



# 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).

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- (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.

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- (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)”.

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**Commencement Information**

**II** S. 11(2)(6) in force at Royal Assent for specified purposes, see **s. 68(4)(d)(e)**

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