

Why the UK Illegal Migration Bill is an Asylum Ban

On 7 March 2023, the *Illegal Migration Bill* was introduced to the UK Parliament. UNHCR, the UN Refugee Agency, has expressed its profound concern in a [public statement](#) noting that the draft legislation, if passed, would breach the UK's obligations under international law. On 22 March 2023, UNHCR shared its [formal legal observations](#) on the Bill with the UK Government. Here, we break down the issues at stake.

1. People in need of protection would be unable to seek it in the UK, no matter how compelling their claims.

Although much of the debate has focused on irregular arrivals over the Channel in recent years, the scope of the asylum ban set out in the draft legislation is much wider. The proposal would also deny access to asylum for people who arrive in UK airports in order to claim asylum after having transited, however briefly, a country where they did not face persecution – regardless of whether or not they had a chance to seek protection there. For example, someone who arrives on a student or tourist visa with the intention of claiming asylum, and who has passed through another country on the way, would no longer be able to apply. [This would mean that almost no-one is able to seek asylum in the UK.](#)

Almost 90% of refugees globally come from countries from which it is impossible to travel to the UK directly because there are no direct flights.ⁱ Even where such routes exist, the vast majority of people fleeing conflict and persecution have no way of obtaining the passports and visas that would make such a journey possible.

[There is no asylum visa or 'queue' for the United Kingdom.](#) Special pathways are in place for a very limited number of refugees including Ukrainians and some Afghans, for whom the right to access protection in the UK is granted before they arrive (see also below). The overwhelming majority of refugees have no access to such pathways – and making their own way to the UK, generally through irregular routes, is the only avenue open to them. Equally, the vast majority of refugees remain in countries neighbouring their own or apply for asylum elsewhere, with only a very small number seeking protection in the UK.

2. The Bill would penalise refugees for arriving in the UK without prior authorization, regardless of how they travel.

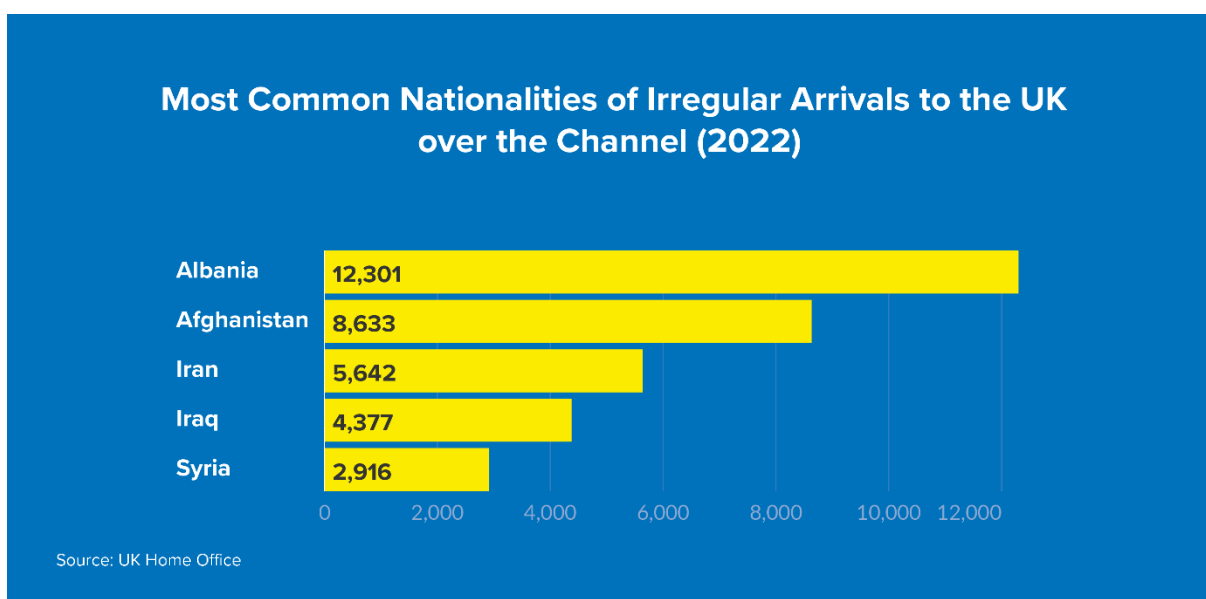
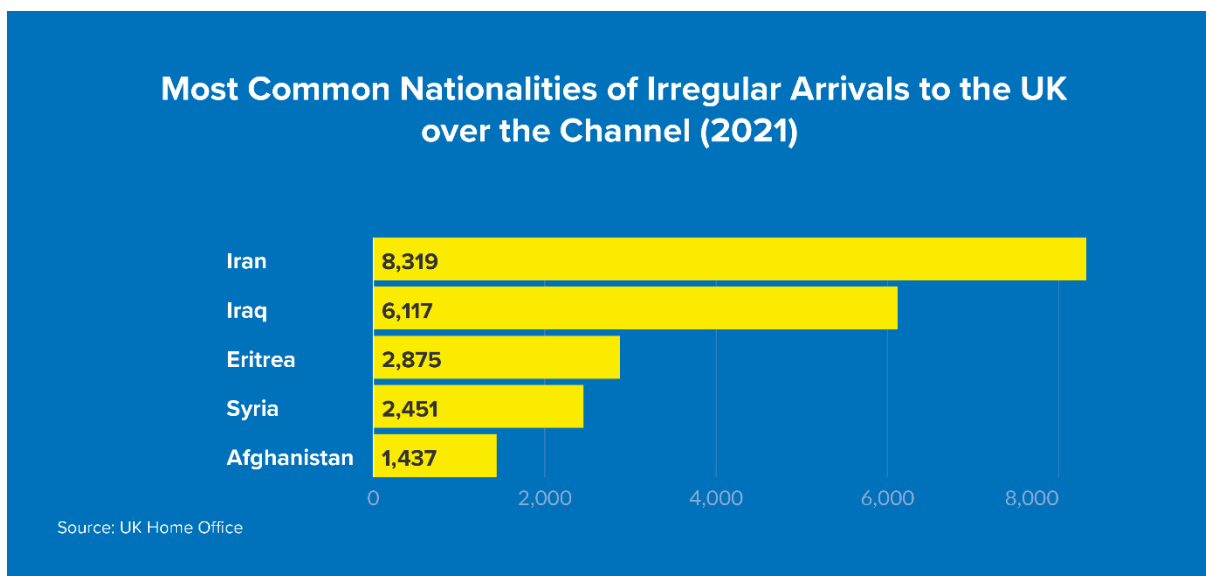
The Refugee Convention, of which the UK was a lead drafter, recognises that people fleeing war and persecution often have no choice but to travel without the documents and official permits that most others take for granted. It is not a crime to cross a border without authorization to seek asylum – otherwise most refugees would remain trapped in their own countries and at risk of persecution indefinitely. The Refugee Convention specifically states under Article 31 that refugees 'coming directly' from the country they are fleeing should not be penalised on this basis.

In cases where a refugee travels through another country where they were only in transit, or where their protection and safety could not be ensured, they are still considered to have 'come directly' to the country where they are seeking asylum.ⁱⁱ For this reason, international law requires that refugees are not denied the chance to have

their claim for protection considered simply on the basis of their irregular entry and the fact that they have transited another country.

3. Most people arriving across the Channel are refugees.

In 2021-2022, the most common nationalities of people arriving in the UK across the Channel were Iran, Iraq, Eritrea, Syria, Afghanistan and Albania. In each of these years, Afghanistan, Syria, Iran and Iraq were among the top 5 nationalities.ⁱⁱⁱ Most of these countries are affected by major global displacement and refugee situations with immense humanitarian needs and limited solutions.^{iv} In countries in which there is no active war or conflict, it may still be the case that specific profiles are at risk of persecution – for grounds including gender, religion or political opinion. These are the very people the international refugee framework was designed to protect.



4. Resettlement and other ‘bespoke’ pathways cannot substitute for the right to seek asylum.

Resettlement and asylum are two different ways of providing protection to people who have been forced to flee their homes due to war and persecution. Asylum is a fundamental human right. It allows people who are fleeing persecution and conflict to seek protection in another country. It provides a lifeline to people in need of sanctuary and safety.

Resettlement, on the other hand, is made available only for a very limited number of refugees who have been identified as particularly at risk, and who cannot return home or integrate into the country where they initially sought refuge. [It is the rare exception – available to fewer than 1% of refugees worldwide.](#) UNHCR resettlement programmes, which rely on places being made available by governments, are designed to provide a permanent solution for refugees who cannot rebuild their lives in safety and dignity in the country where they first sought protection. However, resettlement is available only for a small number of refugees at heightened risk, and it cannot replace asylum itself.

Certain countries and regions have at times created special programmes for refugees from large-scale displacement crises – such as Vietnam and Cambodia in the 1970s and 1980s, Bosnia in the 1990s and most recently, Ukraine. These programmes have saved lives and changed lives immeasurably for the better. But restricting protection to special intakes like these, while closing down access to asylum, would effectively contain refugees on the peripheries of the world’s major conflicts, in low- and middle-income countries. In so doing, governments like the UK would be adopting a selective approach to their refugee protection obligations and turning their backs on the fundamental right to seek asylum.

5. A ban on asylum for irregular arrivals would strain the UK’s existing system further and leave refugees in limbo.

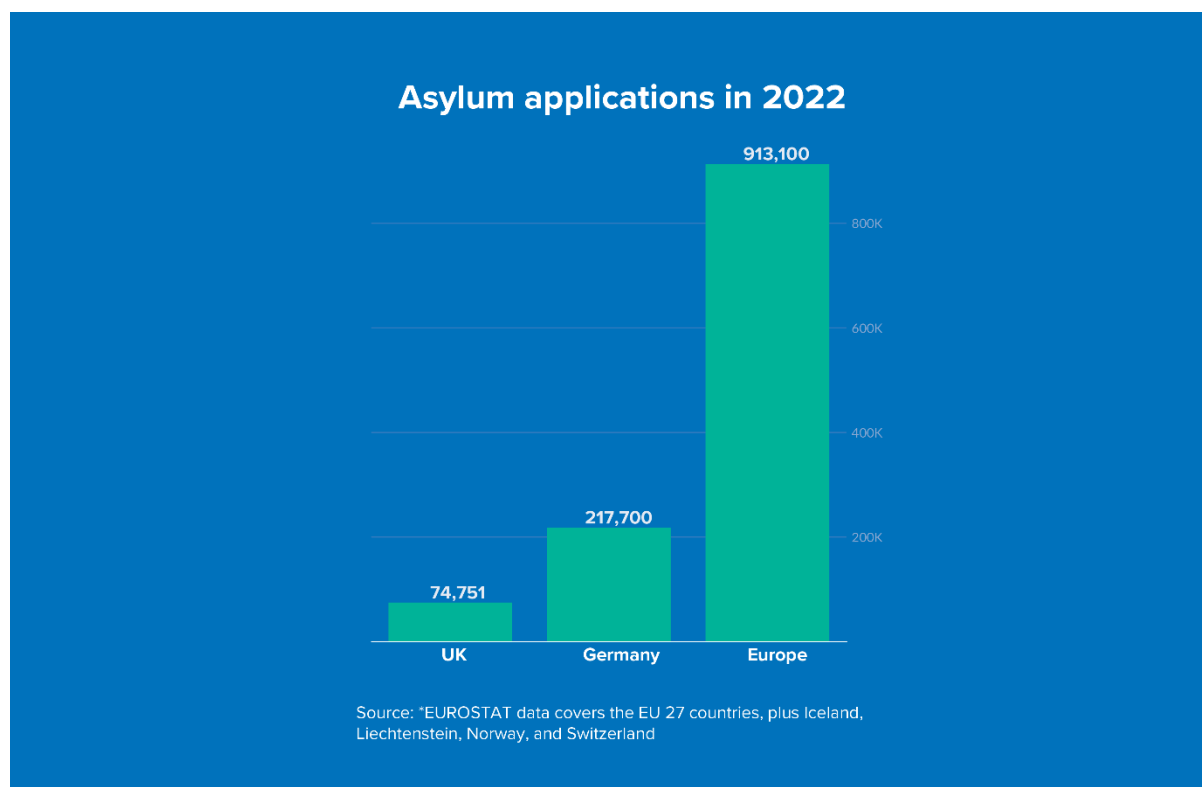
A more practical, cost-effective and humane way of addressing irregular arrivals would be to fairly and efficiently determine asylum claims, including through streamlined processing. Most people arriving to the UK by small boat are likely to be refugees. In February 2022, the UK Home Office introduced welcome [accelerated procedures](#) for high-grant nationalities (currently Afghanistan, Eritrea, Libya, Syria and Yemen, all within the top ten arrivals over the Channel at different points during the past five years). These very same people, profoundly in need of international protection, would be barred from seeking asylum in the UK by this Bill introduced less than two weeks later.

The situation for people from countries that do not present such clear or obvious reasons to seek asylum is more complex. The fact that the country is not at war does not mean that people may not face persecution or otherwise need international protection. Where asylum claims are made by those who are not refugees, a robust procedure with adequate safeguards would mean that such people can be swiftly returned to their home countries, if they are determined not to be in need of protection or to have another lawful basis to remain in the UK.

To better address current challenges, UNHCR has long advocated for the UK authorities to improve processing times and make faster decisions through streamlined and tailored asylum procedures. We continue to work closely with the Home Office in support of these efforts. Barring access to asylum will mean that those in need of protection do not receive it, and those who have no such need may wait months or years without having their claims determined.

6. International cooperation and responsibility-sharing matter.

As of the end of 2022, there were 103 million people forcibly displaced around the world.^v More than half have been forced to flee their homes but remain within their own countries. Some 34.4 million people are refugees and asylum-seekers globally today. 74% of refugees remain in low- and middle-income countries, most in countries neighbouring those affected by the world's major conflicts. The vast majority of people forced to flee conflict and persecution globally are therefore within their own countries or regions – they are not seeking to come to the United Kingdom.



The Refugee Convention recognises displacement and asylum as the collective responsibility of all states, amidst a truly global challenge. As such, the Convention calls for international cooperation to ensure that refugees are protected and provided with the necessary assistance and support. [If every country in the world took the approach outlined by this draft legislation, refugees and displaced people would remain in countries of the peripheries of the world's major conflicts, exacerbating an already disproportionate and inequitable burden.](#)

UNHCR shares the concerns of governments regarding the number of asylum-seekers resorting to dangerous journeys, not only across the Channel but also elsewhere, as in the Mediterranean. In pursuing a short-term response to such challenges, disconnected from existing, robust regional frameworks, the proposed legislation also risks undermining the regional cooperation that would bring more effective and sustainable results.

7. Transfer arrangements can work, but the UK is responsible for those who seek asylum on its territory, and safeguards and standards must be met.

International law does not require that refugees claim asylum in the first country they reach. Returns or transfers to safe third countries may nonetheless be appropriate if certain thresholds are met – in particular, if Refugee Convention rights will be respected there, and the arrangement helps share the responsibility for refugees equitably among nations. The Dublin framework between EU member states is an example of such an arrangement. Currently, the UK is not part of any such framework, and its bilateral arrangement with Rwanda fails to meet the necessary international standards. The primary responsibility for identifying and affording international protection rests with the state in which an asylum-seeker arrives and seeks that protection. This obligation remains unaltered by the transfer of asylum-seekers to third countries. For UNHCR's position on the UK-Rwanda Migration and Economic Development partnership, please see [here](#).

ⁱ See <https://www.heathrow.com/travel-guides/route-map>; <https://www.flightsfrom.com/explorer/LGW?mapview>; <https://fly.manchesterairport.co.uk/destinations/>; <https://birmingham.airportdirecttravel.co.uk/>; <https://www.stanstedairport.com/destinations-and-guides/a-z-list-of-destinations/>; <https://www.edinburghairport.com/flights/destinations/>; <https://www.glasgowairport.com/destinations/all-destinations/>; <https://www.belfastairport.com/flights/destination-map>

ⁱⁱ See, 'Asylum-seekers who have entered irregularly: What the 1951 Convention has to say', *A guide to international refugee protection and building state asylum systems: Handbook for Parliamentarians N° 27*, 2017, p. 94, available at <https://www.unhcr.org/3d4aba564.pdf>.

ⁱⁱⁱ <https://www.gov.uk/government/collections/irregular-migration-to-the-uk-statistics>

^{iv} See, for example, 'Deteriorating conditions putting Eritrean refugees at grave risk in Tigray', UNHCR, 21 January 2022, '[Thousands of Eritrean refugees displaced in clashes in Ethiopia's Afar region](#)', UNHCR, 18 February 2022, [UNHCR Sudan - Eritrean Refugees in Sudan Dashboard as of 31 January 2023](#), [UNHCR Operational Data Portal: Ethiopia](#), [UNHCR Operational Data Portal: Syrian Refugee Regional Response](#), [UNHCR Operational Data Portal: Afghanistan Situation](#), [UNHCR International Protection Considerations with Regard to People Fleeing the Republic of Iraq](#), [UNHCR Guidance Note on the International Protection Needs of People Fleeing Afghanistan](#), [UNHCR International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update VI](#), [UNHCR Chad: Situation map of persons of concern to UNHCR](#), [UNHCR Position on Returns to Ethiopia](#).

^v See UNHCR Mid-Year Trends Report 2022, available at <https://www.unhcr.org/uk/statistics/unhcrstats/635a578f4/mid-year-trends-2022.html>.