same way as would be done by failing to repeal the Safety of Rwanda (Asylum and Immigration) Act 2023.

**The Illegal Migration Act 2023 must therefore be repealed in its entirety.**

## **Nationality and Borders Act 2022**

Different parts and sections of this Act have different purposes. Several of these have nothing to do with refugees and the asylum system.

The parts and sections that relate to asylum also have different purposes. These purposes include:

- allowing the Home Office to operate a two-tier asylum system. Under that system, refugees can be granted lesser status and rights if they passed through any other country before arriving in the UK.

Doing this means the Home Office continues to exercise much more control over people's lives even after they are granted asylum;<sup>xxv</sup>

- creating a statutory basis for the previous government's policy of refusing to process asylum claims;<sup>xxvi</sup>
- introducing complex asylum processes with strict and fast timetables. If people seeking asylum fail to comply, the Home Office and courts may be required to doubt their accounts, ignore their evidence, or bar their rights of appeal;<sup>xxvii</sup>
- requiring the Home Office and courts to apply the Refugee Convention in ways that are inconsistent with international law and the decisions of UK courts;<sup>xxviii</sup> and
- using the criminal law to deter people from seeking asylum; and deter people from assisting people seeking asylum, even when assistance is given purely to save life or for other humanitarian reasons.<sup>xxix</sup>

The previous government suspended the two-tier asylum system introduced by this Act. The current government should go further. If it is truly committed to upholding international law, and wants to operate the asylum system fairly and efficiently, **it should act to repeal much of the Nationality and Borders Act 2022 including the parts and sections referred to above.**

## Conclusion

The previous government introduced a policy of refusing to process many thousands of asylum claims. That policy did – and is still the cause of – considerable harm to people, to public finances, and to the asylum system.

The current government has indicated an intention to change course because of the huge expense of this policy. There are many other reasons why it should do so. Nonetheless, it is right that not doing so will waste a great deal more public money.

Over the last three years of the previous government, Parliament passed three Acts to entrench this policy in UK legislation. The sole purpose of two of these Acts is to do that. The third Act has more varied purposes, but some parts and sections are for that purpose or related to it.

If the government wishes to make good its stated intention, it must act to repeal the Safety of Rwanda (Asylum and Immigration) Act 2024 and the Illegal Migration Act 2023. If not, its claim that it is changing course will have no credibility. Its wider claims about respecting international law will lose credibility too.

The government should also act to repeal much of the Nationality and Borders Act 2022. The parts and sections in that Act relating to asylum are inconsistent with any aim to operate a fair and efficient asylum system. If the government fails to act to repeal these parts and sections, it will cast doubt on its claim to want to change course, it will undermine its claims about respecting international law, and it will risk replacing one harmful and costly asylum policy with another.

**Amnesty recognizes that repeal of legislation requires time. However, the government has already indicated it will introduce a Bill in this parliamentary session relating to asylum.<sup>xxx</sup> It must take that opportunity for the repeals identified in this briefing.**

Some other parts and sections of the Nationality and Borders Act 2022 are in need of repeal for other reasons. The same is true of many other Acts of Parliament relating to immigration, asylum and nationality. However, this is not the focus of this briefing.

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## Notes

- <sup>i</sup> A parliamentary session usually lasts around 12 months, but the government of the day can take steps to make this shorter or longer.
- <sup>ii</sup> Amnesty produced several [briefings on the Safety of Rwanda Act](#) as it passed through Parliament.
- <sup>iii</sup> Amnesty produced several [briefings on the Illegal Migration Act](#) as it passed through Parliament.
- <sup>iv</sup> Amnesty produced several [briefings on the Nationality and Borders Act](#) as it passed through Parliament.
- <sup>v</sup> The policy and the many harms done by it are explained in Amnesty’s briefing [Gambling with lives: How a bad policy wrecked the UK asylum system, February 2024](#).
- <sup>vi</sup> The government has repeatedly indicated that it has taken decisions on the basis of financial cost and related practical considerations. This was e.g., made clear by the Home Secretary: [Hansard HC, 22 July 2024 : Col 386](#).
- <sup>vii</sup> An Act of Parliament, or any part or section of it, can usually only be repealed or amended by another Act of Parliament. There are some exceptions to this. If an Act is not repealed (i.e., cancelled), it remains a part of UK law. However, although an Act is part of UK law, its various parts and sections only take effect when they are commenced, which often requires a minister to make what is called a Commencement Order giving the date from which the part or section takes effect.
- <sup>viii</sup> The previous government made this deal with the Rwandan government. Originally, it did so by a [Memorandum of Understanding](#) in April 2022. Later, after the Supreme Court had ruled that the deal was unsafe, that government remade the deal with the Rwandan government by a [Treaty](#) in December 2023 (ratified when the Safety of Rwanda Act was passed).
- <sup>ix</sup> Amnesty has frequently expressed its concerns about the deal, including in submissions [to the International Agreements Committee on the Treaty](#) and [to the Joint Committee on Human Rights on the Act](#).
- <sup>x</sup> sections 2 and 4(2), Safety of Rwanda (Asylum and Immigration) Act 2024
- <sup>xi</sup> sections 4 and 5, Safety of Rwanda (Asylum and Immigration) Act 2024
- <sup>xii</sup> section 3, Safety of Rwanda (Asylum and Immigration) Act 2024
- <sup>xiii</sup> This was [announced by the Prime Minister](#) within two days of taking office. The Home Secretary later confirmed that she had informed the Rwandan government of the decision to end the deal: [Hansard HC, 22 July 2024 : Col 386](#).
- <sup>xiv</sup> Such commitment is most emphatically stated in the speech of the Attorney General delivered on 14 October 2024 on [‘the Rule of Law in an Age of Populism’](#).
- <sup>xv</sup> *ibid*
- <sup>xvi</sup> In its manifesto ahead of the 2024 general election, the Labour Party clearly committed itself to a foreign policy that would promote the rule of law, international law and human rights as is summarized in [a House of Lords Library briefing on foreign affairs and international development](#) ahead of the King’s Speech.
- <sup>xvii</sup> Section 1, Illegal Migration Act 2023 expressly states its purpose of deterrence; and its effect and intent is further explained in Amnesty’s [analysis of the Act](#).
- <sup>xviii</sup> sections 2, 5 and 30 of the Illegal Migration Act 2023
- <sup>xix</sup> This is a critical effect and purpose of the Act as explained in Amnesty’s [analysis of the Act](#).
- <sup>xx</sup> section 38ff, Illegal Migration Act 2023
- <sup>xxi</sup> section 13, Illegal Migration Act 2023
- <sup>xxii</sup> section 1(5), Illegal Migration Act 2023
- <sup>xxiii</sup> e.g., sections 22ff, 57 and 58, Illegal Migration Act 2023
- <sup>xxiv</sup> On 22 July 2024, the Home Secretary made the Illegal Migration Act 2023 (Amendment) Regulations 2024, SI 2024/815 to take effect the following day. These regulations pause the effect of part of the Act that was commenced from the moment the Act received Royal Assent. This is to enable the government to abandon the previous government’s policy of not deciding asylum claims and permit the Home Office to grant asylum to anyone found to be a refugee when their claim is decided. The Home Secretary confirmed the purpose of these regulations: [Hansard HC, 22 July 2024 : Col 386](#).
- <sup>xxv</sup> section 12, Nationality and Borders Act 2022
- <sup>xxvi</sup> section 15ff, Nationality and Borders Act 2022
- <sup>xxvii</sup> sections 18ff, Nationality and Borders Act 2022
- <sup>xxviii</sup> sections 30ff, Nationality and Borders Act 2022
- <sup>xxix</sup> Part 3, Nationality and Borders Act 2022
- <sup>xxx</sup> The King’s Speech announced a new bill would be introduced in the current parliamentary session partly to “modernise the asylum and immigration system”: [Hansard HC, 17 July 2024 : Col 40](#). The bill has generally been referred to as the border security, asylum and immigration bill: see e.g., [Hansard HC, 22 July 2024 : Col 386](#).

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