

THE ILLEGAL MIGRATION ACT 2023 AND UNACCOMPANIED CHILDREN

This briefing has been endorsed by the following organisations



The Illegal Migration Act 2023 and unaccompanied children

The Illegal Migration Act ('IMA' or 'the Act') became law on 20 July 2023.

However, all duties set out by the Children Act 1989, including the duty to support young people through leaving care services, still stand.

Whilst most of the Act is not yet in force one key provision, the ban on leave at Section 30, came into force immediately. The leave ban means that anyone who entered the UK without permission on or after 7 March 2023 will not be granted permission to stay or citizenship, unless an exception applies. The exceptions include granting leave to unaccompanied children and victims of trafficking, where human rights obligations require leave to be granted, and for limited leave to remain based on other international law or exceptional circumstances. For more information on these changes please see this [KIND briefing](#).

What type of leave will be granted to unaccompanied children is still unclear, but the Home Office has indicated they are likely to be granted temporary leave to remain until they reach 18, without a route to permanent status.

However, as the Home Office has not published guidance on how this will be implemented, there are several exceptions, and the legislation could change, it is crucial that young people are referred for good quality legal advice and those at risk of persecution in their home country are still supported to apply for asylum.

The sections of the Act that have not yet come into force include the provisions relating to inadmissibility (meaning that asylum claims will not be considered) and the duty to remove (as envisaged in the Government's Rwanda Scheme – see [here](#) for further info on the implications of the recent Rwanda judgement).

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If these provisions do come into force the government will have a **duty** to remove people who have entered the UK without permission if they have not come directly from a country where their 'life and liberty were threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion'.

Asylum claims by people subject to removal under the Act will not be admissible in the UK (this means the UK Government will not make a decision about whether the person is or is not a refugee or in need of humanitarian protection) and their removal will be permanent and to a country the Secretary of State considers to be safe.

In the case of children who arrived in the UK unaccompanied, the **duty** to remove is suspended until they turn 18. However, the Secretary of State retains the **power** to remove an unaccompanied child prior to their 18th birthday e.g. to reunite them with their family or to return them to a country the UK Government has deemed safe (**this would include Albania if the designation of Albania as a safe country provided for in s.59 of the IMA is brought into force**).

However, as these provisions have not yet come into force and may change it remains vital that young people at risk of persecution in their home country are still supported to apply for asylum and referred for good quality legal advice.

Other parts of the Act that have not yet come into force include changes to Home Office powers to detain, powers to accommodate separated children and move them out of care, and age assessments. For more details on these provisions please see RMCC's briefing on the IMA [here](#).

Local authority duties and the the Illegal Migration Act 2023

The Children Act 1989 ('CA') (England) and the Children (Leaving Care) Act 2000 ('CLCA') continue to be in force, and Local Authorities' duties under these acts are unchanged.

Where a child is 'looked after' by the local authority, it must also act in line with the corporate parenting principles; in particular this means acting in their best interests and securing best outcomes for them. Local authorities also need to create a long term 'permanence plan' for the child's upbringing, with the aim of giving them a sense of security, continuity, identity and belonging. Equivalent legislation and duties exist in Northern Ireland, Scotland and Wales. For a local authority to meet all of these duties towards a child, it is essential that they are still supported to seek advice on obtaining as secure an immigration status as possible (or British citizenship).

Migrant care leavers who still have an outstanding application (including pending appeals) have the same right to support and care from the local authority as any other care leaver. The responsibility to provide accommodation and financial support remains with the local authority, rather than the Home Office, until care leaving duties are discharged. For further information on where and how duties may be discharged please see the [NRP Network guidance](#).

Other sections of the Illegal Migration Act that directly conflict with the CA and CLCA (for example, s.16-21 of the IMA granting the Home Office powers over the care and accommodation of unaccompanied children) have not been brought into force. If brought into force, these sections are likely to be subject to a consultation process due to the potential legal issues they raise for both the Home Office and Local Authorities.

Local authority good practice for working with children affected by the Act

- Children at risk of persecution in their home country should be supported to make asylum claims as quickly as possible.
- Refer young people to good quality legal advice as soon as possible so that they can be advised fully on the immigration routes available to them and have the best chance possible of obtaining secure status. For more guidance on this see the section on 'Monitoring and identifying any issues with legal representation' in SLRA's [Immigration Support for children in care and care leavers – policy resource for local authorities](#).
- There are extremely serious consequences for children treated as adults under the IMA. Therefore when working with people who say they are children, do not rely on the 'significantly over 18' decisions made by the Home Office. Where there is significant reason to doubt a young person's age, complete a full and robust age assessment based on all relevant and appropriate factors, ensuring access to an appropriate adult, and if found to be older than 18, appropriate legal advice.
- As with any other children, it is still necessary to consider obtaining a care order for unaccompanied migrant children if there is reasonable cause to believe that a child is suffering or is likely to suffer significant harm. A care order may be particularly relevant for younger children, those who have been trafficked or those with learning or capacity issues. Due to increased risks of removal from the UK, it is even more important now that this option is actively reviewed in care planning.
- Given the increased uncertainty under the IMA, ensure that children going through the immigration system are adequately supported to access mental health support.
- Inform young people of their right to advocacy and ensure access to advocacy services as required.

Local authority good practice for working with children affected by the Act

- Prioritise gathering evidence around vulnerability and best interests to use in support of any immigration, asylum, or citizenship application or to challenge removal. For example, evidence of vulnerability might include any records, statements, or other evidence indicating that a child may have suffered trafficking, exploitation, abuse, mental health issues, trauma, medical conditions, or be at heightened risk of any type of harm due to their life history, living situation, or other factors (such as sexual or gender identity, statelessness, pregnancy, etc). Evidence might come from social workers, teachers, counsellors, GPs, parents, foster parents, guardians, religious leaders, or others involved in a child's life.
- If you work in local authority leadership, ensure that your workforce receives regular mandatory training so that they have the knowledge needed to provide proactive support to children in their care who are subject to immigration control in an increasingly complex immigration system. If you are a social worker, ask for such training if it is not being provided.
- Given the drastically increased risk that children will go underground (especially Albanian children since s.59 of the IMA seeks to add Albania to the safe country list) this training should include sessions on how to work effectively with children at risk of going missing / being exploited (including making NRM referrals).
- Participate in and strengthen networks that support migrant young people. Including building relationships and referral pathways with local specialist organisations.

For further information and support on how local authorities can best meet the needs of migrant children in care please visit the [‘Taking Care’ resources](#) on SLRA’s website or contact maya@slr-a.org.uk