



Illegal Migration Act 2023

2023 CHAPTER 37

Detention, bail etc

11 Powers of detention

(1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended in accordance with subsections (2) and (3).

(2) After paragraph 16(2B), insert—

“(2C) A person may be detained under the authority of an immigration officer—

- (a) if the immigration officer suspects that the person meets the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), pending a decision as to whether the conditions are met;
- (b) if the immigration officer suspects that the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under that section, pending a decision as to whether the duty applies;
- (c) if the Secretary of State has such a duty, pending the person’s removal from the United Kingdom in accordance with that section;
- (d) if the person meets those four conditions but the Secretary of State does not have such a duty by virtue of subsection (1) of section 4 of that Act—
 - (i) pending a decision to give limited leave to enter or remain under the immigration rules to the person for the purposes of that subsection,
 - (ii) pending a decision to give leave under section 8AA of the Immigration Act 1971 (discretionary leave for persons generally ineligible for leave etc),
 - (iii) pending a decision to give leave under section 65(2) of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking), or

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- (iv) pending a decision to remove the person under subsection (2) of section 4 of the Illegal Migration Act 2023 (power to remove unaccompanied children), and pending their removal in accordance with that subsection.
- (2D) But if the immigration officer is satisfied that a woman being detained under sub-paragraph (2C) is pregnant, then the woman may not be detained under that sub-paragraph for a period of—
- (a) more than 72 hours from the relevant time, or
 - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- (2E) A woman who has been released as a result of sub-paragraph (2D) may be detained again under sub-paragraph (2C) in accordance with sub-paragraph (2D).
- (2F) Where a woman being detained under sub-paragraph (2C) has previously been detained under section 62(2A) of the Nationality, Immigration and Asylum Act 2002 and has not been released in between, the definition of “the relevant time” in sub-paragraph (2G) is to be read as if paragraph (b) referred to the time when the woman was first detained under sub-paragraph (2C) or section 62(2A) of that Act.
- (2G) In sub-paragraphs (2D) to (2F)—
- “the relevant time” means the later of—
 - (a) the time at which the immigration officer is first satisfied that the woman is pregnant, and
 - (b) the time at which the detention under sub-paragraph (2C) begins;
 - “woman” means a female of any age.
- (2H) The powers in sub-paragraph (2C) may be exercised in respect of an unaccompanied child only in the circumstances specified in regulations made by the Secretary of State.
- (2I) The Secretary of State may, by regulations, specify time limits that apply in relation to the detention of an unaccompanied child under sub-paragraph (2C)(d)(iv) (detention of unaccompanied child in relation to removal).
- (2J) Regulations under sub-paragraph (2H) may confer a discretion on the Secretary of State or an immigration officer.
- (2K) Regulations under sub-paragraph (2H) or (2I)—
- (a) may make different provision for different purposes;
 - (b) may make consequential, supplementary, incidental, transitional or saving provision;
 - (c) must be made by statutory instrument.
- (2L) A person who may be detained under sub-paragraph (2C) may no longer be detained under sub-paragraph (1), (1A), (1B), (2), (3) or (4).

- (2M) A person (of any age) detained under sub-paragraph (2C) may be detained in any place that the Secretary of State considers appropriate.
- (2N) A statutory instrument containing regulations under sub-paragraph (2H) or (2I) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2P) In sub-paragraphs (2H) and (2I), “unaccompanied child” has the same meaning as in the Illegal Migration Act 2023 (see section 4 of that Act).”
- (3) In the italic heading before paragraph 16, at the end insert “, or for the purposes of the Illegal Migration Act 2023”.
- (4) In section 147 of the Immigration and Asylum Act 1999 (interpretation of Part 8 of that Act), in the definition of “pre-departure accommodation”—
- (a) in the words before paragraph (a), omit “for a period of”;
 - (b) at the beginning of paragraph (a), insert “for a period of”;
 - (c) omit the “or” at the end of paragraph (a);
 - (d) at the beginning of paragraph (b), insert “for a period of”;
 - (e) at the end of paragraph (b), insert “, or
- (c) for any period, where the detention is under—
 - (i) paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer for the purposes of the Illegal Migration Act 2023), or
 - (ii) section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State for the purposes of the Illegal Migration Act 2023);”.
- (5) Section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State) is amended in accordance with subsections (6) to (10).
- (6) After subsection (2), insert—
- “(2A) A person may be detained under the authority of the Secretary of State—
- (a) if the Secretary of State suspects that the person meets the four conditions in section 2 of the Illegal Migration Act 2023 (conditions relating to removal from the United Kingdom), pending a decision as to whether the conditions are met;
 - (b) if the Secretary of State suspects that the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under that section, pending a decision as to whether the duty applies;
 - (c) if the Secretary of State has such a duty, pending the person’s removal from the United Kingdom in accordance with that section;
 - (d) if the person meets those four conditions but the Secretary of State does not have such a duty by virtue of subsection (1) of section 4 of that Act—
 - (i) pending a decision to give limited leave under the immigration rules to the person for the purposes of that subsection,

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- (ii) pending a decision to give leave under section 8AA of the Immigration Act 1971 (discretionary leave for persons generally ineligible for leave etc),
 - (iii) pending a decision to give leave under section 65(2) of the Nationality and Borders Act 2022 (leave to remain for victims of slavery or human trafficking), or
 - (iv) pending a decision to remove the person under subsection (2) of section 4 of the Illegal Migration Act 2023 (power to remove unaccompanied children), and pending their removal in accordance with that subsection.
- (2B) But if the Secretary of State is satisfied that a woman being detained under subsection (2A) is pregnant, then the woman may not be detained under that subsection for a period of—
- (a) more than 72 hours from the relevant time, or
 - (b) more than seven days from the relevant time, in a case where the longer period of detention is authorised personally by a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975).
- (2C) A woman who has been released as a result of subsection (2B) may be detained again under subsection (2A) in accordance with subsection (2B).
- (2D) Where a woman being detained under subsection (2A) has previously been detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 and has not been released in between, the definition of “the relevant time” in subsection (2E) is to be read as if paragraph (b) referred to the time when the woman was first detained under subsection (2A) or paragraph 16(2C) of that Schedule to that Act.
- (2E) In subsections (2B) to (2D)—
- “the relevant time” means the later of—
- (a) the time at which the Secretary of State is first satisfied that the woman is pregnant, and
 - (b) the time at which the detention under subsection (2A) begins;
- “woman” means a female of any age.
- (2F) The powers in subsection (2A) may be exercised in respect of an unaccompanied child only in the circumstances specified in regulations made by the Secretary of State.
- (2G) The Secretary of State may, by regulations, specify time limits that apply to the detention of an unaccompanied child under subsection (2A)(d)(iv) (detention of unaccompanied child in relation to removal).
- (2H) Regulations under subsection (2F) may confer a discretion on the Secretary of State or an immigration officer.
- (2I) Regulations under subsection (2F) or (2G)—
- (a) may make different provision for different purposes;
 - (b) may make consequential, supplementary, incidental, transitional or saving provision;
 - (c) must be made by statutory instrument.

- (2J) A person who may be detained under subsection (2A) may no longer be detained under subsection (1) or (2).
- (2K) A person (of any age) detained under subsection (2A) may be detained in any place that the Secretary of State considers appropriate.
- (2L) A statutory instrument containing regulations under subsection (2F) or (2G) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2M) In subsections (2F) and (2G), “unaccompanied child” has the same meaning as in the Illegal Migration Act 2023 (see section 4 of that Act).”
- (7) In subsection (3), in the opening words, for “that Act” substitute “the Immigration Act 1971”.
- (8) After subsection (3) insert—
 - “(3A) But a provision of Schedule 2 to the Immigration Act 1971 which is expressed to relate only to a person who is detained or liable to detention under subparagraph (2) of paragraph 16 of that Schedule does not apply to a person who is detained or liable to detention under subsection (2A) of this section.”
- (9) In subsection (7), for “this section” substitute “subsection (1) or (2)”.
- (10) In subsection (7A), for “this section” substitute “subsection (1) or (2)”.
- (11) In section 60(8) of Immigration Act 2016 (limitation on detention of pregnant women), in paragraph (c) of the definition of “relevant detention power”, after “section 62” insert “(1) or (2)”.

12 Period for which persons may be detained

- (1) In Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc.)—
 - (a) in paragraph 16 (powers to detain), after sub-paragraph (4) insert—
 - “(5) See paragraph 17A for further provision about the period for which persons may be detained under this paragraph.”;
 - (b) after paragraph 17 insert—
 - “17A (1) A person liable to be detained under paragraph 16 may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the examination or removal to be carried out, the decision to be made, or the directions to be given.
 - (2) Sub-paragraphs (1) to (2), (2C), (3) and (4) of paragraph 16 apply regardless of whether there is anything that for the time being prevents the examination or removal from being carried out, the decision from being made, or the directions from being given.
 - (3) Sub-paragraphs (1) and (2) are subject to—
 - (a) paragraph 16(1B) (power to detain for examination for period not exceeding 12 hours);

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- (b) paragraph 16(2A) and paragraph 18B (limitation on detention of unaccompanied children);
 - (c) paragraph 16(2B) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women);
 - (d) paragraph 16(2D) to (2G) (limitation on detention of pregnant women).
- (4) Sub-paragraph (5) applies if, while a person is detained under paragraph 16, the Secretary of State no longer considers that the examination or removal will be carried out, the decision will be made, or the directions will be given within a reasonable period of time.
- (5) The person may be detained under paragraph 16 for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.
- (6) In the application of this paragraph in relation to detention under paragraph 16(3), references to "the removal" are to—
- (a) the removal of the person from the ship or aircraft on which the person is detained so that the person may be detained under paragraph 16, or
 - (b) the removal of the person from the United Kingdom in that ship or aircraft.
- (7) In the application of this paragraph in relation to detention under paragraph 16(4), references to "the removal" are to the removal of the person from the United Kingdom in the ship or aircraft on which the person is detained."
- (2) In paragraph 2 of Schedule 3 to the Immigration Act 1971 (detention or control pending deportation)—
- (a) after sub-paragraph (3) insert—
 - “(3A) A person liable to be detained under sub-paragraph (1), (2) or (3) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the deportation order to be made, or the removal to be carried out.
 - (3B) Sub-paragraphs (1) to (3) apply regardless of whether there is anything that for the time being prevents the deportation order from being made or the removal from being carried out.
 - (3C) Sub-paragraphs (3A) and (3B) are subject to sub-paragraph (4ZA) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
 - (3D) Sub-paragraph (3E) applies if, while a person is detained under sub-paragraph (1), (2) or (3), the Secretary of State no longer considers that the deportation order will be made or the removal will be carried out within a reasonable period of time.
 - (3E) The person may be detained under that sub-paragraph for such further period as, in the opinion of the Secretary of State, is

- reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.”;
- (b) in sub-paragraph (4), for “17 to 18A” substitute “17, 18, 18A”.
- (3) In section 10(9) of the Immigration and Asylum Act 1999 (application of Schedule 2 to the Immigration Act 1971 in relation to persons unlawfully in the United Kingdom)—
- (a) in paragraph (b), for “16(2) to (4)” substitute “16(2) to (2B), (3) and (4)”;
- (b) after paragraph (c) insert—
- “(ca) paragraph 17A (period for which persons may be detained);”.
- (4) In section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)—
- (a) after subsection (2M) (inserted by [section 11\(6\)](#)), insert—
- “(2N) A person liable to be detained under this section may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision to be made, the removal or examination to be carried out, or the directions to be given.
- (2O) Subsections (1) to (2A) apply regardless of whether there is anything that for the time being prevents the decision from being made, the removal or examination from being carried out, or the directions from being given.
- (2P) Subsections (2N) and (2O) are subject to—
- (a) paragraph 18B of Schedule 2 to the Immigration Act 1971 (limitation on detention of unaccompanied children), as applied by subsection (3);
- (b) subsections (2B) to (2E) (limitation on detention of pregnant women);
- (c) subsection (7A) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
- (2Q) Subsection (2R) applies if, while a person is detained under this section, the Secretary of State no longer considers that the decision will be made, the removal or examination will be carried out, or the directions will be given within a reasonable period of time.
- (2R) The person may be detained under this section for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.”;
- (b) in subsection (3), in the opening words, after “under that Schedule” insert “, other than paragraph 17A,”.
- (5) In section 36 of the UK Borders Act 2007 (detention relating to deportation), after subsection (1) insert—
- “(1A) A person liable to be detained under subsection (1) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision as to whether section 32(5) applies, or the deportation order, to be made.

- (1B) Subsection (1) applies regardless of whether there is anything that for the time being prevents the decision or the deportation order from being made.
 - (1C) Subsections (1A) and (1B) are subject to subsection (2A) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
 - (1D) Subsection (1E) applies if, while a person is detained under subsection (1), the Secretary of State no longer considers that the decision or the deportation order will be made within a reasonable period of time.
 - (1E) The person may be detained under subsection (1) for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate."
- (6) In regulation 32 of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052) as it continues to have effect following its revocation (person subject to removal), for paragraph (1) substitute—
- "(1) If there are reasonable grounds for suspecting that a person is someone who may be removed from the United Kingdom under regulation 23(6)(b), that person may be detained under the authority of the Secretary of State pending a decision whether or not to remove the person under that regulation.
 - (2) A person liable to be detained under paragraph (1) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the decision to be made.
 - (3) Paragraph (1) applies regardless of whether there is anything that for the time being prevents the decision from being made.
 - (4) Paragraph (5) applies if, while a person is detained under paragraph (1), the Secretary of State no longer considers that the decision will be made within a reasonable period of time.
 - (5) The person may be detained under paragraph (1) for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.
 - (6) Paragraphs 17, 18 and 18A of Schedule 2 to the 1971 Act apply in relation to detention under paragraph (1) as they apply in relation to detention under paragraph 16 of that Schedule."

13 Powers to grant immigration bail

- (1) Schedule 10 to the Immigration Act 2016 (immigration bail) is amended in accordance with subsections (2) to (4).
- (2) In paragraph 1 (power to grant immigration bail)—
 - (a) in sub-paragraph (1)(a), for "or (2)" substitute ", (2) or (2C)",
 - (b) in sub-paragraph (3)(a), for "or (2)" substitute ", (2) or (2C)", and
 - (c) in sub-paragraph (9), after "bail)" insert "and paragraph 3A (legal proceedings)".

- (3) In paragraph 3 (exercise of power to grant immigration bail)—
- (a) in sub-paragraph (2), after paragraph (e) insert—
- “(eza) whether the Secretary of State has a duty to make arrangements for the removal of the person from the United Kingdom under section 2(1) of the Illegal Migration Act 2023,”;
- (b) after sub-paragraph (3) insert—
- “(3A) A person who is being detained under paragraph 16(2C)(d)(iv) of Schedule 2 to the Immigration Act 1971 or section 62(2A)(d)(iv) of the Nationality, Immigration and Asylum Act 2002 (detention of unaccompanied child for purposes of removal) must not be granted immigration bail by the First-tier Tribunal until after the earlier of—
- (a) the end of the period of 28 days beginning with the date on which the person’s detention under any provision of paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 or section 62(2A) of the Nationality, Immigration and Asylum Act 2002 began, and
- (b) the end of the period of 8 days beginning with the date on which the person’s detention under paragraph 16(2C)(d)(iv) of Schedule 2 to the Immigration Act 1971 or section 62(2A)(d)(iv) of the Nationality, Immigration and Asylum Act 2002 began.
- (3B) A person who is being detained under—
- (a) paragraph 16(2C)(a), (b), (c) or (d)(i) to (iii) of Schedule 2 to the Immigration Act 1971, or
- (b) section 62(2A)(a), (b), (c) or (d)(i) to (iii) of the Nationality, Immigration and Asylum Act 2002,
- must not be granted immigration bail by the First-tier Tribunal until after the end of the period of 28 days beginning with the date on which the person’s detention under paragraph 16(2C) of that Schedule or section 62(2A) of that Act began.
- (3C) Where a person is detained under a provision of the Immigration Act 1971 and then (without being released) under a provision of the Nationality, Immigration and Asylum Act 2002, or vice versa, the periods referred to in sub-paragraphs (3A) and (3B) begin with the date on which the person was first detained under the relevant provisions of either of those Acts.”
- (4) After paragraph 3 insert—

“Legal proceedings

- 3A (1) This paragraph applies in relation to—
- (a) a decision to detain a person under the authority of an immigration officer under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971,

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- (b) a decision to detain a person under the authority of the Secretary of State under section 62(2A) of the Nationality, Immigration and Asylum Act 2002, and
 - (c) where a person is being detained under a provision mentioned in paragraph (a) or (b), a decision of the Secretary of State to refuse to grant immigration bail to the person.
- (2) In relation to detention during the relevant period, the decision is final and is not liable to be questioned or set aside in any court or tribunal.
- (3) In particular—
- (a) the powers of the immigration officer or the Secretary of State (as the case may be) are not to be regarded as having been exceeded by reason of any error made in reaching the decision;
 - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Sub-paragraphs (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether the immigration officer or the Secretary of State is acting or has acted—
- (a) in bad faith, or
 - (b) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) Sub-paragraphs (2) and (3) do not affect any right of a person to—
- (a) apply for a writ of habeas corpus, or
 - (b) in Scotland, apply to the Court of Session for suspension and liberation.
- (6) In this paragraph—
- “decision” includes any purported decision;
 - “relevant period” means the period of 28 days beginning with the date on which the person’s detention under the provision mentioned in sub-paragraph (1) began;
 - “the supervisory jurisdiction” means the supervisory jurisdiction of—
 - (a) the High Court, in England and Wales or Northern Ireland, or
 - (b) the Court of Session, in Scotland.”
- (5) In Schedule 3 to the Special Immigration Appeals Commission Act 1997 (bail: modifications of Schedule 10 to the Immigration Act 2016), in paragraph 3(a), after “(3),” insert “(3A), (3B),”.

14 Disapplication of duty to consult Independent Family Returns Panel

In section 54A of the Borders, Citizenship and Immigration Act 2009 (Independent Family Returns Panel), after subsection (3) insert—

- “(3A) The duty under subsection (2)(a) does not apply where the proposed removal is for the purposes of section 2 or 4(2) of the Illegal Migration Act 2023 (duty or power to make arrangements for removal).

(3B) The duty under subsection (2)(b) does not apply where the proposed detention is under—

- (a) paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (detention under authority of immigration officer relating to removal under the Illegal Migration Act 2023), or
- (b) section 62(2A) of the Nationality, Immigration and Asylum Act 2002 (detention under authority of Secretary of State relating to removal under the Illegal Migration Act 2023).”

15 Electronic devices etc

Schedule 2 confers—

- (a) powers to search persons liable to be detained under paragraph 16(2C) of Schedule 2 to the Immigration Act 1971 (illegal migrants), and to search vehicles, premises and property, for things on which certain information is or may be stored in electronic form;
- (b) powers to seize and retain such things, and to access, copy and use information stored on those things.