



# Illegal Migration Act 2023

## 2023 CHAPTER 37

### *Detention, bail etc*

#### **12 Period for which persons may be detained**

(1) In Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc.)—

(a) in paragraph 16 (powers to detain), after sub-paragraph (4) insert—

“(5) See paragraph 17A for further provision about the period for which persons may be detained under this paragraph.”;

(b) after paragraph 17 insert—

“17A (1) A person liable to be detained under paragraph 16 may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the examination or removal to be carried out, the decision to be made, or the directions to be given.

(2) Sub-paragraphs (1) to (2), (2C), (3) and (4) of paragraph 16 apply regardless of whether there is anything that for the time being prevents the examination or removal from being carried out, the decision from being made, or the directions from being given.

(3) Sub-paragraphs (1) and (2) are subject to—

(a) paragraph 16(1B) (power to detain for examination for period not exceeding 12 hours);

(b) paragraph 16(2A) and paragraph 18B (limitation on detention of unaccompanied children);

(c) paragraph 16(2B) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women);

(d) paragraph 16(2D) to (2G) (limitation on detention of pregnant women).

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*Changes to legislation:* There are currently no known outstanding effects for the Illegal Migration Act 2023, Section 12. (See end of Document for details)

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- (4) Sub-paragraph (5) applies if, while a person is detained under paragraph 16, the Secretary of State no longer considers that the examination or removal will be carried out, the decision will be made, or the directions will be given within a reasonable period of time.
- (5) The person may be detained under paragraph 16 for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.
- (6) In the application of this paragraph in relation to detention under paragraph 16(3), references to "the removal" are to—
- (a) the removal of the person from the ship or aircraft on which the person is detained so that the person may be detained under paragraph 16, or
  - (b) the removal of the person from the United Kingdom in that ship or aircraft.
- (7) In the application of this paragraph in relation to detention under paragraph 16(4), references to "the removal" are to the removal of the person from the United Kingdom in the ship or aircraft on which the person is detained."
- (2) In paragraph 2 of Schedule 3 to the Immigration Act 1971 (detention or control pending deportation)—
- (a) after sub-paragraph (3) insert—
    - “(3A) A person liable to be detained under sub-paragraph (1), (2) or (3) may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary to enable the deportation order to be made, or the removal to be carried out.
    - (3B) Sub-paragraphs (1) to (3) apply regardless of whether there is anything that for the time being prevents the deportation order from being made or the removal from being carried out.
    - (3C) Sub-paragraphs (3A) and (3B) are subject to sub-paragraph (4ZA) and section 60 of the Immigration Act 2016 (limitation on detention of pregnant women).
    - (3D) Sub-paragraph (3E) applies if, while a person is detained under sub-paragraph (1), (2) or (3), the Secretary of State no longer considers that the deportation order will be made or the removal will be carried out within a reasonable period of time.
    - (3E) The person may be detained under that sub-paragraph for such further period as, in the opinion of the Secretary of State, is reasonably necessary to enable such arrangements to be made for the person's release as the Secretary of State considers to be appropriate.”;
  - (b) in sub-paragraph (4), for “17 to 18A” substitute “17, 18, 18A”.
- (3) In section 10(9) of the Immigration and Asylum Act 1999 (application of Schedule 2 to the Immigration Act 1971 in relation to persons unlawfully in the United Kingdom)—

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

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

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**Commencement Information**

- I1** S. 12 not in force at Royal Assent, see [s. 68\(1\)](#)
- I2** [S. 12](#) in force at 28.9.2023 by [S.I. 2023/989](#), [reg. 2\(a\)](#)

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