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Research Briefing

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The UK-Rwanda Migration and Economic Development Partnership

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Summary

The Government intends to send some people who have tried to claim asylum in the UK to Rwanda to seek asylum there. The policy is designed to deter unauthorised immigration, especially people arriving by small boat.

The Supreme Court found in November 2023 that sending asylum seekers to Rwanda was unlawful. In response, the Government secured a new treaty with Rwanda and new legislation from Parliament, both designed to make the relocation scheme lawful. Prime Minister Rishi Sunak hopes to begin sending people to Rwanda in July, if his party wins the 2024 general election.

People attempting to claim asylum in the UK will be sent to live in Rwanda instead

The UK and Rwanda agreed a Migration and Economic Development Partnership in April 2022. It included a five-year 'asylum partnership arrangement' as detailed in a non-binding memorandum of understanding. In December 2023, this was upgraded to a formal treaty.

The arrangement allows the UK to forcibly relocate asylum seekers, people who have already been refused asylum, and other people who have made unauthorised journeys to the UK. Rwanda will either grant them asylum or permanent residence; they cannot apply for return to the UK. Under the treaty, relocated people cannot be sent out of Rwanda (unless the UK requests their return).

The UK is making significant economic aid and per-person payments to Rwanda

In return, the UK is providing £370 million in development funding to Rwanda, plus another £120 million once 300 people have been relocated. The UK will also pay up to £171,000 per person relocated, largely to cover a five-year integration package. By the end of 2023, £240 million had already been paid to Rwanda. Another £50 million was due for payment in April 2024.

The arrangement has been controversial, including in Parliament and among some Conservatives. Critics have raised concerns about the policy's legality, practicality, morality, efficacy and expense. The Labour Party says it would cancel the scheme.

Asylum seekers will no longer have their claim processed in the UK if they arrive illegally

The Home Office plans to use the relocation agreement to remove people who have made dangerous journeys to the UK and are considered 'inadmissible' to the UK's asylum system. Once the Illegal Migration Act 2023 is fully in force, people's asylum claims would be automatically inadmissible if they have arrived illegally since 20 July 2023.

People whom the Home Office wishes to relocate to Rwanda will be identified and referred to the Rwandan authorities on a case-by-case basis, after an initial screening process in the UK.

Although the scheme originally focused on inadmissible asylum seekers, it has since been expanded to cover people who never lodge an asylum claim, have an asylum claim turned down or go voluntarily (one man has voluntarily relocated to Rwanda after being refused asylum).

The plan has been held up by legal challenges, and may be again

Nobody has been forcibly relocated under the UK-Rwanda asylum partnership since the policy was announced. The first planned flight in June 2022 was halted following a controversial European Court of Human Rights injunction.

In November 2023, the Supreme Court found that the Rwanda arrangements were unlawful. In a unanimous decision, the court held that Rwanda was not a safe country because of the risk that it might send refugees back to places where they would be persecuted.

The Government has decided to press ahead with the Rwanda policy. It is attempting to make the arrangements lawful by including extra safeguards for refugees in the new treaty with Rwanda and introducing a new Safety of Rwanda Act which instructs the courts to treat Rwanda as safe. Both came into force on 25 April 2024.

Fresh litigation challenging aspects of the policy has begun nevertheless.

Criticism from the UN Refugee Agency

The UN Refugee Agency, UNHCR, has questioned whether the scheme is compatible with the UK's obligations under international refugee and human rights laws. Some of its concerns are summarised in the annex to this briefing.

1 The agreement between the UK and Rwanda

In April 2022, the UK and Rwanda announced a Migration and Economic Development Partnership.

This bilateral agreement centres around an 'asylum partnership arrangement'. The asylum partnership was initially agreed in a non-binding memorandum of understanding (MOU) but is now, with some modifications, in a formal treaty.

The arrangement allows the UK to ask Rwanda to assume responsibility for some people who have claimed asylum in the UK and/or arrived in the UK illegally. Those relocated to Rwanda will be able to apply for permission to stay in that country.

Nobody will be able to apply for return to the UK, but the UK can request their return. Otherwise, the treaty does not permit Rwanda to send people away: everyone relocated is to be granted asylum or permanent residence.

The UK will pay Rwanda up to £170,000 for each relocated person to cover processing costs and a five-year integration package, plus up to £500 million in economic aid. The UK Government has also committed to resettle in the UK a small number of vulnerable refugees currently in Rwanda.

1.1 April 2022: announcement and reactions

The original MOU on the asylum partnership was signed in Kigali on 13 April 2022 by the then Home Secretary, Priti Patel, and Rwanda's Minister of Foreign Affairs, Vincent Biruta. It came into force on the same date.[1]

Media reports of the agreement emerged that evening.[2] The then Prime Minister, Boris Johnson, announced the policy in a speech the following day, 14 April 2022.[3] The deal was also summarised in a Home Office press release, World first partnership to tackle global migration crisis, and a media factsheet: Factsheet: Migration and Economic Development Partnership.

1 Home Office, Memorandum of Understanding between the government of United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement, 13 April 2022

2 For example, "UK to send asylum seekers to Rwanda for processing", The Guardian, 13 April 2022

3 Prime Minister's Office, PM speech on action to tackle illegal migration, 14 April 2022

The asylum partnership was part of a broader set of changes to the asylum system, under the overarching New Plan for Immigration policy agenda. The prospect of relocation to Rwanda is one of the ways in which the Government is seeking to deter people who make unauthorised journeys to the UK rather than claiming asylum in countries they pass through on the way (such as France).[4]

Controversy

The Government's interest in securing asylum partnership agreements with other states was well-known and commented on during passage of the Nationality and Borders Act 2022. Nevertheless, the announcement of the partnership with Rwanda generated considerable controversy and commentary domestically and overseas.

Some opposition parties in Rwanda objected to the scheme.[5] The EU Commissioner for Home Affairs, Ylva Johansson, criticised it for not being a "humane and dignified migration policy".[6]

The arrangement was opposed in the UK Parliament, including by the former Prime Minister, Theresa May, and some other senior Conservatives.[7] Their criticisms highlighted concerns about the policy's likely legality, practicality, efficacy and expense. The Archbishop of Canterbury said that the plan does not stand the judgment of God, and some Home Office officials also reportedly raised objections.[8]

Aside from practical concerns, refugee rights advocates objected in principle to the use of 'externalisation' policies by developed states such as the UK.[9] In April 2022, a coalition of over 150 civil society organisations wrote to the Prime Minister and Home Secretary outlining their opposition to the policy.

Refugee law practitioners and academics argued that the deal undermines the post-World War 2 international protection regime. The Migration Policy Institute think tank commented that it "advances the idea that states can pay to cast off the responsibilities they signed up to under the 1951 Geneva Convention".[10]

4 HC Deb 15 December 2023 c653

5 "Rwandan opposition criticises deal to accept UK's asylum seekers", The Guardian, 14 April 2022

6 "Migrant crossings: PM defends Rwanda plan as 'the morally right thing to do'", Sky News, 15 April 2022

7 HC Deb 19 April 2022 c29; David Davis, "Hard-won Brexit freedoms shouldn't be abused to outsource asylum", The Times, 19 April 2022; Andrew Mitchell, "The Government's Rwanda plan will be impractical, ineffective – and expensive", Conservative Home, 19 April 2022

8 "UK's Rwanda asylum plan the 'opposite of nature of God' – Welby", BBC News, 17 April 2022; "Home Office perm sec 'tells staff to get on with' Rwanda asylum scheme", Civil Service World, 22 April 2022

9 Refugee Council, Briefing on the UK Government's agreement with Rwanda, April 2022

10 Migration Policy Institute, Commentaries, The UK-Rwanda Agreement Represents Another Blow to Territorial Asylum, April 2022

The UN Refugee Agency (UNHCR) said the UK was abdicating responsibility to others and therefore threatening "the international refugee protection regime, which has stood the test of time, and saved millions of lives":

> The UK has supported UNHCR's work many times in the past and is providing important contributions that help protect refugees and support countries in conflicts such as Ukraine. However, financial support abroad for certain refugee crises cannot replace the responsibility of States and the obligation to receive asylum seekers and protect refugees on their own territory – irrespective of race, nationality and mode of arrival.
>
> While UNHCR recognizes the challenges posed by forced displacement, developed countries are host to only a fraction of the world's refugees and are well resourced to manage claims for asylum in a humane, fair and efficient manner.[11]

In contrast, the UK and Rwandan Governments contended that the global asylum system is "broken". They believe the partnership is a "world-leading" approach which "can set a new international standard" and will support the humane and respectful treatment of refugees.[12] They argued:

> [it] is a first-class policy that will see major investment in jobs, skills, and opportunities in Africa. [...]
>
> And it is a template for how to deliver a fairer and more effective global asylum system – one that deters criminality, exploitation and abuse, and promises a bright new future for those who find a new home in a wonderful country.[13]

Ministers accused critics of failing to offer a viable alternative.[14] One of the policy's supporters, Tony Smith, a former head of Border Force, welcomed the deal for having "opened up a very real possibility of removing persons who enter illegally to another country". Writing in The Telegraph, he suggested it reflected the limited options available to the Government:

> It takes two to tango. Absent any international collaboration from France, the EU or source and transit countries, the Government has nowhere to go other than to negotiate returns agreements like this with countries like Rwanda. Anything less means, in effect, open borders. If that's what refugee groups and lawyers are advocating, then they should be honest about it and say so.[15]

The Labour Party has said it would call off the deal with Rwanda.[16]

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11 UNHCR UK, UN Refugee Agency opposes UK plan to export asylum, 14 April 2022

12 Home Office press release, Home Secretary and Rwandan Minister Biruta visit Geneva, 19 May 2022

13 Priti Patel and Vincent Biruta, "Repairing the broken asylum system is a moral imperative", 19 May 2022

14 "Priti Patel: Rwanda plan critics 'fail to offer their own solutions'", The Guardian, 18 April 2022

15 Tony Smith, "Time to push ahead with Rwanda deportations, no matter what the lawyer-activists say", The Telegraph, 23 May 2022

16 "Keir Starmer vows to scrap Rwanda asylum scheme 'straight away'", BBC News, 10 May 2024; see also Policy Mogul, Yvette Cooper's speech to Labour Conference, 27 September 2022

1.2 Key elements of the asylum partnership

On 5 December 2023, Home Secretary James Cleverly signed a treaty on the asylum partnership with the Rwandan Government.[17] The treaty partly replicated the terms of the original MOU but made some significant changes (see section 4.1 below). This section outlines the main terms of the asylum partnership as restated in the new treaty.

The stated objective of the asylum partnership is to:

> deter dangerous and illegal journeys to the United Kingdom which are putting people's lives at risk and to disrupt the business model of people smugglers who are exploiting vulnerable people.[18]

It aims to achieve this by relocating asylum seekers, and people arriving in the UK without permission, to Rwanda where they can apply for asylum.[19] Those not entitled to asylum will be granted a Rwandan permanent residence permit instead.[20]

Rwanda commits to processing individual asylum cases in accordance with the 1951 Refugee Convention (which it has signed), and current international standards including international human rights law. The treaty creates "binding obligations" between the two states and will become part of Rwanda's domestic law once ratified.[21]

The treaty is due to last until 13 April 2027 but can be renewed. The clock stops ticking if a court order requires suspension of the arrangements. The agreement can be terminated by either party with three months' notice.[22]

The UK's responsibilities under the treaty

Rwanda needs to approve each individual transfer request before the person is relocated. The timing of a relocation request is determined by the UK, but requests will not be made before the person has been through an initial asylum screening process in the UK.

The treaty does not specify any minimum or upper limit on the number of transfer requests made.[23]

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17 Home Office, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023

18 As above, art 2(1)

19 As above, art 3

20 As above, art 10(4)(a)

21 As above, arts 2(2) and 6

22 As above, art 23

23 As above, art 4

When submitting a transfer request to Rwanda, the UK commits to providing information about that person, including about special needs or health issues.[24] The UK is not obliged to disclose such information if it would be contrary to domestic or international law.[25]

If Rwanda accepts the person for transfer, the UK will "where possible" provide additional information about them, such as languages spoken or dietary requirements. Annex C to the treaty contains further provisions on data management and protection.

The UK assumes responsibility for arranging (and funding) transport to Rwanda, including the provision of escorts where necessary.[26]

Processing and reception arrangements in Rwanda

Rwanda promises to provide all arrivals with accommodation and support that is adequate to ensure their "health, security and wellbeing". People are free to enter and leave the allocated accommodation at all times".[27] There is more detail on these assurances in Part 1 of Annex A to the treaty.

Relocated people have the right to claim asylum in Rwanda. They must be processed by Rwanda's asylum system in accordance with its national and international legal obligations.

Annex B to the treaty contains procedural safeguards for asylum applicants. These include:

- Being given the opportunity to lodge an asylum claim, provide supporting written evidence and attend an in-person interview
- Initial decisions being made by an impartial First Instance Body made up of people trained in asylum law
- Notification of the asylum decision in writing, giving "detailed reasons"
- Access to an interpreter and to legal representation at every stage of the asylum claim

For the first six months, the First Instance Body must consider the advice of a "seconded independent expert" before deciding to refuse asylum.

The treaty then says there is a right of appeal to an 'Appeal Body'. For the first five years, the Appeal Body must be jointly headed by one Rwandan judge and one judge from another Commonwealth country. These two will select the other judges of the Appeal Body, who must be "from a mix of nationalities".

24 As above, art 5(2)
25 As above, art 5(6)
26 As above, art 6
27 As above, art 8

Like the First Instance Body, the Appeal Body must consult an independent expert before making decisions, in this case for the first 12 months.

These would be new institutions. Normally, asylum decisions in Rwanda are made by a Refugee Status Determination Committee with appeals to a government minister and then the High Court of Rwanda.[28]

Possible case outcomes and post-decision entitlements

People who are relocated from the UK to Rwanda cannot apply to return to the UK under the partnership arrangement. The UK can, however, decide to request that someone be returned.[29]

People found to be eligible for asylum will be granted refugee status (or an equivalent status for non-Refugee Convention cases) by Rwanda. Those not eligible for asylum, or who have not applied for it, will be allowed to stay anyway. Rwanda commits to "regularise that person's immigration status in Rwanda, so as to ensure a right to remain in Rwanda in the form of a permanent residence permit".[30]

Part 2 of Annex A to the treaty has more detail on the rights of people granted permission to stay in Rwanda (as a refugee or otherwise). These include language classes, integration programmes and freedom of movement.

Nobody can be removed from Rwanda unless the UK requests their return. The treaty says the parties:

> shall cooperate to agree an effective system for ensuring that removal contrary to this obligation does not occur, which includes systems (with the consent of the Relocated Individual as appropriate) for returns to the United Kingdom and locating, and regularly monitoring the location of, the Relocated Individual.[31]

The treaty does not place restrictions on the UK's right to request someone's return. Circumstances in which this might happen include a UK court determining that the relocated person is under 18 (and unaccompanied) or explicitly ordering that the person be brought back.[32] The Home Office has also reportedly said that return would be requested if the person commits a serious crime in Rwanda and loses their right to reside.[33]

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28 Home Office, Rwanda: country information on the asylum system, version 1.0, 9 May 2022 [since withdrawn], paras 4.7 and 4.11

29 Home Office, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023, art 11(1)

30 As above, art 10(4)(a)

31 As above, art 10(3)

32 As above, art 3(4) and heading of art 11

33 "Asylum seekers jailed for serious crimes in Rwanda will be sent back to UK", The Telegraph, 5 December 2023

Monitoring and oversight

Joint Committee of UK and Rwandan Government representatives

A Joint Committee comprising representatives of the UK and Rwandan Governments (mostly officials) has been set up as required by the MOU and now the treaty. Its role is to monitor and review implementation of the asylum partnership arrangement and to make non-binding recommendations. It serves as a forum to exchange information, discuss best practice, and resolve technical or administrative issues.

The Joint Committee will meet at least once every six months. The first meeting took place on 31 May 2022.[34]

Independent Monitoring Committee

A Monitoring Committee, comprising people independent of the UK and Rwandan governments, has also been formed as required by the MOU and now the treaty. It reports and makes recommendations to the Joint Committee.[35]

The committee's "key function" is to advise on how to ensure that the treaty is adhered to in practice. It sets its own terms of reference, but the Joint Committee can set additional terms of reference provided they do not conflict.[36] The Monitoring Committee's latest terms of reference say it will assess compliance with the treaty across "the entire relocation process from the beginning".[37]

This will happen largely through "field visits". The terms of reference say that the Monitoring Committee will be able to make unannounced visits to accommodation, asylum processing centres and any other locations used to process cases.[38] The treaty also provides that the committee is to have "unfettered access" to relevant locations, people, and documents.[39] The committee will meet at least twice a year.

As of May 2024 there were eight members, four appointed by Rwanda and four by the UK.

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34 Home Office, First meeting of the Migration and Economic Development Partnership Joint Committee, 31 May 2022, 2 September 2022

35 Home Office, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023, art 15(4)(b) and (c)

36 As above, arts 15(4) and 16(5)

37 Home Office, Monitoring Committee: terms of reference, 11 January 2024, p2

38 As above

39 Home Office, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023, art 14(1)

Resettlement of refugees in Rwanda to the UK

As part of the deal, the UK has also committed to resettle in the UK an unspecified "portion" of Rwanda's most vulnerable refugees.[40] The Home Office has said this is expected to amount to "tens" of cases, involving people who have complex needs.[41]

1.3 How are people chosen for relocation?

People inadmissible to the UK asylum system

Asylum seekers whom the UK wishes to transfer to Rwanda will be identified and referred to the Rwandan authorities on a case-by-case basis, after an initial screening process following arrival in the UK. The Home Office says relocations will initially focus on people who have made dangerous journeys to the UK via a safe country since May 2022.[42]

Broad parameters on who is eligible to be relocated to Rwanda are set out in the Home Office 'inadmissibility' policy:

> A person who is otherwise suitable for inadmissibility action as set out in this guidance may be eligible for removal to Rwanda… if:
>
> - they have claimed asylum on or after 1 January 2022, and
> - their journey to the UK can be described as having been dangerous[, and]
> - they do not have families with children under the age of 18…

A dangerous journey is defined as one able or likely to cause harm or injury, including journeys by small boat or hidden in a lorry.[43]

What are inadmissible asylum claims?

The Nationality and Borders Act 2022 provides for people who were previously present in or have another type of connection with a "safe third State" to be treated as inadmissible to the UK's asylum system.[44] The Home Office can remove them to **any** safe third state that agrees to receive them, without first having to consider the asylum claim.

The inadmissibility rules would be strengthened by the Illegal Migration Act 2023. People's asylum claims would be automatically inadmissible if, broadly speaking, they have entered the country illegally since 20 July 2023.[45] Proof of having travelled through a safe country would no longer be required.

The core provisions of the Illegal Migration Act are mostly not in force at time of writing and have been disapplied entirely in Northern Ireland.[46]

A 'notice of intent' is issued to people whose claims are being considered under the current inadmissibility rules. If the person is being considered for relocation to Rwanda this will also be specified in the letter. The notice of intent gives people seven days to respond if they are in a detention centre, or 14 days if they are not detained.[47]

Caseworkers must consider the relevant country policy and information documents to determine whether relocation to Rwanda is suitable in an individual case.[48] The Home Office says it will "undertake a case-by-case assessment when considering enforced removal. This means individual vulnerabilities will be taken into consideration and assessed against our knowledge of the conditions in Rwanda".[49]

Decisions that Rwanda is safe for a particular person can be challenged through the judicial review process, although the Safety of Rwanda Act 2024 requires "compelling evidence". The 2024 Act also restricts the ability of judges to issue an injunction suspending the person's removal from the UK.[50]

Although the scheme originally focused on asylum seekers, other people making unauthorised journeys to the UK can also be relocated. The two governments have agreed that the treaty covers failed asylum seekers and people who take a voluntary relocation package.[51]

People refused asylum in the UK

People whose asylum claim has been considered but turned down by the UK can be sent to Rwanda if they arrived illegally (and have exhausted their appeal rights).[52]

Home Office guidance on this cohort does not explain how people might be selected from among the large number potentially eligible.[53] A departmental press release has however pointed to people who "could not have been

40 As above, art 19
41 PQ 180360 [on Refugees: Rwanda], answered on 19 April 2023; Home Affairs Committee, Asylum and migration oral evidence HC 197, 11 May 2022, Q25
42 Home Office, Inadmissibility: safe third country cases, version 9.0, 29 April 2024, pp8-9
43 As above
44 Nationality, Immigration and Asylum Act 2002, s80B
45 Illegal Migration Act 2023, s5
46 *Northern Ireland Human Rights Commission, Re Application for Judicial Review (Rev2)* [2024] NIKB 35, 13 May 2024
47 Home Office, Inadmissibility: safe third country cases, version 9.0, 29 April 2024, p22
48 As above, p23
49 Home Office, Migration and Economic Development Partnership with Rwanda: Equality Impact Assessment, 29 April 2024, section 2a
50 Safety of Rwanda (Asylum and Immigration) Act 2024, s4
51 Letter to the Permanent Secretary, Ministry of Foreign Affairs and International Cooperation from the British High Commissioner concerning the interpretation of terms in the Rwanda partnership agreement, 13 May 2024
52 As above
53 Home Office, Removal of Failed Asylum Seekers to Rwanda (PDF), version 1.0, 13 May 2024

returned to… countries such as Syria or Afghanistan". It also states explicitly that removals from this cohort can be "enforced", not just voluntary.[54]

People who do not claim asylum at all

An addendum to the original MOU, agreed in March 2023, extended the partnership to "individuals arriving illegally in the United Kingdom, who do not make an asylum claim".[55] The Home Office has not set out a policy on removing non-asylum seekers to Rwanda against their will.

People who agree to go

The scheme also covers "assisted", or voluntary, relocations.[56] People who take assisted relocation are eligible for up to £3,000.[57]

There is one known case of someone accepting assisted relocation to Rwanda.[58] Although he had been refused asylum in the UK, voluntary relocation can be taken up by "any individual who does not have leave to remain" – not just failed asylum seekers.

Who will not be sent to Rwanda?

Unaccompanied children are exempt from removal under the treaty.[59] The treaty does envisage families with children being relocated, although the Home Office says that "at least initially" this would only be voluntary.[60]

Rwandan asylum seekers in the UK would also be excluded.[61] During passage of the Safety of Rwanda Bill, a Home Office minister committed to an additional exception for certain Afghans with links to the armed forces.[62]

The Government has been reluctant to identify publicly any other cohorts who are suitable or otherwise for relocation to Rwanda. It is concerned that doing so could influence decisions made by asylum seekers and people smugglers and undermine the policy's intended deterrent effect.[63]

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54 Home Office press release, Failed asylum seekers detained for removal to Rwanda, 15 May 2024
55 Home Office, Addendum to the Memorandum of Understanding, 18 March 2023
56 Letter to the Permanent Secretary, Ministry of Foreign Affairs and International Cooperation from the British High Commissioner concerning the interpretation of terms in the Rwanda partnership agreement, 13 May 2024
57 Home Office, Voluntary and assisted departures (PDF), version 6.0, 18 March 2024
58 "Failed asylum seeker given £3,000 to go to Rwanda", BBC News, 1 May 2024
59 Home Office, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023, art 3(4)
60 Home Office, Migration and Economic Development Partnership with Rwanda: Equality Impact Assessment, 29 April 2024, section 2a
61 Home Affairs Committee, Asylum and migration oral evidence HC 197, 11 May 2022, Q24 and Q26
62 HL Deb 22 April 2024 c1327
63 HC Deb 19 April 2022 c29

2 Parliamentary scrutiny and approval

2.1 The April 2022 memorandum of understanding

The original UK-Rwanda memorandum of understanding (MOU) was not put before Parliament for formal scrutiny or a vote. Unlike the subsequent treaty (see below), it did not fall under the parliamentary scrutiny requirements of the Constitutional Reform and Governance Act 2010 because it did not create any legally binding obligations.[64]

Public Law Project, a charity, criticised the absence of parliamentary scrutiny. It also observed that the decision to use an MOU rather than a treaty was relevant to the European Court of Human Rights' decision to grant an injunction which led to the cancellation of the first removal flight on 14 June 2022 (see section 3.1 below).[65]

In an October 2022 report, the House of Lords International Agreements Committee criticised the decision to use an "unenforceable" MOU rather than a formal treaty. The report said "it is unacceptable that the Government should be able to use prerogative powers to agree important arrangements with other states that have serious human rights implications without any scrutiny by Parliament".[66]

The Rwanda policy as expressed in the MOU was nevertheless debated in Parliament and examined by select committees, albeit after it had come into force. Relevant parliamentary activity included:

- In April 2022, the Home Secretary made a statement to the House of Commons on the "global migration challenge", including the Migration and Economic Development Partnership (which had been announced while Parliament was in recess).[67]
- In May 2022, the Home Affairs Committee held a one-off evidence session with a Home Office minister and a senior official.[68]

64 Home Office, Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement, 14 April 2022, para 1.6

65 Public Law Project, Why treaties matter: statement on flight cancellation, 15 June 2022

66 International Agreements Committee, Memorandum of Understanding between the UK and Rwanda for the provision of an asylum partnership arrangement, 18 October 2022, HL 71, 2022-23, p11

67 HC Deb 19 April 2022 c25

68 Home Affairs Committee, Oral evidence: Asylum and migration, HC 197, 11 May 2022. See also the minister's follow-up letter to the committee of 15 June 2022 (PDF).

- In June 2022, the Joint Committee on Human Rights held a one-off evidence session with three expert witnesses examining the human rights implications of the deal.[69]
- In July 2022, the Home Affairs Committee made several recommendations about the Rwanda scheme in a report about Channel crossings.[70]
- In June 2023, the Women and Equalities Committee expressed concern about the process for selecting people for removal to Rwanda in a report about equality in the asylum process.[71]

2.2 The December 2023 treaty

The UK and Rwanda signed a new asylum partnership treaty on 5 December 2023. It was laid before Parliament on 6 December 2023.[72]

Commons scrutiny of the treaty

Section 20 of the Constitutional Reform and Governance Act 2010 (CRAG) allows Parliament to object to a treaty being ratified. The House of Commons can delay ratification indefinitely, in theory, by adopting resolutions to that effect.[73]

However, the Government is not obliged to provide parliamentary time for a debate or vote on a treaty. This considerably reduces the effectiveness of the delay powers because in the Commons the Government controls most of the time on the floor of the House.

The Home Affairs Committee recommended that the Government should provide time for a debate on the UK-Rwanda treaty.[74] The Government said it was unable to find time for a Commons debate but the treaty could be examined during passage of the Safety of Rwanda Bill (see section 4.2 below).[75]

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69 Joint Committee on Human Rights, Oral evidence: The UK-Rwanda Migration and Economic Development Partnership and Human Rights, 8 June 2022. See also the Home Secretary's letter to the committee of 14 October 2022 (PDF).

70 Home Affairs Committee, Channel crossings, migration and asylum, 18 July 2022, HC 199 2022-23, p45

71 Women and Equalities Committee, Equality and the UK asylum process, 27 June 2023, HC 93 2022-23, paras 176-186

72 Written statement HCWS101, 6 December 2023

73 Constitutional Reform and Governance Act 2010, s20

74 Home Affairs Committee, UK-Rwanda treaty: provision of an asylum partnership, HC 434 2023-24, 12 January 2024

75 Letter from Leader of the House of Commons to Joanna Cherry MP (PDF), 31 January 2024

Lords scrutiny of the treaty

The Lords International Agreements Committee has a remit to scrutinise all treaties laid before Parliament. It held an inquiry into the UK-Rwanda treaty, to which the Home Secretary gave oral evidence. James Cleverly told the committee that the Government would not operationalise the Rwanda scheme "until we are confident that the measures underpinning the treaty have been put in place" by the Rwandan Government.[76]

The committee's report, published on 17 January 2024, welcomed that commitment but recommended against ratification:

> The Home Secretary told us that the Government would not "operationalise this scheme until we are confident that the measures underpinning the treaty have been put in place; otherwise, the treaty is not credible". We welcome that commitment but would go further. The Government should not ratify the Rwanda Treaty until Parliament is satisfied that the protections it provides have been fully implemented since Parliament is being asked to make a judgement, based on the Treaty, that Rwanda is safe.
>
> The Government should submit further information to Parliament in due course to confirm that the necessary legal and practical steps and training identified in this report, which underpin the protections provided for in the Treaty, have been put in place and bedded in. It should then allow for a further debate before proceeding to ratification.[77]

The report was followed by a full House of Lords debate on a motion by the committee's chair, Lord Goldsmith (Labour), that the treaty not be ratified until fully implemented.[78] This was the first debate ever held under section 20 of CRAG. The Lords resolved against ratification by 214 votes to 171.[79]

A House of Lords resolution against a treaty does not prevent or delay it from being ratified. But it does mean that the Government must lay before Parliament a statement explaining why the treaty should nevertheless be ratified.[80] It can then proceed to ratify.

On 25 April 2024, the Home Secretary laid a statement under section 20 of CRAG explaining why the treaty would be ratified despite the Lords' resolution.[81] The treaty came into force on the same day, having been ratified by both countries.[82]

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76 International Agreements Committee, Corrected oral evidence: UK-Rwanda asylum agreement, 19 December 2023, Q21

77 International Agreements Committee, Scrutiny of international agreements: UK–Rwanda Agreement on an Asylum Partnership (PDF), HL 43 2023-24, 17 January 2024, paras 47-48 (footnotes and emphasis omitted).

78 HL Deb 22 January 2024 cc596-656

79 HL Deb 22 January 2024 cc656-658

80 Constitutional Reform and Governance Act 2010, s20 (7) and (8)

81 Home Office, Statutory statement for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 25 April 2024

82 Home Office press release, UK-Rwanda Treaty completes ratification process, 25 April 2024

3 Legal challenges and court decisions

Nobody has been removed under the UK-Rwanda partnership since it was announced, except for one man who volunteered. The first planned flight in June 2022 was halted following a European Court of Human Rights injunction, which the Government strongly criticised.

On 15 November 2023, the Supreme Court found that the Rwanda arrangements are unlawful. The Government decided to press ahead with the Rwanda policy, and is attempting to make the arrangements lawful through a combination of legislation, capacity-building and a new treaty.

3.1 First flight halted by European court

On 10 May 2022, the Government announced that it had notified the first group of people being considered for relocation to Rwanda. It said that it anticipated legal challenges to prevent removal in some cases and expected the first flights to Rwanda to take place "in the coming months".[83]

A further press release published on 1 June said that the Home Office had begun to issue formal removal directions to the first cohort of cases and that the first flight was expected on 14 June.[84]

Those notified of their liability for removal to Rwanda applied for judicial review of the decision-making in their individual cases. Some campaigning organisations also challenged the legality of the asylum partnership and the policies and procedures underpinning it.[85]

In the days leading up to 14 June the number of people due to fly reduced. Many people had their removal directions cancelled, either by the Home Office or after their individual cases had been scrutinised by the courts.

83 Home Office press release, First illegal migrants told of impending removal to Rwanda, 10 May 2022

84 Home Office press release, First migrants set for Rwanda to be given final notice, 1 June 2022

85 *AAA & Ors v Secretary of State for the Home Department* [2022] EWHC 1922 (Admin), 20 July 2022; Public and Commercial Services Union press release, PCS brings legal challenge against plans to send asylum seekers to Rwanda, 27 April 2022

Some of those remaining applied for injunctions to prevent removal to Rwanda until judicial review of other relocation cases had finished. The UK courts refused these applications.[86]

But on 14 June the European Court of Human Rights granted injunctions to several of those still due to fly, under its 'Rule 39' interim measures procedures. The decision in one case, *NSK v United Kingdom*, was confirmed by press release on the evening of 14 June. That led to the Home Office cancelling the flight very shortly before its departure.[87]

According to the press release, the court decided that NSK should not be removed to Rwanda until the ongoing judicial review had been resolved:

> The Court had regard to the concerns... that asylum-seekers transferred from the United Kingdom to Rwanda will not have access to fair and efficient procedures for the determination of refugee status as well as the finding by the High Court that the question whether the decision to treat Rwanda as a safe third country was irrational or based on insufficient enquiry gave rise to "serious triable issues". In light of the resulting risk of treatment contrary to the applicant's Convention rights as well as the fact that Rwanda is outside the Convention legal space (and is therefore not bound by the European Convention on Human Rights) and the absence of any legally enforceable mechanism for the applicant's return to the United Kingdom in the event of a successful merits challenge before the domestic courts, the Court has decided to grant this interim measure to prevent the applicant's removal until the domestic courts have had the opportunity to first consider those issues.[88]

The timing and outcome of the court's intervention was controversial.

Speaking in the House of Commons the following day, the then Home Secretary Priti Patel criticised the court's "opaque" decision-making, commenting that the Home Office had not yet seen the written judgment.[89] The Policy Exchange think tank's Judicial Power Project described the decision as "a remarkable abuse of judicial power, which discredits European human rights law".[90]

The court has since changed the wording of Rule 39 to emphasise that interim measures should only be granted in "exceptional circumstances". There have also been procedural changes relevant to criticism of its Rwanda intervention, such as naming judges who issue such injunctions.[91]

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86 *R (Public and Commercial Services Union & Ors) v Secretary of State for the Home Department* [2022] EWCA Civ 840, 13 June 2022; Supreme Court, Rwanda Permission to Appeal Application refused, 14 June 2022

87 "Rwanda asylum flight cancelled after legal action", BBC News, 15 June 2022

88 European Court of Human Rights press release, ECHR 197 (2022), 14 June 2022. On the other injunctions issued on 14 June, see press release ECHR 199 (2022), 15 June 2022.

89 HC Deb 15 June 2022 c301

90 Richard Ekins and the Judicial Power Project, "The Strasbourg court's disgraceful Rwanda intervention", Law Society Gazette, 15 June 2022

91 European Court of Human Rights, Rules of Court (PDF), 28 March 2024; A Lawyer Writes, Strasbourg tightens rule 39, 29 March 2024

3.2 Policy found unlawful by UK courts

Lower court judges split

The judicial review proceeded to the High Court. In December 2022, the court concluded that the Rwanda policy was lawful overall.[92] But it gave permission for some of the claimants to take the case on to the Court of Appeal.[93]

Ministers confirmed that they would not seek to remove anyone to Rwanda until legal proceedings had finished.[94]

The Court of Appeal issued its judgment in June 2023. It held, by a 2-1 majority, that the Rwanda policy was unlawful. The Lord Chief Justice dissented and would have held that the policy was lawful.[95]

The judges found that the UK was not obliged to process all asylum claims received.[96] There was no objection in principle to sending asylum seekers to a safe third country.[97] These findings were not challenged in the Supreme Court (see below).

The issue for the majority was that Rwanda was not a safe country because of the risk that it would not decide asylum claims properly and as a result might send refugees back to countries where their life or freedom would be threatened ('refoulement'). The risk of refoulement created a breach of Article 3 of the European Convention on Human Rights, and therefore of section 6 of the UK's Human Rights Act 1998, which makes it unlawful for the Government to act in breach of the Convention.

The court gave its permission for the Home Secretary (now Suella Braverman) to take the case to the Supreme Court.[98]

Unanimous Supreme Court decision

On 15 November 2023, five justices of the Supreme Court held that sending asylum seekers to Rwanda was unlawful.[99] They essentially agreed with the Court of Appeal that problems with the Rwandan asylum system created a

92 *R (AAA and others) v Secretary of State for the Home Department* [2022] EWHC 3230 (Admin), 19 December 2022

93 Garden Court Chambers, Rwanda judgment: Permission to appeal to the Court of Appeal granted, 18 January 2023. The Court of Appeal itself later gave permission to appeal on additional grounds.

94 HC Deb 13 December 2022 c887; HC Deb 19 December 2022 c42

95 *R (AAA and others) v Secretary of State for the Home Department* [2023] EWCA Civ 745, 29 June 2023

96 As above, paras 118, 321

97 Free Movement, Reflections on the Court of Appeal's Rwanda decision, 5 July 2023

98 "UK government given permission to challenge Rwanda plan in top court", Reuters, 13 July 2023

99 *R (AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42, 15 November 2023

risk of refoulement. The decision did, however, leave open the possibility that the system could improve in future and eliminate that risk.[100]

Other points made in the judgment include:

- The principle of non-refoulement is part of several international treaties which the UK has ratified, and is a "core principle of international law".[101] It also forms part of UK domestic law, not just through the Human Rights Act 1998, but under immigration legislation from 1993, 2002 and 2004.[102]
- Courts have to make their own assessment of whether there is a real risk of refoulement, rather than deferring to the government's expertise.[103]
- Evidence about the asylum situation in Rwanda provided by the UN Refugee Agency, UNHCR, had "particular significance" because of that organisation's standing and expertise.[104]
- That evidence highlighted various deficiencies in the Rwandan asylum system as it operated in practice, such as refusing claims without giving reasons and an "untested" appeal system to judges thought to lack independence from the government. There was also a "surprisingly high" refusal rate of 100% for claims by citizens of Afghanistan, Syria and Yemen between 2020 and 2022.[105]
- A previous agreement to take asylum seekers from Israel resulted in "serious breaches" of the Refugee Convention rights of those relocated.[106]
- The general political situation in Rwanda gives rise to "profound human rights concerns", which raise "serious questions as to its compliance with its international obligations".[107]
- Rwanda's agreement to uphold higher standards under the deal with the UK was "in good faith", but "intentions and aspirations do not necessarily correspond to reality: the question is whether they are achievable in practice".[108]

No appeal from the Supreme Court is possible.

100 As above, para 105
101 As above, para 26
102 As above, para 33
103 As above, para 52
104 As above, paras 64-70
105 As above, paras 77-94
106 As above, para 96
107 As above, paras 75-76
108 As above, para 102

3.3 Government response: Revised Rwanda policy

The Government decided to press ahead with implementation of the Rwanda policy, making adjustments to render it lawful.

Two days before the Supreme Court handed down its judgment, Suella Braverman was replaced as Home Secretary by James Cleverly. The Parliamentary Under Secretary for Migration and Borders, Lord Murray of Blidworth, also left the Government.

The new Home Secretary gave a statement to the House of Commons on the day of the judgment, 15 November 2023. He set out the Government's intention to continue with the policy, including by firming up commitments from the original memorandum of understanding in a legally binding treaty:

> The important thing to note is that the judgment of the Court today was made on the basis of facts from 15 months ago. [...]
>
> We have been working with Rwanda to build capacity and amend agreements with Rwanda to make clear that those sent there cannot be sent to another country than the UK. Our intention is to upgrade our agreement to a treaty as soon as possible.
>
> That will make it absolutely clear to our courts and to Strasbourg that the risks laid out by the Court today have been responded to, will be consistent with international law, and ensure that Parliament is able to scrutinise it. [...]
>
> We have a plan to deliver the Rwanda deal and we will do whatever it takes to stop the boats.[109]

The Prime Minister, Rishi Sunak, held a press conference later on 15 November. As well a new treaty, he said that the Government would propose "emergency legislation" to confirm that Rwanda is safe, intended to insulate the policy from challenge in domestic courts. He added that, given the possibility that the policy could nevertheless face challenge in the European Court of Human Rights, the Government was "prepared to... revisit those international relationships to remove the obstacles in our way".[110]

These changes are discussed in section 4 below. But despite the work that has gone into the scheme over the past six months, the Public Accounts Committee reported on 29 May 2024 that the Home Office does not have a "credible plan" for implementing the scheme.[111]

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109 Home Office, Update to government's plan for illegal immigration, 15 November 2023
110 Prime Minister's Office, PM remarks on Supreme Court Judgement, 15 November 2023
111 Public Accounts Committee, Asylum Accommodation and UK-Rwanda partnership, HC 639 2023-24

4 Changes in response to the Supreme Court judgment

4.1 Upgrading the deal to a treaty

The new treaty with Rwanda was signed on 5 December 2023 and ratified on 25 April 2024. Unlike the original memorandum of understanding (MOU), the treaty is legally binding. The Government considers this significant in providing a firmer guarantee that refugees will not be removed from Rwanda in breach of the agreement.[112]

Differences between the treaty and the MOU

Paragraph 10(4) of the MOU had envisaged that people refused asylum in Rwanda could ultimately be removed from the country. Article 10 of the treaty explicitly rules this out and provides that anyone who does not qualify for asylum will nonetheless be given a permanent residence permit.

Annex B of the treaty provides for new institutions to decide asylum applications and appeals by people relocated to Rwanda. Both decision-makers and judges will be required to consult independent experts, and some judges will not be Rwandan. A note accompanying the original MOU had provided for some procedural safeguards but not to the same extent as in the treaty.

In paragraph 11 of the MOU, relocated people could be brought back from Rwanda "should the United Kingdom be legally obliged to facilitate that person's return". Under Article 11 of the treaty, the UK can request that a person be brought back for any reason (although this provision is under the heading "Facilitation of United Kingdom court proceedings and court orders and return to the United Kingdom").

The powers of the independent Monitoring Committee have been expanded. It can now set its own terms of reference and publish reports of its inspections as it sees fit (the Home Office does not permit the UK's own immigration inspectorate to do this). The committee has been tasked with setting up a complaints system. It can also hire staff.

Article 3 of the treaty specifies that the rights of relocated people apply "regardless of their nationality, and without discrimination". This was not in

[112] Prime Minister's Office, PM remarks on Supreme Court Judgement, 15 November 2023

the MOU and may reflect the Supreme Court's comments about the treatment of Middle Eastern asylum seekers in Rwanda.[113]

Article 22 contains a mechanism for the UK and Rwanda to resolve disputes about the agreement. This includes arbitration. The MOU had explicitly ruled out any external dispute resolution mechanism.

Ratifying the treaty

The treaty came into force on 25 April 2024, after being ratified by both parties.[114]

As explained in section 2.2 above, the UK's internal procedures required a statement to be laid before Parliament explaining why the Government is ratifying despite House of Lords opposition. Mr Cleverly laid a statement to that effect on 25 April 2024.[115]

The Rwandan Parliament passed legislation approving the treaty for ratification on 18 April 2024.[116]

4.2 New law treating Rwanda as safe

The Safety of Rwanda (Asylum and Immigration) Act 2024 was introduced on 7 December 2023 and came into force on 25 April 2024.[117]

The measure is designed to replace the Supreme Court's judgment that Rwanda is not safe with a rule that the courts must treat Rwanda as safe. The intention is that the policy will then be lawful under UK domestic law despite the ruling. The act also seeks to stop people taking legal challenges to delay or prevent removal to Rwanda, insofar as those challenges are based on arguments about refoulement or Rwanda being generally unsafe.[118]

It will still be possible to argue that Rwanda is unsafe based on "compelling evidence relating to the person's particular individual circumstances". This is consistent with the Government's position that there will be case-by-case screening of individual suitability for relocation to Rwanda (see section 1.3

113 *R (AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42, 15 November 2023, para 85

114 Home Office, Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 5 December 2023, art 24; Home Office press release, UK-Rwanda Treaty completes ratification process, 25 April 2024

115 Home Office, Statutory statement for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 25 April 2024, p16

116 Official Gazette, Law n° 040/2024 of 18/04/2024 (PDF), 19 April 2024

117 Safety of Rwanda (Asylum and Immigration) Act 2024, s10

118 See Commons Library briefing CBP-9918, Safety of Rwanda (Asylum and Immigration) Bill 2023-24

above). The Prime Minister has argued that the act sets the bar for a legal challenge so high that "it will be vanishingly rare for anyone to meet it".[119]

Sir Jonathan Jones KC, a former head of the Government Legal Department, has identified several possible ways in which there could be renewed litigation on the Rwanda policy despite the new legislation:

- A challenge arguing that the law itself is 'unconstitutional' and should be struck down, although this is unlikely given the principle of parliamentary sovereignty;
- A challenge seeking a declaration of incompatibility with the European Convention on Human Rights, under section 4 of the Human Rights Act 1998;
- Individual challenges based on personal circumstances, as envisaged by section 4 of the act;
- Individual applications to the European Court of Human Rights in Strasbourg, including for interim measures (injunctions) under Rule 39 to delay removal pending a full hearing.[120]

Section 5 states that ministers can refuse to comply with interim measures issued by the Strasbourg court.[121] This has always been the case as a matter of UK domestic law. But exercising this power would place the UK in breach of its treaty obligations under the European Convention.[122]

11 Conservative MPs voted against the Safety of Rwanda Bill at third reading, including Suella Braverman, Robert Jenrick and Sir William Cash.[123] They felt that it did not go far enough in shutting down all possible avenues of legal challenge.

Conversely, the House of Lords raised multiple concerns about the bill and suggested a series of amendments over several rounds of ping pong. The bill was ultimately passed unamended, except for a requirement for the Home Secretary to report on the removal of human trafficking victims to Rwanda.[124]

119 Prime Minister's Office, PM's remarks on illegal migration, 7 December 2023
120 Institute for Government, Rwanda: what next in the courts?, 23 April 2024
121 Safety of Rwanda (Asylum and Immigration) Act 2024, s5
122 See generally Commons Library briefing CBP-9958, The European Convention on Human Rights and the Human Rights Act 1998
123 Safety of Rwanda (Asylum and Immigration) Bill: Third reading, division 60, 17 January 2024
124 On the concerns highlighted by the House of Lords, see Commons Library briefing CBP-9944, Safety of Rwanda (Asylum and Immigration) Bill: progress of the bill, 19 April 2024, section 2

5 Frequently asked questions about the Rwanda policy

5.1 When would flights to Rwanda begin?

How could be sent to Rwanda?

Prime Minister Rishi Sunak told the BBC on 23 May that people would start being sent to Rwanda "in July", after the general election of 4 July.[125] He noted that the Government had made extensive preparations, including flight bookings and putting people in immigration detention.[126]

Before calling the election, the plan had been for removals to begin in late June or early July.[127] This was 10 to 12 weeks on from passage of the Safety of Rwanda Act and ratification of the new UK-Rwanda treaty on the asylum partnership in late April.

At that point, the Rwandan Government had yet to fully implement all the treaty guarantees. For example, the treaty requires independent experts to advise the Rwandan authorities on refusing asylum claims by people relocated. The process for selecting these was ongoing as of late April, although the Government expected the posts to be filled no later than 27 May 2024.[128]

As mentioned in section 4.2 above, it remains to be seen whether legal challenges would again frustrate the intended timetable. There are two cases before the courts at time of writing, one taken by the charity Asylum Aid and another taken by the First Division Association trade union for civil servants.[129]

If the Labour Party wins the general election, it says it would call off the Rwanda policy altogether. Sir Keir Starmer said on 10 May 2024 "we would cancel the scheme, so that means no flights, no Rwanda scheme".[130]

125 "No Rwanda flights before election, says Rishi Sunak", BBC News, 24 May 2024 (reporting comments on the BBC Today programme of 23 May

126 Home Office press release, First phase of detentions underway for Rwanda relocations, 1 May 2024

127 King's Bench Division, court orders of 8 May 2024 and 23 May 2024; Prime Minister's Office, Prime Minister Rishi Sunak's statement on the plan to stop the boats, 22 April 2024

128 Home Office, Statutory statement for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants, 25 April 2024, p11

129 Leigh Day, Asylum Aid launches legal action against Home Office Safety of Rwanda policy, 3 May 2024; FDA, Why we've launched a judicial review of the Safety of Rwanda Act, 1 May 2024

130 "Keir Starmer vows to scrap Rwanda asylum scheme 'straight away'", BBC News, 10 May 2024

5.2 How many people would be sent to Rwanda?

Announcing the policy in April 2022, then Prime Minister Boris Johnson said "Rwanda will have the capacity to resettle tens of thousands of people in the years ahead".[131] The then Deputy Prime Minister later said that the number of people relocated to Rwanda each year was more likely to be in the hundreds.[132]

More recently, Rishi Sunak and James Cleverly have emphasised that the aim is for multiple flights each month indefinitely.[133] Although there is no published target, there is no upper limit either; ministers and officials have repeatedly stressed that the scheme is "uncapped".

Some observers have suggested that limited capacity in Rwanda to house people and process their asylum claims could undermine the policy's intended deterrent effect.[134] Rwanda's recent caseloads of asylum claims eligible for individual assessment have been small. There were 465 asylum seekers in Rwanda at the end of 2020 and 228 individual asylum decisions made, according to UNHCR statistics cited by the Home Office.[135]

In terms of accommodation, the evidence before the High Court in 2022 was that "the physical capacity for housing asylum seekers in Rwanda was limited to 100".[136] The Home Office gave an initial figure of 200 beds.[137]

But the Rwandan authorities have said more accommodation will be prepared if the UK begins to relocate people: "As soon as flights begin, we will be able to scale up rapidly to meet whatever the requirements are".[138]

More generally, Rwanda has emphasised its willingness to take large numbers of people if required. A spokesperson told the BBC in November 2023 "we are ready, and willing, to take in as many people as the UK is able to send".[139] Home Office Permanent Secretary Matthew Rycroft, speaking to the Public Accounts Committee in April 2024, agreed with that assessment.[140]

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131 Prime Minister's Office, PM speech on action to tackle illegal migration, 14 April 2022

132 "Dominic Raab: Hundreds, not thousands, will be sent to Rwanda", The Times, 20 May 2022

133 "Rwanda flights will deport asylum seekers 'indefinitely', says Cleverly", Guardian, 25 April 2024; Prime Minister's Office, Prime Minister Rishi Sunak's statement on the plan to stop the boats, 22 April 2024

134 HC Deb 19 April 2022 c34; Home Affairs Committee, Asylum and migration oral evidence HC 197, 11 May 2022 Q39-44

135 Home Office, Review of asylum processing Rwanda: country information on the asylum system, version 10, 9 May 2022 [since withdrawn], para 4.14.1

136 *R (AAA and others) v Secretary of State for the Home Department* [2023] EWCA Civ 745, 29 June 2023, para 474

137 PQ 97762 [on: Asylum: Rwanda], 28 November 2022

138 "UK taxpayers helping fund Rwanda apartments for asylum seekers", Telegraph, 17 March 2023

139 BBC Sounds, World at One, 16 November 2023, 16:29

140 Public Accounts Committee, Oral evidence: Asylum Accommodation and UK-Rwanda partnership, HC 639, 15 April 2024, Q83

5.3 Would the scheme deter unauthorised journeys to the UK?

Deterrence is a core objective of the Rwanda policy.[141] The Prime Minister has said it will be considered a success if the boats are stopped.[142]

In general, the Home Office accepts the "academic consensus" that policy changes in destination countries do not stop people from leaving to seek asylum. But it argues that policy can affect the choice of destination country, highlighting examples of this being achieved by countries such as Australia, Italy and Spain.[143] Oxford University's Migration Observatory says that these examples do not necessarily prove the effectiveness of deterrence policies, as they mostly involve physically preventing (rather than disincentivising) unauthorised journeys.[144]

There is considerable uncertainty about the likely impact of the Rwanda policy specifically. The department's Permanent Secretary requested a ministerial direction to proceed in spite of there being insufficient evidence that it provided value for money. He explained: "This does not mean that the [partnership] cannot have the appropriate deterrent effect; just that there is not sufficient evidence for me to conclude that it will".[145]

The Home Affairs Committee concluded in July 2022 that there is "no clear evidence" that the policy will deter small boat crossings.[146] In response, the Government said the desired deterrent effect "cannot be quantified with sufficient certainty at this early stage in isolation from wider efforts to tackle small boat crossings". It also stated that it did not expect to achieve much deterrence until removals take place.[147]

Migration Watch, a think tank that advocates lower immigration, has suggested that the policy could act as a powerful deterrent if people entering the UK illegally "are swiftly and routinely sent to Rwanda".[148]

141 HC Deb 25 April 2022 c454

142 "Rwanda bill: 'Success is when the boats have been stopped,' PM tells Sky News", Sky News, 22 April 2024. Tom Pursglove, as illegal immigration minister in the Johnson Government, told the Home Affairs Committee in May 2022 that a "real drop-off" in boat numbers would demonstrate success.

143 Home Office, Impact Assessment, Illegal Migration Bill, IA HO 0438 (PDF), 26 June 2023, p13

144 Migration Observatory at the University of Oxford, Why the government's economic Impact Assessment of the Illegal Migration Act tells us little about the Act's economic impact, 26 July 2023

145 Home Office, Letter from Matthew Rycroft to Rt Hon Priti Patel, 13 April 2022

146 Home Affairs Committee, Channel crossings, migration and asylum, 18 July 2022, HC 199 2022-23, p4

147 Home Affairs Committee, Channel crossings, migration and asylum: Government Response to the Committee's First Report, 28 October 2022, pp10-11

148 Migration Watch, Potential impact of asylum arrangements with Rwanda, 5 May 2022

5.4 How much does it cost?

The Government initially said details of the funding arrangement with Rwanda were confidential and refused to speculate about the likely overall costs.[149] A National Audit Office investigation has now confirmed the costs of payments to Rwanda:

- Fixed payments of £370 million into an Economic Transformation and Integration Fund. The UK has already paid £220 million; it was due to pay the remaining £150 million in three instalments of £50 million in April 2024, April 2025 and April 2026.
- There are additional payments due to the Fund depending on the number of people sent to Rwanda:
  - £20,000 per person
  - £120 million once 300 people have been relocated
- The UK will also pay up to £150,874 per person relocated to cover asylum processing and integration over five years:
  - Year 1: £45,262 (this includes £11,000 for the asylum assessment)
  - Year 2: £37,718
  - Year 3: £30,175
  - Year 4: £22,632
  - Year 5: £15,087

  If the person left Rwanda voluntarily, these payments would cease.[150]

This means that, if 300 people were relocated to Rwanda and remained there for five years, the total cost of the scheme would be £541 million (£1.8 million per person relocated). If 1,000 people were relocated and remained for five years, the total costs would be £661 million (£661,000 per person relocated). If those 1,000 people stayed only for one year, the total costs would be £555 million (£555,000 per person).

In addition to payments to Rwanda, the Home Office will incur its own costs. These include an estimated £11,000 per person for flights to Rwanda.[151]

149 PQ 2110 [Asylum: Rwanda], answered on 21 November 2023

150 National Audit Office, Investigation into the costs of the UK-Rwanda Partnership, HC 577, 1 March 2024

151 As above, paras 2.9-2.10

5.5 Are there comparable precedents?

The Government has sought to counter some criticisms of the UK-Rwanda deal by suggesting that the EU and UNHCR have supported a scheme to remove asylum seekers to Rwanda, and by highlighting a previous Labour administration's interest in processing asylum claims outside the UK.

It maintains that the policy is not comparable to other examples, including a previous arrangement between Israel and Rwanda.

UNHCR's Emergency Transit Mechanism

The European Union has provided financial support to UNHCR's 'Emergency Transit Mechanism' project in Rwanda.[152] This was established in September 2019 as an emergency humanitarian response to an urgent situation in Libya, a major transit hub for migrants heading towards Europe.

UNHCR says the scheme:

> can currently support up to 700 refugees and asylum seekers at any given time. Its main aim is to temporarily host refugees and asylum seekers who have undertaken voluntary evacuation from Libya. While in the ETM, the asylum seekers go through refugee case processing undertaken by UNHCR...[153]

There are conceptual and practical differences between this scheme and the UK-Rwanda arrangement. For example, relocation from the UK to Rwanda is not voluntary, and asylum processing on arrival would be undertaken by the Rwandan authorities rather than UNHCR.

As of August 2023, over 1,700 people had been evacuated from Libya to Rwanda. Around two thirds have since been resettled as refugees in other countries, such as Canada and Sweden.[154]

The Blair Government's proposals

During the early 2000s, the Blair Government considered some ideas for transferring asylum seekers from the UK to third countries while their claims were being processed.

These included a proposal that EU member states establish 'transit processing centres' in third countries where asylum claims to the EU would be considered.[155] There were also discussions with the Tanzanian Government

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152 European Union, Emergency Trust Fund for Africa, Enhancing protection, lifesaving assistance and sustainable solutions for evacuees from Libya through the Emergency Transit Mechanism (ETM) in Rwanda, accessed on 20 November 2023

153 UNHCR, Emergency Transit Mechanism, Rwanda (PDF), August 2023

154 As above

155 Letter from the Prime Minister, New international approaches to asylum processing and protection (PDF), 10 March 2003

that reportedly involved the possibility of Tanzania receiving some asylum seekers and refused asylum seekers.[156]

Full Fact, a fact-checking organisation, has concluded that the previous proposals were "quite different" to the UK-Rwanda deal.[157]

None of these policies were implemented. However, some of the legislation introduced to support the UK-Rwanda plan builds on legislation passed under Labour. For example, section 29 and Schedule 4 of the Nationality and Borders Act 2022 amend the safe country provisions in Schedule 3 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

The Israel-Rwanda arrangements

In 2013, Rwanda agreed to take Eritrean and Sudanese asylum seekers from Israel and process their asylum claims. According to the UK Supreme Court, the agreement included an explicit undertaking from the Rwandan Government to the Israeli Government that it would comply with human rights and the principle of non-refoulement.

The Supreme Court concluded that, this did not happen:

> There is no dispute that persons who were relocated under the agreement suffered serious breaches of their rights under the Refugee Convention. UNHCR found that asylum seekers who arrived in Rwanda under the arrangement were routinely moved clandestinely to Uganda… In three cases, refoulement to Eritrea (via Kenya) had only been prevented by UNHCR's intervention.[158]

Both the UK and Rwandan Governments have said that the two arrangements are not at all comparable, partly because the UK-Rwanda deal includes mechanisms to monitor implementation (see section 1.2 above).[159] But the Supreme Court said it "appears" that there were such mechanisms in the Israel-Rwanda deal as well, and thought the "apparent failure" of Rwanda to respect the non-refoulement principle was relevant to compliance with its undertakings to the UK.

156 "UK plans asylum camp in Tanzania", BBC News, 26 February 2004

157 Full Fact, Did David Blunkett propose sending asylum seekers abroad in 2004?, 22 April 2022

158 *R (AAA and others) v Secretary of State for the Home Department* [2023] UKSC 42, 15 November 2023, paras 95-100. For further background, see "How Israel's Secret Refugee Deals Collapsed in the Light of Day", The New Humanitarian, 3 May 2018; Border Criminologies Blog, Moving under Threats: The Treacherous Journeys of Refugees who 'Voluntary' Departed from Israel to Rwanda and Uganda and Reached Europe, 12 October 2018.

159 BBC Sounds, World at One, 16 November 2023, 13:34; HL Deb 20 December 2022 c1071; "What happened when Israel sent its refugees to Rwanda?", BBC News, 23 June 2022; HC Deb 19 April 2002 c37

Annex: International law issues

UNHCR opposition to UK's plans

The UN High Commissioner for Refugees (UNHCR) has produced several reports and press releases outlining its opposition to the Migration and Economic Development with Rwanda.

> UNHCR remains firmly opposed to arrangements that seek to transfer refugees and asylum seekers to third countries in the absence of sufficient safeguards and standards. Such arrangements simply shift asylum responsibilities, evade international obligations, and are contrary to the letter and spirit of the Refugee Convention.[160]

UNHCR head Filippo Grandi said in April 2022 that the Rwanda policy was against both the letter and spirit of international law:

> … wide-ranging inadmissibility rules have the potential to deny refugees their right to seek asylum in the UK. Such provisions are potentially at variance with the Refugee Convention.
>
> I am also concerned by the UK's intention to externalize its obligations to protect refugees and asylum seekers to other countries. Such efforts to shift responsibility run counter to the letter and spirit of the Refugee Convention, to which the UK is a party. These efforts also run counter to the Global Compact on Refugees, which was affirmed by the UN General Assembly in 2018 and calls for more equitably sharing the responsibility for refugee protection.[161]

The rest of this annex covers the main international legal questions relating to the UK-Rwanda arrangement.

The Refugee Convention

The 1951 International Refugee Convention acknowledges that some refugees and asylum-seekers may enter a country illegally.[162] Article 31 of the convention outlines a state's obligations when it comes to the treatment of

160 UNHCR, UN Refugee Agency opposes UK plan to export asylum, 14 April 2022

161 UNHCR, News comment: UNHCR's Grandi fears UK legislation will dramatically weaken refugee protection, 27 April 2022

162 Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137

those seeking refuge by entering a state in a way that would usually be unlawful. The provision states:

> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
>
> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

There are several legal questions that arise out of the UK-Rwanda arrangements in light of this provision:

- What amounts to a "penalty" under Article 31(1).
- Whether refugees must come "directly" from the state they are fleeing, or may transit through other states and still be protected by this provision.
- Whether asylum seekers should claim asylum in the "first safe country" they reach.

Prohibition of penalties

In the UK, the prohibition of penalties against refugees who enter a state unlawfully is given effect by section 31 of the Immigration and Asylum Act 1999. This provides a legal defence against some immigration offences, such as document fraud.

As noted in section 1.3 above, an asylum claim can be declared inadmissible based on a number of conditions set out in the 2022 Act. This includes where an asylum seeker has previously been present in another country and failed to claim asylum there when it would have been reasonable to expect them to do so.[163]

Some expert and academic commentators suggest that treating any potential refugee claim as inadmissible based on the fact they may have entered the UK illegally runs contrary to Article 31 and could amount to an unlawful penalty.[164]

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163 Nationality, Immigration and Asylum Act 2002, s80C (inserted by Nationality and Borders Act 2022, s16)

164 See, for example, Maja Grundler and Elspeth Guild, The UK-Rwanda deal and its Incompatibility with International Law, EU Immigration and Asylum Law and Policy blog, 29 April 2022

UNHCR further notes that, where penalties are permissible (when the asylum seekers fall outside the scope of Article 31), they should not interfere with the fundamental right to seek asylum or other Convention guarantees. [165]

> Where asylum-seekers are not protected against the imposition of penalties under Article 31(1) (not having arrived directly, presented themselves without delay or shown good cause for their irregular entry or presence) any penalising measure must not undermine the right to seek and enjoy asylum or be at variance with other provisions of the 1951 Convention and international and regional human rights law. **Thus, such penalties must not involve or indirectly result in denying asylum seekers access to an asylum procedure.** Nor … can it involve the denial of the full set of rights guaranteed by the 1951 Convention. UNHCR further considers that the denial of entry or the summary removal from its territory of asylum-seekers based on their irregular entry or presence, without necessary safeguards regarding the application of safe third country concepts, would also be in breach of the UK's obligations under the 1951 Convention and applicable international and regional human rights law.[166]

The Home Office's view is that relocation to Rwanda does not amount to a "penalty". It emphasises Rwanda's commitment to non-refoulement and its treatment of refugees.[167]

Interpretation of Article 31

The UK Government interprets the Refugee Convention as excluding some asylum seekers from the scope of Article 31, and therefore the protection against penalties. In particular, the UK's interpretation of asylum seekers "coming directly from a territory where their life or freedom was threatened" has been included in section 37 of the Nationality and Borders Act 2022 (in force from 28 June). Section 37(1) provides that:

> A refugee is not to be taken to have come to the United Kingdom directly from a country where their life or freedom was threatened if, in coming from that country, they stopped in another country outside the United Kingdom, unless they can show that they could not reasonably be expected to have sought protection under the Refugee Convention in that country.

The Act does not define what it means for an asylum seeker to have "stopped" in another country where asylum could have been claimed.

UNHCR rejects the UK Government's description of the Nationality and Borders Act as "aligned with", "based on" and "consistent with" Article 31(1).[168] It argues that the UK's position is based on a "fundamental

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165 The right to seek asylum was recognised in the Universal Declaration of Human Rights, Article 14 (1): Everyone has the right to seek and to enjoy in other countries asylum from persecution.

166 UNHCR, UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom, May 2021, Annex para 14

167 Home Office, Migration and Economic Development Partnership with Rwanda: equality impact assessment, 4 July 2022, p5

168 UNHCR, UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022, para 26

misapplication" of Article 31, reiterating its position that asylum does not have to be claimed in the first safe country a refugee may reach.

UNHCR provides a different and more specific interpretation of the 1951 Convention, supporting the existing interpretations from UK case law:

> Article 31(1) of the Refugee Convention prohibits penalising refugees for their unlawful entry or presence if they come directly from a country where their life or freedom was threatened, present themselves to the authorities without delay, and show good cause for their unlawful entry or presence. This article was intended to address the situation of refugees who were often unable to secure the necessary authorisation to enter a country. The exemption in their favour could not, however, be claimed by those who were lawfully settled, temporarily or permanently, in another country and had already found protection there and who decided to move onward irregularly for reasons unconnected to their need for international protection. To them, administrative penalties for unlawful entry or presence could be applied. It has since been understood also to apply to those who failed to seek asylum in a timely fashion or at all, in a country where they could reasonably have done so. The UK High Court in *Adimi* introduced three benchmarks to interpret "coming directly": 1) the length of stay in the intermediate country; 2) the reason for the delay; and 3) whether or not the refugee sought or found protection *de jure* or *de facto*.[169]

UNHCR's position reflects 2001 research on the interpretation of Article 31.[170] This indicated that the interpretation of Article 31, and significant state practice in implementing it at the time, suggested the meaning of a refugee "coming directly" to a state did not mean that refugees cannot transition through or even stop in a safe country in order to be protected by Article 31:

> Refugees are not required to have come directly from their country of origin. Article 31 was intended to apply, and has been interpreted to apply, to persons who have briefly transited other countries, who are unable to find protection from persecution in the first country or countries to which they flee, or who have 'good cause' for not applying in such country or countries. The drafters only intended that immunity from penalty should not apply to refugees who had settled, temporarily or permanently, in another country.[171]

UNHCR has also previously outlined that Article 31 does not require an asylum seeker to seek protection in the first safe country they enter:

> The requirement that, in order to benefit from exemption from penalties, an asylum-seeker should be coming "directly" from a territory where their life or freedom was threatened allows States parties to treat refugees differently only if they have already settled in a country and subsequently move onwards for reasons unrelated to their need for international protection. **It is not meant to suggest that an asylum-seeker must claim asylum in the first country that could be reached without passing through another.** Given that the 1951 Convention was drafted at a time when air travel was inaccessible to most,

169 As above, para 27, footnotes omitted; case cited: *R (Adimi) v Uxbridge Magistrates Court* [1999] EWHC Admin 765, 29 July 1999

170 Guy S. Goodwin-Gill, Article 31 of the 1951 Convention relating to the Status of Refugees: Non-penalization, Detention and Protection: A paper prepared at the request of the Department of International Protection for the UNHCR Global Consultations (PDF), October 2001

171 As above, para 103

> and overland travel was by far the most common mode of transport, such a principle would have relieved the very States that drafted and signed the Convention of any significant obligations under it. A literal, temporal or geographical interpretation of "directly" would also undermine the application of Article 31(1). Rather, reflecting leading UK jurisprudence, the term "directly" is to be interpreted broadly as meaning that refugees who have crossed through, stopped over or stayed in other countries en route, may still be exempt from penalties.[172]

Therefore, while the UK considers refugees who have "stopped" in another country as not coming "directly" to the UK, UNHCR considers such refugees as still subject to the protections of Article 31.

A previous version of the Home Office's guidance on inadmissibility decisions went further in outlining when the UK Government would refuse to consider an asylum claim based on a claimant's "presence" in a country before reaching the UK. It included as a possible scenario for inadmissibility where "it is believed that a claimant passed through Belgium before arriving in the UK and claiming asylum". The standard for inadmissibility was that potential asylum seekers have "passed through" a third state (rather than stopped, or had been temporarily or permanently resident). The guidance also referred to evidence that an asylum seeker "has travelled through" a third state as grounds for an inadmissibility decision.[173]

This possible interpretation was also addressed by UNHCR during the passing of the Nationality and Borders Bill, suggesting that such an interpretation would make the UK an international outlier:

> In UNHCR's view, transit alone ought not be regarded as a "sufficient" connection or meaningful link to a third country to justify a finding of inadmissibility, particularly outside the context of formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards. Transit is often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection.[174]

More generally, UNHCR comments that such a right to seek protection does not equate to an unfettered right to choose where to apply for asylum:

> Whilst international law does not provide an unrestricted right to choose where to apply for asylum, there is no requirement under international law for asylum-seekers to seek protection in the first safe country they reach. **This expectation would undermine the global humanitarian and cooperative principles on which refugee protection is founded, as emphasized by the 1951 Convention and recently reaffirmed by the General Assembly, including the UK, in the Global Compact on Refugees.** It would impose an arbitrary and disproportionate burden on countries in the immediate region(s)

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172 UNHCR, UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom, May 2021, Annex para 12 (emphasis in original)

173 Home Office, Inadmissibility: safe third country cases, version 6.0, 9 May 2022. This language does not appear in version 7.0

174 UNHCR, UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022, Annex, para 155

> of flight and threaten the capacity and willingness of those countries to properly process claims or provide acceptable reception conditions and durable solutions. This would (and does) threaten to make these first countries, in turn, unsafe and encourage onward movement.[175]

Externalisation policies and 'safe third countries'

Guiding principles and legality of transfer arrangements

The use of agreements between states to share responsibility for the protection of refugees and asylum seekers is possible in international law, but only in specific circumstances. UNHCR has warned that such arrangements may only be in line with the Refugee Convention where they do not amount to the 'externalisation' of states' international obligations and responsibilities towards refugees, as set out below.

In May 2013, UNHCR issued guidance on the use of transfer arrangements for asylum seekers between states. This recognised that "asylum-seekers and refugees should normally be processed in the territory of the State where they arrive, or which otherwise has jurisdiction over them" and that the primary responsibility to provide protection rests with the state where asylum is sought.[176]

The guidance also recognised an increase in arrangements between states for sharing the hosting of asylum seekers and the processing of their asylum claims. It said the legality or appropriateness of such arrangements "need to be assessed on a case-by-case basis".[177]

While not all arrangements will be legal, UNHCR sets out a number of principles to guide where these arrangements may be appropriate.[178] One of the principles is that:

> There is no obligation for asylum-seekers to seek asylum at the first effective opportunity, yet at the same time there is no unfettered right to choose one's country of asylum. The intentions of an asylum-seeker, however, ought to be taken into account to the extent possible.

Another principle is that states involved in transfer arrangements should be parties to the Refugee Convention and its 1967 Protocol, or to other refugee and human rights treaties. But UNHCR notes that "while being party to

175 UNHCR, UNHCR Observations on the New Plan for Immigration policy statement of the Government of the United Kingdom, May 2021, Annex para 19 (emphasis in original)

176 UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, May 2013, para 1

177 As above, para 3

178 As above

international and regional refugee and human rights instruments is an important indicator as to whether the receiving State meets the criteria outlined in this Guidance Note, review of the actual practice of the State and its compliance with these instruments is an essential part of this assessment".[179]

A further principle is:

> Arrangements should be aimed at enhancing burden- and responsibility-sharing and international/regional cooperation, and not be burden shifting. Such arrangements should ideally contribute to the enhancement of the overall protection space in the transferring State, the receiving State and/or the region as a whole.[180]

UNHCR also recommends that such agreements should be legally binding and allow asylum seekers to challenge their treatment under them.[181]

As noted above, the UK-Rwanda MOU is not legally binding. Paragraph 2.2 specifically provides that the arrangement is not justiciable in a court of law and does not confer rights or obligations.[182]

One of the most fundamental principles suggested by UNHCR is made up of an accumulation of human rights and international legal standards regarding the treatment of each asylum seeker. Based on these international standards, UNHCR suggests that any transfer arrangement needs to guarantee that each asylum seeker:

- will be individually assessed as to the appropriateness of the transfer, subject to procedural safeguards, prior to transfer. Pre-transfer assessments are particularly important for vulnerable groups, including unaccompanied and separated children. The best interest of the child must be a primary consideration;
- will be admitted to the proposed receiving State;
- will be protected against refoulement;
- will have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection;
- will be treated in accordance with accepted international standards (for example, appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; persons with specific needs are identified and assisted); and

179 As above, para 3 (iii)
180 As above, para 3 (iv)
181 As above, para 3 (v)
182 Home Office, Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement, 14 April 2022, para 2.2

- if recognised as being in need of international protection, will be able to enjoy asylum and/or access a durable solution.[183]

Where these guarantees cannot be agreed to or met, UNHCR considers that a transfer would not be appropriate.

Requirement of a connection with the receiving state

While UNHCR acknowledges in some circumstances it is possible to allow asylum seekers to be transferred to countries they have a connection to, or previously claimed asylum in, recently it has argued there should be more meaningful connections between an asylum seeker and the state they are transferred to.[184]

Connections to the receiving state which may be relevant, the UNHCR suggests, could include for example:

- family relations;
- previously acquired rights in the state, such as previous residence or long-term visits;
- linguistic, cultural or other similar ties.[185]

As mentioned above, section 16 of the Nationality and Borders Act 2022 provides for a test that an asylum seeker has a "connection" with a receiving State. It lists five conditions where an asylum-seeker may have a connection to a third state, including where they have previously made an asylum claim, or where they could have been reasonably have been expected to make such a claim. But it also provides that the Secretary of State can remove an asylum seeker even where they have no connection to the receiving state.

UNHCR has criticised this as a departure from established international standards:

> In a significant and highly problematic departure from international practice and UK caselaw, it is irrelevant whether the claimant would be admitted to the safe third State in question. While a "connection" (in the limited sense of proposed new Section 80C) between the applicant and the "safe third State" is required for a claim to be declared inadmissible, the Secretary of State may still remove the applicant to any other "safe" third State. The 'connection'

183 UNHCR, Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers, May 2013, para 3 (vi)

184 See, for example, UNHCR, Legal Considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries, April 2018

185 As above, para 6, footnote 15; see also UNHCR, Considerations on the "Safe Third Country" Concept, July 1996; UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions, March 2010, p 311

> requirement therefore appears to be meaningless in terms of ensuring the reasonableness and appropriateness of actual transfers.[186]

It cites in support of this position a 2010 immigration tribunal case which stated:

> … the type of case with which we are concerned here, involving intended expulsion of a refugee, tends only to arise as a matter of international state practice in situations where the person concerned has some connection with the third state which is said to be safe, based on nationality, prior residence, marriage, entitlement to residence, historical ties etc. it [sic] does not arise simply because there is a safe third country somewhere.[187]

UNHCR considers that sending asylum seekers to countries in which they have no meaningful connection would risk undermining the aims of the 1951 Convention:

> This would be fundamentally at odds with international practice, as well as incompatible with respect for human dignity. It undermines the Refugee Convention's fundamental goal of achieving durable solutions for refugees in which they can enjoy the "widest possible exercise of … fundamental rights and freedoms". This goal is a practical as well as a humanitarian one. If refugees are sent to countries with which they have no connection and where it is not reasonable for them to go, many will simply seek ways to move onwards.[188]

Non-refoulement (return to a risk of persecution)

Article 33 of the Refugee Convention provides:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This long-standing principle is reiterated in several other international human rights treaties. A similar principle has developed in the judicial case law relating to Article 3 of the European Convention on Human Rights (the prohibition of torture or other inhuman or degrading treatment) whereby states are prohibited from deporting people to states where they are at risk of being subject to violations of this human right.

The Nationality and Borders Act 2022 outlines when a country can be considered "safe third country":

> For the purposes of this section, a State is a "safe third State" in relation to a claimant if—

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186 UNHCR, UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022, para 38

187 *RR (refugee – safe third country) Syria* [2010] UKUT 422 (IAC), 13 November 2010, para 11

188 UNHCR, UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022, Annex, para 159

> (a) the claimant's life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion,
>
> (b) the State is one from which a person will not be sent to another State—
>
> (i) otherwise than in accordance with the Refugee Convention, or
>
> (ii) in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment), and
>
> (c) a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State.[189]

The UK-Rwanda MoU also provides for a specific commitment in this regard:

> 9.1 Rwanda will ensure that:
>
> 9.1.1 at all times it will treat each Relocated Individual, and process their claim for asylum, in accordance with the Refugee Convention, Rwandan immigration laws and international and Rwandan standards, including under international and Rwandan human rights law, and including, but not limited to ensuring their protection from inhuman and degrading treatment and refoulement;

UNHCR, however, has been critical of these criteria, suggesting that they do not go far enough.

> Under this provision, a State could be considered "safe" even if the applicant had been, and perhaps continues to be, at real risk of being subjected to human rights violations there that either fall short of threats to life and liberty, or to which they were not exposed for reasons of a Refugee Convention ground. Nor would inhuman and degrading treatment make a State unsafe, unless it were in the context of removal to a further country.[190]

UNHCR offers its own suggestions as to what criteria should be considered when determining whether a state is sufficiently safe for the transfer of asylum seekers. It suggests the criteria must also be met in practice as well as in the legal systems of those states:

> In UNHCR's view, any definition of a country's safety should include explicit benchmarks in line with the standards outlined in the Refugee Convention and under international human rights law, and these must be met in both law and practice. At a minimum, therefore, the definition of a "safe" State must include that the following are guaranteed in law and met in practice: appropriate reception arrangements and protection against threats to physical safety or freedom; protection against refoulement; access to fair and efficient asylum procedures, or to a previously afforded protective status; the legal right to remain during the asylum procedure; an appropriate legal status if found to be in need of international protection; and standards of treatment commensurate with the Refugee Convention and international human rights law. This includes

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189 Nationality, Immigration and Asylum Act 2002, s80B (inserted by Nationality and Borders Act 2022, s16)

190 UNHCR, UNHCR Updated Observations on the Nationality and Borders Bill, as amended, January 2022, Annex, para 140 (footnotes omitted)

> recognition of the positive rights enshrined in the Refugee Convention, and not merely protection against refoulement. Furthermore, the capacity of the third State to provide protection in practice should be taken into consideration, particularly if the third State is already hosting large refugee populations.[191]

European Convention on Human Rights

Some people might invoke protections provided by the European Convention on Human Rights (ECHR) to challenge the Home Office's decision that it is safe to remove them to Rwanda. The Law Society of England and Wales has outlined some potential examples:

> (1) For instance, if someone:
>
> - has been trafficked to the UK and the UK does not fulfil its obligations to investigate the trafficking claim. This could mean that the government is in breach of its obligations under Article 4 European Convention on Human Rights (ECHR). Such claims may not even come to light if that individual does not have access to a legal representative
> - has a spouse or parent in the UK then their removal may be in breach of their right to family or private life under Article 8 ECHR
> - has a medical condition or is at risk of suicide the removal could not be in line with the UK's human rights obligations and so be in breach of Article 2 ECHR
> - would be at risk of persecution or inhuman or degrading treatment within Rwanda, such as LGBT individuals, this may further be incompatible with an individual's Article 3 rights under the ECHR[192]

A June 2022 evidence session held by the Joint Committee on Human Rights considered these issues in further detail.

Other substantive and procedural protections

The principle of non-refoulement, and linked human rights law standards, sometimes require much more than simply preventing an asylum seeker from encountering danger when removed from a country. When read in conjunction with other human rights obligations, such as the right to an effective remedy for potential human rights violations, established case law has outlined that states have specific procedural obligations when considering the removal of an asylum seeker, and that an asylum seeker must also be able to challenge their removal.

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191 As above, para 144 (footnotes omitted)

192 Law Society press release, Rwanda removals raise rule of law questions, 9 June 2022

For example, the European Court of Human Rights has set out an overview to its established case law on immigration. It summarises that in cases where an asylum seeker may be removed to a safe third country, the removing state is under specific procedural duties. In particular, the Court considers the following factors:

- The removing state should examine thoroughly whether there is a real risk of the asylum seeker being denied access to adequate protection in the third state from refoulement without a proper evaluation of the risks they may face.
- Where guarantees from the third state are insufficient, the removing state is under a duty not to remove asylum seekers to the third state.
- To determine whether the removing state has properly assessed the asylum procedures of the third state, the removing state should take into account the available general information about the receiving third state and its asylum system in an adequate manner and of their own initiative.
- An applicant should be given sufficient opportunity to demonstrate that the third state is not a 'third safe country' in their particular case.
- Any presumption that a particular country is "safe", if it has been relied upon in decisions concerning an individual asylum seeker, must be sufficiently supported at the outset.[193]

Where an asylum seeker has an "arguable complaint" that removal would expose them to treatment that could violate their right to life (Article 2) or the prohibition of torture, inhuman or degrading treatment (Article 3), the Court has said they must have an "effective remedy" at the domestic level.[194]

This, according to the Court, requires independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Articles 2 or 3. Such a claim should also have an automatic suspensive effect (that is, the removal procedure should be halted until the claim is considered).

The Court has elaborated on the requirements that states should adhere to in these circumstances, and the factors relevant to considering whether there is a violation of this standard. These include providing adequate information, the availability of interpreters, staff training, legal aid and giving reasons for decisions.[195]

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193 European Court of Human Rights, Guide on the case-law of the European Convention on Human Rights: Immigration (PDF), updated 31 August 2022, para 55

194 As above, para 57; see also European Court of Human Rights, Guide on Article 13 of the European Convention on Human Rights: Right to an effective remedy (PDF), updated 31 August 2022, paras 121-132

195 European Court of Human Rights, Guide on the case-law of the European Convention on Human Rights: Immigration (PDF), updated 31 August 2022, para 57

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