**GMIAU Briefing for Local Authorities on the Illegal Migration Act and Children**

May 2024

**Key message:**The Illegal Migration Act 2023 (IMA) is set to greatly change the protections offered to children and adults arriving in the UK to seek asylum. Not all parts of the IMA are currently in force. If the IMA is fully enacted, the asylum system will be different and many children who arrive in the UK will not have their asylum claim decided here and will be at risk of detention and removal, particularly after they turn 18.

At GMIAU we anticipate social workers’ input will have an important role to play in children being able to stay in the country and avoiding detention or removal.

Working on the information we have, we are sharing what we think local authorities can put in place now to increase protective factors for children in the future. Reading this means you will be better able to understand the risks to children from the IMA, and what you can do to protect them.

**Who is affected by the IMA?**

The IMA applies to people who arrive in the country “irregularly” – without a visa, and without coming directly from a country where their safety is threatened. For most young people this will be because they crossed the channel from France in a lorry or on a small boat. Only children who arrived irregularly will be affected. It is also dependent on the date a child arrived in the UK.

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| Arrived on or before the 7th March 2023 | Arrived after 7th March and before 20th July 2023 | Arrived after 20th July 2023 |
| Not affected by the IMA. The Home Office is deciding these cases to try to clear the asylum backlog.  However, be aware that detentions ahead of removals to Rwanda could have affected people who have arrived since January 2022. Unaccompanied children, and care leavers who arrived and claimed asylum as unaccompanied children, **should not** be affected. | No decisions are currently being made on these cases. These cases will be processed once the older cases have been decided, which we expect to happen shortly. We understand that these asylum claims will be processed in the UK | These are the cases we expect to be impacted by the IMA.  No decisions are being made on these cases and no policy has been published as to how they will be handled. |

In this briefing when we refer to children and young people affected by the IMA we are talking about children who arrived after 20th July 2023 via an irregular route.

**What does the IMA say?**

The IMA says that people who arrive in the UK “irregularly” will never be given leave to remain or permanent stay in the UK. If the IMA is enacted, adults will be subject to detention and removal from the UK as soon as they arrive.

**What do we know?**

Although none of these policies have yet been implemented, our understanding is that children who come under the IMA may be given temporary “bridging” leave and be looked after by a local authority as normal until they turn 18. No matter their date of arrival, the leave will expire on their 18th birthday. At this point they may be subject to a “duty” to remove them from the UK. Currently it is unclear where they will be removed to but Rwanda is currently a possibility.. Once their leave has expired they will have no right to work, rent etc.

Nobody is currently being detained or removed under the IMA. There are questions over whether this will ever be possible to implement. However it is good for us all to be prepared before the government attempts to implement it.

**What can social workers do?**

We understand as professionals who want the best thing for the children we support, the IMA can leave us feeling powerless. However, there are things that social workers can do to support children impacted by this.

**For children affected by the IMA (arrived after 20th of July 2023):**

1. **Understand** the implications of the new law and be prepared to challenge the Home Office. Discuss the impact of the IMA in your teams, supervision and consider escalating within the Local Authority so that directors of children’s services could raise strategically with the Home Office. GMIAU can offer training on the IMA and legal advice if needed.
2. Social workers should have one-on-one **conversations** with children to ensure they understand the IMA and are not getting second-hand or incorrect information. At the moment these conversations should be clear that the IMA is not yet implemented and can reassure children it is very unlikely they will ever be sent to Rwanda. Explore with them any worries or anxieties they have and put support in place where possible. We recommend considering additional safety planning for children around having these conversations, around their 18th birthdays, or if they are at risk of going missing from home. GMIAU can offer practical advice on having these conversations as part of training on the IMA.
3. **Evidencing** that children’s life and future is in the UK. This could support any possible future applications or challenges made by a lawyer. There are a number of ways social work will already be gathering this information, for example in looked after review meetings and pathway planning. Ensuring any additional vulnerabilities are documented, and recording children’s intention to stay in the UK (for example, future education/work aspirations, future plans in general, and community in the UK). Consider if a full care order is appropriate for the child you are supporting. GMIAU training can cover what information needs to be documented in interactions.
4. Due to the current legal aid crisis it is likely that children impacted by the IMA may be looked after for a long time before they receive immigration advice. We advise exploring children’s journeys to the UK, and if there are any **trafficking concerns** to refer into the NRM and ensure additional support is in place to keep children safe and support them in recovery. Without an immigration lawyer, children might not get another chance to disclose their trafficking or exploitation.
5. **Age disputes** - because of the difference in treatment of children and adults, the IMA makes the consequences far more severe for children wrongly assessed or assumed to be adults. For young people who are found to be adults, they will be immediately at risk of detention and a duty to remove them from the country. Because the Children Act 1989 still applies, unaccompanied children seeking asylum will still be entitled to be looked after by local authorities – meaning that being children will be their only protection.

BASW have released a practice guide for **age assessments**, which offers information about the impact of the IMA on those assessed to be adults: <https://new.basw.co.uk/sites/default/files/2023-11/181311%20Age%20Assessment%20A%20Practice%20Guide%20V3.pdf>

We ask social workers carrying out age assessments to be aware of the potential consequences of wrongly assessing a child as an adult, and to ensure they carry out a holistic Merton compliant assessment, if one is deemed to be essential.

We are concerned that the Home Office is increasingly involved in age assessments and using age disputes as a tool of immigration control. Age assessments should be based on ensuring young people are accessing the correct support and safeguarding them from harm.

Social workers should not accept Home Office “significantly over 18” decisions if you think there’s a chance they may be incorrect. Challenge the Home Office if they are insisting on an age assessment that you think is unnecessary. GMIAU can advise on age dispute issues if you are unsure.

It is more important than ever that the child’s age is correctly recorded by the Home Office and that where the local authority accepts the young person to be a child, evidence of this is sent to the Home Office immediately and this is followed up until the Home Office confirms the correct age has been recorded.

**For children who arrived before the 20th July:**

1. Ensure all children have **claimed** asylum. If there is a reason for a delay between arriving and claiming asylum, document this if possible.
2. **Raise cases** with the Home Office directly if there are exceptional vulnerabilities or if they are over 18. (this also applies to post-20th July cases)
3. Be aware that children who arrived after 1 January 2022, and who the Home Office believe to be adults, may also be at risk of being detained and threatened with removal to Rwanda. This means it is extremely important that children’s correct age is recorded with the Home Office. Please see the section directly above on age assessments.

**GMIAU waiting list**GMIAU was previously aiming to allocate all young people on our waiting list who were close to turning 18 with a legal representative. However, for young people whose cases have not yet been allocated, we are now prioritising

* The cases of children who arrived before the 20th July 2023.
* Children who arrived after 20th July 2023 who are extremely vulnerable, for example if they have serious and significant mental or physical health conditions for which they are receiving treatment. Please flag this and provide any evidence as part of a referral to GMIAU.

We have made this change because we are prioritising the cases that we can help to move through and out of the system. We are monitoring the situation and will change our priorities if things change. As it stands, children who arrived after the 20th July 2023 are not having their claims progressed by the Home Office regardless of whether they have a legal representative.

So, while children may turn 18 while waiting for a legal representative, representation from GMIAU would not help to speed up the claims of those children who arrived after the 20th July 2023.

Regardless of the date a child arrived in the UK, it is crucial that social workers

* ensure all children have claimed asylum before turning 18/as soon as possible. Escalate to the Home Office any children with particular vulnerabilities, no matter when they arrived.

**Rwanda detentions**

From April 2024, the Home Office started detaining people ahead of attempting to send them to Rwanda. In May, the Prime Minister announced that there will be no flights to Rwanda before the General Election on the 4th of July. If the government changes, which polls suggest is likely, the Labour Party have said they will not continue the Rwanda policy. That means that removals to Rwanda, and further detentions on this basis, are unlikely.

It is important to reassure young people of this, because many will be distressed and frightened by media reports.

We have heard that children have erroneously received “notices of intent” - letters warning them that their cases are inadmissible and they may be removed to Rwanda. This could be because of age dispute issues or because of straightforward error from the Home Office. In either case, if this happens to young people you are working with, it is crucial to get legal advice urgently to challenge the Home Office. GMIAU will prioritise these cases if they are flagged to us.

Some care leavers do have reporting conditions, meaning they have to go and sign at reporting centres like Dallas Court. Be aware that they may be very worried about attending these appointments and please ensure that you are doing all you can to support them, including accompanying them to appointments.

GMIAU’s update about these detentions, including who may be at risk, can be found here: <https://gmiau.org/removals-to-rwanda-information/>

Resources:

British Association of Social Workers (BASW) practice guide on age assessments:  
<https://new.basw.co.uk/policy-and-practice/resources/age-assessment-basw-practice-guide>

South London Refugee Association’s Illegal Migration Act 2023 Resource for Local Authorities can be found in the Learning Package on this page: <https://www.slr-a.org.uk/campaigns/immigration-support-pledge/>

Kids In Need of Defense (KIND) UK “Concerns about the UK’s Rwanda Act 2024” <https://www.kidsinneedofdefense.org.uk/2024/05/concerns-about-the-uks-rwanda-act-2024/>

To ask about training and further advice from GMIAU, email[**maria@gmiau.org**](mailto:maria@gmiau.org)If you are concerned about a child’s asylum claim - for example want to check if they have claimed asylum - you can email **yollande.safi@RefugeeCouncil.org.uk**